
28 June 2021

English only

Human Rights Council**Forty-seventh session**

21 June–9 July 2021

Agenda items 2 and 9

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of
the High Commissioner and the Secretary-General****Racism, racial discrimination, xenophobia and related forms
of intolerance follow-up to and implementation of the Durban
Declaration and Programme of Action****Promotion and protection of the human rights and
fundamental freedoms of Africans and of people of African
descent against excessive use of force and other human rights
violations by law enforcement officers****Conference room paper*,*******Summary***

The murder of George Floyd on 25 May 2020 and the ensuing mass protests worldwide have marked a watershed in the fight against racism. Responding to this situation, the Human Rights Council met in an urgent debate and adopted resolution 43/1. In that resolution, the Council requested the High Commissioner to prepare a comprehensive report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and people of African descent, to contribute to accountability and redress for victims; to examine government responses to anti-racism peaceful protests, including the alleged use of excessive force against protesters, bystanders and journalists, to be submitted to the Council at its forty-seventh session.

Pursuant to that mandate, the High Commissioner submitted her report (A/HRC/47/53) to the Human Rights Council. She will also present this present conference room paper to expand on the analysis contained in that report.

The report of the High Commissioner includes an agenda towards transformative change for racial justice and equality. The objectives of that agenda, contained in the annex to the report are to reverse cultures of denial, dismantle systemic racism and accelerate the pace of action; end impunity for human rights violations by law enforcement officials and

* Reproduced as received, in the language of submission only.

** The present paper should be read in conjunction with the report of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council at its forty-seventh session under the same title (A/HRC/47/53).

close trust deficits in this area; ensure that the voices of people of African descent and those who stand up against racism are heard and that their concerns are acted upon; and acknowledge and confront legacies, including through accountability and redress.

In her report, the High Commissioner calls upon States to translate this agenda into action plans and concrete measures developed through national dialogues and with the meaningful participation of people of African descent to address the specific histories, lived experiences and current realities in each State. The Office of the High Commissioner looks forward to working with States and the Human Rights Council to implement this agenda, including by: strengthening assistance to States and other stakeholders; documenting and following up on specific incidents; consulting and partnering with victims, survivors and affected communities; and providing guidance for relevant racial justice processes in States, for which additional resources are required.

The High Commissioner also recommends that the Human Rights Council sustain its close engagement on these issues and establish a specific, time-bound mechanism, or that it strengthen an existing mechanism by providing it with additional capacity, in order to advance racial justice and equality in the context of law enforcement in all parts of the world, including by examining relevant patterns, incidents, policies and processes, such as those highlighted by the High Commissioner in her report and in the present conference room paper.

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I. Introduction and Methodology

1. The murder of George Floyd on 25 May 2020 in Minnesota, the United States of America (United States), the mass protests that ensued in many countries and the conviction and verdict against one responsible law enforcement officer¹ represent a seminal point in the fight against impunity for racism.

2. The worldwide mobilization of people calling for racial justice has forced a long-delayed reckoning with racial discrimination and has shifted debates towards a focus on the systemic nature of racism and the institutions that perpetrate it. Most visibly, there were widespread protests calling for an end to systemic racism and police brutality against Africans and people of African descent.² Prompted by this groundswell, on 17 June 2020 the Human Rights Council held an urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests. During the urgent debate, the United Nations High Commissioner for Human Rights stated that the killing of George Floyd has come to symbolize the systemic racism that harms millions of people of African descent, and called on all States and stakeholders to do more to address systemic and structural racial discrimination impinging on the human rights of people of African descent.³ Citing an op-ed by senior United Nations (UN) officials who were African or of African descent, Deputy Secretary General Amina Mohammed said that not enough can ever be said about the deep trauma and intergenerational suffering that has resulted from the racial injustice perpetrated through centuries, particularly against people of African descent. To merely condemn expressions and acts of racism is not enough. We must go beyond and do more.⁴

3. Ahead of the debate, on 8 June, family members of victims of police killings and civil society organizations from around the world sent a joint open letter to the members of the Human Rights Council. The letter called on the Council to convene a special session “with the aim of mandating an independent inquiry”.⁵

4. On 19 June, the Council adopted resolution 43/1 by consensus, in which it requested the High Commissioner to prepare a comprehensive report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and people of African descent, to contribute to accountability and redress for victims; to examine government responses to anti-racism peaceful protests, including the alleged use of excessive force against protesters, bystanders and journalists; and to present a comprehensive report to the Council at its forty-seventh session. Pursuant to the Council’s request, this conference room paper elaborates on the issues presented in A/HRC/47/53 and should be read in conjunction with it.⁶

5. Given the pivotal importance of this moment, the High Commissioner has established a team dedicated to implementing Human Rights Council resolution 43/1. The Office of the High Commissioner (OHCHR) has recognized the importance of building on decades of research, analysis, and recommendations on the areas identified in the resolution, bringing together and moving forward the work of UN human rights mechanisms, particularly the Committee on the Elimination of All Forms of Racial Discrimination, the Special Rapporteur

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27016&LangID=E>.

² A/75/561, para. 5. People of African descent are those referred to as such by the Durban Declaration and Programme of Action and who identify themselves as people of African descent (Committee on the Elimination of Racial Discrimination, general recommendation No. 34 (2011), (CERD/C/GC/34), para. 1).

³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25968&LangID=E>; A/HRC/54/47, paras. 20 and 23.

⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25971>

⁵ https://www.aclu.org/sites/default/files/field_document/20.06.08_final_and_signed_letter_to_unhrc_aclu_and_ushrn.pdf.

⁶ See also

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26326&LangID=E>;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26921&LangID=E>

on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Working Group of Experts on People of African Descent.

6. The analysis carried out by OHCHR is based on over 110 contributions made in response to a detailed call for submissions addressed to States and other stakeholders that included specific questions on all the issues raised in Human Rights Council resolution 43/1.⁷ OHCHR's analysis was also based on a review of publicly available material and on 23 consultations held online with over 340 persons (over 65 per cent of whom were women), mostly people of African descent. The consultations also included listening attentively to some family members of people of African descent from different countries killed by law enforcement officials. Specific consultations were held on the major themes of the report: systemic racism, law enforcement policies and conduct, and accountability and redress for victims with the participation of academics, practitioners, representatives of civil society, national human rights institutions and equality bodies, regional human rights experts and businesses. It was critical for OHCHR to learn from the lived experiences of people and communities of African descent in order to formulate recommendations for ways to achieve transformative change.

7. Additional consultations were held with UN special procedures mandate holders and members of the human rights treaty bodies. OHCHR benefited in particular from the ongoing perspectives and insights of the Working Group of Experts on People of African Descent, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the rights to freedom of peaceful assembly and of association – all of which enriched the present conference room paper.

8. OHCHR received information on over 250 incidents of deaths of Africans and people of African descent, at least 190 of which were at the hands of law enforcement officials. While the incidents occurred in countries with varying legal systems, some of the practices, patterns and challenges were the same. Given the inherent limitations of this time-bound and global mandate, OHCHR has selected seven emblematic incidents and examined them in detail to illustrate these practices, patterns and challenges and to formulate concrete recommendations for structural and institutional change. With regard to the seven incidents, OHCHR reached out to the States concerned and their views are summarized in Section III.

9. OHCHR grounded its analysis in the obligations of States contained in international human rights treaties, particular the International Convention on the Elimination of Racial Discrimination; general comments and recommendations elaborated by UN human rights treaty bodies,⁸ international human rights norms and standards, as relevant,⁹ as well as political commitments made by States, notably the Durban Declaration and Programme of

⁷ Contributions were received from States (Algeria, Andorra, Argentina, Bolivia (Plurinational State of), Costa Rica, Cyprus, Finland, Guatemala, Mexico, Sweden, Ukraine and United States), intergovernmental organizations, national human rights institutions, United Nations bodies and specialized agencies and non-governmental organizations, as well as other stakeholders. See www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx.

⁸ Including Committee on the Elimination of Racial Discrimination General Recommendations No. 36 on Preventing and Combating Racial Profiling by Law Enforcement Officials (CERD/C/GC/36); No. 34 on Racial discrimination against people of African descent (CERD/C/GC/34) - Human Rights Committee General Comments No. 34 on freedom of opinion and expression (CCPR/C/GC/34); No. 36 on the right to life (CCPR/C/GC/36); No. 37 on the right of peaceful assembly (CCPR/C/GC/37) – Committee on Economic, Social and Cultural Rights General Comment No. 20 on Non-discrimination in economic, social and cultural rights (E/C.12/GC/20).

⁹ For example, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990 (“Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”). (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>); the UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979 (“Code of Conduct for Law Enforcement Officials”) (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>).

Action.¹⁰ The analysis was complemented by OHCHR public reports, the findings of UN and regional human rights mechanisms, information from UN agencies and programmes, and open source information.

10. OHCHR is grateful to all those who contributed to the preparation of the report and this accompanying conference room paper by submitting information and participating in the related events, and in particular to the families of victims and affected communities and individuals who shared their experiences.

11. The analysis by OHCHR indicates that racism and racial discrimination against Africans and people of African descent are often rooted in policies and practices grounded in the debasement of the status of individuals in society. Their impact is particularly apparent in, though not limited to, States with a legacy of or with significant links to enslavement, the transatlantic trade in enslaved Africans and/or colonialism resulting in sizeable communities of people of African descent. The submissions and consultations repeatedly highlighted the situations of people of African descent in such States.

12. While the present conference room paper reflects the above-mentioned focus, it also touches on some of the most salient issues regarding entrenched racism and racial discrimination against Africans and people of African descent worldwide, for example towards smaller communities of people of African descent and in the context of contemporary migration trends.

13. This conference room paper examines the compounding inequalities that Africans and people of African descent face in all areas of life as a result of their marginalization and the lack of equal access to opportunities, resources and power. The High Commissioner highlights how systemic racism manifests itself in the area of law enforcement, focusing on incidents that result in death as its most visible and irreversible outcome, and on the consistent lack of accountability and redress for victims. The High Commissioner emphasizes the importance of ensuring that the voices of people of African descent and all those standing up against racism are heard. She considers the long-overdue need to confront the legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism and to seek reparatory justice. Recognizing the imperative for action, she presents an agenda towards transformative change for racial justice and equality for Africans and people of African descent globally (see also annex to A/HRC/47/53), which is further detailed in the ways forward in this conference room paper.

II. Reversing cultures of denial, dismantling systemic racism, and accelerating the pace of action

A. Systemic racism, enslavement, the transatlantic trade in enslaved Africans and its context of colonialism

14. This section examines illustrative contemporary manifestations of systemic racism affecting Africans and people of African descent, and factors that contribute to its perpetuation. It further seeks to highlight some promising developments that have been undertaken in a number of States and regions. It concludes with recommendations on the way forward to address systemic racism in line with States' international human rights law obligations and their political commitments, notably under the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action, in order to create conditions of life that uphold dignity and rights and achieve equality and justice.¹¹

¹⁰ Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (https://www.ohchr.org/Documents/Issues/Racism/DDPA_full_text.pdf).

¹¹ The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) defines racial discrimination as any distinction, exclusion, restriction or preference based on race,

15. For the purposes of the present conference room paper, the concept of systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect,¹² intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement,¹³ the transatlantic trade in enslaved Africans and colonialism.

16. Indeed, systemic racism persists, in large part, due to misconceptions that the abolition of slavery, the end of the transatlantic trade in enslaved Africans and colonialism, and measures taken by States to date, have removed the racially discriminatory structures built by those practices, addressed contemporary structures of racial discrimination, inequality and subordination, and created equal societies. The data and the lived experiences of Africans and people of African descent around the world are a constant reminder that systemic racism must be addressed in a systemic manner.

17. The submissions and consultations highlighted that people of African descent face interconnected and compounded forms of racial discrimination, marginalization and exclusion that are shaped by historical legacies and mutually reinforced through cycles of structural inequalities that have lasted for generations. The systemic racism experienced by Africans and people of African descent is also shaped by intersectionality or the combination of several identities, including sex, gender, gender identity, sexual orientation, nationality, migration status, disability, religion, socioeconomic and other status. Women and girls of African descent stand at the crossroad of intersectionality and inequality and therefore face multiple forms of discrimination arising from their racial or ethnic origin and their sex combined with gender-based discrimination and harmful gender stereotyping.¹⁴

B. Contemporary manifestations of systemic racism against Africans and people of African descent

18. Systemic racism against Africans and people of African descent affects the enjoyment of human rights in every part of life. Illustrative examples of its contemporary manifestations are presented below. The information draws *inter alia* on the submissions and the consultations, and on the findings of the Working Group of Experts on People of African Descent, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial

colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.

¹² The Committee on Economic, Social and Cultural Rights considers that both direct and indirect forms of differential treatment can amount to discrimination under article 2(2) of the International Covenant on Economic, Social and Cultural Rights (E/C.12/GC/20).

¹³ CERD/C/GC/34.

¹⁴ A/HRC/20/16; A/HRC/29/47; A/HRC/35/10; CERD/C/URY/CO/21-23; CERD/C/ARG/CO/21-23; CERD/C/MEX/CO/18-21; CERD/C/COL/CO/17-19; submissions by the Working Group on discrimination against women and girls, Rede Nacional de Mulheres Negras no Combate à Violência and the Woodhull Freedom Foundation/Sex Workers Project at the Urban Justice Center; www.un.org/sites/un2.un.org/files/women_and_girls_of_african_descent_web.pdf; <https://www.un.org/womenwatch/daw/csw/genrac/report.htm>.

Discrimination; as well as other UN¹⁵ and regional¹⁶ human rights mechanisms; and UN agencies and programmes.¹⁷

19. Although data is often scarce, where it exists it provides a worrying picture about the plight of people of African descent in many countries. UN and regional human rights mechanisms and bodies have been recommending the collection and disaggregation of data, including by race or ethnic origin, in line with international human rights standards to analyze the impact of laws, policies and programmes on specific populations, including Africans and people of African descent.¹⁸ Several States continue to be reluctant to engage in such an endeavour however (see further below).

1. Socioeconomic marginalization

20. Stark socioeconomic marginalization shapes the lives of people of African descent in many States and regions. In countries where there are sizeable communities of people of African descent, the members of these communities are more likely to live in or to be vulnerable to poverty. In 2018, research by the World Bank Group indicated that the combination of a protracted history of exclusion together with contemporary processes of structural discrimination made people of African descent one of the most persistent segments of Latin America's poor. They were over 2.5 times more likely to live in chronic poverty,¹⁹ and women of African descent suffered poverty at higher levels than the rest of the population.²⁰ For example, a 2018 report highlighted that the probability of being poor in Brazil, Colombia, Ecuador and Uruguay is between 4 and 7 per cent higher than for non-Afrodescendants, while in Uruguay, children of African descent experience higher rates of poverty and lower standards of living.²¹ Similar findings were made in countries in other regions, for example Portugal.²² In States with small communities of people of African decent, similar concerns have been raised. For example, in 2017, people of African descent

¹⁵ E.g. A/HRC/42/59/Add.1-2; E/CN.4/2006/16/Add.3; A/HRC/27/68/Add.1; A/HRC/36/60/Add.1; E/CN.4/2004/18/Add.2; E/CN.4/1997/71/Add.1; A/HRC/7/19/Add.5; A/HRC/7/23/Add.3; A/HRC/45/44/Add.1; A/HRC/13/59; A/HRC/36/60/Add.2; A/HRC/7/23/Add.2; E/CN.4/2005/18/Add.2; A/HRC/33/61/Add.1-2; A/HRC/30/56/Add.1; A/HRC/44/57/Add.2; A/HRC/24/52/Add.1-2; A/HRC/39/69/Add.2; A/HRC/42/59/Add.2; A/HRC/21/60/Add.1; A/HRC/30/56/Add.2; A/HRC/41/54/Add.2; A/HRC/15/18; CERD/C/GC/34; <https://www.ohchr.org/Documents/HRBodies/CERD/earlywarning/statements/USA.PDF>

[https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E.](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E)

¹⁶ E.g. https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf; <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/ecri-warns-against-racial-profiling-in-policing-and-calls-for-a-systemic-response-to-address-racism-in-all-areas>; <https://rm.coe.int/statement-of-ecri-on-racist-police-abuse-including-racial-profiling-an/16809eee6a>; <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>.

¹⁷ E.g. <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>; https://repositorio.cepal.org/bitstream/handle/11362/44387/1/S1800725_en.pdf; <https://www.cepal.org/es/publicaciones/42654-situacion-personas-afrodescendientes-america-latina-desafios-politicas-la>; <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>; <https://www.cepal.org/en/publications/45202-people-african-descent-latin-america-and-caribbean-developing-indicators-measure>.

¹⁸ CERD/C/GC/34, para. 9; Durban Declaration and Programme of Action, paras. 92-98; A/70/335; https://www.ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf; https://ec.europa.eu/info/sites/default/files/final_guidelines_4-10-18_without_date_july.pdf; <https://op.europa.eu/en/publication-detail/-/publication/1dcc2e44-4370-11ea-b81b-01aa75ed71a1/language-nl>; <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>; https://repositorio.cepal.org/bitstream/handle/11362/45202/1/S1900854_es.pdf.

¹⁹ <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>, pp. 12, 39 and 77.

²⁰ https://repositorio.cepal.org/bitstream/handle/11362/44387/S1800725_en.pdf?sequence=1&isAllowed=y, p. 79.

²¹ <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 21-22, and 74; A/75/363, para. 12.

²² CRC/C/PRT/CO/5-6, paras. 38-39.

in Saudi Arabia faced discrimination in access to housing, education, health care and employment, as well as societal racism.²³

21. According to the United States Census Bureau, in 2019, “Blacks [...] continue to be over-represented in the population in poverty relative to their representation in the overall population”, and while they represented 13.2 per cent of the total population, they comprised 23.8 per cent of those in poverty.²⁴ Moreover, in 2015, the “structural situation of poverty in which many African Americans live” was central to their overrepresentation in arrests, prison system, and unequal access to justice (see Section III).²⁵ In Europe, 55 per cent of respondents of African descent to a 2018 survey by the European Union Agency for Fundamental Rights had a household income below the “at-risk-of-poverty” threshold.²⁶

22. In countries and regions where there are sizeable communities of people of African descent, the members of these communities are more likely to suffer disproportionately high unemployment rates, earn lower wages, occupy less-skilled positions and are underrepresented in management positions.²⁷ For example, in the European Union, people of African descent were among the groups with the highest level of discrimination in employment in 2017, according to data gathered by non-governmental organizations,²⁸ and were employed in elementary occupations that did not match their level of education, according to a 2018 survey by the European Union Agency for Fundamental Rights.²⁹ UN and World Bank Group reports indicate that in Latin America women of African descent are particularly affected by unemployment and low income jobs.³⁰ Reportedly, in 2020 in the United Kingdom of Great Britain and Northern Ireland (United Kingdom), “nine per cent of Black people are unemployed, more than double that of white people”³¹ – similarly to the situation in the United States in 2017 where reportedly “the black unemployment rate was 7.5 percent [...] and is still roughly twice the white unemployment rate”.³² According to Canada’s National Statistical Office, Statistics Canada, based mainly on the 2016 Census data, “the unemployment rate for the Black population is higher than for Canada’s total

²³ CERD/C/SAU/CO/4-9, para. 25.

²⁴ <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html>; see also A/HRC/38/33/Add.1, para. 54; <https://files.epi.org/pdf/142084.pdf>.

²⁵ <https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>, para. 166.

²⁶ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf, pp. 62-63. See also A/HRC/41/39/Add.1, para. 81.

²⁷ A/HRC/15/18; A/HRC/30/56, para. 18; A/HRC/33/61/Add.2, para. 55; A/HRC/38/33/Add.1, para. 54; A/HRC/36/60/Add.1; A/74/274, para. 73; A/75/363; submission by the Association for the Prevention of Torture; <https://ec.europa.eu/migrant-integration/librarydoc/enar-shadow-report-racism-discrimination-in-employment-in-europe-2013-2017>; CERD/C/BRA/18-20, para. 69; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf, p. 63; www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america; www.cepal.org/es/publicaciones/46191-afrodescendientes-la-matriz-la-desigualdad-social-america-latina-retos-la, pp. 178-179; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 47; www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf; <https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019002-eng.htm>.

²⁸ <https://www.statewatch.org/media/documents/news/2018/mar/eu-com-data-collection-field-of-equality-study-2017.pdf>, p. 5; https://www.enar-eu.org/IMG/pdf/shadowreport_2016x2017_long_final_lowres.pdf.

²⁹ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf, pp. 51 and 54.

³⁰ https://repositorio.cepal.org/bitstream/handle/11362/44387/1/S1800725_en.pdf, p. 33; <https://openknowledge.worldbank.org/handle/10986/30201>, p. 82; CERD/C/BRA/18-20, para. 71.

³¹ https://uploads.ssi.webflow.com/5f5bdc0f30fe4b120448a029/5f973b076be4cadc5045fad3_An%20Avoidable%20Cri sis.pdf, p. 24.

³² <https://files.epi.org/pdf/142084.pdf>, p. 2; see also A/HRC/38/33/Add.1, para. 54.

population”,³³ and the prevalence of low income among women of African descent was 24 per cent compared to 14 per cent for all Canadian women.³⁴

23. People of African descent are also more likely to lack access to adequate housing,³⁵ and to live in segregated,³⁶ disadvantaged and hazardous neighbourhoods.³⁷ In the European Union, the aforementioned 2018 survey found that 45 per cent of respondents of African descent lived in overcrowded housing compared with 17 per cent of the general population; and 15 per cent of people of African descent owned their home compared with 70 per cent of the general population.³⁸ In the United Kingdom, according to a report in 2020, “20 per cent of Black African households [own] their own home, compared to 68 per cent of white households”.³⁹ In 2016, a survey by the Defender of Rights in France “found that French nationals and those perceived as “white” were twice as likely to find a home within one year of commencing their search, as compared to immigrants and those perceived as “Arab” or “black””.⁴⁰

24. In the United States, people of African descent are disproportionately affected by racial segregation in some neighbourhoods,⁴¹ gentrification,⁴² so-called ‘reverse redlining’ (predatory lending),⁴³ as well as homelessness.⁴⁴ An Executive Order issued by the President of the United States in January 2021 recognized that “during the 20th century, Federal, State, and local governments systematically implemented racially discriminatory housing policies that contributed to segregated neighbourhoods and inhibited equal opportunity and the chance to build wealth for Black [...] and other underserved communities”.⁴⁵ Reportedly, in some countries in Latin America, people of African descent were about twice as likely to live in slums than non-Afro-descendants in 2018.⁴⁶

³³ <https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019002-eng.htm>.

³⁴ <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=110563&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=120&VID=0&VNAMEE=&VNAMEF;>
<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110013502&cubeTimeFrame.startYear=2016&cubeTimeFrame.endYear=2016&referencePeriods=20160101%2C20160101>.

³⁵ https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf, p. 5;
<https://drive.google.com/file/d/1Aqmk7Wp3Ppf6wZUTM-ho9O8Dpjwjr0vo/view>, p. 5;
<https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>, p. 71.

³⁶ CERD/C/USA/CO/7-9, para. 13; <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 20-21; https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html;
<https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rap-origine-en-num-22.09.20.pdf>, p. 21.

³⁷ A/HRC/45/44/Add.1, paras.37-38; A/HRC/45/44/Add.2, paras. 55 and 62; A/HRC/27/68/Add.1, para. 8; A/HRC/42/59/Add.2, para. 45;
<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25814>.

³⁸ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-being-black-in-the-eu-summary_en.pdf, p. 12; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-fundamental-rights-report-2019_en.pdf, p. 89.

³⁹ https://uploads-ssl.webflow.com/5f5bdc0f30fe4b120448a029/5f973b076be4cadc5045fad3_An_Avoidable_Crisis.pdf; p. 15.

⁴⁰ A/HRC/43/43/Add.2, para. 16, referring to
https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/171213_ddd_ead_discrimination_logement_num_0.pdf, p. 31.

⁴¹ CERD/C/USA/CO/7-9, para. 13.

⁴² A/HRC/33/61/Add.2, paras. 51 and 83.

⁴³ A/74/274, para. 75; A/HRC/26/25/Add.4, para. 87;

<https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>, para. 62.

⁴⁴ A/HRC/33/61/Add.2, para. 53.

⁴⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>.

⁴⁶ <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 20-21.

25. In several countries, people of African descent also suffer disproportionately from environmental pollution and lack of access to clean water.⁴⁷ For example, according to the Working Group of Experts on People of African Descent, in some areas in Ecuador, communities of African descent are exposed to hazardous substances in their water,⁴⁸ and in Peru some exploitative practices adopted by agribusiness and hydroelectric companies result in the denial of access to safe drinking water for Afro-Peruvians.⁴⁹ In the United States, reports highlight that some people of African descent live in neighbourhoods with hazardous environments which impacts their standard of living and health.⁵⁰ In areas predominantly inhabited by people of African descent, concerns were also raised regarding the development of petrochemical facilities and methanol complexes, which creates environmental pollution and adverse health effects, and in some instances forces people of African descent to relocate.⁵¹

26. People of African descent also face obstacles in gaining equal access to quality education. In several countries, reports highlight attainment gaps, higher levels of illiteracy and of dropping out of school in comparison with non-Afrodescendants.⁵² Reports suggest that, in some instances, children of African descent are awarded lower grades,⁵³ and diverted to vocational or manual training.⁵⁴ Africans and people of African descent face difficulties in having their qualifications and diploma obtained abroad recognized in their country of residence,⁵⁵ and the proportion of women of African descent with low educational levels is much higher than that of women in the general population in some countries.⁵⁶

27. In some countries, children of African descent also face racial discrimination and violence in schools and are more likely to be excluded from schools. Reports highlight that in some European countries, they are often victims of harassment, bullying and racism in schools, including by teachers and other children.⁵⁷ The UK Committee for UNICEF (UNICEF UK) reported that the most recent data available (2018/19) illustrates that specific ethnic groups of children, including children of Caribbean descent, are disproportionately impacted by school exclusions in England.⁵⁸ Further, according to data from the US Education Department's Office for Civil Rights, in 2014, African American children faced

⁴⁷ A/HRC/45/44/Add.1, paras. 37-38; A/HRC/27/68/Add.1, para. 8; A/HRC/45/44/Add.2, para. 55; A/HRC/42/59/Add.2, para. 40;

<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25814>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=18792>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19482>.

⁴⁸ A/HRC/45/44/Add.1, para. 38.

⁴⁹ A/HRC/45/44/Add.2, para. 25.

⁵⁰ A/HRC/33/61/Add.2, para. 52.

⁵¹ <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25814>; <http://www.mossvilleproject.com/>.

⁵² CERD/C/BRA/18-20, paras. 74 and 77; A/HRC/15/18, paras. 31-32; A/HRC/27/68/Add.1, paras. 30-32; A/HRC/33/61/Add.2, para. 11; A/HRC/36/60/Add.1, para. 33; A/HRC/42/59/Add.1, paras. 58-59; submission by the National Human Rights Institution of Mexico; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, paras. 24 and 67; <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>, para. 15; www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america, p. 88; www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 53; www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf, p. 2; <https://rm.coe.int/combating-racism-and-racial-discrimination,-against-people-of-african-d/1680a1c0b6>, p. 7; <https://www.lawrencereview.co.uk/>, p. 25.

⁵³ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html; https://www.enar-eu.org/IMG/pdf/shadowreport_afrophobia_final_with_corrections.pdf.

⁵⁴ A/HRC/42/59/Add.1, para. 57; https://www.enar-eu.org/IMG/pdf/shadowreport_afrophobia_final_with_corrections.pdf.

⁵⁵ A/HRC/42/59/Add.1, para. 51.

⁵⁶ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf, p. 46.

⁵⁷ https://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf, p. 2; <https://rm.coe.int/combating-racism-and-racial-discrimination,-against-people-of-african-d/1680a1c0b6>, para. 17.

⁵⁸ Submission by UK Committee for UNICEF (UNICEF UK); see also CERD/C/GBR/CO/21-23, para. 34.

disproportionately high rates of suspensions, expulsions, referrals to law enforcement, and school-related arrests.⁵⁹ In Honduras, in 2016 concerns were raised with regard to disproportionately high rates of illiteracy and secondary school dropout for girls in rural and remote areas, and notably in communities of African descent compared with the rest of the population, often owing to poverty, early pregnancy, early marriage and child labour.⁶⁰

28. People of African descent also face obstacles in gaining equal access to health care. Higher mortality rates at all ages and a higher incidence of poor health compared with other ethnic groups have also been reported, including in countries where there are sizeable communities of people of African descent.⁶¹ Studies show that the inter-generational trauma caused by racism passed down over centuries has negative health consequences on some people of African descent.⁶² Repeated racist micro aggressions and commonplace experiences of racism further cause stress and trauma and disproportionately impact their health, in particular their mental health.⁶³ Further, research in the United States indicates that racial prejudices and stereotypes by health care providers have an impact on the quality of health care provided to people of African descent.⁶⁴ In the United Kingdom, official data indicated in 2020 that while maternal mortality now occurs in fewer than 1 in 10,000 pregnancies, “the disparity between Black women and White women has widened” and “Black British mothers are five times more likely to die in pregnancy or six weeks after childbirth, than White women”.⁶⁵

29. Long-standing structural inequalities in the area of health and across the key social determinants of health – which have been described as a manifestation of systemic racism - have been both aggravated and exposed by the coronavirus disease (COVID-19) pandemic.⁶⁶ In a number of countries, people of African descent have higher infection, hospitalization and mortality rates due to COVID-19.⁶⁷ For instance, in the United States, in 2020, “African Americans are reportedly three times as likely to contract the coronavirus and nearly twice as likely to die from COVID-19 as whites”.⁶⁸ In Norway, it was reported that people born in Somalia have infection rates more than 10 times above the national average,⁶⁹ and in Brazil’s São Paulo city, “people of colour are 62% more likely to die from COVID-19 than white

⁵⁹ <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>; see also A/HRC/33/61/Add.2, para. 44; CERD/C/USA/CO/7-9, para.14.

⁶⁰ CEDAW/C/HND/CO/7-8, para. 32.

⁶¹ A/HRC/30/56, para. 18; A/HRC/36/60/Add.1, para. 33; A/HRC/38/33/Add.1, paras. 54 and 57; CERD/C/USA/CO/7-9, para. 15; CERD/C/BRA/18-20, paras. 96 and 101; submission by the Center for Reproductive Rights/National Birth Equity Collaborative; www.lawrencereview.co.uk/; www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html; www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf; www.cepal.org/sites/default/files/publication/files/44387/S1800725_en.pdf; <https://iris.paho.org/handle/10665.2/51571>.

⁶² https://healingthewoundsosslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP_2020_Healing-the-Wounds-of-Slavery_Desk-Review_Report.pdf

⁶³ A/74/274, paras. 21 and 52.

⁶⁴ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644684, p. 7. See also <https://www.ama-assn.org/delivering-care/health-equity/ama-racism-threat-public-health>.

⁶⁵ <https://www.gov.uk/government/news/government-working-with-midwives-medical-experts-and-academics-to-investigate-bame-maternal-mortality>.

⁶⁶ A/HRC/45/44, paras. 14, 16 and 67; A/HRC/45/47, para. 8; www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916; submission by Human Rights Watch; www.lawrencereview.co.uk/, p. 24; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7441277/>; <https://www.adl.org/education/resources/tools-and-strategies/how-systemic-racism-impacts-coronavirus-racial-disparities>; <https://www.thelancet.com/action/showPdf?pii=S2589-5370%2820%2930374-6>.

⁶⁷ A/HRC/45/44; [https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf](http://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf).

⁶⁸ <http://sobadev.iamempowered.com/sites/soba.iamempowered.com/files/NUL-SOBA-2020-ES-web.pdf>, p. 3. See also A/HRC/45/44, para. 37; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7441277/>.

⁶⁹ <https://www.ft.com/content/5fd6ab18-be4a-48de-b887-8478a391dd72>.

people".⁷⁰ Reportedly, women and men of African descent "were respectively 4.3 and 4.2 times more likely to die of COVID-19 than white people" in the United Kingdom.⁷¹ Further, in 2020 UN human rights mechanisms raised concerns with regard to racial discrimination, xenophobia, forced eviction, and disproportionate targeting of Africans and people of African descent by state and private actors amidst measures and restrictions to contain the pandemic in some parts of China.⁷²

30. The Committee on the Elimination of Racial Discrimination observed that the increasing use of new technological tools, including artificial intelligence, in areas such as access to social services, has the potential to deepen racism, racial discrimination, xenophobia and other forms of exclusion.⁷³ For instance, in the United States, a 2019 study found "significant racial bias in a widely used commercial algorithm used to determine whether patients will be enrolled in 'care management' programs that allocate considerable additional resources: white patients were far more likely to be enrolled in the program and to benefit from its resources than black patients in a comparable state of health".⁷⁴ Similarly, in Switzerland, some hospitals reportedly use health algorithms that "discriminate against Black patients".⁷⁵ With regard to housing, in 2016, studies in the United States reported that ethnic discrimination in Facebook's targeted advertising "could be used to prevent black people from viewing specific housing advertisements".⁷⁶ Other examples include algorithms that schools customize and use for admissions.⁷⁷ Reportedly, in the migration context, "despite the fact that even the best algorithms misrecognize black women twenty times more often than white men, the use of these technologies is increasing globally".⁷⁸

31. The recognition and protection of the right to land of people of African descent is being gradually incorporated into some national regulatory frameworks, notably in Latin America. However, despite some formal measures to protect land rights, concerns have been expressed about the limited progress towards the implementation of such legislation and measures, and that people of African descent continue to experience displacement, dispossession, exclusion from and expropriation of their lands in some countries.⁷⁹

2. Marginalization and civil and political rights: insufficient meaningful participation and representation and citizenship and immigration

32. With the racialization of poverty, disparate outcomes in terms of the enjoyment of economic and social rights are compounded by the insufficient meaningful participation and representation of people of African descent in decision-making processes and in public life.⁸⁰ This points to the structural racial inequalities people of African descent face in accessing power structures and influencing policies, with measures and practices that disproportionately impact their right to vote and participation in public life. With regard to the right to vote, in the United States, some people of African descent are disenfranchised

⁷⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E>.

⁷¹ A/HRC/45/44, para. 37.

⁷² <https://spocommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25213>.

⁷³ CERD/C/GC/36, para. 12; see also A/HRC/44/57;
<https://ainowinstitute.org/discriminatingsystems.pdf>.

⁷⁴ <https://ainowinstitute.org/discriminatingsystems.pdf>, pp. 15-16; A/HRC/44/57, para. 30;
<https://science.sciencemag.org/content/sci/366/6464/447.full.pdf>; <https://dl.acm.org/doi/10.1145/3287560.3287593>; <https://www.nejm.org/doi/pdf/10.1056/NEJMms2004740>.

⁷⁵ <https://algorithmwatch.ch/en/racial-health-bias/>.

⁷⁶ A/HRC/44/57, para. 32; see also <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race>; <https://ainowinstitute.org/discriminatingsystems.pdf>, p. 15.

⁷⁷ E.g. <https://themarkup.org/news/2021/05/26/nycs-school-algorithms-cement-segregation-this-data-shows-how>.

⁷⁸ A/75/590, para. 9; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3714297.

⁷⁹ Submission by Cristosal; A/HRC/45/44/Add.1-2; A/HRC/39/69; A/HRC/41/54; A/HRC/46/76; <https://openknowledge.worldbank.org/handle/10986/30201>; https://www.cepal.org/sites/default/files/publication/files/46191/S2000226_es.pdf. See also CERD/C/COL/CO/17-19, paras. 18 and 20.

⁸⁰ www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf; <https://rm.coe.int/combatting-racism-and-racial-discrimination,-against-people-of-african-descent/1680a1c0b6>.

through measures that affect them disproportionately, a trend that is currently expanding. These measures include provisions that deny individuals with felony convictions the right to vote.⁸¹ Concerns have also been raised about lower than average voter registration rates among people of African descent in the United Kingdom.⁸² As for participation in public life, for example, some civil society activists of African descent in Europe noted that they are not granted meaningful participation in consultation and decision-making processes, and their knowledge and experience are not sufficiently considered, including in the design and implementation of policy measures for eliminating racism.⁸³

33. The level of representation in elected and other decision-making bodies in States where there are sizeable communities of people of African descent is substantially lower than the percentage of the population they represent.⁸⁴ In Latin America according to the World Bank Group in 2018, people of African descent are still vastly underrepresented in decision-making positions, both in the private and in the public sectors.⁸⁵ According to the Council of Europe Parliamentary Committee, in 2021, people of African descent are overwhelmingly underrepresented in elected and other decision-making bodies at all levels, and in some countries, they are hardly represented at all.⁸⁶

34. When exercising their rights to political participation, politicians of African descent have experienced racial abuse and violence.⁸⁷ The intersection of sexism and racism has exposed women of African descent in politics to particularly vicious attacks. For instance, in France, there is the well known case of Christiane Taubira, a woman of African descent who served as Minister of Justice from 2012 to 2016 and experienced racist and sexist attacks by media during her tenure.⁸⁸ Also, in Italy, Cécile Kyenge, a woman of African descent and former Minister for Integration, was subjected to racial abuse.⁸⁹ Likewise, Diane Abbott, the longest serving woman of African descent in the United Kingdom Parliament and former Shadow Home Secretary was the victim of record levels of online racism during the 2017 election campaign.⁹⁰ In Germany, Karamba Diaby, Germany's first male Member of Parliament of African descent faced racial abuse and violence.⁹¹

35. In some instances, measures relating to citizenship and immigration status have reportedly resulted in discriminatory outcomes for some people of African descent.⁹² In some countries, they continue to be perceived as foreigners even when they hold full citizenship

⁸¹ A/HRC/15/18, para. 47; A/HRC/38/33/Add.1, paras. 19-20; A/HRC/33/61/Add.2, paras. 7, 11 and 42; CERD/C/USA/CO/7-9, para. 11; <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644684, p. 16.

⁸² <https://committees.parliament.uk/publications/3376/documents/32359/default/>.

⁸³ [https://rm.coe.int/combatting-racism-and-racial-discrimination,-against-people-of-african-descent/1680a1c0b6](https://rm.coe.int/combatting-racism-and-racial-discrimination,-against-people-of-african-descent/), p. 9.

⁸⁴ www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 55; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 56; A/HRC/44/57/Add.2, para. 42.

⁸⁵ <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 16 and 108.

⁸⁶ <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 56.

⁸⁷ https://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf, p. 2; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 56.

⁸⁸ <https://news.un.org/en/story/2013/11/455412-un-human-rights-office-condemns-racist-attacks-against-french-justice-minister>; <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13995&LangID=E>.

⁸⁹ <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 8. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fundamental-rights-report-2018_en.pdf, p. 81; <https://www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf>, paras. 16 and 39.

⁹⁰ <https://www.amnesty.org.uk/online-violence-women-mps>; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 58.

⁹¹ <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para. 59.

⁹² A/HRC/38/52, paras. 41, 44; submissions by Coalición indígena de Migrantes de Chiapas/Proyecto Afrodescendencia Mexico / Instituto para las Mujeres en la Migración A.C. (IMUMI) and Platform for International Cooperation on Undocumented Migrants (PICUM);

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14751&LangID=E>.

and have done so for multiple generations, with deep and enduring ties to their countries.⁹³ For instance, in Pakistan, the Sheedi (descendants of East Africans), were reportedly restricted in participating in cultural activities, including the annual Sheedi Mela, that had been held in Karachi for centuries.⁹⁴ In Mauritania, in 2016 Haratinas and Afro-Mauritanians made up the overwhelming majority of those who have been unable to obtain a national identity card.⁹⁵ In the United Kingdom, an independent review commissioned by the Government in 2020 found that hundreds of people of African descent from the ‘Windrush’ generation or their children were wrongly detained, deported and denied legal rights,⁹⁶ in what the review described as “an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation [...] consistent with some elements of the definition of institutional racism”.⁹⁷ In response, the Government apologized and put in place a Comprehensive Improvement Plan and a compensation scheme.⁹⁸

36. UN human rights mechanisms and other bodies have repeatedly highlighted the situation of African migrant domestic workers, especially women, in several countries, including in the Middle East, where they have allegedly been subjected to exploitation and abuse, including sexual abuse, arbitrary arrest and deportation.⁹⁹ According to Human Rights Watch, in 2017, an estimated 2.4 million migrant domestic workers, most from Asia and Africa, resided in the Middle East’s Gulf region where they fell under the kafala system of labour sponsorship.¹⁰⁰

37. Consultations highlighted the role of business enterprises in addressing systemic racism, including by adopting measures to strengthen diversity and inclusion in the workplace. Notwithstanding, reports also point to labour practices and predatory mortgage lending practices that may discriminate against people of African descent;¹⁰¹ and the role of social media companies to stop the spread of hate speech across their platforms,¹⁰² for example. Further, the impact of business enterprises on the environment and rights of local communities in certain contexts, such as agri-business and large-scale development projects, was raised.¹⁰³

38. People of African descent continue to suffer from a lack of knowledge and recognition of their history, including the wrongs and racial injustices they suffer, culture, heritage and contributions. Their history remains insufficiently or inaccurately addressed in educational curricula, particularly in relation to enslavement, the transatlantic trade in enslaved Africans and colonialism.¹⁰⁴

⁹³ A/HRC/41/54/Add.2, paras. 52-53; A/HRC/44/57/Add.2, para. 8.

⁹⁴ CERD/C/PAK/CO/21-23, para. 33.

⁹⁵ A/HRC/35/26/Add.1, para. 45.

⁹⁶ <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/559/55906.htm>, para. 77; A/HRC/41/54/Add.2, para. 52.

⁹⁷ <https://www.gov.uk/government/publications/windrush-lessons-learned-review>, p. 7.

⁹⁸ <https://www.gov.uk/government/publications/windrush-lessons-learned-review-response-comprehensive-improvement-plan>.

⁹⁹ CMW/C/GC/1; A/HRC/44/57/Add.1, para. 29; A/HRC/23/48/Add.1, para. 18; CERD/C/LBN/CO/18-22, para. 41; CCPR/C/LBN/CO/3, para. 39; <https://www.aljazeera.com/features/2021/6/16/vanished-the-plight-of-3-ethiopian-domestic-workers-in-lebanon>; <https://www.amnesty.org/en/latest/campaigns/2019/04/lebanon-migrant-domestic-workers-their-house-is-our-prison/>; https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4060524.

¹⁰⁰ <https://www.hrw.org/news/2017/12/08/metoo-say-domestic-workers-middle-east>.

¹⁰¹ A/HRC/45/44/Add.2, para. 130; A/HRC/39/69/Add.2, para. 45.

¹⁰² <https://www.business-humanrights.org/en/latest-news/more-than-1000-companies-pause-advertising-on-facebook-as-part-of-civil-society-campaign-to-stop-spread-of-hate-discrimination-on-the-platform/>.

¹⁰³ E.g. A/HRC/45/44/Add.2, paras. 24-25; A/HRC/32/45/Add.1, para. 46.

¹⁰⁴ A/HRC/33/61/Add. 2, para. 46; A/HRC/42/59/Add.1, para. 26; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 112.

3. Racially motivated violence and hatred, including hate speech

39. Racially motivated violence and hatred, including hate speech, that draw on supremacist ideologies are an everyday reality for people of African descent in many countries.¹⁰⁵ In some countries and regions, people of African descent are among the most frequent victims of hate speech and violence, including homicide.¹⁰⁶ For example, in 2018 people of African descent were reportedly among the main victims of violence in Latin America, and in Brazil up to three in four homicide victims were reportedly people of African descent.¹⁰⁷ A Government-commissioned report in Sweden in 2014 showed that “Afro-Swedes were the Swedish minority most exposed to hate crimes”, and faced an “increase in afrophobic hate crimes by 24 per cent since 2008”.¹⁰⁸

40. UN human rights mechanisms raised concerns about attacks against Africans and people of African descent in India,¹⁰⁹ Slovakia,¹¹⁰ the Russian Federation¹¹¹ and Ukraine.¹¹² In 2019, concerns were raised in Israel about “the proliferation of racist and xenophobic acts that in particular target [...] migrants and asylum seekers of African origin”, and the alleged forcible return of Eritrean and Sudanese nationals.¹¹³ In Poland, in 2019, “the prevalence of racist hate speech against minority groups [...], in particular people of African descent” was noted.¹¹⁴ In Hungary, racist statements against Africans, among others, by a Government official were reported in 2018.¹¹⁵ In the Russian Federation, in 2017, concern was expressed that racist displays remain deeply entrenched among football fans, including against people of African descent.¹¹⁶ Reports of “discrimination against and the social stigmatization of members of the black community in Egypt, which are said to affect not only those Egyptians with a darker skin than others but also, and above all, non-citizens, particularly those from sub-Saharan Africa” in 2015 were also raised as a concern.¹¹⁷

C. Contributing factors to the persistence of systemic racism

1. The culture of denial and absence of a systemic approach to systemic racism

41. While there are some promising signs, some States – especially those with links to enslavement, the transatlantic trade in enslaved Africans and colonialism – continue to deny or have failed to acknowledge the existence and impact of systemic racism, especially institutional racism, against Africans and people of African descent; or its linkages with enslavement and colonialism. As a result, they have not sufficiently examined the disparate

¹⁰⁵ www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf; <https://rm.coe.int/ecri-annual-report-2019/16809ca3e1>; www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html; www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf; www.visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-web-2.pdf; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fundamental-rights-report-2018_en.pdf; www.pewresearch.org/fact-tank/2017/07/25/1-in-4-black-americans-have-faced-online-harassment-because-of-their-race-or-ethnicity/; [https://mkcentrum.se/wp-content/uploads/2014/12/Afrofobi-20140203-executive-summary.pdf](http://mkcentrum.se/wp-content/uploads/2014/12/Afrofobi-20140203-executive-summary.pdf); A/73/312.

¹⁰⁶ Submission by the European Commission against Racism and Intolerance of the Council of Europe (ECRI); <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 21, 67-68.

¹⁰⁷ <https://openknowledge.worldbank.org/handle/10986/30201>, p. 112.

¹⁰⁸ [https://mkcentrum.se/wp-content/uploads/2014/12/Afrofobi-20140203-executive-summary.pdf](http://mkcentrum.se/wp-content/uploads/2014/12/Afrofobi-20140203-executive-summary.pdf), p. 7.

¹⁰⁹ [https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3275](http://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3275).

¹¹⁰ CERD/C/SVK/CO/11-12, para.11.

¹¹¹ CERD/C/RUS/CO/23-24, para. 15.

¹¹² CERD/C/UKR/CO/22-23, para. 13.

¹¹³ CERD/C/ISR/CO/17-19, para. 26(b);

[https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23609](http://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23609).

¹¹⁴ CERD/C/POL/CO/22-24, para 15(b).

¹¹⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765>

¹¹⁶ CERD/C/RUS/CO/23-24, para. 17.

¹¹⁷ CERD/C/EGY/CO/17-22, para. 19.

impact of their legislation, policies and practices on certain groups of the population, including Africans and people of African descent.

42. Further, despite constitutional provisions, laws, policies, and institutions established in some States to address racial discrimination against Africans and people of African descent, these efforts are not consistently prioritized and have yielded often grossly insufficient results, in part due to lack of political will.

2. Lack of collection, analysis and application of data disaggregated by race or ethnic origin

43. The above-mentioned challenges demonstrate the importance of data to unpack and understand the differentiated dynamics of systemic racism. The collection, analysis and application of data disaggregated by race or ethnic origin, as well as gender, age, and other factors, with strict safeguards and in accordance with international human rights law, including on the effect of laws, policies and practices on certain racial or ethnic groups, remains the exception rather than the norm.

44. Despite considerable recommendations and guidance by UN and regional human rights mechanisms and bodies about data disaggregation, including by race or ethnic origin, in line with international human rights standards,¹¹⁸ most States continue to be reluctant to collect and publish such data. Their reasons range from considering the collection of such data an obstacle to the building of a unified national identity; to fearing it would lead to further discrimination and aggravate tensions between different ethnic groups; to arguments that data disaggregation is prohibited on the grounds that legislation ensures the equality of all citizens before the law, without distinction on grounds of race or ethnic origin.¹¹⁹ France, for example, has for many years considered data disaggregation by race or ethnic origin to be contrary to its Constitution which guarantees equality of all citizens before the law without distinction on grounds of origin, race or religion,¹²⁰ despite numerous recommendations by UN human rights mechanisms to collect such data.¹²¹ Other States invoke human rights concerns, such as the misuse of data for racist and exclusionary policies, the violation of the right to privacy and the protection of personal data. In some instances, however the absence of data disaggregated by race or ethnic origin is the result of a restrictive interpretation of the legislation, including data protection laws, that are posed as insurmountable obstacles when in fact their provisions allow the collection of such data.¹²² Some other States have limited capacity and resources to collect such data.¹²³

45. In many European Union Member States, compared to data on other grounds of discrimination, data disaggregated by race or ethnic origin is relatively scarce.¹²⁴ Recognizing this challenge, in 2019, the European Union High Level Group on Non-Discrimination, Equality and Diversity endorsed Guidelines on improving the collection and use of equality

¹¹⁸ CERD/C/GC/34, para. 9; Durban Declaration and Programme of Action, paras. 92-98; A/70/335; https://www.ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf; https://ec.europa.eu/info/sites/default/files/final_guidelines_4-10-18_without_date_july.pdf; <https://op.europa.eu/en/publication-detail/-/publication/1dcc2e44-4370-11ea-b81b-01aa75ed71a1/language-nl>; <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>; https://repositorio.cepal.org/bitstream/handle/11362/45202/1/S1900854_es.pdf.

¹¹⁹ CERD/C/FRA/CO/17-19, para. 12; <https://rm.coe.int/fifth-report-on-france/16808b572d>, paras. 113-114.

¹²⁰ <https://www.insee.fr/fr/information/2108548>; CERD/C/FRA/CO/17-19, para. 12; <https://rm.coe.int/fifth-report-on-france/16808b572d>, paras. 113-114.

¹²¹ <https://rm.coe.int/fifth-report-on-france/16808b572d>, para. 115; CERD/C/FRA/CO/20-21, para. 5; A/HRC/7/23/Add.2, paras. 81-82; <https://www.defenseurdessroits.fr/sites/default/files/atoms/files/rap-origine-en-num-22.09.20.pdf>, p. 58; https://www.cncdh.fr/sites/default/files/rapport_racisme_2019_focus_racisme_antirois_vdef.pdf, pp. 25 and 29.

¹²² A/70/335, para. 37.

¹²³ A/70/335, para. 36.

¹²⁴ Submission by the European Union; <https://op.europa.eu/en/publication-detail/-/publication/1dcc2e44-4370-11ea-b81b-01aa75ed71a1/language-en>, p. 45.

data.¹²⁵ Moreover, the European Union Action Plan against Racism includes among its objectives improving the collection of such data.¹²⁶ In 2021, according to the European Commission, several EU Member States reported how they collect equality data, including: using situation testing to examine patterns of discrimination; involving minority organizations in collecting and disseminating equality data; developing statistical data that can serve as proof of indirect discrimination; collecting disaggregated equality data in population censuses; and publishing data on complaints received by equality bodies, the police, public services, the judiciary and on judgments.¹²⁷ Nevertheless, the European Commission underlined that many Member States still consider the lack of equality data as a problem at national level.¹²⁸

46. The United Kingdom has a longstanding tradition of collecting and publishing such data,¹²⁹ including for example through the 2016 Race Disparity Audit.¹³⁰ Similarly, in the United States, official disaggregated data is often available, however many Federal datasets are not disaggregated by race, ethnicity, gender, disability or other key variables.¹³¹ In 2021, existing structures for collecting and analyzing disaggregated data, including by race,¹³² were reinforced by the establishment of an interagency Working Group on Equitable Data.¹³³ In Latin America, several States have progressively adopted reforms to address the lack of disaggregated data. Statistical institutes have increasingly included such variables in national censuses, household surveys and other statistical tools,¹³⁴ including for instance in Argentina,¹³⁵ Bolivia (Plurinational State of),¹³⁶ Brazil,¹³⁷ Colombia,¹³⁸ Ecuador,¹³⁹ Guatemala,¹⁴⁰ Mexico,¹⁴¹ Peru¹⁴² and Uruguay.¹⁴³ In some countries where census data is disaggregated by race or ethnic origin, people of African descent do not always agree with the official estimates of the population of African descent, for example, in Argentina and Chile.¹⁴⁴

¹²⁵ https://ec.europa.eu/info/sites/default/files/final_guidelines_4-10-18_without_date_july.pdf; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-being-black-in-the-eu-summary_en.pdf, p. 8.

¹²⁶ Submission by the European Union; https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020-2025_en.pdf, p. 16.

¹²⁷ https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equalityDirective_en.pdf, para. 2.5.

¹²⁸ https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equalityDirective_en.pdf, para. 2.5

¹²⁹ <https://www.ethnicity-facts-figures.service.gov.uk/>; A/70/335, para. 69; A/HRC/24/52/Add.1, para. 24.

¹³⁰ <https://www.gov.uk/government/publications/race-disparity-audit>.

¹³¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-orderadvancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹³² A/HRC/15/18, para. 63.

¹³³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-orderadvancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

¹³⁴ <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>, pp. 100-101.

¹³⁵ Submission by Argentina (National Institute against Discrimination, Xenophobia and Racism - INADI); A/HRC/42/59/Add.2, paras. 11 and 24; A/HRC/35/41/Add.1, para. 77.

¹³⁶ Submission by Bolivia (Plurinational State of); CERD/C/BOL/21-26, para. 134.

¹³⁷ E/CN.4/2006/16/Add.3, para. 11; A/70/335, para. 70; A/75/561, para. 45.

¹³⁸ CERD/C/COL/17-19, paras. 10 and 12-14.

¹³⁹ A/HRC/45/44/Add.1, para. 24.

¹⁴⁰ A/75/561, para. 46.

¹⁴¹ Submission by Mexico; A/75/561, para. 47.

¹⁴² A/HRC/45/44/Add.2, para. 72(f).

¹⁴³ CERD/C/URY/CO/21-23, paras. 8-9; CERD/C/URY/24-26, paras. 8-11.

¹⁴⁴ A/HRC/35/41/Add.1, para. 77; A/HRC/42/59/Add.2, para. 11;

<https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>, p. 56.

47. Even when such data is collected, it does not appear to be used consistently to inform effective policymaking.¹⁴⁵ This also prevents effective implementation and monitoring of the impact of measures adopted by States to eliminate racism.

3. Continued pervasive racial stereotypes

48. The dehumanization of people of African descent – a practice rooted in false social constructions of race created to justify enslavement, pervasive racial stereotypes¹⁴⁶ and widely accepted harmful practices and traditions¹⁴⁷ – has sustained and cultivated a tolerance for racial discrimination, inequality and violence, which continues to have a disproportionate impact on the enjoyment of their human rights.¹⁴⁸ Such stereotypes may start in childhood; for example, in some instances pervasive stereotypes about the educational ability of children of African descent have reportedly led teachers to direct them to educational paths that limit their access to higher education.¹⁴⁹ Racist attitudes involving derogatory and false stereotypes associating people of African descent with laziness are sometimes employed to justify their poverty.¹⁵⁰ Stereotypes are also perpetuated through the “folklorization” and the “exotization” of people of African descent,¹⁵¹ and dehumanizing traditions, such as Black Pete in the Netherlands,¹⁵² and a “human zoo exhibit involving eight Baka “pygmies”” from Cameroon in Belgium as recently as 2002.¹⁵³

49. Such stereotypes are compounded by negative representations or misrepresentation of people of African descent in school curricula, teaching materials and classrooms.¹⁵⁴ In educational materials and beyond, the contributions of people of African descent are frequently not emphasized,¹⁵⁵ beyond being depicted as performers, including singers, dancers or sportsmen.¹⁵⁶ Gender biases combined with racial stereotypes may also inform how the behaviours and actions of women and girls of African descent are read. Negative stereotypes of women and girls of African descent being “hypersexual, sassy, conniving or loud” still persist.¹⁵⁷ Concerns have been raised about how Black identity is associated with violence, misogyny, materialism and deviancy in popular music,¹⁵⁸ as reinforced and communicated in other forms of popular culture, such as television and film. These stereotypes are embodied in social behaviour, private and States institutions, public life and political affairs, the media, advertising, and cultural production.¹⁵⁹

4. Promising developments amidst insufficient engagement by States

50. Specific laws, policies and frameworks have been adopted at the national and regional levels to address systemic racism against Africans and people of African descent. There have been some promising developments, some progress made and awareness-raising about

¹⁴⁵ www.statewatch.org/media/documents/news/2018/mar/eu-com-data-collection-field-of-equality-study-2017.pdf, p. 7.

¹⁴⁶ A/74/274; A/HRC/39/69/Add.2; www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf; www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf.

¹⁴⁷ A/HRC/30/56/Add.1; A/HRC/44/57/Add.2.

¹⁴⁸ A/74/274; https://www.cncdh.fr/sites/default/files/rapport_racisme_2019_focus_racisme_antinoirs_vdef.pdf, pp. 17-18; <https://mkcentrum.se/wp-content/uploads/2014/12/Afrofobi-20140203-executive-summary.pdf>.

¹⁴⁹ A/74/274, para. 71; https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51025, p. 5.

¹⁵⁰ A/HRC/38/33/Add.1, para. 55.

¹⁵¹ [https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf](http://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf), para. 57.

¹⁵² A/HRC/30/56/Add.1, paras. 104-109; A/HRC/44/57/Add.2, paras. 80-81; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=20624>.

¹⁵³ A/HRC/42/59/Add.1, para. 10.

¹⁵⁴ <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america>, p. 88; [https://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf](http://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf), p. 2.

¹⁵⁵ A/HRC/33/61/Add.2, para. 46; A/HRC/42/59/Add.1, para. 26; [https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf](http://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf), para. 112.

¹⁵⁶ [https://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf](http://www.enar-eu.org/IMG/pdf/sr_key_findings-2.pdf), p. 3.

¹⁵⁷ A/74/274, para. 42.

¹⁵⁸ A/74/274, para. 44.

¹⁵⁹ A/74/274. See also CERD/C/ESP/CO/21-23 para. 25.

systemic racism, including as a result of the crucial role played by people of African descent and their organizations.¹⁶⁰ Yet, many States have failed to sufficiently review legislation, policies and practices, as well as the possible role of State institutions in the perpetuation of systemic racism, in part due to lack of political will.

51. Indeed, legislation and policies for combating racism often do not recognize people of African descent as a distinct group subjected to racism, and address racism primarily at the individual level rather than adopting a comprehensive and intersectional approach.¹⁶¹ Linked to this, States have failed to take up opportunities and effectively implement recommendations made by UN and regional human rights mechanisms and bodies, national human rights institutions, parliamentary committees and civil society organizations, that could help end systemic racism against people of African descent and achieve racial justice and equality. In addition, existing frameworks with potential to effect change, such as the International Decade for People of African Descent, are insufficiently utilized by States.¹⁶²

52. With regard to legislative measures, several States, especially in Latin America, have explicitly recognized in their constitutions or legislation people of African descent, their rights, identity and culture,¹⁶³ and adopted laws to prevent and punish racial discrimination. For example, in the European Union, the 2008 Framework Decision on combatting certain forms and expressions of racism and xenophobia by means of criminal law requires Member States to criminalize the public incitement to violence or hatred against a person based on race, colour, religion, descent or national or ethnic origin, including when committed online.¹⁶⁴ While the 2000 Racial Equality Directive explicitly prohibits racial discrimination and provides protection against discrimination on grounds of race or ethnic origin in employment, education, social protection, and in access to goods and services, it does not cover the behaviour of law enforcement agencies nor does it address systemic racism.¹⁶⁵ Reports also suggest that the Directive is insufficiently implemented.¹⁶⁶ In Latin America, the legal framework protecting the rights of people of African descent reportedly remained patchy and incomplete, with limited enforcement capacity.¹⁶⁷

53. The Organization of American States adopted the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance in 2017,¹⁶⁸ and a Plan of Action for the Decade for People of African Descent in the Americas (2016–2025).¹⁶⁹ The Plan of Action reaffirms Member States' commitment to confront racism and fight all of its individual, structural, and institutional manifestations,¹⁷⁰ and reinforces the commitments made in the 2013 Montevideo Consensus on Population and Development in Latin America

¹⁶⁰ https://repositorio.cepal.org/bitstream/handle/11362/44458/6/S1801011_en.pdf, p. 203; <https://openknowledge.worldbank.org/handle/10986/30201>, pp. 30, 85 and 94; Submission by Dr Michael McEachrane.

¹⁶¹ <https://rm.coe.int/combating-racism-and-racial-discrimination,-against-people-of-african-d/1680a1c0b6>, para. 12; Submission by Dr. Michael McEachrane.

¹⁶² <https://rm.coe.int/ecri-annual-report-2019/16809ca3e1>, para. 12; A/HRC/45/47.

¹⁶³ Submission by Mexico; <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>, pp. 204 and 209; A/75/561, para. 10; A/HRC/27/68/Add.1; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, p. 70, para. 197; A/HRC/46/76, para. 75.

¹⁶⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133178>.

¹⁶⁵ <https://op.europa.eu/en/publication-detail/-/publication/b2e52f4f-7f8c-11e3-9b7d-01aa75ed71a1/language-en>, para. 5.2. Submission by the European Union; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=EN>

¹⁶⁶ <https://www.politico.eu/article/eus-fight-against-racism-isnt-working/>.

¹⁶⁷ <https://openknowledge.worldbank.org/handle/10986/30201>, p. 100.

¹⁶⁸ http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism_signatories.asp.

¹⁶⁹ <http://www.oas.org/en/sare/documents/res-2891-16-en.pdf>.

¹⁷⁰ <http://www.oas.org/en/sare/documents/res-2891-16-en.pdf>.

and the Caribbean¹⁷¹ to address structural factors such as racism that hinder the exercise by people of African descent of their rights.¹⁷²

54. Some States have adopted national action plans and policies devoted to people of African descent or that give special attention to their needs,¹⁷³ and some countries, including in Europe, acknowledge that people of African descent experience racism and racial discrimination.¹⁷⁴ Some States established official days to commemorate the abolition of slavery and implemented activities to recognize the contribution of people of African descent and promote their culture and heritage,¹⁷⁵ while several States have sought to ensure the teaching of their history and culture in schools.¹⁷⁶ At the regional level, the European Union's first anti-racism action plan for 2020-2025 recognizes "anti-black racism" and acknowledges the existence of structural racism.¹⁷⁷ Further, the European Parliament adopted a resolution in 2019 calling on Member States "to denounce and discourage racist and Afrophobic traditions", and called upon Member States and European Union institutions to recognize and address structural racism against people of African descent¹⁷⁸; while the first EU anti-racism summit was held in 2021.¹⁷⁹

55. In January 2021, the President of the United States issued an Executive Order underlining "the unbearable human costs of systemic racism" and the need for a comprehensive and systematic approach to advancing equity for people of African descent¹⁸⁰ – thereby launching a "whole-of-government equity agenda [...] that matches the scale of the opportunities and challenges that we face".¹⁸¹ Also in 2021, he issued other Executive Orders seeking, among other things, to address racial discrimination and inequalities in various sectors.¹⁸² In Canada, the federal anti-racism strategy for 2019-2022 acknowledges the need to address systemic and institutional racism, establishing a new Anti-Racism Secretariat that will be supported by existing inter-departmental committees and lead a whole-of-government approach in addressing racism, noting that "Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices, such that anti-Black racism is either functionally normalized or rendered invisible to the larger white society".¹⁸³

56. Beyond these examples, a lack of national action plans or strategies specifically and comprehensively aimed at fighting racism and racial discrimination has been highlighted. For example, in the European Union, as of 2019, only 15 Member States had initiated such action

¹⁷¹ <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>, p. 203.

¹⁷² <https://www.cepal.org/en/publications/45202-people-african-descent-latin-america-and-caribbean-developing-indicators-measure>, pp. 14-15.

¹⁷³ Submissions by Argentina, Guatemala, Mexico; <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and> p. 208; CERD/C/BRA/18-20, paras. 111, 120, 124, 140; A/75/561, para. 21; A/75/363, para. 23.

¹⁷⁴ Submission by Sweden; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-fundamental-rights-report-2017_en.pdf, p. 90; <https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf> paras. 63-64; https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2018/06/national_plan_against_racism_and_anti-semitism_2018-2020.pdf.

¹⁷⁵ Submission by Argentina; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 220; <https://www.blackhistorymonth.org.uk/>; <https://www.canada.ca/en/canadian-heritage/campaigns/black-history-month.html>; <http://blackhistory.eu/>.

¹⁷⁶ A/HRC/27/68/Add.1, para. 16.

¹⁷⁷ https://ec.europa.eu/info/files/union-equality-eu-action-plan-against-racism-2020-2025_en.

¹⁷⁸ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html.

¹⁷⁹ <https://www.ardi-ep.eu/save-the-date-european-summit-against-racism-to-be-virtually-held-on-19-march-2021/>.

¹⁸⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁸¹ www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

¹⁸² CERD/C/USA/10-12.

¹⁸³ <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>; www.canada.ca/en/privy-council/campaigns/speech-throne/2020/speech-from-the-throne.html.

plans,¹⁸⁴ and reportedly, only a few States have taken measures to ensure the full participation and equal rights for people of African descent.¹⁸⁵ In several States in Latin America, people of African descent are reportedly still largely overlooked in public policies.¹⁸⁶

57. In line with the Committee on the Elimination of Racial Discrimination's recommendation for the urgent adoption of special measures to overcome the structural discrimination that affects Africans and people of African descent,¹⁸⁷ a minority of countries in Latin America¹⁸⁸ and the United States¹⁸⁹ have introduced such measures, especially in the areas of employment and education. However, growing opposition and budget cuts threaten their impact.¹⁹⁰

58. Over the last two decades, in Latin America, the number of institutions responsible for issues relating to people of African descent or the promotion of racial equality has grown,¹⁹¹ while European Union States have established equality bodies.¹⁹² In some States, these bodies are not sufficiently resourced to meet their mandates – and at times are not empowered to address issues of racial discrimination.¹⁹³ Furthermore, in Latin America, people of African descent are rarely represented in these bodies, and are not always aware of their mandates.¹⁹⁴ Reportedly, civil society organizations working to achieve equality for people of African descent often have limited access to relevant funding from their governments.¹⁹⁵

59. Several States and regional organizations have formally launched the International Decade for People of African descent (2015-2024), undertaken various activities and initiatives to implement it, such as developing national programmes of action.¹⁹⁶ While welcome, more needs to be done to ensure that its potential is maximized, that initiatives yield tangible results, and that other States endorse the Decade and implement its programme of activities.¹⁹⁷

60. Overall, and in part because States have not fully acknowledged the existence of systemic racism, measures adopted have not been commensurate with the magnitude of the

¹⁸⁴ <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>, p. 66.

¹⁸⁵ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fundamental-rights-report-2018_en.pdf, p. 79.

¹⁸⁶ <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>, p. 203.

¹⁸⁷ CERD/C/GC/32; CERD/C/GC/34, para. 7.

¹⁸⁸ <https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america> p. 100; <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>, p. 209; A/75/561, para. 41; CERD/C/BRA/18-20, paras. 82-84.

¹⁸⁹ CERD/C/USA/10-12.

¹⁹⁰ A/HRC/27/68/Add.1, paras. 25-26, and 56-57; CERD/C/USA/CO/7-9, para. 7; https://repositorio.cepal.org/bitstream/handle/11362/44387/1/S1800725_en.pdf, p. 32.

¹⁹¹ Submissions by Argentina, Brazil, Mexico; A/75/561, para. 8; CERD/C/BRA/18-20, para. 219; <https://www.cepal.org/en/publications/44458-first-regional-report-implementation-montevideo-consensus-population-and>, p. 205; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, para. 206; <https://www.un.org/en/observances/decade-people-african-descent/actions-taken>.

¹⁹² https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equality_directive_en.pdf; <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>, p. 66.

¹⁹³ <https://equineteurope.org/2021/towards-stronger-equality-bodies-for-an-equal-europe/>; https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, paras. 210 and 225.

¹⁹⁴ https://www.oas.org/en/iachr/afro-descendants/docs/pdf/afros_2011_eng.pdf, paras. 214-215.

¹⁹⁵ <https://rm.coe.int/ecri-annual-report-2019/16809ca3e1>, para. 12.

¹⁹⁶ Submissions by Argentina, Bolivia (Plurinational State of), National Human Rights Institution of Bolivia (Plurinational State of) (Defensor del Pueblo); A/HRC/45/47, para. 26; A/74/308, para. 32; <https://www.un.org/en/observances/decade-people-african-descent/actions-taken>.

¹⁹⁷ <https://rm.coe.int/combatting-racism-and-racial-discrimination,-against-people-of-african-d/1680a1c0b6>, para. 13; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fundamental-rights-report-2018_en.pdf, p. 79.

challenges, and have largely fallen short of addressing systemic racism and failed to lead to the transformative change that is required to achieve racial justice and equality.

D. Agenda Towards Transformative Change for Racial Justice and Equality – The Way Forward - STEP UP: Stop denying and start dismantling

61. The above-mentioned examples speak to the urgency of States creating conditions of life that uphold dignity, equality and rights.¹⁹⁸ Systemic racism needs a systemic response to rapidly reverse denial, and alter structures, institutions and behaviours leading to direct or indirect discrimination against Africans and people of African descent in every part of life. In some countries, there is now broader acknowledgment of the systemic nature of the racism that affects the lives of Africans and people of African descent and of the need to address the past. Yet, stronger political will and resolute action are needed from States and other stakeholders to advance the equality and dignity of Africans and people of African descent and to effectively tackle systemic racism.¹⁹⁹ It is our collective duty to address these issues – immediately and everywhere.

1. Adopt comprehensive “whole-of-government” and “whole-of-society” reforms and responses to dismantle systemic racism, elaborated in comprehensive and adequately resourced national and regional action plans

62. States should adopt a systemic approach to combating racism and racial discrimination through the adoption and monitoring of whole-of-government and whole-of-society responses that are elaborated – in close collaboration with people of African descent and their organizations and movements - in comprehensive and adequately resourced national and regional action plans and that include, where necessary, special measures to secure for disadvantaged groups, notably Africans and people of African descent, the full and equal enjoyment of human rights.²⁰⁰ In federal States, Governments should support, incentivize, and encourage subnational authorities, including state and local civil and human rights agencies, to act in conformity with human rights principles, including recommendations to identify and eliminate the root causes of systemic racism and structural discrimination, and publicly report on implementation of the rights of people of African descent. All levels of Government should be equipped to identify and investigate patterns of racial discrimination; collect and publicize disaggregated data; and work with communities to shape law and policy, improve quality of life for all residents, and promote justice.

63. States should examine the extent and impact of systemic racism and adopt effective legal, policy and institutional measures that address racism not merely as the sum of individual acts. A rigorous examination is therefore essential to dismantle structures and measures that contribute to political, social and economic inequalities and to comprehensively address the manifestations, root causes and drivers of systemic racism.²⁰¹ Chief among these drivers, racial stereotypes and false characterizations must be dismantled, including by recognizing people of African descent as a distinct group in national constitutions and legislation, through education, awareness-raising measures and respect for their cultural rights, and support and promoting greater knowledge of and respect for the history of people of African descent.²⁰² Further, States should intensify efforts to develop educational materials, including textbooks and dictionaries, including to eliminate any elements that might promote racism, racial discrimination, xenophobia and related intolerance or reinforce negative stereotypes and include material that refutes such stereotypes.²⁰³

¹⁹⁸ CCPR/C/GC/36.

¹⁹⁹ A/HRC/45/47, paras. 18 and 23.

²⁰⁰ CERD/C/GC/34; CERD/C/GC/32.

²⁰¹ Durban Declaration and Programme of Action; CERD/C/GC/34.

²⁰² A/74/274, paras. 77 and 78(i).

²⁰³ A/74/274, para. 78(m).

64. Progress should be measured according to indicators grounded in impact, rather than intent. Eliminating incentives for perpetuating racism and ensuring that systems and institutions do not profit from it is key.

2. Make time-bound public commitments on implementation of national and regional strategies and action plans to end systemic racism, and empower independent institutions to monitor and report on how those commitments are met

65. The time for action is now. States need to move from aspirational statements to specific time-bound commitments to achieve results, including through the implementation of national and regional strategies and action plans to end systemic racism. States should effectively acknowledge in their policies and actions the negative effects of the wrongs occasioned on people of African descent in the past, chief among which are enslavement, the transatlantic trade in enslaved Africans and colonialism and, the effects of which continue to disadvantage people of African descent today.²⁰⁴

66. Independent national human rights institutions and equality bodies²⁰⁵ should be established or strengthened, with adequate resources and robust mandates for dismantling systemic racism, including in law enforcement and the criminal justice system.

67. States should ensure the active and meaningful participation and representation of people of African descent, including women of African descent, and their organizations in State institutions, including in law enforcement and the criminal justice system, as well as in decision-making processes and the development of strategies, through adequate support and funding.²⁰⁶

68. States are urged to put frameworks in place to monitor and follow up on the above-mentioned national and regional strategies and action plans to end systemic racism, including through independent institutions as noted, and with the full and effective participation of people of African descent. States should also promote partnerships with civil society organizations, particularly those led by people of African descent, the private sector, the media, parliaments and trade unions.

69. Business enterprises should recognize that they have a role to play in the fight against systemic racism and should meet their corporate responsibility to respect human rights, including the rights of people of African descent. This entails undertaking effective human rights due diligence to avoid causing or contributing to adverse human rights impacts through their own activities, and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts, as well as developing racial equity performance indicators to ensure a focus on racial equity throughout their operations. Effective human rights due diligence should involve meaningful consultation with potentially affected groups and other relevant stakeholders, working directly with affected communities and obtain their free, prior and informed consent where relevant. Where adverse impacts have occurred business enterprises should provide for or cooperate in remediation through legitimate processes.²⁰⁷ As part of their responsibility to respect human rights, business enterprises should take specific measures to ensure diverse, inclusive and fair employment and recruitment practices. Business enterprises should also promote diversity within their supply and value chains by establishing business relationships with Black-owned businesses. Further, they are encouraged to lend their voices to efforts to combat racial discrimination and to support organizations, that fight for racial justice, especially those led by people of African descent.

²⁰⁴ CERD/C/GC/34, para. 17.

²⁰⁵ www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2

²⁰⁶ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.pdf, para. 12;

<https://assembly.coe.int/LifeRay/EGA/Pdf/Press/2021/20210316-Afrophobie-prov-EN.pdf>, para 17.

²⁰⁷ www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf.

3. Use data to drive and assess responses to systemic racism and collect and make public comprehensive data disaggregated by race or ethnic origin, gender, age, and other factors, with strict safeguards and in accordance with international human rights law, aiming at analysing the effect of laws and policies on Africans and people of African descent

70. States should collect and make publicly available comprehensive data disaggregated by race or ethnic origin, as well as by sex, gender, age and other factors, with strict safeguards and in accordance with international human rights law.²⁰⁸ Additionally, States should analyze the cumulative effects of laws, policies and practices on specific racial and ethnic groups. This entails reconciling the obligation of States to ensure protection of data and the right to privacy, while removing legal obstacles in collecting the data.²⁰⁹ It further involves the adoption of laws regulating the collection and processing of data with the explicit consent of the individuals and groups that are victims of racial discrimination, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms, including the right to privacy, protecting data from misuse and ensuring the confidentiality of information.²¹⁰ This requires the development of voluntary, consensual and participatory strategies, with the active involvement of people of African descent and civil society organizations in developing appropriate methodology for data collection and in the process of collecting and using the information.²¹¹

71. The collection of such disaggregated data and indicators should be understood both as a component of the right of people of African descent to be free from racism, and as an obligation of States to ensure racial equality and eliminate racism. While some States have reported facing challenges in collecting disaggregated data,²¹² such data allows empirical evidence to be used to increase understanding of the nature, magnitude and impact of systemic racism in local contexts and of institutional responses (or lack thereof). Further, it is necessary to inform and design sound anti-racism policies based on empirical evidence; to identify areas where special measures are needed for people of African descent; and to monitor the effectiveness of policy measures and progress made.

72. Data is required in order to ensure the recognition of people of African descent and to overcome their historical, social and structural invisibility. The express recognition of people of African descent in national censuses and statistics is also a step towards acknowledging their identity and heritage, which is intrinsic to their right to dignity. States should also invest in educational curricula and cultural initiatives to raise awareness about the cultures, histories, heritage and contributions of Africans and people of African descent. Further, State should review all the language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning people of African descent and replace it with images, references, names and opinions which convey the message of the inherent dignity and equality of all human beings.²¹³

4. Respond to racist behaviour, violence and hate crimes with the full force of law and the power of leadership, including by calling out and holding perpetrators accountable

73. States should prevent and respond to racist behaviour, violence and hate crimes, including by groups that promote and incite racial hatred or discrimination against people of African descent. They should take measures to prevent any dissemination of ideas of racial superiority and inferiority or ideas which attempt to justify violence, hatred or discrimination

²⁰⁸ A/70/335; www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf; [https://www.ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf](http://www.ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf).

²⁰⁹ A/HRC/24/52, para. 84.

²¹⁰ A/HRC/24/52.

²¹¹ A/HRC/24/52 para. 87(b).

²¹² A/70/335.

²¹³ CERD/C/GC/34, para. 61; Durban Declaration and Programme of Action, para. 127.

against people of African descent.²¹⁴ In response to racially motivated acts of violence against people of African descent, States should ensure prompt action by the police, prosecutors and the judiciary for investigating and punishing such acts, and ensure that perpetrators, be they public officials or other persons, do not enjoy impunity.²¹⁵

74. States are also called upon to put in place measures and procedures that encourage all actors, including the media, not to perpetuate negative stereotypes,²¹⁶ raise awareness among media professionals of their responsibility not to perpetuate prejudices,²¹⁷ and establish an independent and impartial body, with the necessary resources to monitor the effective implementation of such measures.²¹⁸ Voluntary professional codes of conduct for media workers should provide for self-monitoring and reflect the principle of equality in order to eliminate the use of racially discriminatory or biased language and images.²¹⁹ Further, States and civil society should work with the media and communications companies to promote more positive and inclusive images and representations of people of African descent in order to increase their visibility within society and challenge negative stereotypes and resultant discrimination.²²⁰

75. Political leaders should refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination. They also have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.²²¹ Political parties should adopt and enforce ethical guidelines in relation to the conduct of their representatives, particularly with respect to public speech.²²²

76. States, international and national sports authorities and bodies should intensify their collaboration to implement tangible measures to dismantle systemic racism against Africans and people of African descent through sport; as well as combat racism in sports, including through awareness raising activities. States should ensure that appropriate sanctions are implemented to combat racism in sports, and sports associations should develop frameworks or action plans to fight against racism in their respective sports.²²³

5. Accelerate implementation of recommendations by UN and regional human rights mechanisms, national commissions and inquiries, national human rights institutions and equality bodies, and monitor and report on progress

77. Pursuant to obligations and commitments contained notably in the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action, States should prohibit and eliminate racial discrimination in all its forms,²²⁴ including systemic racism,²²⁵ regardless of legal status.²²⁶ International human rights law and political commitments provide a clear framework for

²¹⁴ CERD/C/GC/34, para. 27; Durban Declaration and Programme of Action, paras. 86-87; See also CERD/C/GC/35.

²¹⁵ CERD/C/GC/34, para. 28; Durban Declaration and Programme of Action, paras. 82 and 89.

²¹⁶ A/HRC/24/52 para. 75(g).

²¹⁷ CERD/C/GC/34, para. 30.

²¹⁸ CERD/C/ESP/CO/21-23, para. 25.

²¹⁹ CERD/C/GC/34, para. 33; A/HRC/22/17/Add.4, appendix, paras. 58-59.

²²⁰ A/HRC/27/68, para. 60(r); A/69/318, para. 75.

²²¹ Rabat Plan of Action, A/HRC/22/17/Add.4, appendix, para. 36; Beirut Declaration and its 18 commitments on “Faith for Rights”, A/HRC/40/58, annex II.

²²² A/HRC/22/17/Add. 4, appendix, para. 57.

²²³ Durban Declaration and Programme of Action, paras. 86, 218; A/69/340, para. 66;

<https://news.un.org/en/story/2013/03/435072-no-place-racism-sports-un-declares-international-day>; <https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13164&LangID=E>.

²²⁴ Submissions by Algeria, Andorra, Argentina, Azerbaijan, Bolivia (Plurinational State of), Costa Rica, Cyprus, Finland, Guatemala, Mexico, Sweden and the United States, as well as the European Union, all of which provided information on anti-discrimination laws and policies.

²²⁵ Universal Declaration of Human Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 2; International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2; Durban Declaration and Programme of Action, para. 35; CERD/C/GC/34; E/C.12/GC/20, para. 12; A/75/561.

²²⁶ CERD/C/GC/30, para. 3; E/C.12/GC/20, para. 30.

attaining substantive, not merely formal, racial justice and equality.²²⁷ This includes reviewing legislation, policies and practices that may not be discriminatory in purpose, but are discriminatory in effect, as well as reforming institutions taking into consideration an intersectional analysis.²²⁸

78. States should seize opportunities to advance the anti-racism agenda, prioritize attaining racial equity in implementing the 2030 Agenda for Sustainable Development and ensure that people of African descent are not left behind. The twentieth anniversary of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001, is an opportunity to urgently accelerate action. The International Decade for People of African Descent presents a complementary avenue for advancing recognition, justice and development. Further, the Permanent Forum on People of African Descent could provide movements led by people of African descent with a platform, including to contribute to the elaboration of a UN declaration on the promotion and full respect of the human rights of people of African descent. These processes should be leveraged in an integrated and forward-looking manner so as to maximize their collective impact.

III. Ending impunity for human rights violations by law enforcement and closing trust deficits

A. Introduction

79. This section focuses on interactions of Africans and people of African descent with law enforcement and the criminal justice system that are a reflection of systemic racism, and provides examples of this across several areas. The section seeks to address the failures of related institutions and systems to consider the disparate impacts of policies and practices of law enforcement on people of African descent beyond attributing individual excesses to “a few bad apples” within law enforcement. It considers prevailing challenges to accountability and redress for human rights violations against Africans and people of African descent by law enforcement. Focusing in particular on deaths by law enforcement, it also sets out the specific challenges faced by the families of those killed. Furthermore, it illustrates some patterns and challenges by using available data and through seven specific incidents. The section closes with illustrations of promising initiatives and recommendations for the way forward to ensure a human rights-based approach towards ending impunity for human rights violations by law enforcement and closing trust deficits.

B. People of African descent, law enforcement and the criminal justice system

80. Systemic racism and enduring harmful and degrading associations of Blackness with criminality and delinquency shape interactions of people of African descent with law enforcement and the criminal justice system.²²⁹ Assessing the impact of these interactions on the enjoyment of rights by people of African descent is hampered by the lack of official data disaggregated by race or ethnic origin, as with other areas covered in this conference room paper. As illustrated below, where official data is unavailable, some regional bodies, civil society organizations, the media, universities and think-tanks have sought to fill this evidentiary gap.

81. Concerns about the disparate impact of the policies and practices of law enforcement on people of African descent have been documented by UN human rights mechanisms for many years. Available data, coupled with reports and recommendations by these mechanisms and other bodies, paint an alarming picture of system-wide, disproportionate and

²²⁷ A/HRC/38/52, para. 18; CERD/C/GC/32, para. 7; CERD/C/GC/34, para. 5; E/C.12/GC/20, paras. 8-10.

²²⁸ CERD/C/GC/32, para. 7; E/C.12/GC/20, para. 17; A/HRC/38/52, para. 29.

²²⁹ A/74/274; CERD/C/GC/34; A/HRC/45/44, para. 23.

discriminatory impacts on people of African descent in their encounters with law enforcement and the criminal justice system in some States (see sections below). In particular, UN human rights mechanisms have highlighted issues of racial profiling and the disproportionate impact of police harassment, verbal abuse and abuse of power, discriminatory stop-and-search, ill-treatment, arbitrary arrests, excessive use of force against people of African descent by law enforcement in some States, and broad impunity for such violations.²³⁰

82. Their recommendations have called for law enforcement efforts to pursue structural and behavioural changes that focus on prevention of violations, through systems of oversight, monitoring and reporting of violations, gathering and publishing comprehensive disaggregated data, and human rights training and awareness-raising of law enforcement to counter conscious and unconscious bias, stigmatization and discrimination, and to ensure equal treatment of people of African descent. They also centre around the need for accountability for human rights violations by law enforcement as a pathway to deterrence;²³¹ as well as on strengthening public trust and fostering strong relationships between law enforcement and communities, to reduce crime and increase safety, including through the recruitment, retention and promotion of people of African descent in law enforcement and criminal justice institutions.²³²

83. Thus, over the years, through these recommendations, UN human rights mechanisms have sought to address the systems, practices and patterns which underlie and perpetuate the disproportionate and discriminatory impact of law enforcement and the criminal justice system on people of African descent. Their recommendations speak to the urgency of moving beyond addressing individual violations by law enforcement officials. Inadequate implementation of recommendations has facilitated continuing cycles of abuse and violence against people of African descent.

1. Racial profiling, arrests and stop-and-search

84. In a number of States, Africans and people of African descent are particularly vulnerable to racial profiling,²³³ notably as a basis for discriminatory identity checks, stops-and-searches, arrests and related abuses and violence, including serious injury and deaths.²³⁴

²³⁰ See e.g. A/HRC/38/4; A/HRC/23/3; CCPR/C/FRA/CO/5; CCPR/C/FRA/CO/4; A/HRC/21/9; CCPR/C/GBR/CO/7; A/HRC/24/52/Add.1; A/HRC/46/15; A/HRC/30/12; A/HRC/16/11; CCPR/C/USA/CO/4; CERD/C/USA/CO/7-9; CERD/C/USA/CO/6; A/HRC/36/11; A/HRC/21/11; A/HRC/8/47; A/HRC/14/24, para. 53; A/HRC/14/24/Add.8; A/HRC/20/22/Add.2, paras. 55 and 60; A/HRC/8/3/Add.4; A/HRC/27/68/Add.1; A/HRC/33/61/Add.2; A/HRC/41/54/Add.2, paras. 38 and 42; A/HRC/11/36/Add.3.

²³¹ See e.g. A/HRC/36/11; A/HRC/21/11; A/HRC/24/6; A/HRC/38/4; A/HRC/23/3; A/HRC/8/47; CCPR/C/FRA/CO/5; CCPR/C/FRA/CO/4; A/HRC/46/15; A/HRC/30/12; A/HRC/16/11; CCPR/C/USA/CO/4; CERD/C/USA/CO/7-9; CERD/C/USA/CO/6; A/HRC/10/82; CCPR/C/COL/CO/7; CCPR/C/COL/CO/6; CERD/C/COL/CO/14; CCPR/C/FRA/CO/5; CCPR/C/GBR/CO/7; A/HRC/46/15; A/HRC/20/22/Add.3, para. 13; A/HRC/20/22/Add.2, Appendix, para. 18; A/HRC/8/3/Add.4, paras. 21-22; A/HRC/27/68/Add.1, para. 108; A/HRC/24/52/Add.1, paras. 103 and 105; A/HRC/33/61/Add.2, para. 100; A/HRC/11/36/Add.3, paras. 101-102, 105.

²³² A/HRC/46/15; A/HRC/30/12; A/HRC/24/52/Add.1, para. 103; CERD/C/GC/36, para. 46.

²³³ Racial profiling is defined as “the practice of law enforcement relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.” CERD/C/GC/36, para. 72.

²³⁴ E.g. <https://rm.coe.int/report-on-austria-6th-monitoring-cycle-/16809e826f>, <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>; submissions by the European Union, as well as the European Commission against Racism and Intolerance of the Council of Europe (ECRI), the Inter-American Commission on Human Rights, the Association for the Prevention of Torture (APT), Centro de Estudios Legales y Sociales (CELS)/Diáspora Africana de la Argentina (DIAFAR), Human Rights Watch, the International Decade for People of African Descent Assembly–Guyana (IDPADA-G); Coalición indígena de Migrantes de Chiapas/Proyecto Afrodescendencia Mexico/ Instituto para las Mujeres en la Migración A.C. (IMUMI), and Ilex Acción Jurídica; A/HRC/33/61/Add.2, para. 77; A/HRC/27/68/Add. 1, paras. 74 and 77. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf; <https://www.amnesty.org/en/latest/news/2021/01/france-systemic-police-discrimination-requires-reforms/>.

Some States commendably collect, disaggregate and publish data pertaining to these areas. When such data is available, it however raises serious substantive concerns. For example, while African Americans comprised 13 per cent of the general United States population, official data from 2019 shows that they accounted for 26 per cent of total arrests.²³⁵ A 2015 report of the United States Bureau of Justice Statistics on interactions between the police and the public revealed that “Blacks were more likely to be pulled over in traffic stops than whites and Hispanics”.²³⁶ Statistics by the United Kingdom Ministry of Justice revealed that between April 2019 and March 2020 “there were 6 stops-and-searches for every 1,000 White people, compared with 54 for every 1,000 Black people”.²³⁷

85. A 2021 survey by the European Union Agency for Fundamental Rights shows that Africans and people of African descent are more likely to be stopped and searched by police, which affects their trust in policing.²³⁸ An earlier survey conducted in 2018 by the same Agency found that out of the 24 per cent of respondents of African descent that were stopped by the police in the five years before the survey, 41 per cent felt the stop was a result of racial profiling and 63 per cent of victims of racist physical attacks by a police officer did not report the incident because they felt it would not change anything or because they do not trust the police.²³⁹ In France, according to a 2016 survey by the Defender of Rights, “young men perceived as black, Arab/from Maghreb” were 20 times more likely to be subject to identity checks than others, and reported significantly higher experiences of insulting behaviour and physical abuse during police stops.²⁴⁰

86. In Colombia, a 2019 survey conducted by a non-governmental organization in two neighbourhoods of Bogotá reported that “dark-skinned persons” were over 2.5 times more likely to encounter the police, be arrested, taken to police stations, fined or subject to searches.²⁴¹ In Guyana, 25 per cent of respondents to a survey conducted by a non-governmental organization in 2020 among African Guyanese communities reported perceptions of racial profiling by law enforcement, including in relation to arrests.²⁴² Submissions indicated that in the United States, “Black sex workers at times make up the overwhelming majority of people arrested under loitering and anti-prostitution statutes (in some cases more than 90%)”.²⁴³

87. In some States, in the context of COVID-19 lockdowns, increased stops-and-searches based on racial profiling were reported, alongside the imposition of fines disproportionately

²³⁵ <https://ucr.fbi.gov/crime-in-the-u-s/2019/crime-in-the-u-s-2019/tables/table-43>.

²³⁶ <https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf>, p. 4.

²³⁷ <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>.

²³⁸ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-survey-police-stops_en.pdf, p. 7.

²³⁹ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf, pp. 8 and 14.

²⁴⁰ https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapport-enquete_relations_police_population-20170111_1.pdf, pp. 17 and 23; <https://www.defenseurdesdroits.fr/fr/actus/actualites/relations-policepopulation-le-defenseur-des-droits-publie-une-enquete-sur-les>.

²⁴¹ <https://www.ilexaccionjuridica.org/wp-content/uploads/2020/06/Abuso-Policial-Final-web.pdf>.

²⁴² Submission by the International Decade for People of African Descent Assembly—Guyana (IDPADA-G).

²⁴³ Submissions by Black Sex Worker Collective/Best Practices Policy Project/the Outlaw Project/Desiree Alliance/New Jersey Red Umbrella Alliance, and the Woodhull Freedom Foundation/Sex Workers Project at the Urban Justice Center.

falling on people of African descent,²⁴⁴ and discretionary implementation of restrictive measures against LGBTI persons of African descent.²⁴⁵

88. In some States, the presence in schools of police officers with the authority to detain, frisk and arrest has led to increasing criminalization of children of African descent.²⁴⁶ For example, data from the United States Education Department's Office for Civil Rights shows that African American children faced disproportionately high rates of suspensions, expulsions, referrals to law enforcement, and school-related arrests²⁴⁷ during the enforcement of zero-tolerance policies that criminalize minor infractions of school rules.²⁴⁸ Additionally, official data highlighted that, for the year ending March 2019 in England and Wales, "Black children were over four times more likely than White children to be arrested".²⁴⁹

89. Furthermore, laws and practices, such as civil asset forfeiture laws, can create economic incentives for racial profiling and other discriminatory practices amongst vulnerable populations.²⁵⁰ In its investigation after the 2014 police killing of Michael Brown, the United States Department of Justice highlighted as a concern the practice of focusing on generating revenue rather than addressing public safety needs by law enforcement in Ferguson, Missouri. The investigation report also noted that the confluence of policing to raise revenue and racial bias resulted in direct harm to individuals, undermining community trust among many African Americans.²⁵¹ Other reported incentives include arrest quotas or performance targets on stops-and-searches.²⁵²

90. As noted above, harmful stereotypes have also shaped the encounters of Africans and people of African descent with law enforcement and the criminal justice system.²⁵³ The Working Group of Experts on People of African Descent highlighted that entrenched racial disparities in the criminal justice system "reflect harmful stereotypes grounded in the historical legacies of the global trafficking in enslaved Africans, colonisation, and the ways in which modern social narratives evolved from rhetoric designed to justify these institutions and the exploitation of people of African descent."²⁵⁴ According to a 2021 University of Chicago review on use of lethal force directives in the largest cities of the 29 wealthiest

²⁴⁴ <https://libertyinvestigates.org.uk/articles/bame-people-disproportionately-targeted-by-coronavirus-fines/>; <https://www.amnesty.org/en/latest/news/2020/06/europe-covid19-lockdowns-expose-racial-bias-and-discrimination-within-police/>; <https://www.enar-eu.org/Police-violence-and-racial-profiling-during-Covid-19-need-to-stop-governments>; <https://www.lawrencereview.co.uk/>.

²⁴⁵ Submission by Ilex Acción Jurídica; A/75/258; para. 26, https://raceandequality.org/category/colombia/?post_date=2020-10-06; <https://www.ohchr.org/Documents/Issues/SexualOrientation/ImpactCOVID19LGBTpersons.pdf>.

²⁴⁶ See, e.g., the "school-to-prison pipeline" in the United States (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000; www.aclu.org/issues/juvenile-justice/school-prison-pipeline); submission by UK Committee for UNICEF (UNICEF UK).

²⁴⁷ <https://ocrdata.ed.gov/estimations/2017-2018>; <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

²⁴⁸ <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline?redirect=feature/school-prison-pipeline>; <https://files.eric.ed.gov/fulltext/EJ870076.pdf>; <https://www.vox.com/2015/2/24/8101289/school-discipline-race>.

²⁴⁹ <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; submission by UK Committee for UNICEF (UNICEF UK), CRC/C/GBR/CO/5 para. 78(d).

²⁵⁰ A/HRC/36/37/Add.2; submission by Disability Rights Ohio; www.attorneygeneral.jus.gov.on.ca/inquiries/ippewash/policy_part/projects/pdf/AfricanCanadianClinicIppewashProject_SIUStudybyScotWortley.pdf.

²⁵¹ https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf, p. 5-7.

²⁵² https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf; <https://www.hrw.org/report/2012/01/26/root-humiliation/abusive-identity-checks-france>.

²⁵³ Submissions by International Service for Human Rights/Le Comité Adama/Association A Qui Le Tour? and the National Human Rights Institution of Ecuador (Defensoría del Pueblo); A/74/274, paras. 54-55; <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>.

²⁵⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>; A/HRC/33/61/Add.2, para. 24; A/HRC/36/37/Add.2, para. 58.

countries, racial bias and stereotypes influence law enforcement officers' decisions to employ force while on duty.²⁵⁵

91. Some civil society organizations reported that in the United States, "police officers are more likely to falsely perceive predominantly Black communities as inherently dangerous, threatening and violent due to stereotyping and racial bias".²⁵⁶ In Colombia, according to civil society information, women of African descent reported sexual harassment and verbal intimidation by police based on racial stereotypes.²⁵⁷ A frequent related concern raised was the excessive policing of Black bodies and communities, making them feel threatened rather than protected.²⁵⁸ Reports indicate that in some countries, residents in neighbourhoods predominantly inhabited by people of African descent feel that they are often subject to overly aggressive police tactics and practices, and that they do not receive equal police protection when needed.²⁵⁹

92. Also disturbing is the reported militarization of law enforcement in some States, where the deployment of military personnel and equipment has in some instances facilitated a rapid escalation in the use of lethal force,²⁶⁰ notably in the context of the war on drugs.²⁶¹ Militarized policing increases the risk of violence and harm to both law enforcement and civilians,²⁶² and is not considered effective as it does not de-escalate, reduce bias, improve police-community relations or increase public safety.²⁶³ Research also shows that militarized policing disproportionately impacts racial and ethnic minorities.²⁶⁴ This is because the role of the military, which is meant to deal with armed conflict, differs substantially from the police that deals with civic issues. The purpose that the military is supposed to serve and the

²⁵⁵ https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3832989_code249436.pdf?abstractid=3832989&mirid=1, pp. 37-38.

²⁵⁶ Submission by NAACP Legal Defense and Educational Fund Inc. (LDF). See also L. Song Richardson, Cognitive Bias, Police Character and the Fourth Amendment, 44 ARIZ. ST. L.J. 267, 280 (2012); <https://www.apa.org/pubs/journals/releases/psp-pspi0000092.pdf>; https://www.enar-eu.org/IMG/pdf/shadowreport_afrophobia_final_with_corrections.pdf, p.36; <https://www.runnymedetrust.org/uploads/publications/pdfs/EthnicProfiling-2010.pdf>, p.9.

²⁵⁷ <https://www.ilexaccionjuridica.org/wp-content/uploads/2020/06/Abuso-Policial-Final-web.pdf>, p. 43.

²⁵⁸ See, e.g., A/HRC/33/61/Add.2; A/HRC/33/61/Add.2, para. 76; www.hrw.org/report/2020/06/18/they-talk-us-were-dogs/abusive-police-stops-france; www.runnymedetrust.org/uploads/Race%20and%20Policing%20v5.pdf.

²⁵⁹ Submissions by Action des Chrétiens pour l'Abolition de la Torture (ACAT), Colectivo Justicia Racial, and International Service for Human Rights/Le Comité Adama/Association A Qui Le Tour?; <https://www.tandfonline.com/doi/pdf/10.1080/07418820802119950>, p. 129 ; <https://www.runnymedetrust.org/uploads/Race%20and%20Policing%20v5.pdf>, p. 8; <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/police-as-placeconsolidators-the-organizational-amplification-of-urban-inequality/D67D4B3CA01CA42DBC75CC10216160DE>, pp. 19-20; <https://www.hrw.org/report/2020/06/18/they-talk-us-were-dogs/abusive-police-stops-france>.

²⁶⁰ https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rell1.pdf, p.5; <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>; <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>; <http://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>, p. 12; submissions by the University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP, HERE 4 Justice, and the Transitional Justice Institute Law School Ulster University/Mitchell Institute/The Centre for Documentary Research QUB.

²⁶¹ <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>, p. 37; <http://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>, p. 118.

²⁶² https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rell1.pdf; <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>.

²⁶³ <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>; https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rell1.pdf; submissions by the American Civil Liberties Union (ACLU) and HERE 4 Justice.

²⁶⁴ Submissions by Human Rights First, HERE 4 Justice, and the Transitional Justice Institute Law School Ulster University/Mitchell Institute/The Centre for Documentary Research QUB; <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>.

training and preparation it receives are ill-suited to handle civilian security concerns.²⁶⁵ The militarization of police, including through the deployment of military personnel, has also blurred and negatively impacted accountability for abuse and violations.²⁶⁶

93. Policing with discriminatory outcomes for people of African descent may also be exacerbated by the use of new technologies, including artificial intelligence. The Committee on the Elimination of Racial Discrimination has warned that the increasing use of such technological tools carries a real risk of algorithmic bias when artificial intelligence is used in decision-making in the context of law enforcement.²⁶⁷ Particular risks of reproducing and reinforcing biases emerge when algorithmic profiling is used for determining the likelihood of criminal activity either in certain localities, based on historical arrest data of overpoliced neighbourhoods, or by certain groups or even individuals, through “predictive policing”.²⁶⁸

94. Similarly, the identification of individuals based on their facial geometry has the potential to profile people based on grounds of discrimination, such as race, colour, national or ethnic origin or gender, given that the level of accuracy of facial recognition technology differs depending on the colour, ethnicity or gender of the persons assessed.²⁶⁹ In addition, despite there being no direct linkages between an individual’s DNA composition and their ethnicity or nationality, DNA profiling has been used by law enforcement authorities in some instances to make false claims that certain ethnic minorities are more prone to violence and, in turn, those groups have been subjected to discriminatory police practices.²⁷⁰

2. Sentencing and deprivation of liberty

95. Reports highlight that racial stereotyping and bias including within the judiciary “mirror the prejudices of the society they serve”.²⁷¹ Reports also point to the disproportionate presence of Africans and people of African descent in prison populations,²⁷² for instance in Brazil,²⁷³ Colombia²⁷⁴, Ecuador,²⁷⁵ Italy,²⁷⁶ Portugal²⁷⁷ and the United States (see further below). For example, official statistics from 2020 in Brazil indicate that people of African descent make up 65.9 per cent of the prison population while comprising 56.8 per cent of the overall population.²⁷⁸ Moreover, “Afro-Brazilians reportedly receive higher sentences than their white counterparts for the same crime, and are more likely to suffer discrimination in prison”,²⁷⁹ without the possibility of accessing alternatives to incarceration.²⁸⁰ The Public

²⁶⁵ http://www.oas.org/en/iachr/media_center/PReleases/2018/271.asp; http://www.oas.org/en/iachr/media_center/PReleases/2018/047.asp; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23942&LangID=E>; A/HRC/26/36/Add.1.

²⁶⁶ <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>.

²⁶⁷ CERD/C/GC/36, para. 12.

²⁶⁸ Predictive policing relies on historical data for predicting possible future events. As noted by the Committee on the Elimination of Racial Discrimination, for example, historical arrest data about a neighbourhood may reflect racially biased policing practices. If fed into a predictive policing model, use of these data poses a risk of steering future predictions in the same, biased direction, leading to overpolicing of the same neighbourhood, which in turn may lead to more arrests in that neighbourhood, creating a dangerous feedback loop. CERD/C/GC/36, para. 33; A/HRC/44/57, paras. 36-37; <https://www.nyulawreview.org/online-features/dirty-data-bad-predictions-how-civil-rights-violations-impact-police-data-predictive-policing-systems-and-justice/>.

²⁶⁹ CERD/C/GC/36 para. 35; A/HRC/41/35.

²⁷⁰ CERD/C/GC/36 para. 36.

²⁷¹ A/HRC/27/68, paras. 54-55.

²⁷² CERD/C/GC/34.

²⁷³ A/HRC/31/56/Add.1, para. 53; A/HRC/27/68/Add.1, para. 68.

²⁷⁴ Submission by the Inter-American Commission on Human Rights.

²⁷⁵ Submission by the Inter-American Commission on Human Rights.

²⁷⁶ A/HRC/33/61/Add.1, para. 51.

²⁷⁷ A/HRC/21/60/Add.1, para. 71.

²⁷⁸ <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>, paras. 155 and 22.

²⁷⁹ A/HRC/27/68/Add.1, para. 67.

²⁸⁰ https://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150325_relatorio_aplicacao_penas.pdf.

Defender's Office in Rio de Janeiro found that 77 per cent of people "presented to custody hearings in the state, between 2017 and 2019 were black".²⁸¹

96. In the United States, reports indicate that in 2019, African Americans represented about 33 per cent of the prison population.²⁸² In 2016, "incarceration rates of African Americans are 6.4 times higher than those of Whites"²⁸³ and the incarceration rate for African American females "2.1 times higher than the rate for white females."²⁸⁴ Research also found that between 2012 and 2016, "sentences imposed on Black men and boys in the federal system are nearly 20 percent longer than those imposed on white males convicted of similar crimes".²⁸⁵ Such overrepresentation in prisons is reportedly due, at least in part, to over-policing of African Americans and their neighbourhoods,²⁸⁶ and to more aggressive prosecutions and plea negotiations by local and federal prosecutors.²⁸⁷ Research also indicates that African Americans are disproportionately impacted by wrongful convictions, as 63 per cent of those exonerated through DNA evidence are African American.²⁸⁸

97. In the United Kingdom, according to official data, as of June 2020, 12.8 per cent of the prison population²⁸⁹ in England and Wales were "Black or Black British" despite comprising, according to the 2011 National Census, only 3.4 per cent of the population.²⁹⁰ Additionally, civil society reported that, "Black people are more than twice as likely to die in police custody than any other ethnicity",²⁹¹ and over one third of deaths of immigration detainees since 2000 "have been of Black African, Black Caribbean or other Black ethnicities".²⁹² In 2018-2019, "known rates of detention under the Mental Health Act for Black or Black British people were four times higher than for white British people".²⁹³ In Canada, while accounting for 3.5 per cent of the total population in 2019,²⁹⁴ official statistics in 2018-2019 indicated that "Black inmates [...] represent 8% of the total in-custody population".²⁹⁵

98. Some States are resorting to new technologies, such as algorithmic profiling, to foresee the possibilities that an individual may commit a crime in the future. States appear to

²⁸¹ Submission by Conectas Direitos Humanos, referring to <https://ponte.org/negros-audiencia-de-custodia/>; <https://www.conjur.com.br/2020-nov-24/opiniao-custodia-videoconferencia-racismo-estrutural>.

²⁸² <https://www.sentencingproject.org/wp-content/uploads/2021/06/Trends-in-US-Corrections.pdf>; https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/ft_20-05-05_imprisonmentrates_2a/.

²⁸³ A/HRC/38/33/Add.1, para. 54.

²⁸⁴ A/HRC/33/61/Add.2, para. 29.

²⁸⁵ Submission by the American Civil Liberties Union (ACLU); <http://www.uscc.gov/news/congressional-testimony-and-reports/booker-reports/report-continuing-impact-united-states-v-booker-federal-sentencing> https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

²⁸⁶ Submission by the NAACP Legal Defense and Educational Fund Inc. (LDF); <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

²⁸⁷ https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/public-service/racial-disparities-criminal-justice-how-lawyers-can-help/; <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>; <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>, pp. 8-9.

²⁸⁸ <https://innocenceproject.org/what-wrongful-convictions-teach-us-about-racial-inequality/>.

²⁸⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904864/Population_30June2020.ods.

²⁹⁰ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest#by-ethnicity>.

²⁹¹ Submission by Race Equality First; <https://www.bbc.com/news/52890363>.

²⁹² Submission by INQUEST.

²⁹³ Submission by INQUEST; https://www.cqc.org.uk/sites/default/files/20200206_mhareport1819_report.pdf.

²⁹⁴ <https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019002-eng.htm>.

²⁹⁵ <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx>. See also A/HRC/36/60/Add.1, para. 34.

seek to gather information on a person’s criminal history, their family, friends and social conditions, and other factors, to assess the degree of “danger” the person may pose.²⁹⁶ Similarly to predictive policing (see above), concerns have been raised that such practices reproduce and reinforce bias.²⁹⁷ For example, an investigative journalist report on Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), a tool which is widely used in courts in the United States, revealed “blacks are almost twice as likely as whites to be labeled a higher risk but not actually re-offend”.²⁹⁸ The impact of such algorithms on sentencing can violate an individual’s rights to equality before the law, to fair trial, and to freedom from arbitrary arrest and detention.²⁹⁹

3. Punitive drug policies and death penalty

99. People of African descent are disproportionately affected by excessively punitive drug policies and are more likely to be apprehended, searched, arrested, convicted, and sentenced to death for drug-related crimes.³⁰⁰ Submissions highlighted that, in the United States in 2015, “African Americans are around three times more likely to be arrested for drug possession than their white counterparts”³⁰¹, while in 2017 “Black Americans are 6–10 times more likely to be incarcerated for drug offenses than their white counterparts.”³⁰²

100. In the United Kingdom, it was reported that “black people were prosecuted for drug offences at more than eight times the rate of white people in 2017”,³⁰³ and as reported in 2017, “the odds of receiving a prison sentence were around 240% higher for [Black, Asian and minority ethnic]”.³⁰⁴ Data from 2014 indicated that “black women were about 2.3 times more likely to receive a custodial sentence for drugs offences compared to white women.”³⁰⁵ In Canada, non-governmental research released in 2018³⁰⁶ and 2020³⁰⁷ found that Black and indigenous people were overrepresented in cannabis possession arrests. In Brazil, in 2017 reports note that “in almost 50% of drug trafficking cases involving white persons the offence is disqualified to drug possession for personal use, with a significant sentence reduction, while the same happens in only 5.3% of cases where the defendants are Black”; and “Black people are prosecuted and convicted for trafficking lower quantities of drugs than white defendants”.³⁰⁸

101. Reports indicate that the death penalty disproportionately affects the poor, while poverty also compounds obstacles that vulnerable and disadvantaged groups, including

²⁹⁶ CERD/C/GC/36, para. 34.

²⁹⁷ CERD/C/GC/36, para. 34. See also <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

²⁹⁸ <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

²⁹⁹ A/HRC/44/57, para. 43.

³⁰⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26742&LangID=E>;

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24529&LangID=E>;

A/HRC/30/65, para. 51;

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>.

³⁰¹ Submission by Harm Reduction International/Release; <https://pubmed.ncbi.nlm.nih.gov/27565526/>;

<https://link.springer.com/article/10.1007/s11524-018-00325-1>;

<https://nij.ojp.gov/library/publications/race-differences-drug-offending-and-drug-distribution-arrests>;

<https://journals.sagepub.com/doi/abs/10.1177/0011128714568427>. See also

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20746&LangID=E>.

³⁰² Submission by Harm Reduction International/Release. See also

<https://pubmed.ncbi.nlm.nih.gov/28690668/>.

³⁰³ <https://www.release.org.uk/publications/ColourOfInjustice>.

³⁰⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p. 33.

³⁰⁵ <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>, para. 22.

³⁰⁶ <https://www.vice.com/en/article/d35eyq/black-and-indigenous-people-are-overrepresented-in-canadas-weed-arrests>.

³⁰⁷ <https://pubmed.ncbi.nlm.nih.gov/33011019/>.

³⁰⁸ Submission by Harm Reduction International/Release; <https://exame.com/brasil/negros-sao-mais-condenados-por-trafico-e-com-menos-drogas-em-sao-paulo/>.

people of African descent are already facing in many countries.³⁰⁹ Due to limited or inadequate legal aid services, poor or less privileged individuals often do not have access to effective legal representation and run a higher risk of being subject to the death penalty, leading to inherent bias in their experience of the criminal justice system.³¹⁰

102. Non-governmental data from 2020 indicated African Americans made up 41 per cent of those on death row³¹¹ and 34 per cent of all people executed in the United States between 1976 and May 2021.³¹² In 2021, the United States Government confirmed its support for federal legislation to end the death penalty and encouraged States to follow this course.³¹³

103. In many other countries that retain the death penalty, data and information on its application are limited. In some States, foreign nationals, including from African countries, appear to be overrepresented among the death row population. For example, in Saudi Arabia, in 2018, reportedly out of 59 executions conducted for drug offences at least seven were Nigerian nationals and four from North Africa; and in 2019, reportedly out of 84 executions confirmed, at least 11 were of individuals from North Africa.³¹⁴ In 2020, Saudi Arabia reportedly announced a moratorium on the use of death penalty for drug related offences.³¹⁵

104. In Indonesia, six of the 14 people executed in 2015 and three of the four people executed in 2016 (all convicted of drug offences) were Africans.³¹⁶

4. Incidents of violence and deaths of Africans and people of African descent at the hands of law enforcement

105. When available, data disaggregated by race or ethnic origin is particularly concerning with regard to physical violence by law enforcement against Africans and people of African descent, and the risk of deaths during these encounters. For example, in the United States, official data from 2015 indicates that “[w]hen police initiated the contact, blacks (5.2%) [...] were more likely to experience the threat or use of physical force than whites (2.4%)”.³¹⁷ According to non-governmental data, African Americans accounted for 28 per cent of those killed by police in 2020.³¹⁸ Official data from Canada shows that between 2013 and 2017, a “Black person in Toronto was nearly 20 times more likely than a White person to be involved in a fatal shooting by the Toronto Police Service”.³¹⁹ In Brazil, according to the Brazilian Forum for Public Security, in 2019, people of African descent represented 79 per cent of deaths during police interventions,³²⁰ a rate that was 183 per cent higher than for “brancos”

³⁰⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>.

³¹⁰ A/HRC/36/26, para. 12.

³¹¹ Submission by Advocates for Human Rights. See also <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf>.

³¹² <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf>.

³¹³ CERD/C/USA/10-12, para. 116.

³¹⁴ Submission by Harm Reduction International/Release.

³¹⁵ https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf.

³¹⁶ Submission by Harm Reduction International/Release, referring to <http://icjr.or.id/data/wpcontent/uploads/2018/08/DEATHPENALTY-POLICY-final-1.pdf>; <https://edition.cnn.com/2016/07/28/asia/indonesia-drug-executions/index.html>. See also <https://www.amnesty.org/download/Documents/ACT5034872016ENGLISH.PDF>, p. 31.

³¹⁷ <https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf>, pp. 1 and 4.

³¹⁸ <https://mappingpoliceviolence.org/>. See also <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>; <https://www.amnestyusa.org/issues/the-united-states-is-violating-the-human-rights-of-black-people-by-failing-to-restrict-use-of-deadly-force-by-police/>.

³¹⁹ Submission by Action Canada for Sexual Health and Rights; <http://www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black#Executive%2520summary>.

³²⁰ <https://forumseguranca.org.br/wp-content/uploads/2020/11/infografico-violencia-desigualdade-racial-2020-v6.pdf>. See also <http://www.scielo.org.co/pdf/res/n64/0123-885X-res-64-00027.pdf>, p. 91.

(“white people”).³²¹ In Rio de Janeiro, similar data indicated that in 2019, 1,423 of the 1,814 persons killed by police were people of African descent.³²²

106. Reports also indicate that legislation adopted by some States, as well as increasingly restrictive policies and controls at international borders, have resulted in measures and practices that may restrict the human rights of migrants and safe pathways for regular migration,³²³ with a disproportionate impact on Africans and people of African descent.³²⁴ According to the International Organization for Migration, 20,781 migrants, the majority Africans, drowned in the Mediterranean between 1 January 2014 and 1 December 2020.³²⁵ Submissions highlighted alleged human rights violations involving deaths, arbitrary detentions and unlawful deportations of African migrants and migrants of African descent, as well as a lack of legal safeguards.³²⁶ OHCHR itself has highlighted serious human rights violations and abuses, including enslavement, suffered by African migrants in Libya.³²⁷

107. Transgender people of African descent seem to be particularly vulnerable to a high level of violence and excessive use of force, as well as cases of arbitrary detention and torture, as the submissions noted.³²⁸ Consultations and submissions indicate that many families believe that race and socioeconomic status are determinant factors of violence and use of force violations against communities of African descent.³²⁹

108. With regard to specific incidents, OHCHR received information concerning over 190 incidents of deaths of Africans and people of African descent during or following contact with law enforcement officials. Of these incidents, 98 per cent occurred in Europe, Latin America and North America.³³⁰ The vast majority of victims were people of African descent (92 per cent), while eight per cent of victims were Africans. While most victims were men (80 per cent) – particularly young men (under 30 years old), often from impoverished communities or with psychosocial disabilities – approximately 16 per cent of the total number of victims were women, 11 per cent were children and four per cent were LGBTI persons. Alleged use-of-force violations were most frequently associated with fatal gunshots, the disproportionate or unnecessary use of restraining measures, the use of less-lethal weapons or a combination thereof.

³²¹ <https://forumseguranca.org.br/wp-content/uploads/2020/10/anuario-14-2020-v1-interativo.pdf>.

³²² http://observatorioseguranca.com.br/wp-content/uploads/2020/12/Novo-Relat%C3%B3rio_A-cor-da-viol%C3%A3oAncia-policial_a-bala-n%C3%A3o-erra-o-alvo.pdf, p. 6.

³²³ A/74/271; A/HRC/29/36; A/HRC/33/67.

³²⁴ <https://www.fcnl.org/updates/2020-12/black-lives-matter-black-immigrants-lives-matter-black-asylum-seekers-lives-matter>.

³²⁵ <https://missingmigrants.iom.int/region/mediterranean>.

³²⁶ Submissions by Centre Suisse pour la Défense des Droits des Migrants, the Platform for International Cooperation on Undocumented Migrants (PICUM), Quaker United Nations Office (QUNO), US Human Rights Network (USHRN), Coalición indígena de Migrantes de Chiapas/Proyecto Afrodescendencia Mexico/Instituto para las Mujeres en la Migración A.C. (IMUMI), Centro de Estudios Legales y Sociales (CELS)/Diáspora Africana de la Argentina (DIAFAR), and the National Human Rights Institution of Panama (Defensoría del Pueblo); www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16270&LangID=E; www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25146&LangID=E; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf.

³²⁷ www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf; https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LBY/INT_CERD_SWA_LBY_8609_E.pdf.

³²⁸ Submissions by Action Canada for Sexual Health and Rights, the Association for the Prevention of Torture (APT), and the Black Sex Worker Collective/Best Practices Policy Project/the Outlaw Project/Desiree Alliance/New Jersey Red Umbrella Alliance. See also <http://www.oas.org/en/iachr/multimedia/2015/lgbti-violence/lgbti-violence.html>, p. 192; http://avp.org/wp-content/uploads/2017/04/2013_ncavp_hvreport_final.pdf, p.9.

³²⁹ See e.g. submissions by Action des Chrétiens pour l’Abolition de la Torture (ACAT), Colectivo Justicia Racial and Conectas Direitos Humanos.

³³⁰ Information received through submissions, consultations, and special procedures communications.

109. Analysis of these incidents carried out by OHCHR suggests that three key contexts underlie over 85 per cent of police-related fatalities: first is the policing of minor offences, traffic stops and stops-and-searches, as in the cases of George Floyd (United States), Adama Traoré (France) and Luana Barbosa dos Reis Santos (Brazil); second is the intervention of law enforcement officials as first responders in mental health crises, as in the case of Kevin Clarke (United Kingdom); and third is the conduct of special police operations, as in the cases of Breonna Taylor (United States), Janner (Hanner) García Palomino (Colombia) and João Pedro Matos Pinto (Brazil). Many such interventions have been characterized as actions taken in the context of the “war on drugs” or as gang-related operations.

110. While the over 190 incidents reviewed by OHCHR occurred in different countries with varying legal systems, information received indicated some broader practices, patterns and challenges across States, which is borne out by other research. For example, the aforementioned 2021 University of Chicago study found that, in the largest cities of the 29 wealthiest countries, use of force legislation and directives are often not in conformity with international human rights law. Further, use of lethal force directives are often outdated and provide overly broad discretion to police, while there is a lack of effective accountability mechanisms and transparency regarding these violations.³³¹

111. OHCHR selected seven specific incidents to illustrate these practices and patterns, as well as challenges to accountability and redress. These illustrative incidents include the emblematic case of the murder of George Floyd, while the other six have also become symbolic in their respective countries and together represent different profiles of victims. In all these incidents, families are pursuing truth, justice and guarantees of non-repetition, and demand the prosecution and sanction of those responsible. As indicated in Section I, OHCHR invited the concerned States to provide information on these incidents. The responses received from these States were carefully considered, in particular as they related to accountability and redress measures undertaken in the specific incidents and more broadly (see below summaries of the responses). In consultation with these States and upon receipt of their consent, responses have been made available either as received, or subject to requested redaction.³³²

a) Policing of minor offences, traffic stops, and stops-and-searches

112. In line with the data highlighted above, information received confirms that in some States, routine policing of minor offences (including in response to calls to intervene), traffic stops, and stops-and-searches are conducted in ways that often put people of African descent at risk. In many of the incidents reviewed by OHCHR, the information shared indicates that the victims did not seem to pose an imminent threat of death or serious injury to law enforcement officials or to the public that would be necessary to justify the level of force used. Police officers also appear to have failed to adequately de-escalate the situation. In many incidents, when there was resistance, police officers appeared to respond with disproportionate force, including lethal force with a firearm and/or restraint, which reportedly contributed to or caused the deaths.

113. The murder of George Floyd has become emblematic of use of force-related human rights violations by law enforcement against people of African descent.

³³¹ See https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3832989_code249436.pdf?abstractid=3832989&mirid=1, pp. 27, 36, 39-41.

³³² See <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

George Floyd, 46 years old

25 May 2020, Minneapolis, Minnesota, United States

“Police officers have to be made accountable. In order for us to feel America is behind us, we need justice, a conviction out of this” (George Floyd’s brother)

According to information received, on 25 May 2020, George Floyd, a 46-year-old African American man, died after having been restrained by Minneapolis Police Department officers further to an attempt to buy cigarettes with an allegedly counterfeit 20-dollar bill in a store in Minneapolis, Minnesota. He was handcuffed and laid prone on the ground and Officer Derek Chauvin used his knee to press his full body weight on to Mr. Floyd’s neck for nine minutes and 29 seconds. Two other police officers applied their weight on Mr. Floyd’s back and legs, while a fourth officer stood next to them. Mr. Floyd offered no resistance from the moment the three officers began to kneel on him. Throughout the initial minutes under the weight of the police officers, Mr. Floyd repeatedly expressed pain and distress including stating “I can’t breathe”. Bystanders alerted the police that Mr. Floyd was not responsive and offered medical aid, while the officers kept them at a distance. While one police officer stated that he was unable to find a pulse, Officer Chauvin continued to kneel on Mr. Floyd’s neck until emergency medical personnel arrived. Mr. Floyd was pronounced dead in hospital an hour later.

114. The death of Mr. Adama Traoré in a deprived neighbourhood in France in 2016 is illustrative of challenges to seek truth and justice promptly in cases of deaths of Africans and people of African descent while in police custody.

Adama Traoré, 24 years old

19 July 2016, Persan, France

“In the fight that we are pursuing, we live in dehumanisation, as if the death of our brother was legitimate. It’s been five years that we are fighting against a judicial system that protects the police. When there is racism, there is no punishment.” (Adama Traoré’s sister)

According to information received, on 19 July 2016, Mr. Adama Traoré, a 24-year-old French man of Malian origin, died a few hours after police arrested him in an apartment in the commune of Persan, in the Val-d’Oise department. Reportedly, Mr. Traoré ran away after witnessing his brother’s arrest by the police, and he refused to present his ID upon the officers’ request. He was pursued and eventually was found hiding in an apartment, where he was arrested by three police officers. According to the authorities, Mr. Traoré resisted his arrest and was restrained inside the apartment. During the short car journey to the Persan police station, information indicates that Mr. Traoré felt unwell. Upon arrival at the police station, the police officers allegedly placed him, handcuffed, in the yard, and called emergency services. Despite attempts by the emergency services to revive Mr. Traoré, he died that evening, on the day of his 24th birthday.

115. Racial bias, stereotypes and profiling of people of African descent by law enforcement are often compounded and aggravated by intersectional factors. Women of African descent face multiple discrimination arising from their racial or ethnic origin combined with gender-based discrimination and harmful gender stereotyping,³³³ which can be accentuated for

³³³ A/HRC/26/50, para.15; A/HRC/29/47, para.12; CERD/C/URY/CO/21-23, para. 27; CERD/C/ARG/CO/21-23, para.35; submissions by Working Group on discrimination against women and girls; Black Sex Worker Collective/Best Practices Policy Project/the Outlaw Project/Desiree Alliance/New Jersey Red Umbrella Alliance, the Woodhull Freedom Foundation/Sex Workers Project at the Urban Justice Center, Rede Nacional de Mulheres Negras no Combate à Violência and US Human Rights Network (USHRN); <https://44bbdc6e-01a4-4a9a-88bc>

lesbian women of African descent,³³⁴ rendering them more vulnerable to police violence.³³⁵ The next incident, that of Luana Barbosa dos Reis Santos that took place during a stop-and-search illustrates some of these concerns. In May 2016, OHCHR and UN Women called on the authorities to conduct an impartial investigation into the killing, incorporating a gender and racial perspective. They stressed that the use of unnecessary or disproportionate force, as well as any type of discrimination based on gender, race, ethnicity, sexual orientation or other ground, are impermissible in the exercise of police functions and should be eradicated from security forces in Brazil.³³⁶

Luana Barbosa dos Reis Santos, 34 years old

8 April 2016, Ribeirão Preto, São Paulo, Brazil

"To think that it was just because Luana was Black, lesbian and poor that they thought they could beat her to death, it hurts a lot. But it also revolts us and gives us the strength to keep fighting for justice; because that's the only way we have to honour my sister's memory." (Luana Barbosa dos Reis Santos' sister)

According to information received, on 8 April 2016, Luana Barbosa dos Reis Santos, a 34-year-old Afro-Brazilian lesbian woman, was approached by Military Police on patrol reportedly based on a suspicion that she was riding a stolen motorcycle. During the ensuing search, which Ms. dos Reis Santos reportedly resisted after requesting that it be conducted by a policewoman, three policemen allegedly punched, kicked and beat her with batons. The policemen handcuffed Ms. dos Reis Santos, and took her to the police station. Later that day, upon her release, a video showed Ms. dos Reis Santos sitting on the sidewalk with bruises and injuries on her face and legs, stating that the policemen threatened to kill her and her family. She was admitted to hospital on 9 April and died on 13 April.

b) Law enforcement as first responders in mental health crises

116. Several incidents analyzed by OHCHR occurred after calls to emergency services seeking assistance for a person experiencing a mental health crisis.³³⁷ According to the analysis, when acting as first responders, police interventions often aggravate the situation including due to the use of restraints, while crises de-escalation protocols may not provide for appropriate crisis support services. Further, police often fail to identify the victims as individuals in distress and in need of rights-based mental health support. Instead, racial bias and stereotypes compounded with disability-based stereotypes appear to lead law enforcement officials to perceive the victim as "dangerous",³³⁸ overriding considerations of the individual's safety and well-being and of delivery of the appropriate care and basic life support. The death of Kevin Clarke in the United Kingdom is illustrative of this context.

731c6524888e.filesusr.com/ugd/62e126_8752f0575a22470ba7c7be7f723ed6ee.pdf;
<https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>, p. 93;
<http://www.oas.org/en/iachr/reports/pdfs/violencelgbtipersons.pdf>, pp. 195-197;
<https://antrabrasil.files.wordpress.com/2020/11/dosier-de-los-asesinatos-y-de-la-violencia-en-contr travestis-y-transexuales-brasilenas-en-2019.pdf>, p. 55.

³³⁴ A/HRC/38/43, para. 45; A/HRC/20/16, para. 73; submission by the National Human Rights Institution of Ecuador (Defensoría del Pueblo).

³³⁵ https://raceandequality.org/wp-content/uploads/2021/01/Dossier_Brazil_ENG.pdf, p. 113.

³³⁶ <http://www.onumulheres.org.br/noticias/nota-publica-do-alto-comissariado-de-direitos-humanos-das-nacoes-unidas-para-america-do-sul-e-da-onu-mulheres-brasil-sobre-o-assassinato-de-luana-reis/>

³³⁷ Submissions by Access to Justice Knowledge Hub for Fair Participation, Black Legal Action Centre, INQUEST and US Human Rights Network (USHRN).

³³⁸ A/72/55, Annex: Guidelines on the right to liberty and security of persons with disabilities, paras. 6, 13-14; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf, pp. 63 and 87.

Kevin Clarke, 35 years old**9 March 2018, Lewisham, South London, United Kingdom**

"My son lost his life because of a number of missed chances by the mental health team, the accommodation provider, the police and paramedics who all stood by and let Kevin die."

"We want to see accountability, and real change, not just in training, but the perception and response to black people by the police and other services. We want mental health services better funded so the first point of response is not just reliant on the police."³³⁹ (Kevin Clarke's mother)

According to information received, on 9 March 2018, the police were called in relation to Kevin Clarke, who was showing signs of a relapse of his mental health illness nearby his accommodation. When the police arrived, they concluded that his behaviour did not warrant his detention. Shortly after, the police were called again and located Mr. Clarke lying down, in an exhausted state, in a playing field. The police called the ambulance service and more police officers arrived. Mr. Clarke was restrained as he got to his knees: he was handcuffed in the rear stack position and placed in the semi-prone position. As he became more agitated, leg restraints were placed on him. He was forced to stand and was walked, under significant restraint, to an ambulance. During the period of restraint, he repeatedly expressed pain and distress, including stating "I can't breathe". Upon collapsing and falling unconscious, he was transferred to a carry sheet and carried to the ambulance. Mr. Clarke's handcuffs were removed after cardiac arrest was reported and chest compressions were initiated. He was pronounced dead at the hospital one hour later.

c) *Special police operations*

117. Information received by OHCHR indicates that deaths of people of African descent repeatedly occur in the context of larger scale police operations, often conducted in segregated, disadvantaged and hazardous neighbourhoods, in the context of the "war on drugs" and during gang-related interventions.³⁴⁰ The killing of Breonna Taylor in the United States is illustrative of incidents related to the war on drugs, where people of African descent, including women, are often caught up in police operations with irreversible consequences.

Breonna Taylor, 26 years old**13 March 2020, Louisville, Kentucky, the United States**

"As significant as today is, it's only the beginning of getting full justice for Breonna. We must not lose focus on what the real drive is. It's time to move forward with the criminal charges, because she deserves that and much more" (Breonna Taylor's mother, on the occasion of the settlement of a civil case)³⁴¹

According to information received, on 13 March 2020, just after midnight, in Louisville, Kentucky, three police officers forced entry into the apartment of Breonna Taylor, a 26-year-old African American medical worker. The operation was conducted in relation to a narcotics investigation into the alleged involvement in drug trafficking of Ms. Taylor's former boyfriend, who did not live in the apartment. Reportedly, Ms. Taylor and her current partner were awoken by loud banging. Believing it to be intruders, Ms. Taylor's partner reportedly grabbed his legally registered gun, and asked who was at the door. Allegedly, as the officers entered the apartment, Ms. Taylor's partner fired his gun, and the three officers fired multiple

³³⁹ <https://www.saunders.co.uk/news/inquest-into-the-death-of-kevin-clarke-concludes/>.

³⁴⁰ See also <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>, p. 72; www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf, pp. 184 and 187.

³⁴¹ https://www.washingtonpost.com/national/multi-million-settlement-reached-in-breonna-taylor-lawsuit/2020/09/15/f2a57fa4-f75a-11ea-85f7-5941188a98cd_story.html.

shots, including from outside of the apartment. Ms. Taylor was hit by six bullets, and died shortly thereafter at the local hospital.

118. The next incident, the death of João Pedro Matos Pinto is also illustrative of a death during an anti-narcotics operation. Taking place in a *favela* in Brazil, it also illustrates the disproportionate impact of certain public security policies on communities of predominantly African descent.³⁴² The gradual militarization of security policies has been linked to high death tolls, especially in the context of operations by the military police.³⁴³ In 2020, the UN and the Inter-American Commission on Human Rights expressed concern about João Pedro Matos Pinto's death and the increase in police lethality in Brazil, notably impacting people of African descent.³⁴⁴ In June 2020, Brazil's Supreme Court prohibited operations by the military police in the favelas of Rio de Janeiro during the COVID-19 pandemic.³⁴⁵

João Pedro Matos Pinto, 14 years old

18 May 2020, Rio de Janeiro, Brazil

“Families in Rio de Janeiro [should] not have to face police killings of people of African descent, especially children, any more. We cannot allow these crimes to go without justice.” (João Pedro Matos Pinto’s parents)

According to information received, on 18 May 2020, João Pedro Matos Pinto, a 14-year-old Afro-Brazilian boy, was killed during a joint anti-narcotics operation of the Civil and Military Police of the state of Rio de Janeiro and the Federal Police in São Gonçalo. João Pedro was playing with friends outside his uncle's house when they heard helicopter gunshots and ran inside the house. Officers of the special tactical unit of the Civil Police (CORE) allegedly broke into the front yard and fired into the house, hitting and killing João Pedro. He was flown by a CORE helicopter to a heliport, where he was pronounced dead a few hours later. According to the Civil Police officers involved in the operation, João Pedro was caught in crossfire during a police confrontation with drug dealers fleeing the scene.

119. In a number of States, gang-related police interventions are often conducted in communities of African descent, where racial bias and stereotypes associating these communities with criminality appear to particularly influence police operations. According to information received, police involved in such incidents are rarely prosecuted as authorities argue that the deaths occurred in the context of confrontations with gangs or drug dealers, amid a widespread “presumption of guilt”.³⁴⁶ The last illustrative incident below involves the death of a youth of African descent in the context of a gang-related police intervention in Colombia.

³⁴² See also <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27069&LangID=E>.

³⁴³ <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>, pp. 12 and 100; A/HRC/31/56/Add.1, para. 50; A/HRC/27/68/Add.1, para. 79.

³⁴⁴ http://www.oas.org/en/iachr/media_center/PReleases/2020/187.asp. See also <http://www.onumulheres.org.br/noticias/sistema-onu-lamenta-a-morte-do-menino-joao-pedro-e-faz-apelo-pela-vida-da-juventude-negra/>.

³⁴⁵ <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADPF635DECISaO5DEJUNHODE20202.pdf>; submission by Conectas Direitos Humanos.

³⁴⁶ <https://eji.org/issues/presumption-of-guilt/>; <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>, p. 98.

Janner García Palomino, 22 years old**20 April 2020, Puerto Tejada, Cauca, Colombia**

"I want justice; I want the police officer who killed my son, and caused so much pain to me, to pay for what he did. It hurts so much to hear the police officer say that my son was a criminal that was armed. My son was not a criminal; he was a good young man. I ask that my son's case, and many other cases like my son's, move forward, that truth be told, his name be cleared, and justice be served." (Janner García Palomino's mother)

According to information received, on the night of 20 April 2020, Janner (Hanner) García Palomino, a 22-year-old Afro-Colombian, was allegedly shot by a police officer during an operation by the National Police in response to a confrontation involving shooting between rival gangs in a neighborhood close to Mr. García Palomino's home. He was awoken by the confrontation and together with his girlfriend and neighbours, went outside. Reportedly, police officers instructed the crowd to return to their homes. Reportedly, as Mr. García Palomino turned around, one of the police officers shot him at close range in front of numerous witnesses. Mr. García Palomino died shortly thereafter, upon being brought to a hospital. According to official information, during the police intervention, a police officer was injured by gunshot during the operation, and reportedly, Mr. García Palomino was present among those who fired against the police.

C. Accountability and redress for violations by law enforcement against Africans and people of African descent

120. This section sets out accountability and redress measures undertaken in the seven above-mentioned illustrative incidents. It further highlights four key sets of challenges to accountability and redress for use of force and related human rights violations suffered by people of African descent at the hands of law enforcement more broadly, with a particular focus on those that result in deaths.

George Floyd (United States, May 2020)

121. On 20 April 2021, after a six-week trial, a jury unanimously found Officer Chauvin guilty of Mr. Floyd's murder, and convicted him of third-degree murder, second-degree manslaughter and second-degree unintentional murder. On 25 June 2021, Officer Chauvin was sentenced to 270 months (22 years and six months) imprisonment.³⁴⁷ According to information received, charges of aiding and abetting murder and manslaughter were brought against the three other former officers. As of June 2021, they were scheduled to face a separate trial in March 2022. In addition to the criminal proceedings in the State of Minnesota, in May 2021, a federal grand jury in Minneapolis indicted all four officers for federal civil rights crimes for their roles in Mr. Floyd's death. While the guilty verdict against Officer Chauvin was hailed as "momentous",³⁴⁸ it is a rare example in any country of a case of a death at the hands of law enforcement resulting in a conviction.

122. In its response,³⁴⁹ the Government of the United States stated that the tragic deaths of George Floyd and Breonna Taylor served as reminders of the pervasive nature of systemic racism in the United States and the urgent action needed to address this challenge. It stressed that the United States was dedicated to eliminating racial discrimination and the use of excessive force in policing, and noted that, apart from the criminal state and federal proceedings in the case of Mr. Floyd and the civil measures adopted at the local level, legislative measures on policing and accountability reforms have been undertaken at the

³⁴⁷ https://mnCourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/MCRO_27-CR-20-12646_Sentencing-Order_2021-06-25_20210625145755.pdf.

³⁴⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27016&LangID=E>.

³⁴⁹ Made available as received at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

local, state and federal level, including to address underlying issues of racial discrimination and the use of excessive force in policing. On 21 April 2021, the Department of Justice announced the opening of a pattern-or-practice investigation into the City of Minneapolis and the Minneapolis Police Department. The investigation will assess all types of force used by police officers, including with respect to persons with psychosocial disabilities, and whether the police department engages in discriminatory policing.³⁵⁰

Adama Traoré (France, July 2016)

123. According to information received, on 19 July 2016, the public prosecutor's office referred the investigation to the General Inspectorate of the National Gendarmerie to determine the cause of Mr. Traoré's death. At the same time, the family filed a complaint against the three policemen. In October 2016, the Court of Cassation ordered the referral of the case to the Paris Tribunal de Grande Instance and magistrates were appointed to investigate. As of May 2021, nearly five years later, the judicial investigation is ongoing, with the three policemen involved in the incident placed under the status of "assisted witness". Medical investigations and expertise carried out to date have not unequivocally determined the cause of death. Almost five years after his death, a single version of the circumstances inside the apartment has so far failed to emerge, and no charges have been filed.

124. In its response,³⁵¹ the Government of France noted the confidentiality of matters under investigation. It stressed that use of force by law enforcement in France is based on the principles of absolute necessity and proportionality, which arise from the jurisprudence of the European Convention on Human Rights and the Court of Cassation. It noted that French authorities continuously reflect on the evolution of law enforcement techniques to rule out those which do not present sufficient guarantees to preserve the physical integrity of the person subject to arrest; and update training accordingly.

Luana dos Reis Santos (Brazil, April 2016)

125. According to information received, the Military Police, the Civil Police and the Public Ministry of the State of São Paulo initiated investigations into Ms. dos Reis Santos' death. While a request for the preventive detention of the three military policemen involved in the incident was dismissed, and following advocacy by the Brazilian Bar Association, they were assigned to administrative tasks until completion of investigations. In May 2016, the case was referred to the military justice system, arguing that the incident involved bodily injury followed by death rather than a homicide, and was therefore not subject to the civilian justice system. Thereafter, the Military State Court of São Paulo closed the case on the basis of lack of evidence of a crime. Ms. dos Reis Santos' family appealed the May 2016 decision, and on 31 January 2017, the appeals court determined that the case should return to the civilian justice system. Consequently, the Civil Police reopened the case and concluded its investigation on 5 April 2018. Almost four years after Ms. dos Reis Santos' death, on 21 February 2020, the three military policemen were indicted for qualified homicide. The defence appealed the indictment. As of May 2021, five years on, no trial has yet begun.

126. In its response,³⁵² the Government of Brazil noted that the criminal case is currently before the São Paulo Court of Justice, which will rule on the defence's appeal. In addition, the National Secretariat for Policies to Promote Racial Equality of the Ministry of Women, Family and Human Rights of the Government of Brazil regretted that cases such as the incident that resulted in the deaths of Luana Barbosa dos Reis Santos and João Pedro Matos Pinto (see below) still happen in Brazil, and stressed that it works to prevent that racism becomes the reason behind the woes of Brazilians of African descent, through legal, institutional and policy measures. The Government of Brazil also provided information on

³⁵⁰ <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-investigation-city-minneapolis-minnesota-and>.

³⁵¹ Made available as received at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

³⁵² Made available at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

its legal framework, including Law No. 7,716 of 1989 (modified by Law No. 9,459 of 1997) which notably criminalizes acts resulting from “prejudice of race or color”.

Kevin Clarke (United Kingdom, March 2018)

127. According to information received, the Metropolitan Police Service referred the case to the Independent Office for Police Conduct (IOPC),³⁵³ which completed its investigation into actions of a number of police officers in May 2019. In October 2020, an inquest³⁵⁴ concluded that the use of restraints contributed to Mr. Clarke’s death, and highlighted serious failures in the handling of the incident by the police, ambulance and mental health services. The London Metropolitan Police and the ambulance service apologized for the failings identified by the jury. Based on the outcome of the inquest, Mr. Clarke’s family requested the IOPC to review the findings of its investigation. While the inquest found wrongdoing, no criminal investigation has been initiated.

128. In its response,³⁵⁵ the Government of the United Kingdom noted that legal proceedings are ongoing and therefore it could not comment further on the case. It highlighted progress made by the Government in three key areas. The first was prevention of deaths in police custody; for example, by reducing the use of police stations as places of safety for persons experiencing a mental health crisis; police training on identifying health risks of detainees; and annual publication of data on police use of force disaggregated by ethnicity. The second was improving support to families in cases of deaths in police custody; for example, undertaking a review of the provision of legal aid for inquests. The third area was improving the information available immediately after a death in custody, and ensuring that police are held to account.

Breonna Taylor (United States, March 2020)

129. According to information received, on 20 May 2020, the Public Integrity Unit of the Louisville Metro Police Department handed over the conclusions of the criminal investigation. On 21 May 2020, the Federal Bureau of Investigation announced that it was conducting an independent investigation into Ms. Taylor’s death to determine whether her constitutional rights had been violated by the police officers. In September 2020, the Kentucky Attorney-General announced the decision by a state grand jury to indict one of the three officers on three counts of first-degree wanton endangerment for firing into an apartment and endangering Ms. Taylor’s neighbours. As of May 2021, the federal investigation remains ongoing. No police officer has been charged in relation to Ms. Taylor’s death.

130. In its response,³⁵⁶ the Government of the United States noted that, on 11 June 2020, Louisville City Council passed the Breonna Taylor Law, banning the use of “no-knock warrants” and requiring all Louisville Metro Police Department officers to be equipped with an operating body camera while executing a search warrant. On the same day, the Justice for Breonna Taylor Act, which prohibits no-knock warrants at federal level, was introduced in Congress.³⁵⁷ On 26 April 2021, the Department of Justice opened a pattern-or-practice investigation into the Louisville/Jefferson County Metro Government and the Louisville

³⁵³ The IOPC is the independent statutory body tasked to investigate all deaths in or following police custody in England and Wales. IOPC reports and evidence are provided to the Coroner to inform the inquest into these deaths. Following an investigation by the IOPC, a matter may be referred to the Crown Prosecution Service if there is an indication of a criminal offence.

<https://www.policeconduct.gov.uk/>.

³⁵⁴ An inquest is a public court hearing for the Coroner to discover the facts of the death. If evidence is found that suggests someone may be criminally responsible for the death, the Coroner can pass the evidence to the police or the Crown Prosecution Service.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859076/guide-to-coroner-services-bereaved-people-jan-2020.pdf.

³⁵⁵ Made available as received at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

³⁵⁶ Made available at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

³⁵⁷ <https://www.paul.senate.gov/news/sen-rand-paul-introduces-justice-breonna-taylor-act>.

Metro Police Department to assess police use of force and whether the police department engages in discriminatory policing, and whether it conducts unreasonable stops-and-searches, seizures and arrests, both during patrol activities and in obtaining and executing search warrants for private homes.³⁵⁸

João Pedro Matos Pinto (Brazil, May 2020)

131. According to information received, the Civil Police homicide unit and the state of Rio de Janeiro Public Prosecutor's Office launched criminal investigations into the death. Further, the Federal Public Prosecutor's Office and the Federal Police opened inquiries to investigate the actions of the Federal Police. Reportedly, three officers of the Civil Police who participated in the operation were suspended. According to the Civil Police officers involved in the killing, João Pedro Matos Pinto was caught in a crossfire during a police confrontation with fleeing drug dealers. As of May 2021, no charges have been brought in relation to his death, and the conclusion of the investigation by the Civil Police is pending.

132. In its response,³⁵⁹ the Government of Brazil noted that, aside from the ongoing inquiries and criminal proceedings detailed above, the Ministry of Justice and Public Security has developed several projects focused on the performance of community police in federal entities, through assistance in the regulation, implementation and dissemination of good practices in violence prevention, and prioritizing groups vulnerable to violence. The Ministry of Justice and Public Security is also producing guidelines at the federal level for support to vulnerable groups, including the provision of training to public security agents. As noted above, the National Secretariat for Policies to Promote Racial Equality of the Ministry of Women, Family and Human Rights of the Government of Brazil regretted that cases such as the death of Luana Barbosa dos Reis Santos and João Pedro Matos Pinto still happen in Brazil, and stressed that it works towards prevention.

Janner García Palomino (Colombia, April 2020)

133. According to information received, the Attorney-General's Office launched an investigation into a crime of homicide. As of May 2021, the criminal investigation remained open, and no one has been charged for Mr. García Palomino's death.

134. In its response, the Government of Colombia stated that the prosecutor has conducted twenty proceedings and issued orders to the judicial police to determine the facts and identify the perpetrators. It also noted that the criminal investigation is ongoing and jurisdictional authorities will determine the facts and relevant responsibilities, based on the national legal system. It added that it will continue informing OHCHR of progress and results of the investigation, as reported by competent authorities.

135. As noted above, the next sections highlight four key sets of challenges to accountability and redress for use of force and related human rights violations suffered by people of African descent at the hands of law enforcement more broadly, with a particular focus on those that result in deaths.

1. Ensuring that examining the role of racial discrimination, stereotypes and biases is central to accountability measures

136. Any deprivation of life based on discrimination in law or fact is arbitrary in nature.³⁶⁰ States need to take appropriate measures to establish the truth relating to events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time in which the deprivation occurred.³⁶¹ Further, the duty to protect the right to life requires States to take special measures of protection towards persons in vulnerable situations whose lives have

³⁵⁸ <https://www.justice.gov/opa/pr/department-justice-announces-investigation-louisvillejefferson-county-metro-government-and>.

³⁵⁹ Made available at <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>.

³⁶⁰ CCPR/C/GC/36, para. 61.

³⁶¹ Ibid., para. 28.

been placed at particular risk including because of pre-existing patterns of violence. Such persons may also include members of ethnic and religious minorities.³⁶²

137. An analysis of the over 190 incidents indicates that in the three contexts in which deaths of people of African descent by law enforcement most commonly occur, racial bias, stereotypes and profiling appear to play recurrent and predominant roles. It appears that erroneous and stereotypical portrayals or perceptions of what or who is dangerous continue to drive inferences made in the context of law enforcement and within the criminal justice system. This is compounded by intersectional factors of discrimination, including socioeconomic, work or migration status, sex, gender, sexual orientation and gender identity, religion and psychosocial disabilities. Further, in all the seven illustrative incidents, the investigations do not appear to have fully considered the role that racial discrimination, stereotypes and biases may have played in the deaths. Where the case advanced beyond the investigation phase, the prosecution, trial and judicial decisions also did not consider this aspect. Information received suggests that this is the case for most similar incidents.³⁶³

138. Yet, the data available and the lived experiences of Africans and people of African descent speak to the urgency of taking the central element of race into consideration during investigations and prosecutions. First, this will enable States to ensure the prosecution of all persons who commit crimes against people of African descent where race is an element, and guarantee the provision of adequate compensation for victims of such crimes.³⁶⁴ Second, considering the role that race may have played is an essential component of understanding the reasons and circumstances of deaths, identifying clear patterns, and acting to prevent similar acts from occurring in the future through broad learning.³⁶⁵

139. Indeed, accountability also serves to restore trust in the institutions, in particular law enforcement, with communities of African descent, which report a prevailing sense of decisions and outcomes being driven by racial discrimination, stereotypes and bias. As noted by an independent review in 2017 of deaths and serious incidents in police custody - conducted in the United Kingdom at the request of the Home Secretary - “unless investigatory bodies operate transparently and are seen to give all due consideration to the possibility that stereotyping may have occurred or that discrimination took place in any given case, families and communities will continue to feel that the system is stacked against them”.³⁶⁶

140. Some processes in some States have taken steps in this direction. In the United Kingdom, the aforementioned independent 2017 review recommended that “the IPCC [Independent Police Complaints Commission] should ensure that race and discrimination issues are considered as an integral part of its work”, which should be monitored and fed into internal learning and the IPCC’s ‘watchdog’ role.³⁶⁷ Further, an upcoming public inquiry into the death of Sheku Bayoh in Scotland in 2019 will consider the extent to which the actions of police officers were affected by his actual or perceived race.³⁶⁸ Additionally, the IOPC announced in July 2020 that race discrimination would be a thematic area of focus to independently investigate more cases where racial discrimination may be a factor, in order to develop a body of evidence to identify systemic issues which should be addressed.³⁶⁹

141. Further, the aforementioned pattern-or-practice investigations of the Minneapolis and Louisville Police Departments, launched by the US Department of Justice in April 2021, will

³⁶² Ibid., para. 23.

³⁶³ See, e.g., submissions by INQUEST and Colectivo Justicia Racial.

³⁶⁴ CERD/C/GC/34, para 37.

³⁶⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf, pp. 85-93.

³⁶⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf, p. 87.

³⁶⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf, p. 93. See also A/HRC/24/52/Add.1, para. 55.

³⁶⁸ https://archive2021.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20200521CSJtoMMSheku_Bayoh.pdf, p. 2.

³⁶⁹ www.policeconduct.gov.uk/news/iopc-announces-thematic-focus-race-discrimination-investigations.

assess whether the departments engage in discriminatory policing, among other things.³⁷⁰ In 2020, the Inter-American Court of Human Rights ruled that Argentina had violated the rights to personal liberty, equality and non-discrimination in the death in police custody of José Delfín Acosta Martínez.³⁷¹ During the public hearing at the Court, Argentina recognized that the case was “paradigmatic of the persecution and stigmatization of the collective of Afro descendants in the country” and provided an apology and recognition of responsibility.³⁷² In a 2017 case from Brazil, the Inter-American Court acknowledged general patterns of structural discrimination, although it did not make a specific determination about the impact of racial discrimination.³⁷³

2. Investigation and prosecution

142. An important element of the protection afforded to the right to life is the obligation on States to investigate and, where appropriate, prosecute potentially unlawful deprivations of life.³⁷⁴ Such investigations should aim to establish the facts about what happened and whether it is necessary to take further action, and to restore and build public confidence.³⁷⁵ Besides serving to identify the alleged wrongdoer, they should also assist in detecting any shortcomings in organizational procedures, structures or supervision.³⁷⁶

143. As detailed below, independent, impartial, prompt, thorough, effective, credible and transparent investigations and prosecutions should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.³⁷⁷ They must seek to ensure that those responsible are brought to justice and full reparations are provided,³⁷⁸ to promote accountability and prevent impunity, to avoid denial of justice, and to draw lessons for revising practices and policies with a view to avoiding repeated violations. Further, in order to identify potential violations of the right to life, States are required to establish rules and procedures for mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents.³⁷⁹

144. There is a particular duty to investigate allegations of violations of the right to life whenever State authorities have used or appear to have used firearms or other potentially lethal force,³⁸⁰ to determine whether force was used in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.³⁸¹

145. Despite these legal obligations to critically assess the use of lethal force, data indicates that the criminal justice system is seldom invoked to examine cases of deaths during or

³⁷⁰ <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-investigation-city-minneapolis-minnesota-and>; <https://www.justice.gov/opa/pr/department-justice-announces-investigation-louisvillejefferson-county-metro-government-and>.

³⁷¹ www.corteidh.or.cr/docs/casos/articulos/seriec_410_esp.pdf.

³⁷² Submission by Argentina and Centro de Estudios Legales y Sociales (CELS) / Diáspora Africana de la Argentina (DIAFAR); <https://www.argentina.gob.ar/noticias/historico-reconocimiento-ante-la-corte-interamericana-de-derechos-humanos-por-casos-de>.

³⁷³ https://www.corteidh.or.cr/docs/casos/articulos/seriec_333_esp.pdf.

³⁷⁴ CCPR/C/GC/36, para. 27. See also <https://www.achpr.org/legalinstruments/detail?id=10>, paras. 2 and 15; <https://www.ircr.org/en/doc/assets/files/publications/icrc-002-4126.pdf>, pp.11-14; <https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>, principle 34; A/HRC/42/20.

³⁷⁵ CCPR/C/GC/36, para. 28.

³⁷⁶ Ibid., para. 27. See also

<https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>, p. 171.

³⁷⁷ CCPR/C/GC 36, para. 27; <https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

³⁷⁸ <https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>; CCPR/C/GC/36 , para. 28.

³⁷⁹ Ibid., para. 13.

³⁸⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 11 and 22; https://www.unode.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf, p. 52.

³⁸¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 9.

following contact with law enforcement, giving an impression that their likely legality is presumed. In the few instances that these cases are examined by the justice systems, convictions are even more rare. For example, in the United States, a non-governmental organization found that less than three per cent of killings by police from 2013-2020 resulted in officers being charged with a crime.³⁸² In the United Kingdom, reports show that since 1990 there have been nine unlawful killing conclusions returned by juries at inquests into deaths involving the police, and one unlawful killing finding recorded by a public inquiry into a police shooting, and that none of these have resulted in a successful murder or manslaughter prosecution.³⁸³ Since 2018, the European Court of Human Rights has found violations of the rights to life and prohibition of torture in five cases, four of which concerned victims of African descent, in France. However, reports suggest that none of these cases were brought to trial.³⁸⁴ A civil society report points out that between 2017 and 2019, the Attorney-General's Office of Colombia opened 127 investigations out of a total of 289 allegations of police killings, amounting to less than half of the total, and only two of the investigations led to convictions for homicide charges.³⁸⁵

146. Low rates of criminal accountability have been attributed to many reasons, which appear mutually reinforcing and should be addressed through a coordinated, system-wide reform approach.³⁸⁶ The challenges to impunity include a lack of independent and robust oversight, complaint and accountability mechanisms (see below), as well as delays in and deficient investigations without access to information.³⁸⁷ Other challenges include a reported lack of cooperation by police officers in investigations and attempts in some instances to proactively undermine accountability processes.³⁸⁸ There is also an inequality of arms resulting from the State providing police officers with legal assistance, while not doing so routinely for families of victims of alleged police killings.³⁸⁹ Also highlighted in the submissions was the discretion vested in prosecutors and, at times, their reported reluctance to file charges against police officers,³⁹⁰ the difficulty in proving criminal intent or knowledge of police officers to the high standard necessary to secure a conviction in criminal proceedings,³⁹¹ as well as the racial composition of the jury and potential bias of jurors in relevant jurisdictions.³⁹²

147. Laws, policies and regulations governing law enforcement that do not comply with international human rights law, including basic principles on the use of force, also constitute impediments for accountability.³⁹³ Police discretion in the implementation of these laws and regulations (or in the exercise of the powers vested by these laws and regulations, such as the use of search warrants in the United States) and a lack of effective judicial control further

³⁸² <https://mappingpoliceviolence.org/>; submission by the American Civil Liberties Union (ACLU); http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/?utm_term=.90c3d610122a.

³⁸³ Submission by INQUEST.

³⁸⁴ Submission by Action des Chrétiens pour l'Abolition de la Torture (ACAT).

³⁸⁵ www.temblores.org/bolillo-dios-y-patria, p. 63.

³⁸⁶ A/HRC/14/24/Add.8, para. 16.

³⁸⁷ Submissions by Action des Chrétiens pour l'Abolition de la Torture (ACAT), the American Civil Liberties Union (ACLU), INQUEST and the NAACP Legal Defense and Educational Fund (LDF); <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>.

³⁸⁸ A/HRC/14/24/Add.8, para. 16.

³⁸⁹ Submissions by INQUEST and Conectas Direitos Humanos.

³⁹⁰ Submission by the American Civil Liberties Union (ACLU);

<https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>; <https://www.theatlantic.com/ideas/archive/2020/06/prosecutors-need-to-do-their-part/612997/>.

³⁹¹ Submissions by the International Human Rights Clinic at Santa Clara University School of Law and the Global Human Rights Clinic at the University of Chicago Law School.

³⁹² <https://eji.org/wp-content/uploads/2019/10/illegal-racial-discrimination-in-jury-selection.pdf>; <https://www.theatlantic.com/ideas/archive/2021/04/what-was-different-time/618735/>.

³⁹³ A/HRC/26/36.

hinder accountability for police misconduct and violations.³⁹⁴ Specific to the United States is the legal doctrine of “qualified immunity” - applicable to civil liability - pursuant to which a police officer cannot be held accountable unless the violation was so clearly established in the law that any reasonable officer would have known that their actions were unlawful.³⁹⁵

3. Other accountability and redress measures, including disciplinary proceedings

148. States are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials, including soldiers charged with law enforcement missions, including, notably by enacting appropriate legislation controlling the use of lethal force by law enforcement officials.³⁹⁶ Additionally, States are expected to put in place procedures designed to ensure that law enforcement actions comply with relevant international standards,³⁹⁷ that officials are trained accordingly and that actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life.³⁹⁸

149. States must generally refrain from addressing violations of the right to life merely through administrative or disciplinary measures as a criminal investigation is normally required.³⁹⁹ Such criminal investigation should lead, if enough incriminating evidence is gathered, to a criminal prosecution, in order to properly vindicate the fundamental right to life. Additionally, mandatory reporting, review and investigation of lethal and other life-threatening incidents require that law enforcement officials report to their superiors promptly whenever the use of force or firearms resulted in death or serious injury, and also when firearms were used.⁴⁰⁰ Law enforcement authorities should therefore establish effective reporting and review procedures for this purpose. At a minimum, all incidents of the use of force or firearms should be reviewed by a senior law enforcement official who should take appropriate measures, defined by law and/or formal regulation, to detect, document and refer incidents for further follow-up and review, in accordance with international standards.⁴⁰¹

150. As part of a system of accountability, and in addition to judicial processes, States should implement effective internal accountability frameworks, including investigation processes, which are essential to foster an internal culture of accountability, discipline and respect for laws within the police force.⁴⁰² States should also establish adequate systems for monitoring and deterring abuses. Law enforcement officials in positions of command have an obligation to plan operations carefully and take all possible measures to avoid a situation in which force, and possibly lethal force, may have to be used.⁴⁰³ Senior officials are expected

³⁹⁴ Submissions by the Global Human Rights Clinic at the University of Chicago Law School and Rainbow Push Coalition;
<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1014&context=ihrc>;
https://www.hrw.org/sites/default/files/report_pdf/brazil0716web_1.pdf.

³⁹⁵ Submissions by the American Civil Liberties Union (ACLU) and the NAACP Legal Defense and Educational Fund (LDF); <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>; <https://theappeal.org/qualified-immunity-explained/>; <https://www.cato.org/publications/policy-analysis/qualified-immunity-legal-practical-moral-failure>; <https://www.thenation.com/article/why-its-impossible-indict-cop/>;
<https://www.theusconstitution.org/news/the-supreme-court-enabled-horrific-police-violence-by-ignoring-constitutional-history/>.

³⁹⁶ CCPR/C/GC/36, para. 13.

³⁹⁷ Including the Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

³⁹⁸ CCPR/C/GC/36, para. 13.

³⁹⁹ Ibid., para. 27.

⁴⁰⁰ Ibid., para. 13; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 6 and 11(f).

⁴⁰¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 6, 11, 22 and 24. See also <https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>;
https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

⁴⁰² A/HRC/14/24/Add.8, para. 24.

⁴⁰³ ECtHR, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995, paras. 194 and 213. Inter-American Court of Human Rights, *Nadege Dorzema and others v. Dominican Republic*, Judgment, 24 October 2012, para. 87; A/HRC/26/36, para. 63; African

to exercise sufficient internal control and due diligence to ensure that forces under their command follow laws, procedures and good practices taught during training courses.

151. Additionally, States should establish an independent civilian oversight body, which can effectively complement the work of national human rights institutions. At its most effective, such an oversight body possesses a broad legislative mandate to investigate complaints from the public, to accept referrals from police, and to initiate investigations in the public interest. They should also be given investigatory powers, sustained political support, sufficient human and financial resources, powers of recommendation and follow-up, and financial and operational independence from the executive and police.⁴⁰⁴ Such bodies should be authorized to transmit findings directly to the public prosecutor.⁴⁰⁵

152. In several of the illustrative incidents examined by OHCHR, no disciplinary measures were imposed on the concerned law enforcement officials, and in some instances, despite the concern of the family and broader community, officials allegedly involved continued to carry out their functions, while the criminal investigations were ongoing. Consultations and submissions pointed out that, in a number of countries, disciplinary proceedings for police misconduct and crimes against people of African descent are often inadequate, ineffective or not subject to independent oversight, and seldom lead to appropriate sanctions.⁴⁰⁶

153. Consultations also highlighted that, in some States, national human rights institutions and equality bodies are not sufficiently mandated, resourced and empowered to address issues of racial discrimination involving law enforcement and the criminal justice system.

154. Moreover, reports suggest that action taken to respond to many complaints regarding police misconduct is inadequate. For example, in the United States, the Department of Justice found that the Chicago Police Department had failed to conduct investigations into nearly half of the misconduct complaints presented to it.⁴⁰⁷ Similarly, it concluded that longstanding deficiencies in Baltimore Police Department's systems for investigating complaints had contributed to a culture of resistance to accountability that persisted in the Department.⁴⁰⁸ Police officers who reported misconduct allegedly faced retaliation, further entrenching a culture of impunity.⁴⁰⁹ In France, the Defender of Rights is empowered to launch investigations into the circumstances of deaths, and has done so notably with regard to Mr. Traoré.⁴¹⁰ However, the Defender has noted that none of its 36 requests made between 2014 and 2019 for disciplinary proceedings against specific police officers were undertaken.⁴¹¹ In the United Kingdom, reportedly 8.4 per cent of police officers found to have potentially committed gross misconduct by the Independent Office for Police Conduct were dismissed between 2015 and 2020.⁴¹²

Commission on Human and Peoples' Rights, General Comment on the Right to Life, 2015, para. 27, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 5 b.

⁴⁰⁴ A/HRC/14/24/Add.8, para. 4; https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf; <https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>; A/HRC/14/24.

⁴⁰⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 6, 22-26; A/HRC/26/36, paras. 81-82; African Commission on Human and Peoples' Rights, General Comment on the Right to Life, 2015, para. 27.

⁴⁰⁶ Submissions by Action des Chrétiens pour l'Abolition de la Torture (ACAT), the American Civil Liberties Union (ACLU), INQUEST and the NAACP Legal Defense and Educational Fund (LDF).

⁴⁰⁷ <https://www.justice.gov/opa/file/925846/download>, p. 50.

⁴⁰⁸ <https://www.justice.gov/crt/file/883296/download>, p. 149.

⁴⁰⁹ <https://www.justice.gov/crt/file/883296/download>, p. 152-153; <https://theintercept.com/series/code-of-silence/>; <https://www.buzzfeednews.com/article/albertsamaha/breaking-baltimore-s-blue-wall-of-silence>.

⁴¹⁰ <https://defenseurdesdroits.fr/fr/communiques-de-presse/2016/07/le-defenseur-des-droits-a-ete-saisi-des-circonstances-dans-lesquelles>.

⁴¹¹ <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/raa-2019-num-accessopty.pdf>, p.60.

⁴¹² <https://www.theguardian.com/uk-news/2021/jan/18/fewer-than-one-in-10-police-officers-fired-after-gross-misconduct-finding>, citing IOPC source.

155. While police unions play an important role in protecting the labour rights of police officers, submissions and consultations also highlighted their role, in several instances, in hindering reforms and accountability for police misconduct through lobbying, contractual provisions, and other means.⁴¹³ For example, contractual provisions and related laws negotiated and promoted by their unions have allowed officers accused of serious misconduct to remain employed, be promoted and, in some cases, have their disciplinary records erased.⁴¹⁴

156. Another avenue of redress in some States includes civil settlements, which have led to financial compensation, including for the families of Mr. Floyd⁴¹⁵ and Ms Taylor.⁴¹⁶ Settlements often also include reform measures. For example, the settlement in relation to the death of Ms. Taylor included reforms to the use of search warrants, police accountability reforms (such as implementation of an early-warning system that tracks all use of force incidents, complaints and investigations), and community-related police programs. Families have also devoted some of the financial compensation received to support community-based projects and memorialization initiatives.⁴¹⁷

4. The role of families of victims during accountability processes

157. Where relevant, the investigation into deaths at the hands of law enforcement should include an autopsy of the victim’s body, whenever possible in the presence of a representative of the victim’s relatives.⁴¹⁸ States parties should also disclose relevant details about the investigation to the victim’s next of kin, allow them to present new evidence, afford them with legal standing in the investigation, and make public information about the investigative steps taken and the investigation’s findings, conclusions and recommendations. States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation.⁴¹⁹

158. Notwithstanding this, families of people of African descent who have died after an encounter with law enforcement officials face considerable challenges in their demands for truth and justice. While in some jurisdictions, families have an official role or involvement in portions of accountability processes,⁴²⁰ most families report a profound lack of information available about possible or ongoing processes. During consultations, families highlighted their overarching need to establish the truth about how their loved one died, to hold those responsible to account, to bring about changes to prevent further deaths occurring, and to ensure that no others go through the same suffering in the future. Failure to provide relatives with information on the circumstances of the death of an individual may violate the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment.⁴²¹

159. Consultations and submissions revealed that many people of African descent feel continuously “betrayed by the system” and that there are striking similarities across countries in terms of the challenges they face in gaining access to justice. Many expressed a profound lack of trust in law enforcement and the criminal justice system, primarily due to impunity.

⁴¹³ Submissions by the NAACP Legal Defense and Educational Fund (LDF) and the International Human Rights Clinic at Santa Clara University School of Law. See also <https://www.justice.gov/opa/file/925846/download>, p. 47; <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>; and https://www.hrw.org/sites/default/files/media_2020/06/france0620_web_1.pdf, pp. 2 and 38.

⁴¹⁴ Submissions by Action des Chrétiens pour l’Abolition de la Torture (ACAT) and the NAACP Legal Defense and Educational Fund (LDF).

⁴¹⁵ <https://www.reuters.com/article/us-usa-race-georgefloyd-lawsuit-idUSKBN2B42GX>.

⁴¹⁶ <https://louisvilleky.gov/news/mayor-fischer-announces-settlement-civil-lawsuit-filed-breonna-taylors-estate>.

⁴¹⁷ <https://www.minneapolismn.gov/government/programs-initiatives/38th-chicago/>; <https://inquirycommission.org/video-and-transcript-tamir-rice-hearing-tuesday-january-26-international-commission-of-inquiry/>.

⁴¹⁸ CCPR/C/GC/36, para. 28.

⁴¹⁹ Ibid., para. 28.

⁴²⁰ See, e.g., submission by INQUEST.

⁴²¹ CCPR/C/GC/36, para. 56; International Covenant on Civil and Political Rights, art. 7.

It often falls on victims and families to fight for accountability without adequate support, when they have already been overpoliced and traumatized. This includes the difficulties that families face to obtain an official autopsy report or to conduct their own autopsies due to lack of financial support. It also includes the difficulties and delays in some instances in receiving their family member's body for burial.

160. Moreover, families reported a lack of access to adequate legal aid and psychosocial support during often long and financially and emotionally draining processes. The enduring psychological and physical trauma often extends to communities. Consultations highlighted that each new killing is a reminder of those who came before, resurfacing the pain and trauma related to past killings. It reinforces communities' experiences of systemic racism, over-policing and criminalization, and deepens mistrust in law enforcement institutions.⁴²² Some families also fear reprisals and harassment.⁴²³ Families find it particularly difficult that victims are often portrayed as "deserving" of the treatment they were subjected to by law enforcement officials.

161. In France, for example, the Défenseur des Droits reported in 2016 that many people of African descent do not report alleged violations by law enforcement officers, including because they deem that such complaints are difficult to make, they do not trust the justice system and the police, and that it is useless to do so.⁴²⁴ In Colombia, a non-governmental organization reported that low levels of complaints against police violence are partly due to fear of reprisals, lack of guarantees of protection, lack of knowledge of complaint mechanisms, and lack of trust in the justice system.⁴²⁵

5. Learning the lessons of the past, including through implementation of existing recommendations

162. As highlighted above, UN and regional human rights mechanisms have made important recommendations to States to enhance accountability for human rights violations against people of African descent, in particular use of force violations. Further, while some States have undertaken detailed reviews and inquiries into law enforcement institutions and their policies, procedures and practices, producing clear recommendations for change, many remain unimplemented.

163. In the United States, important initiatives have been undertaken, albeit with limited impact. For example, the final report of former President Obama's Task Force on 21st Century Policing, issued in 2015, included 59 recommendations related to building trust and legitimacy, policy and oversight, community policing and crime reduction, prohibiting racial profiling, policies on the use of force, the independence of investigations into killings by police officers, data collection, civilian oversight of law enforcement agencies and police workforce diversity.⁴²⁶ In a country with more than 18,000 separate law enforcement agencies, while several steps were undertaken at the local level,⁴²⁷ the creation of a National Crime and Justice Task Force to review and evaluate all components of the criminal justice system to make recommendations on comprehensive criminal justice reform was an

⁴²² See, e.g., A/HRC/41/54/Add.2, para. 44.

⁴²³ See also submissions by Action des Chrétiens pour l'Abolition de la Torture (ACAT) and International Service for Human Rights/Le Comité Adama/Association A Qui Le Tour?

⁴²⁴ <https://www.defenseurdesdroits.fr/fr/etudes-et-recherches/2017/01/enquete-sur-lacces-aux-droits-volume-1-relations-police-population-le>, pp. 3 and 27-27.

⁴²⁵ Submission by Ilex Acción Jurídica.

⁴²⁶ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴²⁷ Reports indicate that in 2016 at least nine states and municipalities have taken significant steps to implement the Task Force's recommendations and 15 police departments signed on to join the "Advancing 21st Century Policing Initiative" (<https://time.com/4398392/obama-police-reform-report-task-force-on-21st-century-policing/>). As of 2017, 39 percent of the largest law enforcement agencies in the United States changed their use of force policies and revised their training to incorporate de-escalation and beef up scenario-based training approaches

(<https://journals.sagepub.com/doi/pdf/10.1177/0002716219887372>, p. 229). See also, <https://www.npr.org/2020/06/22/881814431/how-recommendations-of-an-obama-task-force-have-and-havent-changed-u-s-policing?t=1624022729339>.

important step. This Task Force was complemented by a recommendation to promote programs that take a comprehensive and inclusive look at community-based initiatives that address the core issues of poverty, education, health and safety.

164. In addition, the US Department of Justice's pattern-or-practice investigations have made important findings. For example, the investigation of the Ferguson Police Department in Missouri after the 2014 police killing of Michael Brown found a pattern or practice of unlawful conduct within the Department, identified changes necessary for meaningful and sustainable reform, and recommended a reorientation of law enforcement through a system grounded in the principles of community policing and police legitimacy.⁴²⁸ Also in 2014, the Department of Justice issued guidance barring racial profiling in federal law enforcement practices.⁴²⁹ In the United Kingdom, a series of inquiries and reports have issued detailed recommendations to address institutional racism in law enforcement and the criminal justice system.⁴³⁰ A report by the United Kingdom Parliament's Joint Committee on Human Rights in 2020 concluded that, in recent years, these inquiries "have investigated, and found, structural racial inequalities in state institutions and processes", but that "[t]oo often recommendations made in these reports have not been implemented and where actions have been taken, they have been superficial and not had lasting effect".⁴³¹

165. Despite progress through the implementation of some measures, lessons-learned through these broader investigations and inquiries have not been routinely embedded in policy-making to ensure that problematic cycles and patterns do not repeat themselves and that necessary transformative change occurs – as demonstrated notably through the continued killings of people of African descent at the hands of law enforcement in very similar circumstances.⁴³²

166. Due to this failure over an extended period to effect comprehensive change, the murder of Mr. Floyd and the subsequent global anti-racism protests brought to the fore new calls for reimagining policing and reforming criminal justice systems that do not keep racial and ethnic minorities safe and which have consistently produced discriminatory outcomes for Africans and people of African descent.⁴³³ These calls have largely arisen due to the stalling or limited impact of past reform initiatives which have not resulted in fundamental and broad-based change to discriminatory aspects of law enforcement and criminal justice systems. Calls for reimagining policing also put forward the view that, instead of focusing on procedural justice, State resources and efforts should prioritize social justice approaches in which police institutions deliver in ways and areas where they have expertise and added value, while States directly reinvest in education, employment, health care, housing and other community services, and in a shared vision of community safety.⁴³⁴

⁴²⁸ https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

⁴²⁹ <https://www.justice.gov/opa/pr/attorney-general-holder-announces-federal-law-enforcement-agencies-adopt-stricter-policies-0>; <https://www.dhs.gov/news/2014/12/08/fact-sheet-us-department-justice-racial-profiling-guidance>.

⁴³⁰ See, e.g., <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>, <https://publications.parliament.uk/pa/cm200809/cmselect/cmhaff/427/427.pdf>; <https://webarchive.nationalarchives.gov.uk/20131004165058/http://www.ipcc.gov.uk/investigations/sean-rigg-metropolitan-police-service>; <https://www.gov.uk/government/publications/lammy-review-final-report>; 4262.pdf (publishing.service.gov.uk), p. 365; <https://committees.parliament.uk/publications/3376/documents/32359/default/>; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf, p. 92.

⁴³¹ <https://committees.parliament.uk/publications/3376/documents/32359/default/>, paras. 28-32.

⁴³² Submissions by INQUEST, Convention against Torture Initiative and the American Civil Liberties Union (ACLU).

⁴³³ Submissions by the American Civil Liberties Union (ACLU) and American Muslim Bar Association.

⁴³⁴ <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/>; <https://www.theguardian.com/us-news/2020/jun/05/defunding-the-police-us-what-does-it-mean>; <https://www.theguardian.com/commentisfree/2020/may/31/the-answer-to-police-violence-is-not-reform-its-defunding-heres-why>; <https://www.afsc.org/blogs/news-and-commentary/6-reasons-why-its-time-to-defund-police>; <https://m4bl.org/defund-the-police/>.

167. The available data and the lived experiences of people of African descent support the view that the current situation must change in order to guarantee law enforcement and criminal justice systems that work for people of African descent, rather than against them. There is an overarching need to heed the calls to reimagine policing and the criminal justice system from a human rights perspective, by supporting and implementing community-driven models that protect and serve all members of communities without discrimination.

D. Promising initiatives

168. Various States have undertaken steps to address racism, racial discrimination and human rights violations by law enforcement, mostly at the individual level. Additional examples below include the adoption of focused, effective legislation and policies, including national action plans against racism, and associated data collection to measure true impact.

169. In the United States, since the murder of Mr. Floyd, some municipalities began weighing restrictions on less-lethal weapons, and others banned the use of chokeholds.⁴³⁵ Reportedly, state legislatures in all 50 states and the District of Columbia have introduced legislation with more than 3,000 bills focused on accountability and oversight, with nearly 250 of those bills being signed into law.⁴³⁶ For example, the July 2020 Minnesota Police Accountability Act modifies the arbitration process that officers use to contest disciplinary actions and establishes an independent unit to investigate police killings.⁴³⁷ Further, in November 2020, policy changes were announced for the Minneapolis Police Department, including banning chokeholds, overhauling its use-of-force policy, requiring police to announce their presence and purpose before entering a ‘no-knock’ warrant situation, and adding an embedded assistant city attorney to advise on police misconduct investigations.⁴³⁸ State level initiatives include the 2021 New Mexico Civil Rights Act that notably prohibits the use of qualified immunity,⁴³⁹ and the introduction of state laws to address racism in the law enforcement and racial disparities in the legal system. For example, in the state of California, a 2020 executive order establishing a moratorium on the death penalty records that the death penalty is “unevenly and unfairly applied [notably] to people of color”, and the California Racial Justice Act allows prisoners to use statistical evidence of racial bias to challenge sentences.⁴⁴⁰ Also in 2020, the Supreme Court of the State of North Carolina struck down the attempted retroactive repeal of the Racial Justice Act, enabling approximately 140 prisoners to seek redress for death sentences that they claim were substantially influenced by racial bias.⁴⁴¹

170. At the federal level, the George Floyd Justice in Policing Act, a police reform bill which would prohibit racial profiling, includes measures such as denying funds to local governments that allow law enforcement officials to use chokeholds, banning ‘no-knock’ warrants, prohibiting racial profiling and requiring law enforcement agencies to provide data

⁴³⁵ <https://www.amnesty.org/en/latest/news/2020/06/i-cant-breathe-restrain-reignited-movement/>; <https://monitor.civicus.org/updates/2020/07/13/militarised-police-continue-use-excessive-force-against-protesters/>; <https://edition.cnn.com/2020/06/08/us/lapd-protesters-black-lives-matter/index.html>.

⁴³⁶ Submission by Hogan Lovells. See also <https://www.ncsl.org/research/civil-and-criminal-justice/a-year-after-death-of-george-floyd-work-continues-on-policing-policy-magazine2021.aspx>.

⁴³⁷ <https://mn.gov/governor/news/?id=1055-441356>.

⁴³⁸ <https://www.minneapolismn.gov/government/programs-initiatives/community-safety/focus-areas/police-policy-reform/>.

⁴³⁹ <https://www.governor.state.nm.us/2021/04/07/gov-lujan-grisham-ratifies-civil-rights-act/#~:text=%E2%80%9CThe%20New%20Mexico%20Civil%20Rights,a%20fairer%20state%20for%20everyone.%E2%80%9D.>

⁴⁴⁰ <https://www.gov.ca.gov/2019/03/13/governor-gavin-newsom-orders-a-halt-to-the-death-penalty-in-california/>. See <https://reports.deathpenaltyinfo.org/year-end/YearEndReport2020.pdf>, p. 5. See also <https://deathpenaltyinfo.org/news/california-legislature-passes-racial-justice-package-affecting-death-penalty-practices>.

⁴⁴¹ *North Carolina v. Ramseur*, case No. 388A10, opinion filed on 5 June 2020; <https://deathpenaltyinfo.org/news/north-carolina-supreme-court-strikes-down-racial-justice-act-repeal-permits-race-challenges-by-130-death-row-prisoners>.

on instances when a police officer used deadly force. It was passed through the House of Representatives in March 2021 and is pending advancement through the Senate.⁴⁴² In July 2020, the Canadian Association of Chiefs of Police and Statistics Canada announced that they would work to enable data collection to report statistics on indigenous and ethno-cultural groups as part of Canada's official police-reported crime statistics.⁴⁴³

171. The European Union, in its anti-racism action plan for 2020–2025, calls for action to prevent discriminatory attitudes within law enforcement agencies of its member states and to address racial and ethnic stereotypes.⁴⁴⁴ In the United Kingdom, the development of the Ethnicity Facts and Figures Website⁴⁴⁵ and its disaggregated data on crime and policing, the criminal justice system, and other sectors⁴⁴⁶ is an example of efforts to provide accessible and transparent data disaggregated by race or ethnic origin.

172. These examples demonstrate the kinds of actions needed to end human rights violations against Africans and people of African descent by law enforcement officials. Given the entrenched and persistent nature of concerns in this regard, individual reforms will, however, not of themselves be enough to turn the tide. Thus, the next section proposes a way forward to address challenges and impediments to accountability and redress.

E. Agenda Towards Transformative Change for Racial Justice and Equality - The Way Forward - PURSUE JUSTICE: End impunity and build trust

173. Mass anti-racism protests in 2020 following the death of George Floyd have galvanised calls for ensuring accountability of law enforcement officials for human rights violations and crimes against Africans and people of African descent, for closing trust deficits, and for strengthening institutional oversight. A comprehensive effort is required to ensure a human rights-based approach to policing and an institutional culture free from racism.

1. Reimagine policing and the criminal justice system by supporting and implementing community-driven models for dignity and collective safety that protect and serve all members of communities without discrimination

174. States should undertake profound introspections and encourage the participation and engagement of people of African descent and affected communities in order to reimagine policing and reform the criminal justice system. These efforts should be seen as genuine attempts to ensure that police agencies better protect, represent and equally serve all communities.

175. Processes of self-examination should consider the role of law enforcement agencies in society, and how their methods and their association with historical injustices impact on the functioning of modern law enforcement institutions and the criminal justice system. They should also consider the impediments to changing institutional cultures and practices and the responsibilities of law enforcement superiors in promoting policies that encourage effective peer interventions to stop violations and ensure discipline for misconduct. Further, these processes should seek to prioritize achieving social justice including through allocation of state funds, and ensuring that law enforcement agencies deliver where they have expertise and added value. Removing incentives (see examples above) that contribute to perpetuating racism and racial discrimination in law enforcement is also key.

176. Alternative and complementary methods to policing and the use of force should be properly introduced, in educational settings, in cases of mental health crises, during

⁴⁴² CERD/C/USA/10-12, para 15.

⁴⁴³ Ibid. See also, www.statcan.gc.ca/eng/about/smr09/smr09_106.

⁴⁴⁴ https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf.

⁴⁴⁵ <https://www.ethnicity-facts-figures.service.gov.uk/>.

⁴⁴⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf.

assemblies and in relation to migration and border governance. Potential discriminatory application of criminal law must be tackled at every stage, including by reforming drug-related policies, laws and practices with discriminatory outcomes, in line with international human rights standards. Law enforcement measures alone are insufficient to address wider societal problems, including crime. They must be accompanied by programmes that address the lack of trust between people of African descent and law enforcement agencies. Further, States must invest in sustainable, cross-cutting programmes that reduce inequalities and end discrimination in education, employment, health care and housing, as well as in effective strategies to reduce gun violence, in order to yield more positive results than a focus primarily on arrests and prosecutions. Specific State-sponsored programmes should focus on prevention and also investigate the root causes of criminality and the compounding effects of systemic racism.

177. Addressing prejudice against racial and ethnic minorities, including people of African descent, by some law enforcement officials requires institutional measures, including efforts to enhance diversity within law enforcement and the administration of justice (including among judges, prosecutors and lawyers), as anti-bias and human rights training in isolation has proved to have limited impact.⁴⁴⁷ Effective policing can be best achieved through techniques of cooperation and persuasion, carefully and fairly applied. The conduct of law enforcement officials must be aligned with international human rights law. In some situations, when their individual actions are driven by conscious or unconscious biases, exercising discretion that may appear lawful on its face is rather unlawful, and has the effect of perpetuating systemic racism.

178. In order to enhance law enforcement roles and functions, and address the lack of trust in law enforcement experienced by many communities of African descent, the delivery of public services to the community and the needs of the community as a whole should be prioritized. This also entails balancing assignment of resources for enforcement with service delivery, dismantling militarized law enforcement tactics, approaches and equipment, and re-organizing tasks and resources for non-core law enforcement tasks.

179. Taking these elements into account, as a starting point, States may initiate a human rights audit exercise that would focus on the systemic nature of how racism and racial discrimination may manifest itself in law enforcement institutions and more broadly in the criminal justice system. Such a human rights audit should examine whether there is disparate impact on certain communities, such as people of African descent, of legislation, policies, guidelines and practices, as well as the personal element and contribution that individual officers may bring. It would also critically examine safeguards so that institutions can identify and mitigate the risks of stereotypes and biases. Such an assessment could be undertaken by law enforcement experts, human rights experts with expertise in addressing racial discrimination, and civil society representatives, including people of African descent.

2. Implement reforms to restrict use of force and prohibit racial profiling; consistently and effectively bring to justice law enforcement officials for violations against Africans and people of African descent; and provide redress for victims and their families

180. States should prohibit and address racial profiling in law enforcement practices that associate Blackness with criminality, including during street policing and by developing detailed guidelines for stop-and-search practices with precise standards in consultation with relevant groups and instructions to prevent racial profiling.⁴⁴⁸ This includes reviewing existing laws and regulations that potentially enable or facilitate racial profiling.⁴⁴⁹

181. States should examine to what extent racial biases and stereotypes are a part of the institutional culture of law enforcement and criminal justice system agencies, and address them. Implementation and periodic reviews of internal policies, standard operating

⁴⁴⁷ <https://gspp.berkeley.edu/assets/uploads/research/pdf/SpencerCharbonneauGlaser.Compass.2016.pdf>, pp. 50-63.

⁴⁴⁸ CERD/C/GC/36; submission by the European Union; <https://minorityrights.org/trends2020/>.

⁴⁴⁹ CCPR/C/GC/36, para 38.

procedures and codes of conduct on combating and preventing racism should also be applied in internal administrative procedures, such as recruitment promotion, budgeting, planning, training and internal accountability. More broadly, States should ensure that all public authorities and institutions, federal, state and local, act in conformity with non-discrimination principles;⁴⁵⁰ are empowered to investigate patterns of discrimination; collect and release disaggregated data on actions of law enforcement officials; and prevent and respond to police violence and misconduct more broadly.

182. Robust measures to end impunity and ensure accountability and redress for victims and their families are critical, in line with international human rights law. This requires effective, impartial and timely investigations of allegations of unlawful use of force or other violations by law enforcement officials – with a specific focus on the possible role that racial discrimination may have played in the violation; imposing commensurate punishments; and providing guarantees of non-repetition. States should also envisage disciplinary measures in cases of misconduct. Further, fair and adequate compensation should be paid to the families and dependents of the victim(s).⁴⁵¹

183. In order to meet their obligation to take all necessary measures to prevent arbitrary deprivations of life by law enforcement officials, States should reform laws, policies, procedures and practices to provide clear directives and restrict the use of force by law enforcement officials in compliance with international principles on the use of force and firearms, particularly the principles of legality, precaution, necessity, proportionality, accountability and non-discrimination.⁴⁵² These principles apply equally in complex operations by special law enforcement units.⁴⁵³ States should also consider requiring all law enforcement agencies to document every use of force involving less-lethal weapons or related equipment.

184. Special measures of protection must be taken towards persons in vulnerable situations whose lives and physical security have been placed at particular risk because of pre-existing patterns of violence.⁴⁵⁴ Inadequate laws must be reformed so that they are linked to measurable indicators of success.

185. States should also recognize that they have a heightened duty of care to take any necessary measures to protect the lives of individuals in specific situations.⁴⁵⁵ For example, any deaths of individuals deprived of their liberty must be followed by an independent, impartial, prompt, thorough, effective, credible and transparent investigations carried out by an independent body to clarify the cause of death.⁴⁵⁶ Further, persons with mental health conditions or psychosocial disabilities are entitled to specific measures of protection so as to ensure their effective enjoyment of the rights to life and security.⁴⁵⁷ States should provide

⁴⁵⁰ Commentary (a) of the Code of Conduct for Law Enforcement Officials; International Convention on the Elimination of All Forms of Racial Discrimination, art. 2.

⁴⁵¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; <https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>, principle 20.

⁴⁵² www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx; www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx. According to research conducted in 2015, all US state statutes on the use of force failed to meet international law standards (https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf, p.21). Another review of the twenty largest U.S. cities' use of force policies found that none of them complied with basic international human rights law and standards (<https://chicagounbound.uchicago.edu/ihrc/14>).

⁴⁵³ CCPR/C/GC/36, para. 13.

⁴⁵⁴ CCPR/C/GC/36, para. 23.

⁴⁵⁵ CCPR/C/GC/36, para. 25; see also

https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf, p. 21.

⁴⁵⁶ CCPR/C/GC/36, para. 28.

⁴⁵⁷ CCPR/C/GC/36, para. 24; A/HRC/39/36, paras. 45-48, 51-52; A/HRC/44/48, paras. 61 and 86;

https://www.who.int/mental_health/policy/quality_rights/en/;

<https://www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/policy-guideline-good-health.pdf>. A/72/55 (Annex), para. 13.

community-based support services for people with mental health conditions or psychosocial disabilities, and avoid law enforcement involvement in mental health crises.

186. States should also periodically identify gaps in internal policies and practices in combating and preventing racial discrimination in the context of law enforcement and the criminal justice system, with the help of independent experts and genuine input from communities of African descent. Transparency about the outcomes of these procedures is strongly recommended, to strengthen law enforcement accountability and affected individuals' and communities' trust in related institutions.

3 Regularly publish data, disaggregated by victims' race or ethnic origin, on deaths and serious injury by law enforcement officials and related prosecutions and convictions, as well as any disciplinary actions

187. Disaggregated data is key to informing policy decisions grounded in evidence and highlighting and addressing institutional racism and racial disparities.⁴⁵⁸ With regard to law enforcement and the criminal justice system, States should institute a system for the collection, analysis and publication of anonymized, disaggregated data⁴⁵⁹ by race or ethnic origin and additionally by other factors, notably on the prevalence of racial profiling, law enforcement-related deaths, and serious injury, sentencing and incarceration and related prosecutions and convictions.

188. This entails reconciling the obligation of States to ensure protection of data and the right to privacy, while removing legal obstacles in collecting such data.⁴⁶⁰ It also entails adoption of laws regulating the collection and processing of data with the explicit consent of the individuals and groups that are victims of racial discrimination, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms, including the right to privacy, protecting data from misuse and ensuring the confidentiality of information.⁴⁶¹

4. Create and/or strengthen independent oversight and complaints procedures and mechanisms regarding action by law enforcement; institutionalize and standardize reporting and review of use of force leading to death or serious injury and stocktaking of lessons learnt

189. States should establish effective, independent, civilian monitoring mechanisms as a complement to internal police investigations, internal discipline, the criminal justice system, and legislative oversight, with standardized use of force reporting and review, and with specific expertise to assess law enforcement operations and to oversee human rights compliance by law enforcement bodies.⁴⁶² These mechanisms should be adequately resourced and funded,⁴⁶³ with the necessary transparency, community and political support and civil society involvement,⁴⁶⁴ including representatives of people of African descent. These mechanisms should be granted full investigatory powers, the power to refer cases for criminal prosecution, and be able to enforce proposed disciplinary measures and propose general reform measures.⁴⁶⁵ Further, these mechanisms should issue regular public reports and respond in a timely fashion to complaints received.⁴⁶⁶ Civilian oversight mechanisms also should conduct statistical or general reviews of patterns in police abuse and violence, including its causes.⁴⁶⁷ This can play a vital role in enhancing or restoring public confidence,

⁴⁵⁸ See e.g., <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law>; A/HRC/42/59 para. 62.

⁴⁵⁹ Committee on the Elimination of Racial Discrimination, general recommendations No. 4 (1973), No. 24 (1999), No. 25 (2000), No. 27 (2000), No. 29 (2002), No. 30 (2005) and No. 31 (2005).

⁴⁶⁰ A/HRC/24/52, para. 84.

⁴⁶¹ A/HRC/24/52, para. 87(d).

⁴⁶² A/HRC/14/24/Add.8.

⁴⁶³ Ibid., para. 74.

⁴⁶⁴ Ibid., paras. 73-74.

⁴⁶⁵ Ibid., para. 74.

⁴⁶⁶ Ibid., para. 74.

⁴⁶⁷ Ibid., para. 7.

and is a key prerequisite for effective law enforcement.⁴⁶⁸ Independent oversight and accountability processes must ensure that the rules embodied in codes of conduct and other policies do not have adverse effects on certain sectors of society and that conscious and unconscious biases are addressed through vigorous operational policies, and effective and continuous training and education.⁴⁶⁹

190. National human rights institutions and equality bodies⁴⁷⁰ can also play an effective role in monitoring and investigating deaths by law enforcement officials, as well as analyzing and documenting patterns and trends relating to racial discrimination. They should have the explicit mandate of considering the human rights dimension of criminal justice and law enforcement measures. They should also establish the extent to which domestic legislation complies with international standards, and work towards reform where necessary.⁴⁷¹ Civil society and external accountability mechanisms are key to supporting oversight of law enforcement officials and criminal justice more broadly.

191. States should also consider establishing or ensuring that an existing body has an accessible reporting mechanism for receiving complaints of racism and racial discrimination, including with regard to racial profiling. This body should have the mandate and authority to promptly and effectively investigate alleged cases and work in concert with civil society and human rights monitoring bodies. It should also report publicly on its findings in accordance with data protection regulations and human rights standards.⁴⁷²

5. Establish and resource independent mechanisms to support families and communities affected by law enforcement violations, including through funding for separate autopsies, victim compensation programmes, psycho-social and bereavement assistance, support to bury victims, and accessing justice

192. States must respect the right of families affected by law enforcement violations to know the truth, achieve justice and advocate for guarantees of non-repetition for what happened to their loved ones, including demanding the prosecution and sanction of those responsible.

193. States should establish and resource independent mechanisms to support families and communities in accessing truth and justice. This entails adopting a victim-centered approach in providing them with legal aid and assistance with specialized information and advice on sources of support, the process of investigating deaths during or following contact with law enforcement, as well as regular information throughout investigation processes. States should ensure that families are afforded legal standing in the investigation, and take steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation.⁴⁷³ Further, as noted above, the investigation into deaths at the hands of law enforcement should include an autopsy of the victim's body, whenever possible in the presence of a representative of the victim's relatives.⁴⁷⁴ In this regard, State should also ensure that families are provided the financial means and other support to commission separate autopsies, if desired, and to recover the bodies of, and bury, their loved ones.

194. They should ensure that families can benefit from victim compensation programmes in cases of deaths at the hands of law enforcement, as well as psychosocial and bereavement assistance and support to bury victims, and social assistance and support.⁴⁷⁵ States should adopt measures to memorialize the lives of victims. Such measures should be established in consultation with and participation of the families.

⁴⁶⁸ https://www.unodc.org/documents/justice-and-prison-reform/17-03483_ebook.pdf, p. 172.

⁴⁶⁹ A/HRC/26/36.

⁴⁷⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20813>.

⁴⁷¹ A/HRC/26/36, para. 129.

⁴⁷² A/HRC/14/24/Add.8.

⁴⁷³ CCPR/C/GC/36, para. 28.

⁴⁷⁴ Ibid., para. 28.

⁴⁷⁵ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>.

IV. Ensuring the voices of people of African descent and those who stand up against racism are heard and their concerns are acted on

A. Introduction

195. The murder of George Floyd in May 2020 sparked an unprecedented number of protests demanding racial justice, first in the United States and then worldwide.⁴⁷⁶ An estimated 7,750 anti-racism protests were held across the United States alone between 25 May and 22 August 2020.⁴⁷⁷ Protestors in the United States demanded justice for George Floyd's death and an end to impunity for police violence against people of African descent more generally. They also called for federal, state and local governments to address systemic racism and enact effective police and broader reforms that would achieve equality and justice.

196. Protests in response to the deaths of people of African descent at the hands of law enforcement are not new. At times, in the United States, large-scale protests have lasted for weeks or months, such as those calling for justice for the death of Michael Brown in Ferguson, Missouri, in 2014.⁴⁷⁸ Many of the concerns regarding "hostility towards the Black Lives Matter movement" raised by the Special rapporteur on the rights to freedom of peaceful assembly and of association in 2016⁴⁷⁹ remained pertinent in the 2020 protests, notably that some view the movement as divisive, when it is in fact about inclusion.

197. In 2020, there were also anti-racism protests in other countries, some of which took place under the banner of Black Lives Matter. In a number of instances, these protests were also triggered by the deaths or injury of people of African descent, allegedly often during or after contact with law enforcement officials. For example, some protests in France also sought justice for Adama Traoré and Michel Zecler,⁴⁸⁰ in Colombia for Anderson Arboleda,⁴⁸¹ in Brazil for João Alberto Silveira Freitas, Miguel Otávio Santana da Silva and João Pedro Matos Pinto,⁴⁸² and in Honduras for Garifuna leaders.⁴⁸³ In a number of European countries, protesters also drew connection between anti-racism and protection of migrants.⁴⁸⁴

⁴⁷⁶ <https://blmprotests.forense-architecture.org/>.

⁴⁷⁷ <https://acleddata.com/2020/08/31/us-crisis-monitor-releases-full-data-for-summer-2020/>; <https://www.theguardian.com/world/2020/sep/05/nearly-all-black-lives-matter-protests-are-peaceful-despite-trump-narrative-report-finds>; <https://www.washingtonpost.com/politics/2020/10/16/this-summers-black-lives-matter-protesters-were-overwhelming-peaceful-our-research-finds/>; <https://sites.google.com/view/crowdcoutingconsortium/home>.

⁴⁷⁸ https://www.amnesty.org.uk/files/annual_report_-_english_-_air1415.pdf?VersionId=rs2Y9xqquY7uqZ5ymI6ATNy70seijCJ, p. 17.

⁴⁷⁹ A/HRC/35/28/Add.2, para. 20.

⁴⁸⁰ See e.g. <https://www.bbc.com/news/world-europe-53036388>; <https://www.france24.com/en/20200613-protesters-gather-in-paris-for-fresh-march-against-racism-and-police-brutality>; <https://www.france24.com/en/france/20201128-anger-at-police-beating-galvanises-french-protests-against-security-bill>; https://www.washingtonpost.com/world/europe/assassination-of-adama-traore-black-lives-matter-france/2020/06/12/45c0f450-aa87-11ea-a43b-be9f6494a87d_story.html.

⁴⁸¹ See e.g. <https://www.npr.org/2020/12/30/950053607/in-2020-protests-spread-across-the-globe-with-a-similar-message-black-lives-matt>.

⁴⁸² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26535>; <https://www.theguardian.com/world/2020/jun/12/brazil-black-boy-fall-death-racism>; <https://brasil.elpais.com/brasil/2020-06-06/vidas-negras-importam-chacoalha-parcela-de-brasileiros-entorpecida-pela-rotina-de-violencia-racista.html>; <https://apnews.com/article/virus-outbreak-police-riots-de-janeiro-ap-top-news-brazil-8bfe3a86aa1db5b9671d9d41be8617b7>; <https://www.reuters.com/article/us-brazil-protests-race-feature-idUSKBN23E0QF>.

⁴⁸³ See e.g. [https://cespad.org.hn/2020/07/21/alerta-policia-hondurena-reprime-protestas-de-comunidad-garifunas-y-affecta-gravemente-a-una-nina/](https://cespad.org.hn/2020/07/21/alerta-policia-hondurena-reprime-protestas-de-comunidad-garifunas-y-afecta-gravemente-a-una-nina/).

⁴⁸⁴ <https://www.stop-racial-profiling.ch/en/2020/06/11/blm-en/>; <https://elpais.com/espana/madrid/2020-06-07/el-no-puedo-respirar-de-las-miles-de-personas-que-se-han-manifestado-en-madrid-contra-el-racismo.html>; <https://www.theneweuropean.co.uk/brexit-news/anti-racism-protests-reveal-europes-own-problems-85082>.

Protests were also reported in over 260 towns and cities in the United Kingdom,⁴⁸⁵ as well as, among others, in Argentina,⁴⁸⁶ Australia,⁴⁸⁷ Belgium,⁴⁸⁸ Canada,⁴⁸⁹ Dominican Republic,⁴⁹⁰ Germany,⁴⁹¹ Japan,⁴⁹² Mexico,⁴⁹³ the Netherlands,⁴⁹⁴ South Africa,⁴⁹⁵ South Korea,⁴⁹⁶ Spain,⁴⁹⁷ Sri Lanka,⁴⁹⁸ Switzerland⁴⁹⁹ and The Gambia – related in particular to the death of Gambian citizen and US resident Momodou Lamin Sisay in Georgia, just days after

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- ⁴⁸⁵ <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>, pp. 7, 14. See also submissions by Black Protest Legal Support; Race Equality First, International Network of Civil Liberties Organisations (INCLO).
- ⁴⁸⁶ <https://www.infobae.com/america/agencias/2020/06/02/manifestantes-marchan-en-buenos-aires-por-la-muerte-de-george-floyd-en-eeuu/>; <https://www.lanacion.com.ar/politica/muerte-george-floyd-izquierda-marcha-camara-comercio-nid2372659>.
- ⁴⁸⁷ Submission by International Network of Civil Liberties Organisations (INCLO); <https://covid19.inclo.net/2020/06/23/australia-isolated-anti-lockdown-protests-and-blm-solidarity-marches/>.
- ⁴⁸⁸ <https://www.lesoir.be/312689/article/2020-07-11/manifestation-contre-le-racisme-et-les-violences-policieres-namur>; <https://www.euronews.com/2020/06/08/10-000-black-lives-matters-protesters-take-to-streets-of-brussels1>.
- ⁴⁸⁹ Submission by Black Legal Action Center. See also <https://covid19.inclo.net/2020/06/23/canada-anti-lockdown-protests-and-anti-racism-marches/>, <https://monitor.civicus.org/updates/2020/07/20/protests-against-police-brutality-and-harassment-black-and-first-nations-people-across-canada/>; <https://www.cbc.ca/news/canada/ottawa/ottawa-no-peace-until-justice-1.5600508>, <https://www.cbc.ca/news/canada/toronto/toronto-protests-anti-racism-1.5599966>, <https://www.cbc.ca/news/canada/nova-scotia/hundreds-gather-for-black-lives-matter-vigil-in-halifax-1.5600768>, <https://www.cbc.ca/news/canada/toronto/protest-toronto-regis-korchinski-paquet-1.5591745>.
- ⁴⁹⁰ See e.g. <https://www.efe.com/efe/america/sociedad/un-acto-contra-el-racismo-en-santo-domingo-termina-de-forma-abrupta-e-incidentada/20000013-4267306>; <https://www.theguardian.com/world/2020/jun/15/dominican-republic-haiti-racism-election-protest>.
- ⁴⁹¹ See e.g. <https://www.euronews.com/2020/06/14/anti-racism-activists-form-9-kms-socially-distant-human-chain-in-berlin>; <https://www.dw.com/en/germany-thousands-attend-anti-racism-protests-honoring-george-floyd/a-53700909>; <https://monitor.civicus.org/updates/2020/07/09/court-finds-german-mass-surveillance-law-disregards-press-freedom-large-turnout-blm-protests/>.
- ⁴⁹² See e.g. <https://www.nytimes.com/2020/07/01/world/asia/japan-racism-black-lives-matter.html>, <https://thediplomat.com/2020/06/japan-holds-anti-racism-rally-protesting-homegrown-police-brutality-in-solidarity-with-black-lives-matter/>; <https://monitor.civicus.org/updates/2020/08/27/activist-groups-japan-call-end-racism-police-abuse-and-passage-equality-law/>.
- ⁴⁹³ Linked to the death of Giovanni López. E.g. <https://hchr.org.mx/comunicados/la-onu-dh-condena-la-muerte-en-custodia-de-alejandro-giovanni-lopez-ramirez-en-jalisco/>; <https://www.bbc.com/mundo/noticias-52935685>, <https://www.elperiodico.com/es/internacional/20200606/protestas-sacuden-mexico-tras-muerte-giovanni-lopez-bajo-custodia-policial-7989373>.
- ⁴⁹⁴ See e.g. <https://nltimes.nl/2020/06/03/amsterdam-mayor-wont-step-pledges-handle-large-crowds-better-future>; <https://nltimes.nl/2020/06/02/thousands-attend-black-lives-matter-rallies-keeping-physical-distance>; <https://monitor.civicus.org/updates/2020/07/14/tension-between-right-protest-and-covid-19-measures-rises/>.
- ⁴⁹⁵ Submission by Access to Justice Knowledge Hub for Fair Participation; <https://www.africanews.com/2020/06/04/black-lives-matter-protest-hits-south-africa/>.
- ⁴⁹⁶ See e.g. <https://www.pri.org/stories/2020-06-08/america-s-blm-protests-find-solidarity-south-korea>.
- ⁴⁹⁷ See e.g. https://www.abc.es/espana/madrid/abci-criticas-doble-rasero-gobierno-manifestacion-contraracismo-y-protestas-nunez-balboa-202006081202_noticia.html?ref=https%3A%2F%2Fwww.google.com%2F; <https://www.elmundo.es/madrid/2020/06/07/5edcc55721efa0d5268b4667.html>.
- ⁴⁹⁸ See e.g. <https://www.thehindu.com/news/international/concern-over-police-brutality-in-sri-lanka/article31798486.ece>.
- ⁴⁹⁹ See e.g. <https://www.rts.ch/info/monde/11370418-george-floyd-reveille-la-memoire-des-violences-policieres-dans-le-monde.html>; <https://www.rts.ch/info/suisse/11398030-contre-le-racisme-des-manifestations-dans-plusieurs-villes-de-suisse.html>; <https://www.rts.ch/info/monde/11381085-plusieurs-milliers-de-manifestants-contre-le-racisme-a-lausanne.html>.

George Floyd's killing.⁵⁰⁰ Virtual protests were also reported for example in Thailand.⁵⁰¹ Some of the protests triggered significant change and powerful symbolic steps, including with regard to removing representation of historical racism in public spaces (see Section V).

198. The overwhelming majority of protests were peaceful, according to reports.⁵⁰² During some of the protests, individualized acts of violence were reported, including against law enforcement officials (some causing serious injury), looting or vandalism of some shops and private property.⁵⁰³ Research released in May 2021 indicates that approximately 94 per cent of all pro-Black Lives Matters demonstrations in the United States were peaceful, with six per cent involving reports of violence, clashes with police, vandalism, looting, or other destructive activity – including for example symbolic vandalism of statues and monuments celebrating slave owners, colonial figures or Confederate leaders. The same research indicates that “it is not clear who instigated the violent or destructive activity. While some cases of violence or looting have been provoked by demonstrators, other events have escalated as a result of aggressive government action, intervention from right-wing groups or individual assailants, and car-ramming attacks.”⁵⁰⁴ The 2020 anti-racism protests also took place during the COVID-19 pandemic, which saw numerous countries restricting various rights, including the right to freedom of peaceful assembly.⁵⁰⁵

199. Some level of regulation and management of peaceful assemblies might be required, given the potentially conflicting interests and other challenges that might arise in the context of a demonstration,⁵⁰⁶ and States may impose limitations on the enjoyment of the right to peaceful assembly.⁵⁰⁷ However, such limitations and regulations must comply with international human rights law.

200. Based notably on submissions received, this section presents an overview of Government responses to peaceful anti-racism protests and of the broader situation for human rights defenders, activists and others persons who stand up against racism and have come under attack in response, including in the context of anti-racism protests.

B. Government responses to peaceful anti-racism protests

1. Allegations of use of force violations, including unnecessary and disproportionate use of force

201. Credible and consistent allegations were received concerning Governmental responses to some protests that indicate violations of international human rights law,⁵⁰⁸ including due to unnecessary and disproportionate use of force. During 2020,⁵⁰⁹ there were

⁵⁰⁰ See e.g. <https://monitor.civicus.org/updates/2020/08/17/Charges-against-HRD-Madi-Jobarteh-dropped-Gambia-closer-to-access-to-information-law/>.

⁵⁰¹ See e.g. <https://www.straitstimes.com/asia/se-asia/thailand-holds-zoom-protest-for-black-lives-matter-movement>.

⁵⁰² <https://acleddata.com/2020/08/31/us-crisis-monitor-releases-full-data-for-summer-2020>.

⁵⁰³ Submission by Black Legal Action Center; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>; <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>, p. 7; <https://www.bbc.com/news/uk-england-london-52954899>; <https://www.justice.gov/opa/pr/over-300-people-facing-federal-charges-crimes-committed-during-nationwide-demonstrations>.

⁵⁰⁴ <https://acleddata.com/2021/05/25/a-year-of-racial-justice-protests-key-trends-in-demonstrations-supporting-the-blm-movement>.

⁵⁰⁵ See <https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf> on concerns on the closing of civic space during the pandemic.

⁵⁰⁶ A/HRC/25/32, para. 31.

⁵⁰⁷ CCPR/C/GC/36.

⁵⁰⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>.

⁵⁰⁹ <https://news.un.org/en/story/2020/07/1068971>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25946&LangID=E>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>.

credible reports of unnecessary and disproportionate use of force by law enforcement officials in the United States⁵¹⁰ against demonstrators, journalists, observers and medical personnel who did not appear to pose an imminent threat of injury. In some instances, these tactics seem to have been used in situations in which demonstrators and others were leaving protest areas.⁵¹¹ Between May and end November 2020, over 1,000 incidents of law enforcement “violence and misconduct” were reported in the United States⁵¹². In the overwhelming majority of incidents, the victims did not reportedly pose an imminent threat of injury to the police or others; and law enforcement officials appear to not have exhausted all options before using force.⁵¹³ Research by a non-governmental organization points to more than 125 alleged use of force violations by local and state police and security agents between 26 May and 5 June 2020 in different States in the United States.⁵¹⁴ Specific concerns were highlighted about responses to peaceful protestors, including children and older persons of African descent,⁵¹⁵ in some protests,⁵¹⁶ as well as with regard to so-called kettling/corraling tactics whereby protestors are encircled or confined to a limited space).⁵¹⁷

202. In the United Kingdom, reports indicate “excessive use of force, including baton charges, horse charges, pepper spray and violent arrests”,⁵¹⁸ numerous arrests (see further below), and some clashes between some protestors and law enforcement during anti-racism protests particularly in June 2020.⁵¹⁹ Kettling tactics were also reported, when police reportedly denied access to toilets, drinking water and medicine, and several instances in

<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>;
https://www.oas.org/en/iachr/media_center/PReleases/2020/129.asp;
<https://www.osce.org/parliamentary-assembly/453471>; <https://www.osce.org/representative-on-freedom-of-media/453459>; https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html.

⁵¹⁰ Submissions by the American Civil Liberties Union (ACLU); Advocates for Human Rights; Andy and Gwen Stern Community Lawyering Clinic/American Civil Liberties Union Pennsylvania; Forensic Architecture/Bellingcat; Human Rights Watch; Inter-American Commission on Human Rights; International Network of Civil Liberties Organisations (INCLO); NAACP Legal Defense and Educational Fund, Inc. (LDF); University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP;
<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25335>;
<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>;
<https://www.ohchr.org/Documents/HRBodies/CERD/earlywarning/statements/USA.PDF>;
<https://www.aclu.org/news/criminal-law-reform/all-hell-broke-loose/>;
<https://covid19.inclo.net/2020/06/23/united-states-anti-lockdown-and-anti-police-brutality-demonstrations/>; <https://www.fidh.org/en/region/americas/usa/now-is-the-time-for-action-to-fight-systemic-racism-in-the-usa-and>; <https://monitor.civicus.org/updates/2020/06/22/country-wide-protests-end-police-brutality-united-states-met-militarised-law-enforcement/>;
<https://civicus.org/documents/SOCS2021Part1.pdf#page=2>;
https://www.inclo.net/pdf/statements/30052020_INCLO%20Statement%20re%20use%20of%20police%20force%20in%20USA.pdf.

⁵¹¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>.

⁵¹² Submission by Forensic Architecture/Bellingcat.

⁵¹³ <https://www.amnestyusa.org/protest-map/>.

⁵¹⁴ <https://www.amnestyusa.org/protest-map/>.

⁵¹⁵ Submissions by Amelia Carter, Andy and Gwen Stern Community Lawyering Clinic/American Civil Liberties Union Pennsylvania.

⁵¹⁶ <https://www.aclu.org/news/criminal-law-reform/the-law-enforcement-violence-trump-wont-talk-about/>.

⁵¹⁷ Submissions by Forensic Architecture/Bellingcat, Human Rights Watch; <https://phr.org/our-work/resources/a-targeted-attack-on-the-bronx/>; <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>;
<https://www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf>, pp. 41-42.

⁵¹⁸ <https://netpol.org/black-lives-matter/>, p. 3. See also submissions by Black Protest Legal Support and Race Equality First;

<https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>, pp. 379-380

⁵¹⁹ <https://www.bbc.com/news/uk-england-tyne-53034023>; <https://www.bbc.com/news/uk-england-london-52954899>.

which police ignored or mocked injured protesters.⁵²⁰ There was also some limited information made available on responses to anti-racism protests in other countries, while reports indicated large numbers of arrests, use of tear gas and water cannon in some instances.⁵²¹

2. Differential handling of anti-racism protests and counter-protests and failure to stop confrontations between protesters and counter-protestors

203. Submissions and consultations highlighted specific examples in the United States of reported failures to stop confrontations between protesters and counter-protesters, more permissive treatment of counter-protests, and differences in how certain anti-racism protests were policed compared to other protests. From May to September 2020, violent confrontations reportedly erupted between protesters in some 200 different protests and counter-protests that took place in approximately 75 per cent (37) of all states.⁵²² In some instances, law enforcement agencies reportedly failed to protect anti-racism protesters from violent attacks by third-parties – whether counter-protesters, vigilante armed groups, or violent individuals within otherwise peaceful protests.⁵²³ In these instances, reports indicate that police forces frequently failed to fulfil their positive obligation to protect demonstrators, in particular by not taking preventive measures to avoid the disruption of peaceful assemblies by third-parties, or not protecting protesters from violent attacks. When violent attacks occurred among protesters and counter-protestors, police forces reportedly failed to intervene or differentiate between violent and non-violent actors.⁵²⁴

204. In the Netherlands, demonstrations by anti-racism group ‘Kick Out Zwarte Piet (KOZP)’ in November 2020, protesting against the tradition of Black Pete, were met by large counter-protests in several Dutch cities, and police reportedly failed to ensure the safety of protesters when hundreds of pro-Black Pete protesters arrived.⁵²⁵ Media reports indicated that this may not have been an isolated incident.⁵²⁶

205. Besides, submissions highlighted instances in the United States in which law enforcement officials displayed “different and permissive treatment toward far-right or white supremacist groups”.⁵²⁷ For example, research noted police were three times more likely to

⁵²⁰ Submissions by Black Protest Legal Support; Race Equality First. See also <https://netpol.org/black-lives-matter/>; <https://monitor.civicus.org/updates/2020/12/15/peaceful-assembly-under-threat-crackdown-environmental-and-blm-protesters/>; <https://www.bbc.com/news/uk-53031072>; <https://covid19.inclo.net/2020/06/23/united-kingdom-anti-lockdown-protests-and-blm-solidarity-marches/>; <https://www.bbc.co.uk/news/uk-england-london-52954899>.

⁵²¹ See e.g. <https://carnegieeurope.eu/2021/01/27/europeans-right-to-protest-under-threat-pub-83735>; https://www.ligueedh.be/quand-les-citoyen%c2%b7ne%c2%b7s-utilisent-leur-droit-de-manifester-pour-denoncer-les-violences-policières-les-forces-de-lordre-repondent-par-la-violence/#_ftn7; <https://monitor.civicus.org/updates/2020/08/25/pandemic-brazil-aggravates-democratic-backslide/h>; <https://www.reuters.com/article/us-minneapolis-police-protests-france-idUSKBN23K0J3>.

⁵²² <https://www.amnesty.org/download/Documents/AMR5132382020ENGLISH.PDF>, p. 4.

⁵²³ <https://www.amnesty.org/download/Documents/AMR5132382020ENGLISH.PDF>.

<https://www.amnesty.org/en/latest/news/2020/10/usa-police-failing-protect-protesters-from-violence/>; <https://pen.org/press-release/kenosha-authorities-must-commit-to-protecting-protesters/>.

⁵²⁴ <https://www.amnesty.org/download/Documents/AMR5132382020ENGLISH.PDF>, pp. 4, 6, 12; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25802>; submission by Andy and Gwen Stern Community Lawyering Clinic/American Civil Liberties Union Pennsylvania.

⁵²⁵ <https://monitor.civicus.org/updates/2021/01/08/authorities-fail-protect-anti-racism-protesters-climate-protests-staged.>

⁵²⁶ <https://nltimes.nl/2016/11/12/nearly-200-anti-zwarte-piet-protesters-arrested-rotterdam>; <https://nltimes.nl/2017/11/18/white-extremists-stop-anti-blackface-rally-officials-say-zwarte-piet-protestors-welcome>; <https://www.hartvannederland.nl/nieuws/overzicht-vreedzaam-protest-op-veel-plekken-ongewacht-met-geweld>.

⁵²⁷ Submission by Forensic Architecture/Bellingcat. See also submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP. <https://www.theguardian.com/us-news/2020/oct/29/us-police-brutality-protest>. See also <https://civicus.org/documents/SOCS2021Part1.pdf#page=2>, p. 32.

use force against Black Lives Matters protesters than other protestors.⁵²⁸ Incidents in which police appeared to have discriminatorily restricted peaceful assemblies – such as through dispersal orders or the enforcement of curfews – based on the content of groups’ messages, rather than on the lawfulness of their conduct, were also highlighted.⁵²⁹ Similarly, in the United Kingdom, submissions noted that “police officers disproportionately used excessive force and kettling at BLM protests, mostly against Black protestors”.⁵³⁰ Reportedly, the police were more lenient with “white anti-BLM protesters” than with the BLM protestors themselves⁵³¹ and “young black people [...] were far more likely than their white counterparts to face arrest, excessive force and the use of stop and search powers during and after demonstrations”.⁵³²

3. Use of the military and militarized responses to protests and deployment of law enforcement officials without identification

206. Some militarized responses to anti-racism protests were reported in the United States, leading some to compare these experiences to conditions in war zones and triggering concerns from UN human rights mechanisms, NGOs and others (see more broadly on militarization of law enforcement in Section III).⁵³³ Reports recounted instances in which law enforcement officials were “equipped in a manner more appropriate for a battlefield”, using military-style weapons and creating “an atmosphere of fear and terror that was confrontational and intimidating in cities across the country.”⁵³⁴ In response to certain protests, National Guard and federal agents, apparently without proper training on appropriate policing of protests, were deployed. According to a submission, some of these agents assaulted protestors, indiscriminately fired less-lethal munitions and teargas into non-violent crowds and detained individuals without probable cause.⁵³⁵

207. Further, law enforcement officials were reportedly deployed without identification in some instances in some US cities,⁵³⁶ including some federal law enforcement agents deployed in camouflage and military-style uniforms without identifiable insignia.⁵³⁷ In a number of US cities, federal law enforcement agents allegedly used unmarked vehicles to patrol and

⁵²⁸ <https://www.theguardian.com/us-news/2021/jan/13/us-police-use-of-force-protests-black-lives-matter-far-right> referring to ACLED; https://acleddata.com/acleddatanew/wp-content/uploads/2021/05/ACLED_Report_A-Year-of-Racial-Justice-Protests_May2021.pdf.

⁵²⁹ <https://www.amnesty.org/download/Documents/AMR5132382020ENGLISH.PDF>, p. 5; <https://www.hrw.org/news/2020/09/14/kenosha-police-turned-blind-eye-us-vigilantes>; <https://phr.org/our-work/resources/a-targeted-attack-on-the-bronx/>.

⁵³⁰ Submission by Race Equality First, referring to <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>.

⁵³¹ Submission by Black Protest Legal Support.

⁵³² <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>, p. 6.

⁵³³ Submissions by American Civil Liberties Union (ACLU), Committee to Protect Journalists, Forensic Architecture/Bellingcat, Human Rights First, University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25946&LangID=E>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25933&LangID=E>; <https://www.humanrightsfirst.org/press-release/more-500-veterans-sign-letter-denouncing-use-armed-forces-suppress-civil-liberties>; <https://www.humanrightsfirst.org/press-release/retired-military-leaders-urge-governors-resist-trump-s-attempt-use-military-against>.

⁵³⁴ <https://www.amnestyusa.org/worldiswatching/>; <https://www.amnesty.org/download/Documents/AMR5128072020ENGLISH.PDF>, p. 24. See also submissions by NAACP Legal Defense Fund, Inc. (LDF).

⁵³⁵ Submission by Human Rights First.

⁵³⁶ Submission by Human Rights First; <https://news.un.org/en/story/2020/07/1068971>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>.

⁵³⁷ Submission by Human Rights First.

apprehend protesters, making it difficult to identify the law enforcement officials deployed,⁵³⁸ and in some cases possibly placing those detained outside the full protection of the law and giving rise to risks of arbitrary detention and other human rights violations.⁵³⁹

4. Use of surveillance tools and other technologies to monitor protests

208. The use of surveillance tools and other technologies to monitor protests and protestors was also highlighted as a concern.⁵⁴⁰ For example, in cities in the United States, drones, airplanes, helicopters and video footage captured by ‘smart streetlights’, installed to monitor traffic and environmental conditions, were reportedly used to monitor anti-racism protests.⁵⁴¹ Twitter data and other social media was reportedly used to obtain location data.⁵⁴² Reports indicate that, for example, the company Dataminr, which enjoys real-time access to all tweets on Twitter, was found to have sold to US law enforcement agencies access to data regarding anti-racism protests, including the location data of peaceful demonstrators.⁵⁴³

5. Scale of arrests and detention of protestors

209. Another concerning trend highlighted in submissions received relates to the high numbers of arrests and detention of protesters during anti-racism protests.⁵⁴⁴ For example, between 27 May and 12 June 2020, law enforcement officials in 48 cities in the United States reportedly detained more than 14,000 people in protest-related arrests. Some were never charged or informed of the reason for their arrest.⁵⁴⁵ Many others were charged with misdemeanours, such as curfew violations, theft or property damage, unlawful assembly⁵⁴⁶, traffic violations, and other minor offences.⁵⁴⁷ While charges against the majority of those

⁵³⁸ Submission by Forensic Architecture/Bellingcat, Human Rights First, University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; <https://pen.org/press-release/pen-america-signs-letter-condemning-federal-law-enforcement-targeting-protesters/>; <https://pen.org/press-release/snatching-of-protesters-in-portland-astonishing-act-of-repression/>; <https://ushrnetwork.org/news/242/100/Federal-officers-violate-protestors-human-rights-in-Portland?emci=d056dd88-fcd0-ea11-9b05-00155d03bda0&emdi=929b9215-fed0-ea11-9b05-00155d03bda0&ceid=7964700>; <https://monitor.civicus.org/updates/2020/08/31/escalating-tensions-federal-troops-deployed-and-agents-use-excessive-force-against-protesters/>.

⁵³⁹ <https://news.un.org/en/story/2020/07/1068971>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E> <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>.

⁵⁴⁰ <https://www.amnesty.org/en/latest/news/2021/06/scale-new-york-police-facial-recognition-revealed/>.

⁵⁴¹ Submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

⁵⁴² Submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>.

⁵⁴³ <https://www.accessnow.org/cms/assets/uploads/2020/07/Defending-Peaceful-Assembly-Association-Digital-Age.pdf>, p. 25; <https://theintercept.com/2020/07/09/twitter-dataminr-police-spy-surveillance-black-lives-matter-protests/>.

⁵⁴⁴ Submissions by American Civil Liberties Union (ACLU), Forensic Architecture/Bellingcat, International Network of Civil Liberties Organisations (INCLO), National Lawyers Guild (NLG) Chicago/the International Human Rights Clinic at the University of Illinois at Chicago John Marshall Law School, University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>.

⁵⁴⁵ Submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP. In June, the Associated Press reported that around 9,000 people had been detained.

<https://apnews.com/article/c51f66bd298157c52520ef56026e4857>.

⁵⁴⁶ <https://www.theguardian.com/us-news/2020/oct/29/us-police-brutality-protest>.

⁵⁴⁷ <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>.

arrested were reportedly dropped,⁵⁴⁸ fines and sentencing, including imprisonment and associated criminal records, could have a lasting impact on demonstrators, including their ability to vote, secure housing or jobs.⁵⁴⁹ Conditions of detention pursuant to those arrests were also highlighted. There were reports that some of those detained were held in crowded, unsanitary conditions without adequate measures to ensure protection from the COVID-19 pandemic. In other cases, those detained were reportedly not allowed to make a phone call, and in some instances were moved from one precinct to another, making it difficult for their families and lawyers to locate them.⁵⁵⁰

210. In Belgium, arrests were also reported during anti-racism protests in November 2020 and January 2021. A non-governmental organization reported a high number of arrests, at times allegedly on the basis of racial profiling, including of children, and others who indicated they were not participating in the protests. Further, allegations were raised subsequently regarding poor conditions during detention, ill-treatment and failure to inform those arrested of the charges against them.⁵⁵¹

6. New and proposed restrictions on protests, including in the context of the coronavirus disease (COVID-19) pandemic

211. Limiting some anti-racism protests on the basis of COVID-19 restrictions (see also below) was highlighted as a concern in some locations,⁵⁵² while in protests advocating for other issues, reports indicate that local authorities did not intervene when similar rules were infringed.⁵⁵³ In the United Kingdom, the police invoked COVID-19 regulations to restrict some protests, a practice that reportedly occurred particularly in relation to organizers of African descent.⁵⁵⁴ For example, fourteen people were referred to Northern Ireland's Public Prosecution Service (PPS) for potential breaches of COVID-19 regulations during June 2020 protests in Belfast and Derry/Londonderry, where around 70 fines were handed (in contrast, reportedly no fixed penalty notices were issued at a "Protect our Monuments" rally in Belfast on 13 June).⁵⁵⁵ The charges were subsequently dropped in May 2021 after the PPS concluded that there was "no reasonable prospect of conviction for any offence".⁵⁵⁶ In 2020, the Police Ombudsman found justification in claims that the handling of the protests by the Police Service of Northern Ireland was unfair and discriminatory,⁵⁵⁷ and as of May 2021, a subsequent complaint of race discrimination was being investigated.⁵⁵⁸ Further, four people were arrested in Bristol in January 2021, while protesting in solidarity with those accused of

⁵⁴⁸ <https://www.theguardian.com/us-news/2021/apr/17/george-floyd-protesters-charges-citations-analysis>.

⁵⁴⁹ Submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; <https://time.com/5880229/arrests-black-lives-matter-protests-impact/>; <https://www.justice.gov/opa/pr/over-300-people-facing-federal-charges-crimes-committed-during-nationwide-demonstrations>.

⁵⁵⁰ <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>.

⁵⁵¹ <https://www.liguedh.be/quand-les-citoyen%C2%87ne%C2%87s-utilisent-leur-droit-de-manifester-pour-denoncer-les-violences-policières-les-forces-de-lordre-repondent-par-la-violence/>.

⁵⁵² Submissions by the International Network of Civil Liberties Organisations (INCLO) and Black Protest Legal Support.

⁵⁵³ <https://civicus.org/documents/SOCS2021Part1.pdf#page=2>.

⁵⁵⁴ Submission by Black Protest Legal Support; <https://www.theguardian.com/world/2020/aug/25/black-organiser-of-uk-anti-racism-rally-threatened-with-arrest>; https://www.theguardian.com/uk-news/2020/aug/28/metropolitan-police-drop-investigation-into-anti-racism-protester-ken-hinds?CMP=share_btn_tw.

⁵⁵⁵ <https://www.amnesty.org.uk/press-releases/northern-ireland-fines-imposed-peaceful-black-lives-matter-protestors-deeply>; <https://www.amnesty.org.uk/press-releases/laws-restricting-protest-northern-ireland-unacceptable>.

⁵⁵⁶ <https://www.bbc.com/news/uk-northern-ireland-57330499>.

⁵⁵⁷ <https://www.policeombudsman.org/PONI/files/85/858a4b0b-9b99-4921-b947-5fae248ba683.pdf>; <https://www.amnesty.org.uk/press-releases/northern-ireland-critical-police-ombudsman-report-policing-black-lives-matter>; <https://www.bbc.com/news/uk-northern-ireland-55399659>.

⁵⁵⁸ <https://www.policeombudsman.org/Media-Releases/2021/Investigation-to-assess-consistency-of-police-engagement>; <https://www.amnesty.org.uk/press-releases/northern-ireland-amnesty-welcomes-new-ombudsman-investigation-policing-black-lives>.

toppling the statue of Edward Coulston (who was involved in the transatlantic trade in enslaved Africans) during protests in 2020. They subsequently received an apology in April 2021 from the local police force, after the force admitted its declaration of a blanket ban on protest was unlawful.⁵⁵⁹

212. In the United States, in Mott Haven on 4 June 2020, reports indicate that the police kettled peaceful protesters before a COVID-19 curfew came into effect and blocked paths to disperse.⁵⁶⁰ In Australia, organizers appealed a ban by the New South Wales Supreme Court on protests based on COVID-19 physical distancing measures, and non-governmental organizations condemned tight restrictions placed on protests, at a time when other events were reportedly allowed to go ahead.⁵⁶¹ Rallies took place in a number of cities despite Government officials discouraging gatherings and police saying they would prosecute protesters.⁵⁶² In New Zealand, some officials commented that anti-racism protests held in June 2020 violated the country's distancing rules, and reportedly called the protesters "a small group who think they know better than everyone else".⁵⁶³

213. Additionally, in the United States, reports indicate that as at May 2021, over 90 new bills have been introduced in 35 states since May 2020, that are "aimed at suppressing racial justice protests and the Black Lives Matter movement".⁵⁶⁴ Some proposed or enacted legislation introduces harsh criminal penalties against protesters, as well as allowing for automatic detention of people pre-trial without bond, changing the presumption from pre-trial release on non-monetary conditions to a presumption of no bond.⁵⁶⁵ Some of the new laws also seem to create an environment enabling violence against protesters by creating new legal immunity for people who injure or even kill protesters.⁵⁶⁶ In the United Kingdom, non-governmental organizations warned that, in a context in which Black Lives Matter activists have called off protests for fear of their safety,⁵⁶⁷ a proposal for violent protesters to be jailed within 24 hours of being arrested⁵⁶⁸ would "undermine the right to protest and it fast-tracks people into the criminal justice system rather than ensuring their rights are upheld".⁵⁶⁹

⁵⁵⁹ <https://www.avonandsomerset.police.uk/news/2021/04/statement-after-apology-issued-to-four-people/>; https://www.theguardian.com/world/2021/apr/22/bristol-police-to-pay-damages-for-arrest-of-activists-using-covid-powers?CMP=Share_iOSApp_Other.

⁵⁶⁰ <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>.

⁵⁶¹ Submission by International Network of Civil Liberties Organisations (INCLO). <https://www.hrlc.org.au/news/2020/6/18/australians-right-to-protest>; <https://www.bbc.com/news/world-australia-52947115>; <https://www.theguardian.com/australia-news/2020/jul/23/nsw-police-chief-undermined-legal-challenge-to-blm-protest-planned-for-sydney-organisers-say>; <https://monitor.civicus.org/updates/2020/10/12/secret-whistle-blower-hearings-overreach-security-laws-and-arrest-protesters-australia/>.

⁵⁶² <https://covid19.inclo.net/2020/06/23/australia-isolated-anti-lockdown-protests-and-blm-solidarity-marches/>.

⁵⁶³ <https://www.theguardian.com/world/2020/jun/01/thousands-in-new-zealand-protest-against-george-floyd-killing>; <https://twitter.com/winstonpeters/status/1267347397597818882>; <https://time.com/5845981/new-zealand-george-floyd/>.

⁵⁶⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27060&LangID=E>. See also <https://www.icnl.org/post/analysis/u-s-current-trend-new-wave-of-legislation-targeting-black-lives-matter-protesters>.

⁵⁶⁵ <https://www.aclufl.org/en/press-releases/aclu-florida-condemns-gov-desantis-proposed-anti-protest-bill>.

⁵⁶⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27060&LangID=E>.

⁵⁶⁷ <https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-plans-to-fast-track-prosecutions-for-protesters/>.

⁵⁶⁸ Submission by International Network of Civil Liberties Organisations (INCLO); <https://www.independent.co.uk/news/uk/crime/courts-fast-tracking-prosecutions-black-lives-matter-a9562031.html>.

⁵⁶⁹ <https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-plans-to-fast-track-prosecutions-for-protesters/>.

7. Disparaging comments by some Government officials regarding some protestors

214. According to media reports, several Government figures made disparaging comments about some anti-racism protesters. For example, in the United States, in 2020 some Government officials sought to label anti-racism protests as “terrorist” apparently in an effort to delegitimise the protests and those that participate in them,⁵⁷⁰ and protesters were referred to as “sick and deranged anarchists and agitators”.⁵⁷¹ A senior Government official warned that alleged violence carried out by Antifa and other movements “is domestic terrorism and will be treated accordingly”.⁵⁷² Most disturbingly, on 26 June 2020, an Executive Order⁵⁷³ relating to “protection of American monuments” was issued by then President which stated that “Anarchists and left-wing extremists have sought to advance a fringe ideology that paints the United States of America as fundamentally unjust and have sought to impose that ideology on Americans through violence and mob intimidation”. This Executive Order was revoked on 14 May 2021.⁵⁷⁴

215. Media reported that some Government officials condemned protestors in Brazil demonstrating in June 2020 including in support of Black Lives Matter, labelling them as “thugs” and “terrorists” and indicating that the demonstrations could draw a violent response from law enforcement - warning Brazilians to stay at home, “so that the security forces -- not just state but also federal - can do their duty in case these thugs go beyond the limits of the law”.⁵⁷⁵ In Australia, some officials were quoted as saying that protestors demonstrating during the pandemic were “incredibly selfish” and “incredibly self-indulgent”.⁵⁷⁶ When protestors defaced or damaged statues of Captain James Cook – in light of his links to the colonisation of Australia - the calls to remove statues of European colonists were branded an “obscure left-wing cause”.⁵⁷⁷ In the United Kingdom, an official reportedly described some anti-racism activists as “thugs and criminals”.⁵⁷⁸ Statues of Robert Milligan (a slave owner) in London⁵⁷⁹ and Edward Coulston in Bristol, were pulled down.⁵⁸⁰ While the local police did not intervene, Government officials described the latter as a “criminal act”, describing the incident as “utterly disgraceful” and asserting that “it’s not for mobs to tear down statues”.⁵⁸¹

⁵⁷⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25335>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25980&LangID=E>; <https://www.accessnow.org/standing-with-black-lives-matter/>; https://www.oas.org/en/iachr/media_center/PReleases/2020/129.asp; https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html, para H.

⁵⁷¹ <https://www.nytimes.com/2020/07/29/us/protests-portland-federal-withdrawal.html>.

⁵⁷² <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

⁵⁷³ <https://www.federalregister.gov/documents/2020/07/02/2020-14509/protecting-american-monuments-memorials-and-statues-and-combating-recent-criminal-violence>.

⁵⁷⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/14/executive-order-on-the-revocation-of-certain-presidential-actions-and-technical-amendment/>

⁵⁷⁵ https://edition.cnn.com/us/live-news/george-floyd-protests-06-07-20/h_9490072083f48e264cade5f0660ea18a.

⁵⁷⁶ <https://www.usnews.com/news/world/articles/2020-06-07/australian-minister-calls-anti-racism-protests-self-indulgent>. See also submission by International Network of Civil Liberties Organisations (INCLO).

⁵⁷⁷ <https://www.voanews.com/east-asia-pacific/thousands-march-australia-anti-racism-rallies>.

⁵⁷⁸ [https://www.theguardian.com/politics/live/2020/jun/08/uk-coronavirus-johnson-says-anti-racist-protests-were-subverted-by-thuggery-live-news-covid19-updates?page=with:block-5ede5e208f083999a26dc62d](https://www.theguardian.com/politics/live/2020/jun/08/uk-coronavirus-johnson-says-anti-racist-protests-were-subverted-by-thuggery-live-news-covid19-updates?page=with:block-5ede5e208f083999a26dc62d#block-5ede5e208f083999a26dc62d).

⁵⁷⁹ <https://www.independent.co.uk/news/uk/home-news/robert-milligan-statue-docklands-removed-slave-trader-west-india-quay-a9557686.html>.

⁵⁸⁰ Subsequently, the mayor of Bristol set up a commission to consider the future of the statue, which is currently in a museum (<https://www.bristol.gov.uk/policies-plans-strategies/we-are-bristol-history-commission>; <https://www.theguardian.com/uk-news/2021/may/28/statue-of-slave-trader-edward-colston-to-go-on-display-in-bristol-museum>).

⁵⁸¹ <https://www.bbc.com/news/uk-england-bristol-52962356>.

8. Specific concerns with regard to journalists, observers and medics

216. The treatment of journalists, observers and medics during protests was raised as a concern notably in submissions to OHCHR. In the United States, the number of attacks on the press covering anti-racism protests was reportedly unprecedented,⁵⁸² with reports of journalists being physically attacked, intimidated and/or detained or arrested, despite their press credentials being clearly visible.⁵⁸³ For example, between 26 May 2020 and 25 May 2021, a non-governmental organization documented 415 journalists assaulted, 153 journalists arrested, 105 journalists with equipment damaged and 21 with equipment searched or seized during anti-racism protests.⁵⁸⁴ The continued militarization of police coupled with “inflammatory rhetoric” against the media was highlighted as making the reporting environment “inherently more dangerous” for journalists.⁵⁸⁵ A number of journalists still face charges, while Andrea Sahouri, who was pepper-sprayed, arrested, and detained while reporting on a protest on 31 May 2020, was found not guilty in March 2021.⁵⁸⁶ Some journalists reported that they felt targeted because of their race, and that press credentials or other markings often offered no protection, while some felt they were arrested because they identified as media.⁵⁸⁷ This context led to various litigation efforts to protect journalists and observers.⁵⁸⁸

217. In the United States, use of force was reportedly deployed against some ‘legal observers’,⁵⁸⁹ while others were arrested and detained despite their visible neon green hats and other identifying markers.⁵⁹⁰ In the United Kingdom, use of force was also reportedly deployed against some such observers, “particularly against those who are black or another

⁵⁸² Submissions by Committee to Protect Journalists (referring to <https://cpj.org/reports/2020/06/covering-police-violence-protests-in-the-us/>), University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25946&LangID=E>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gld=25589>; https://www.oas.org/en/iachr/media_center/PReleases/2020/129.asp; <https://www.osce.org/representative-on-freedom-of-media/453459>; https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html.

⁵⁸³ Submission by University of Southern California Gould School of Law International Human Rights Clinic/Access Now with the support of Foley Hoag LLP. See also submissions by Committee to Protect Journalists, Witness. <https://pressfreedomtracker.us/george-floyd-protests/>; <https://www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf> p.41 onwards; <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>; <https://rsf.org/en/news/us-fueled-years-trumps-demonization-media-unprecedented-violence-breaks-out-against-journalists>; <https://www.article19.org/resources/us-authorities-must-protect-protesters-and-journalists-end-use-of-excessive-force/>; <https://www.press.org/newsroom/journalism-groups-call-police-nationwide-halt-use-violence-arrests-against-journalists>; <https://monitor.civicus.org/updates/2020/07/13/militarised-police-continue-use-excessive-force-against-protesters/>.

⁵⁸⁴ <https://pressfreedomtracker.us/1-year-blm/>.

⁵⁸⁵ Submission by Committee to Protect Journalists. See also <https://cpj.org/2020/09/when-police-patrol-protests-in-military-gear-journalists-face-a-hostile-reporting-environment/>.

⁵⁸⁶ <https://www.amnestyusa.org/press-releases/amnesty-international-usa-responds-to-andrea-sahouri-being-found-not-guilty/>.

⁵⁸⁷ Submission by Committee to Protect Journalists; https://freedom.press/static/pdf.js/web/viewer.html?file=/documents/60/Journalists_Under_Arrest_in_2020_KLKbBVW.pdf p.5.

⁵⁸⁸ Submissions by American Civil Liberties Union (ACLU), American Civil Liberties Union Oregon. <https://www.aclu.org/news/criminal-law-reform/a-constitutional-crisis-in-portland/>; <https://www.aclu.org/news/free-speech/police-are-attacking-journalists-at-protests-were-suing/>.

⁵⁸⁹ This term is used primarily in this context in the United States and the United Kingdom, where legal observers monitor protests and report back on what they have seen, and play an important role in ensuring that the rights of protestors are respected.

⁵⁹⁰ <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>; <https://www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf>, pp. 49-55.

racialised minority".⁵⁹¹ Medics also reportedly experienced indiscriminate attacks during anti-racism protests by law enforcement officials in the United States,⁵⁹² with attacks at times allegedly specifically targeting them.⁵⁹³

C. Broader context of harassment, surveillance, intimidation and violence against human rights defenders

218. Clampdowns on anti-racism protests in some countries should be seen within a broader context in which individuals who stand up against racism face harassment, intimidation and sometimes violence. In Europe and the United States, some civil society activists of African descent reported harassment, surveillance and threats to their safety, including online.⁵⁹⁴ UN human rights mechanisms highlighted concerns in Portugal, with regard to "racist harassment, intimidation and death threats" made against one of the founding members of the European Network Against Racism (ENAR) and leader of SOS Racismo; as well as allegations in the United States concerning the arrest of, and criminal proceedings against, eight human rights defenders demonstrating peacefully against unjustified disconnections of water services in Detroit, Michigan which mostly affected African-Americans.⁵⁹⁵ In Europe, there were also reports of stigmatization and marginalization, highlighting that human rights defenders of African descent are often discredited and disregarded.⁵⁹⁶ Other concerns highlighted include the lack of transparency in allocation of funding to organizations working to combat racism against people of African descent,⁵⁹⁷ and limited access to relevant funding from their Governments more generally.⁵⁹⁸ As noted above, some families of victims of African descent also reported harassment and threats.

219. Another concern has been raised with regard to restrictions to the work of organizations that protect the rights of migrants, particularly African migrants, and deliver life-saving assistance.⁵⁹⁹ According to the European Union Agency for Fundamental Rights, since 2016, some 50 criminal or administrative proceedings have been initiated by Germany, Greece, Italy, Malta, the Netherlands and Spain against humanitarian actors involved in search and rescue in the Mediterranean.⁶⁰⁰

220. Information was further received concerning the alleged killings of 70 human rights defenders of African descent in Latin America (57 men, 12 women and 1 transgender woman), the majority over the past ten years. In Honduras, for example, human rights defenders, including Garifuna women leaders, have allegedly faced arbitrary killings and enforced disappearances, as well as criminal charges linked to their defence of the ancestral

⁵⁹¹ <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>, p. 4.

⁵⁹² Submission by Andy and Gwen Stern Community Lawyering Clinic/American Civil Liberties Union Pennsylvania. <https://phr.org/our-work/resources/a-targeted-attack-on-the-bronx/>; <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>.

⁵⁹³ <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25589>; <https://phr.org/our-work/resources/now-they-just-seem-to-want-to-hurt-us-portland-oregon/>; <https://www.aclu.org/press-releases/aclu-sues-feds-portland-police-attacking-medics-protests>.

⁵⁹⁴ <https://rm.coe.int/combatting-racism-and-racial-discrimination-against-people-of-african-d/1680a1c0b6>, pp. 8-9; Submission by University of Minnesota Human Rights Program. See also A/HRC/44/24, para. 15.

⁵⁹⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25639>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=18791>.

⁵⁹⁶ <https://rm.coe.int/combatting-racism-and-racial-discrimination-against-people-of-african-d/1680a1c0b6>, p. 9.

⁵⁹⁷ <https://rm.coe.int/combatting-racism-and-racial-discrimination-against-people-of-african-d/1680a1c0b6>, p. 9.

⁵⁹⁸ <https://rm.coe.int/ecri-annual-report-2019/16809ca3e1>, para. 12.

⁵⁹⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E>.

⁶⁰⁰ <https://fra.europa.eu/en/publication/2020/december-2020-update-ngo-ships-involved-search-and-rescue-mediterranean-and-legal>.

collective lands and cultural rights of the Garifuna people.⁶⁰¹ In 2020, the Inter-American Commission of Human Rights granted urgent provisional measures in favour of four Garifuna leaders who were reportedly disappeared by heavily armed men dressed in police gear during a strict curfew in the context of COVID-19, and who are still missing.⁶⁰² In Colombia, 14 human rights defenders of African descent were reportedly killed in 2020 and others reported receiving death and other threats.⁶⁰³ In 2018, Marielle Franco, a politician and human rights defender of African descent campaigning against police violence and for the rights of people of African descent, was killed in Brazil.⁶⁰⁴ In 2019, concern was expressed that human rights defenders in Mexico, including leaders and defenders of African descent, continued to be subjected to violence, threats and attempts on their lives, and criminal prosecution.⁶⁰⁵

221. In the United States, media reports described individuals arrested at anti-racism protests being turned over to federal immigration authorities.⁶⁰⁶ In some instances, federal immigration officers were also reportedly directly involved in the law enforcement response to the protests, a role for which they were not trained.⁶⁰⁷ In addition, officials reportedly used racial profiling, drones and other surveillance tactics.⁶⁰⁸ Concerns were raised that this undermined the rights of migrants to freedom of expression, peaceful assembly and association, and solidarity between migrants' rights and anti-racism movements.⁶⁰⁹

D. Agenda Towards Transformative Change for Racial Justice and Equality - The Way Forward - LISTEN UP: People of African descent must be heard

222. People of African descent and their organizations have played a central role in the progress achieved worldwide in the fight against racism. Their struggle and resilience in the

⁶⁰¹ Submission by Cristosal; https://www.corteidh.or.cr/docs/medidas/garifuna_se_03.pdf; www.corteidh.or.cr/docs/casos/articulos/seriec_305_esp.pdf; A/HRC/40/60/Add.2; A/HRC/35/23/Add.1.

⁶⁰² https://www.corteidh.or.cr/docs/medidas/garifuna_se_03.pdf.

⁶⁰³ www.indepaz.org.co/wp-content/uploads/2021/04/Informe-Li%CC%81deres.pdf. See also A/HRC/46/76, para. 21; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=15518>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23169>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24100>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24886>; CERD/C/COL/CO/17-19, para. 28; <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/151.asp>.

⁶⁰⁴ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22901; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22837; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24284>; <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23709>.

⁶⁰⁵ CERD/C/MEX/CO/18-21, para. 30.

⁶⁰⁶ <https://www.businessinsider.com/phoenix-protest-black-lives-matter-immigrants-ice-daca-2020-10?r=US&IR=T>; <https://www.pbs.org/newshour/nation/for-immigrants-marching-with-black-lives-matter-has-risks>.

⁶⁰⁷ Submission by Human Rights First; <https://www.americanimmigrationcouncil.org/news/lawsuit-demands-information-cbps-role-racial-justice-protests>; https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/lawsuit_demands_records_on_us_immigration_enforcements_role_in_protests_complaint.pdf; <https://www.merkley.senate.gov/imo/media/doc/ICE%20and%20CBP%20at%20Demonstrations%20Letter.pdf>.

⁶⁰⁸ https://immigrationimpact.com/2020/06/25/black-lives-matter-ice/#.YCEd_uhKjIV; <https://waremitu.com/things-that-matter/ice-is-arresting-and-deporting-undocumented-marchers-who-attend-black-lives-matter-protests/>.

⁶⁰⁹ <https://edition.cnn.com/2020/06/14/us/black-lives-matter-immigrants-visa-status-protest-trnd/index.html>; <https://www.nilc.org/issues/immigration-enforcement/immigrant-participation-in-protests-rights/>; <https://thehill.com/latino/500552-dreamers-grapple-with-immigration-risks-in-joining-floyd-protests>.

face of systemic racism and their persistent advocacy work have resulted in their demands being placed on the national agenda of their countries and regions (see for example promising developments highlighted in Sections II, III and V).

223. Additionally, civil society has been pivotal in pressing for systemic reforms through the justice system. In June 2020, for example, as a result of lawsuits filed by NGOs following reported increased deaths of people of African descent due to an upsurge of operations by the military police in the favelas of Rio de Janeiro, Brazil, the Federal Supreme Court granted a preliminary injunction prohibiting such operations during the COVID-19 emergency.⁶¹⁰ In January 2021, six French NGOs initiated a class action calling for structural reform to end the widespread practice of ethnic profiling, systemic discrimination and discriminatory police practices.⁶¹¹

224. The voices of those seeking racial justice and equality for people of African descent must be heard and acted on.⁶¹² Denouncing racism through the exercise of the rights of freedom of expression, peaceful assembly and participation by human rights defenders, community activists and individuals more broadly is crucial for advancing ideas, reframing dialogue and pressing transformative policy goals in the public domain in order to effect structural change. These rights constitute the foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.⁶¹³

225. It is also crucial that States take prompt action to address the root causes of these unprecedented peaceful anti-racism protests. Indeed, the grievances at the heart of the protests need to be heard and addressed to acknowledge and learn from histories of racism and violence. A profound examination of these histories, in each national context, should be undertaken and prompt action must be taken to truly tackle correlated inequalities. Law enforcement officials should be held fully accountable for human rights violations committed within the context of anti-racism protests, in line with international human rights norms and standards (see Section III), and that States also re-evaluate the policy direction of their responses to peaceful protests in this light.

1. Ensure effective participation and/or representation of people of African descent, in particular women and youth, at every level in State institutions, including law enforcement and the criminal justice system, and policy-making processes

226. To move forward, communities must be able to participate in shaping decisions that affect them and be able to fully and freely air their grievances. Meaningful participation can enable the advancement of all human rights. It plays a crucial role in the promotion of democracy, the rule of law, social inclusion and economic development and is essential for reducing inequalities and social conflict. As a means for empowering individuals and groups, it is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination, including against Africans and people of African descent. Meaningful participation requires a long-term commitment by public authorities, together with their genuine political will, an emphasis on agency and a shift in mindset regarding the way of doing things. Tools are available to assist States and other stakeholders in meeting these goals.⁶¹⁴

227. The right to participate in public affairs requires an environment where all human rights, in particular the rights to equality and non-discrimination, to freedoms of opinion, expression, peaceful assembly and association, are fully respected and enjoyed by all individuals, including Africans and people of African descent. It presupposes that the life,

⁶¹⁰ Submission by Conectas Direitos Humanos; https://www.oas.org/en/iachr/media_center/PReleases/2020/187.asp <https://www.conectas.org/en/news/understand-what-led-the-supreme-court-to-suspend-police-operations-in-rio-de-janeiros-favelas>.

⁶¹¹ Submission by Human Rights Watch; <https://www.amnesty.org/en/latest/news/2021/01/france-systemic-police-discrimination-requires-reforms/>.

⁶¹² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>.

⁶¹³ CCPR/C/GC/37, para.1.

⁶¹⁴ https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

physical integrity, liberty, security and privacy of all members of society, including journalists and human rights defenders, are protected at all times. Moreover, it requires a broader environment that values and takes into account the work and contribution of all members of society, supports and encourages their engagement and ensures that they are empowered and equipped with the knowledge and capacity necessary to claim and exercise their rights. States should therefore calibrate law and policy necessary to create and maintain a safe and enabling environment that is conducive to the exercise of the right to participate in public affairs by all persons on equal footing, including people of African descent. Adequate representation of the diversity within societies, including of people of African descent, should be reflected in State institutions and governmental bodies.

228. Specific formal and permanent mechanisms for the participation of groups that have been historically excluded, or whose views and needs have been inadequately addressed in decision-making processes, should be developed with the participation of those groups.⁶¹⁵ These structures should be developed to ensure that participation in decision-making processes is widely understood, accepted and routinely realized by both public authorities and rights holders. Further, they should be accessible to and inclusive of individuals and groups that are marginalized or discriminated against, including those from disadvantaged socioeconomic backgrounds, in particular people of African descent. Specific measures should be undertaken to ensure the participation of women and girls of African descent, who face specific and unique challenges in representation and participation.

2. Recognise past and current contributions by individuals and organisations that stand up to racism, and encourage and support solidarity across equality movements

229. Continued funding, public recognition and support for this critical work is essential. As families of victims told OHCHR, “together we are stronger”. The resilience of people of African descent to challenges described in this conference room paper is self-evident, notably in the Black Lives Matter movement, associated groups and other organizations that fight against racism. These groups offer a collective platform centering new integrated approaches and intersectional narratives to responding to racism, creating wider spaces to highlight the impact of systemic racism on the health of society as a whole. The movement against racism has provided grassroots leadership models, anchored in listening to communities, and agency and empowerment to claim human rights. Going forward, supporting solidarity among equality movements across States and regions is key to amplifying these voices and forging activism, particularly among youth. A relationship of trust with the communities served must be cultivated, as the relationship between law enforcement and protestors can have wider repercussions. Measures should equally be taken to build mutual respect, understanding and trust between public authorities and civil society actors.

230. Standing up against racism requires sustained global, regional, national, and local efforts. The UN has a crucial role in providing guidance on the human rights approach to policing assemblies and in monitoring and reporting on violations. As the Secretary-General has emphasized in his Call to Action, public participation and protection of free expression and assembly (“civic space”) are priorities for the Organization.⁶¹⁶ Hearing and centering the voices of those left behind, including people of African descent, is also crucial for achieving the Sustainable Development Goals. All stakeholders, and especially States as holders of specific legal obligations, should affirm that the work of actors fighting for racial justice and equality is legitimate, and prioritize protecting spaces for them to operate freely and safely.

231. Within the UN itself, the Secretary-General has also made stamping out racism and racial discrimination a priority for the Organization, and established a Task Force on Addressing Racism and Promoting Dignity for All in the United Nations⁶¹⁷ to develop a

⁶¹⁵ https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf, paras 56-57.

⁶¹⁶ https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf.

⁶¹⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26921&LangID=E>; <https://www.un.org/sg/en/content/secretary-generals-remarks-the-general-assembly-observance-of-the-international-day-for-the-elimination-of-racial-discrimination-delivered>.

strategic action plan and formulate recommendations in this regard. Along with other parts of the UN, OHCHR is playing a key role in realising these objectives for all UN staff, and is developing its own complementary strategies to ensure diversity and inclusion.

3. Ensure full respect for the rights to freedom of expression and peaceful assembly, and recognize the right to peaceful protest as a way of effecting change

232. Peaceful assemblies should be fostered and facilitated. They provide an opportunity for people to claim their rights, express opinion and air grievances, and conversely for Governments to hear people and better understand their lived concerns. In the long run, a society where peaceful assemblies are fostered and encouraged is a society that will better resolve grievances and avoid conflict.

233. The approach of States should be to seek to facilitate peaceful assemblies⁶¹⁸ and to respect and ensure the exercise of the rights of organizers and participants, as well as public and private property, from harm. This includes refraining from adopting legislation and rules that unduly restrict the right to freedom of peaceful assembly, including with regard to specific subject matter, such as anti-racism protests.

234. States should not sanction participants or organizers without legitimate cause.⁶¹⁹ Any arrest, criminal or administrative sanctions imposed on organizers of or participants in a peaceful assembly must be proportionate, non-discriminatory in nature, and not based on ambiguous, vague or over-broadly defined offences.⁶²⁰ States should release defenders detained for human rights work or other expressive conduct protected by international human rights law.

235. It is critical that States honour their obligations to protect those standing up against racism, including human rights defenders, from being abused, harassed, intimidated, and/or subjected on that basis to increased surveillance, within and outside the context of assemblies.⁶²¹ High-level officials should reflect these commitments in their statements to counter narratives that seek to discredit and undermine those who stand up against racism.

4. Protect the safety and rights of organisers, participants, observers and journalists in protests with particular attention to members of groups that are or have been subjected to racial discrimination

236. The rights of organizers, participants, journalists and observers should be respected and protected without discrimination.⁶²² Any limitations – including based on “public health” - should be only those necessary in a democratic society, non-discriminatory, prescribed by law, proportional to the purpose and necessary to achieve a legitimate aim.⁶²³ Further, limitations should in principle be content neutral, and not based on the identity of the participants or their relationship with the authorities. States are encouraged to consider how protests may be held consistent with public health needs, for example by incorporating appropriate physical distancing or mask requirements, rather than seeking to meet health goals by precluding assemblies entirely.⁶²⁴ Restrictions on public gatherings should be constantly assessed to determine whether they continue to be necessary and proportionate and States should undertake a review of existing laws and practices to ensure that they meet these standards.

237. While States must respect and ensure counter-demonstrations as assemblies in their own right, they must also prevent “undue disruption” of the assemblies to which counter-demonstrators are opposed.⁶²⁵ Further, States must protect bystanders, monitors, observers,

⁶¹⁸ CCPR/C/GC/37, para. 74; A/HRC/31/66, para. 41.

⁶¹⁹ CCPR/C/GC/37, para. 23.

⁶²⁰ CCPR/C/GC/37; A/HRC/31/66; A/HRC/40/52.

⁶²¹ A/HRC/32/20.

⁶²² A/HRC/31/66, para. 50.

⁶²³ CCPR/C/21/Rev.1/Add.11; CCPR/C/GC/37; CCPR/C/GC/34;

<https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>.

⁶²⁴ <https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>, p. 3.

⁶²⁵ CCPR/C/GC/37, para. 26.

medical personnel and journalists from all forms of discriminatory abuse and attacks including by non-State actors, such as interference or violence by other members of the public, counter-demonstrators and private security providers.⁶²⁶ This entails, for example, ensuring that law enforcement officials and local authorities are appropriately trained in how to address counter-demonstrations in line with international human rights law.

238. Particular efforts should be made to respect and protect the rights of members of groups that are or have been subjected to discrimination.⁶²⁷ When the rights of protesters are not respected, it adversely affects society as a whole, undercutting peaceful assemblies as a tool of political and social participation that allows people to advance ideas, persuade others and establish the extent of the support that they enjoy.⁶²⁸

239. The role of journalists and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. Participants, journalists and monitors have the right to record law enforcement officials.⁶²⁹ Journalists must not face reprisals or other harassment for performing their professional functions, and their media equipment should not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.⁶³⁰ States, journalists and other relevant stakeholders should discuss ways in which to protect and promote the rights and role of journalists and other monitors.

240. Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give prior warning if it becomes absolutely necessary to resort to the use of force, unless doing either would be manifestly ineffective.⁶³¹ States should ensure that they are trained in alternative methods to the use of force, including rights-based approaches to policing and negotiated crowd management.⁶³²

241. The fact that some protesters in a crowd are violent does not transform the demonstration as a whole into a non-peaceful assembly.⁶³³ In this scenario, all necessary precaution shall be taken to avoid or at least minimize the risk of use of force.⁶³⁴ Where that is not possible in the circumstances, law enforcement officials must ensure that the type and level of force applied is proportionate to the specific threat posed.⁶³⁵ The use of unnecessary or disproportionate force or other unlawful conduct by State officials during an assembly may breach articles 6, 7 and 9 of the International Covenant on Civil and Political Rights⁶³⁶ and the Convention Against Torture, among other provisions of international law. Any use of force must also comply with the fundamental principles of legality and non-discrimination.⁶³⁷ In general, law enforcement agencies should refrain from using kettling as a crowd control technique. Only in situations in which the purpose of the containment is to

⁶²⁶ CCPR/C/GC/37, paras. 22, 24-25, 94; A/HRC/31/66, paras. 41, 68-72.

⁶²⁷ CCPR/C/GC/34; A/HRC/31/66, para. 66.

⁶²⁸ CCPR/C/GC/37, para. 48.

⁶²⁹ CCPR/C/GC/37, para. 94.

⁶³⁰ CCPR/C/GC/37, para. 30;

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

⁶³¹ CCPR/C/GC/37, para. 78.

⁶³² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 4 and 20

⁶³³ A/HRC/26/36, para. 75; A/HRC/31/66, para. 61.

⁶³⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13.

⁶³⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 5(a);

<https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>, p. 18;

A/HRC/26/36, para. 66; Commentary (b) on Article 3, Code of Conduct for Law Enforcement Officials.

⁶³⁶ CCPR/C/GC/37, para. 98; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

⁶³⁷ CCPR/C/GC/36, paras. 13-14.

contain ongoing violence in order to allow the rest of an assembly to proceed peacefully, should this type of containment be considered, together with strict mitigatory measures.⁶³⁸

242. Military equipment should not be used for policing peaceful assemblies, and as a general rule, the military should not police assemblies.⁶³⁹ If in exceptional circumstances and on a temporary basis the military is deployed in support of civilian authorities, they are considered law enforcement officials and subject to international norms and standards on the use of force by law enforcement officials.⁶⁴⁰

243. While the collection of relevant information and data by authorities may under certain circumstances assist the facilitation of assemblies, it must not result in suppressing rights or creating a chilling effect. Any information gathering must strictly conform to applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies.⁶⁴¹ States should also prohibit the use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising the right of peaceful assembly and association, and ensure that targeted surveillance measures are authorized only when there is reasonable suspicion that a particular individual has committed or is committing a criminal offence, or is engaged in acts amounting to a specific threat to national security.⁶⁴²

5. Investigate effectively, impartially and in a timely manner, any allegation of human rights violations or abuses against individuals and organisations that stand up against racism

244. States have an obligation to investigate effectively, impartially and in a timely manner, allegations of human rights violations or abuses against individuals, human rights defenders and organisations that stand up against racism. This includes any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials in the context of assemblies, and through independent and transparent oversight of all bodies involved with peaceful assemblies. Individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims.⁶⁴³

245. To enhance accountability, uniformed law enforcement officials should always display an easily recognizable form of identification during assemblies, and any deployment of plain-clothed officers must be strictly necessary⁶⁴⁴ in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.⁶⁴⁵

246. States have an obligation to protect individuals against reprisals for promoting and striving to protect and realize human rights, and they must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights.⁶⁴⁶

⁶³⁸ CCPR/C/GC/37, para. 84; <https://www.ohchr.org/Documents/Publications/training5Add2en.pdf>.

⁶³⁹ CCPR/C/GC/37, para. 80;

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>; A/HRC/31/66.

⁶⁴⁰ CCPR/C/GC/37, para. 80;

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> article 1 commentary;

https://achpr.org/public/Document/file/Any/achpr_guidelines_on_policing_assemblies_eng_fre_pora.pdf, para.3.2;

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>;

<https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>; A/HRC/31/66, para. 66.

⁶⁴¹ A/HRC/31/66, para. 73.

⁶⁴² A/HRC/44/24, para. 53(f).

⁶⁴³ CCPR/C/GC/37, paras. 29 and 90; <https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

⁶⁴⁴ CCPR/C/GC/37, paras. 100 and 103; CAT/C/DEU/CO/6, para. 38.

⁶⁴⁵ CCPR/C/GC/37, para. 92.

⁶⁴⁶ CCPR/C/GC/36, para. 53.

V. Confronting legacies, including through accountability and redress

A. Introduction

247. It is estimated that around 30 million people were violently uprooted from Africa for enslavement.⁶⁴⁷ Ever since, people of African descent in different countries have called for accountability and redress for harms suffered due to enslavement, the transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies and systems – including for intergenerational trauma.⁶⁴⁸

248. The Durban Conference in 2001, linking between the past, the present and the future, recognised “that slavery and the slave trade are a crime against humanity and should always have been so, especially the transatlantic slave trade and are among the major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance”;⁶⁴⁹ that “colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent [...] were victims of colonialism and continue to be victims of its consequences”.⁶⁵⁰

249. The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁶⁵¹ identify three forms of remedies: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation. Reparations can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

250. This section provides an illustrative overview of local, national and regional initiatives that have begun to undertake truth-seeking and initial forms of reparations with regard to harms suffered due to enslavement, the transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies and systems. The section concludes with an assessment of what needs to be done to achieve accountability and redress through reparatory justice for people of African descent, who continue to suffer from these legacies.

B. Illustrative local, national and regional initiatives for accountability and redress

251. The initiatives described below illustrate a diversity of processes that have been undertaken in recent years in some States. Yet, and despite these welcome initiatives, no country with a legacy of enslavement, the transatlantic trade in enslaved Africans, or colonialism has fully reckoned with the past, or comprehensively accounted for the impacts on the lives of people of African descent today. In this context, the three themes of the International Decade for People of African Descent (2015-2024), emphasizing recognition, justice and development are of particular relevance.

252. Most initiatives include elements of truth-seeking and reparations in various forms, as defined in international human rights law.⁶⁵² Some initiatives were introduced by States, local authorities or regional organisations; others by other entities such as universities, churches and business enterprises. Some began with truth-seeking exercises, leading to reparations, while others have resulted in formal apologies. For illustration purposes, this section clusters

⁶⁴⁷ <https://en.unesco.org/news/slave-trade-and-slavery-founding-tragedy-our-modern-world>. See also <https://unesdoc.unesco.org/ark:/48223/pf0000265488> p. 5 for an overview of the slave trade routes.

⁶⁴⁸ See e.g. Ana Lucia Araujo, *Reparations for Slavery and the Slave Trade: A Transnational and Comparative History*, New York: Bloomsbury Academic, 2017, pp. 42-43.

⁶⁴⁹ Durban Declaration and Programme of Action, para. 13.

⁶⁵⁰ Durban Declaration and Programme of Action, para. 14.

⁶⁵¹ E/CN.4/2005/L.48.

⁶⁵² E/CN.4/2005/L.48.

specific initiatives around truth-seeking; acknowledgement and apologies; memorialization; and other reparations measures more broadly.

1 Truth-seeking initiatives

253. Verification of facts and full and public disclosure of the truth is a form of satisfaction that can repair a measure of harm. In 2009, for example, the Parliament of Mauritius created a Truth and Justice Commission “to make an assessment of the consequences of slavery and indentured labour during the colonial period up to the present”.⁶⁵³ The commission made recommendations towards memorialization; truth-telling; empowerment of Mauritians of African and Malagasy origin, and economic and social justice, particularly related to land issues and the environment.⁶⁵⁴

254. At the federal level in the United States, Bill HR 40 (referring to the unfulfilled promise of 40 acres and a mule for freed former enslaved people) has been introduced in various forms every year since 1989. It seeks to establish a Commission to Study and Develop Reparation Proposals for African Americans to “examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies”.⁶⁵⁵ It further seeks to identify “(1) the role of the federal and state governments in supporting the institution of slavery, (2) forms of discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African Americans and society”.⁶⁵⁶ In April 2021, for the first time, HR 40 moved to the full House of Representatives for consideration.⁶⁵⁷ In 2020, a separate resolution was tabled before the House of Representatives for the establishment of a “Truth, Racial Healing, and Transformation Commission” to “properly acknowledge, memorialize, and be a catalyst for progress, including toward permanently eliminating persistent racial inequities”.⁶⁵⁸ Most recent truth-seeking initiatives include the Maryland Lynching Truth and Reconciliation Commission - “the first of its kind in the United States” - which is authorized to research 42 known racially motivated lynchings and hold public meetings and regional hearings “where a lynching of an African American by a white mob has been documented”.⁶⁵⁹ Other initiatives include mappings undertaken by universities of their historical relationship to the institution of slavery, such as by Columbia⁶⁶⁰ and Harvard,⁶⁶¹ leading at times to specific reparations (see below).

255. In Colombia, as part of its truth-telling process, the Truth and Reconciliation Commission held meetings in 2020 on the impact of the armed conflict on people of African descent, providing some acknowledgement by individuals of the harms that they had caused.⁶⁶² While the dialogues focused on the internal armed conflict, they also examine

⁶⁵³ <https://attorneygeneral.govmu.org/Documents/Laws%20of%20Mauritius/A-Z%20Acts/T/Tr/TRUTHANDJUSTICECOMMISSIONACTNo28of2008.pdf#search=truth%20and%20justice%20commission>.

⁶⁵⁴ <https://www.usip.org/publications/2012/02/truth-commission-mauritius>.

⁶⁵⁵ <https://www.congress.gov/bill/117th-congress/house-bill/40?q=%7B%22search%22%3A%5B%22reparations%22%5D%7D&s=3&r=2>. See also S.40, its Senate companion bill.

⁶⁵⁶ Ibid.

⁶⁵⁷ <https://www.congress.gov/bill/117th-congress/house-bill/40/all-actions?q=%7B%22search%22%3A%5B%22reparations%22%5D%7D&s=3&r=2>. See also S.40, its Senate companion bill.

⁶⁵⁸ <https://www.congress.gov/bill/117th-congress/house-concurrent-resolution/197?q=%7B%22search%22%3A%5B%22racial+healing%22%5D%7D&s=6&r=2>

⁶⁵⁹ https://msa.maryland.gov/lynching-truth-reconciliation/pdf/ch_41_sb0307t.pdf; <https://msa.maryland.gov/lynching-truth-reconciliation/pdf/interim-report.pdf>, p. 7. Other initiatives, such as the Howard County Lynching Truth and Reconciliation (<http://www.hocoltr.org/about/>) will contribute to this work. See also <https://www.mapcustomizer.com/map/US%20Truth%20and%20Reconciliation%20Initiatives%202020>.

⁶⁶⁰ <https://columbiaandslavery.columbia.edu/content/about-project>.

⁶⁶¹ <https://www.legacyofslavery.radcliffe.harvard.edu/>.

⁶⁶² <https://especiales.comisiondelaverdad.co/la-verdad-del-pueblo-negro/>.

enslavement, the slave trade and colonialism, which generated long-term impacts that intensified with the internal armed conflict, widening the gaps of inequality and exclusion that already existed. These dialogues also sought to highlight the resilience and contributions made by people of African descent to peace-building, and to offer recommendations for non-recurrence.

256. In Belgium, a Parliamentary Commission was established in 2020 to bring to light Belgium's colonial past in the Democratic Republic of the Congo, Burundi and Rwanda and to draw lessons for the future. It is to examine the role and structural impact of the State, its authorities and various institutions (including the Church and the Monarchy) on those countries; and inquire into the economic impact of colonialism including those who benefited from it. It will also formulate recommendations on how to address the past and make proposals for reconciliation - with a view to memorialization and access to archives.⁶⁶³ Further, after statues of King Leopold II (who ruled over the Congo basin region from 1885 to 1908)⁶⁶⁴ were defaced during anti-racism protests,⁶⁶⁵ the director of the Royal Museum for Central Africa indicated intention to shift the views of the museum on colonialism and turn them into a "contemporary reassessment of a flawed past".⁶⁶⁶

257. During an annual commemoration of the end of enslavement in July 2020, the Netherlands announced plans for a nationwide dialogue to confront the country's historic links to slavery, to focus on "how the slavery history still influences our daily lives",⁶⁶⁷ which it held in May 2021 across the Netherlands and Caribbean parts of the Kingdom.⁶⁶⁸ Further, it launched online national archival records about Dutch involvement in the history of slavery.⁶⁶⁹ The Amsterdam and Rotterdam municipalities are also considering issuing formal apologies.⁶⁷⁰ In 2021, the Rijksmuseum in Amsterdam launched an exhibition on the transatlantic slave trade in enslaved Africans in Suriname, Brazil and the Caribbean, and the role of the Dutch West India Company, as well as enslavement by Dutch colonial powers in South Africa and Asia where the Dutch East India Company operated.⁶⁷¹

2. Apologies, regrets and acknowledgement

258. Another form of 'satisfaction' as defined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, is public apology, including acknowledgement of the facts and acceptance of responsibility. In recent years, apologies and acknowledgement of past violations have been issued at the State and

⁶⁶³ <https://www.dekamer.be/FLWB/PDF/55/1462/55K1462001.pdf>. See also <https://www.hrw.org/news/2020/06/30/belgium-moving-regrets-reparations>.

⁶⁶⁴ See generally A/HRC/42/59/Add.1, paras. 7-12.

⁶⁶⁵ <https://www.nytimes.com/2020/06/09/world/europe/king-leopold-statue-antwerp.html#:~:text=The%20statue%20of%20Leopold%20II%2C%20a%20Belgian%20king.racism%20in%20Belgium%20and%20has%20now%20been%20removed;> <https://www.theguardian.com/world/2020/jun/12/belgium-forced-to-reckon-with-leopolds-legacy-and-its-colonial-past>.

⁶⁶⁶ <https://www.independent.co.uk/news/world/europe/belgium-king-leopold-statue-who-colonial-africa-congo-black-lives-matter-a9560291.html>.

⁶⁶⁷ <https://apnews.com/article/europe-netherlands-race-and-ethnicity-health-coronavirus-pandemic-76fa36f730acd05d83ebf40ffefe31df>. See also <https://www.rijksoverheid.nl/actueel/nieuws/2020/07/01/start-dialooggroep-slavernijverleden>.

⁶⁶⁸ <https://www.rijksoverheid.nl/actueel/nieuws/2021/05/07/dialoog-slavernijverleden>.

⁶⁶⁹ <https://www.nationaalarchief.nl/en/slavery>. See also A/HRC/30/56/Add.1, para. 67.

⁶⁷⁰ <https://www.nytimes.com/2020/02/10/world/europe/amsterdam-consider-apology-for-slavery-in-former-colony.html#:~:text=Amsterdam%20Considers%20Apology%20for%20Slavery%20in%20Former%20Colony,including%20the%20Royal%20Palace%2C%20center%2C%20on%20Dam%20Square;> <https://apnews.com/article/76fa36f730acd05d83ebf40ffefe31df>; <https://nos.nl/artikel/2364305-rotterdam-overweegt-aanbieden-excuses-voor-slavernijverleden>.

⁶⁷¹ <https://www.rijksmuseum.nl/en/whats-on/exhibitions/slavery>; <https://www.theguardian.com/world/2021/may/18/rijksmuseum-slavery-exhibition-confronts-cruelty-of-dutch-trade>.

local levels in various countries. In 2020, the European Parliament declared ‘slavery’ a crime against humanity⁶⁷² - as did France in 2001.⁶⁷³

259. In 2005, the United States Senate apologised to victims of lynching and the descendants of those victims for its failure to enact anti-lynching legislation.⁶⁷⁴ In 2008 and 2009, the House of Representatives and the Senate acknowledged enslavement and segregation and apologised to people of African descent “for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow laws”. The resolution also declared, however, that “nothing in this resolution authorizes, supports, or serves as a settlement of any claim against the United States.”⁶⁷⁵ In 2008, the House of Representatives passed another resolution in which it expressed “its commitment to rectify the lingering consequences of the misdeeds committed against African Americans under slavery and Jim Crow and to stop the occurrence of human rights violations in the future.”⁶⁷⁶

260. A number of states and cities in the United States have also expressed regret for their role in enslavement and the slave trade,⁶⁷⁷ as well as acknowledging the history of systemic racism.⁶⁷⁸ Some of these initiatives more recently have led to calls for reparations commissions. For example, in July 2020, the Asheville city council, North Carolina, passed a resolution, which seeks to establish a Community Reparations Commission empowered to make recommendations “that will make significant progress toward repairing the damage caused by public and private systemic racism”.⁶⁷⁹ Similar initiatives followed in other North Carolina municipalities.⁶⁸⁰ Universities have also delivered apologies or acknowledgements of links with slavery, such as Georgetown University and the Society of Jesus’ Maryland Province in 2017.⁶⁸¹

261. In 2013, the United Kingdom Government stated that it “sincerely regrets” acts of torture committed against Mau Mau in Kenya during colonial rule.⁶⁸² It agreed to pay £19.9m in “full and final settlement” of a high court action brought by five of the victims, and to build a memorial in Nairobi to the victims of torture and abuse during the colonial era.⁶⁸³ In late June 2020, the King of Belgium issued a statement expressing his regret for the country’s colonization of the Congo.⁶⁸⁴ In 2019, the European Parliament encouraged EU institutions and Member States “to officially acknowledge and mark the histories of people of African

⁶⁷² https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html.

⁶⁷³ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000405369/>.

⁶⁷⁴ <https://www.congress.gov/bill/109th-congress/senate-resolution/39>.

⁶⁷⁵ <https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/26>.

⁶⁷⁶ <https://www.congress.gov/bill/110th-congress/house-resolution/194/text>.

⁶⁷⁷ See e.g. <https://lis.virginia.gov/cgi-bin/legp604.exe?071+ful+HJ728ER>;

<https://mgaleg.maryland.gov/2007RS/bills/hj/hj0004t.pdf>;

<https://mgaleg.maryland.gov/mgaweb/Search/Legislation?target=/2007rs/billfile/sj0006.htm>;

https://www.ictj.org/sites/default/files/ICTJ_Briefing_TJ_US_Race.pdf, p. 8.

⁶⁷⁸ See e.g. <https://charlottenc.gov/CityClerk/Minutes/August%202010,%202020.pdf>, p. 611;

<https://www.msn.com/en-us/news/us/charlottes-mayor-apologized-for-the-citys-role-in-systemic-racism-what-comes-next/ar-BB181ILJ>;

https://www.cityofspartanburg.org/cms_assets/City_Council_files/9.28.2020.Agenda%20Packet.pdf, p. 15.

⁶⁷⁹ <https://www.ashevillenc.gov/news/asheville-reparations-resolution-is-designed-to-help-black-community-access-to-the-opportunity-to-build->; <https://www.ashevillenc.gov/news/asheville-reparations-speaker-series-continues-june-10-and-17-community-urged-to-participate/>;

<https://www.charlotteobserver.com/news/nation-world/national/article244150107.html>;

<https://www.ashevillenc.gov/news/asheville-city-council-makes-initial-2-1-million-in-reparations-funding-appropriation/wealth/>

<https://drive.google.com/file/d/1WKialVISWzu72mhasy9SslDbVGMSj5U/view>.

⁶⁸⁰ <https://apnews.com/article/race-and-ethnicity-discrimination-north-carolina-slavery-raleigh-4e975e1c68704aae5bf3121050983c1c>.

⁶⁸¹ <https://www.georgetown.edu/news/georgetown-apologizes-for-1838-sale-of-272-slaves-dedicates-buildings/>.

⁶⁸² <https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims>.

⁶⁸³ Ibid., <https://www.leighday.co.uk/latest-updates/cases-and-testimonials/cases/the-mau-mau-claims/>.

⁶⁸⁴ https://www.rtbf.be/info/belgique/detail_le-roi-philippe-exprime-au-congo-ses-profonds-regrets-pour-les-blessures-du-passe?id=10532781; <https://www.bbc.com/news/world-europe-53232105>

descent in Europe, including of past and ongoing injustices and crimes against humanity, such as slavery and the transatlantic slave trade, or those committed under European colonialism”, as well as “the vast achievements and positive contributions of people of African descent”.⁶⁸⁵ In this regard, the European Parliament marked the Inaugural Commemoration of the European Day for the Abolition of the Slave Trade in 2020.⁶⁸⁶

262. In January 2021, a report on the memory of colonization and the Algerian war commissioned by the President of France recommended notably the establishment of a Commission for Truth and Memory to begin common initiatives between France and Algeria on memorialization, as well steps to present France’s colonial pasts in school textbooks. The President’s office confirmed the establishment of the Commission, while indicating, however, that there would be “no repentance nor apologies” for France’s occupation of Algeria.⁶⁸⁷

263. Since 2015, the Governments of Germany and Namibia have engaged in negotiations with regard to their colonial past.⁶⁸⁸ In May 2021, Germany announced that agreement had been reached, referring to the events between 1904 and 1908 as genocide, and to its “historical and moral responsibility”. Germany announced that it would ask Namibia and the descendants of the victims for forgiveness. While noting that “[l]egal claims for compensation cannot be derived from it”, Germany recognized “guilt” and offered “an apology” as “an important step to come to terms with the crimes of the past and to shape the future together”. Further, “as a gesture of recognition of the immeasurable suffering inflicted on the victims”, the agreement included 1.1 billion euro for reconstruction and development, with a key role for the communities affected by the genocide to shape and implement this programme.⁶⁸⁹

264. In the United Kingdom, the private sector has begun to issue apologies and undertake commitments towards reparations, including in light of research on tracing the impact of slave ownership on the formation of modern Britain, undertaken by University College London.⁶⁹⁰ For example, in June 2020, the Lloyd’s of London insurance market apologized for and acknowledged its “shameful” role in the transatlantic trade in enslaved Africans and pledged to fund opportunities for “black and ethnic minority groups”.⁶⁹¹ Greene King stated that the firm “made a commitment in June [2020], as part of wider discussions about British companies with historic links to slavery, to accelerate its diversity ambitions and make a substantial investment to support the BAME [Black, Asian and Minority Ethnic] community”, after it was revealed that one of the founders of the British brewery owned slaves and received compensation from the British Government following abolition.⁶⁹² The Bank of England also stated that, as an institution, it “was never itself directly involved in the slave trade, but is aware of some inexcusable connections involving former Governors and Directors and apologises for them.” The Bank indicated that it had commenced a thorough review of its collection of images of former Governors and Directors to ensure none

⁶⁸⁵ https://www.europarl.europa.eu/doceo/document/B-8-2019-0212_EN.html.

⁶⁸⁶ <https://www.ardi-ep.eu/inaugural-european-parliament-commemoration-of-the-european-day-for-the-abolition-of-the-slave-trade/>.

⁶⁸⁷ <https://www.elysee.fr/admin/upload/default/0001/09/0586b6b0ef1c2fc2540589c6d56a1ae63a65d97c.pdf>; <https://www.elysee.fr/emmanuel-macron/2021/01/20/remise-du-rapport-sur-la-memoire-de-la-colonisation-et-de-la-guerre-dalgerie>; <https://www.nytimes.com/2021/01/20/world/europe/france-algeria-war-report.html>.

⁶⁸⁸ <https://www.auswaertiges-amt.de/en/newsroom/news/151104-namibia/276108>; <https://www.dw.com/en/namibia-germany-reparations/a-54535589>.

⁶⁸⁹ <https://www.auswaertiges-amt.de/en/newsroom/news/-/2463598>.

⁶⁹⁰ <https://www.ucl.ac.uk/lbs/>; <https://www.theguardian.com/education/2020/sep/22/jamaican-director-of-ucls-slavery-research-centre-british-racism-is-clear-and-sharp>.

⁶⁹¹ <https://www.lloyds.com/news-and-insights/news/our-full-statement-on-the-lloyds-markets-role-in-the-slave-trade>; <https://www.theguardian.com/world/2020/jun/18/lloyds-of-london-and-green-king-to-make-slave-trade-reparations>.

⁶⁹² See e.g. <https://www.greeneking.co.uk/newsroom/latest-news/new-partnership-announced-between-green-king-and-the-international-slavery-museum/>; <https://www.greeneking.co.uk/newsroom/latest-news/green-king-pledges-new-five-year-commitment-with-the-prince-s-trust-to-create-1000-job-opportunities-for-young-people-and-drive-bame-diversity-across-the-business/>.

with any such involvement in the slave trade remained on display anywhere in the Bank, and that it was “committed to improving diversity”.⁶⁹³

265. Similar acknowledgements by the private sector have taken place in the United States.⁶⁹⁴ For example, Wachovia Corporation apologized after a study found it had purchased two banks that owned enslaved persons and accepted them as payment.⁶⁹⁵ In 2005, JP Morgan agreed to provide USD 5 million over five years to pay full tuition for African-American students to attend college in Louisiana after it was discovered that two of its predecessor banks had allowed enslaved persons to be used as collateral for loans and had owned 1,250 of them in Louisiana as a result of defaults.⁶⁹⁶ The Hartford Courant, a newspaper, printed a front-page apology in 2000 recognizing the profits it had made from running ads for the sale of enslaved Africans and the capture of those who had escaped.⁶⁹⁷

3. Memorialization

266. Commemorations and tributes to the victims keep their memory alive. Memorialization projects in the United States include the recent federal adoption of 19 June (“Juneteenth”) as a new public holiday,⁶⁹⁸ as well as initiatives such as the Legacy Museum and the National Memorial for Peace and Justice in Montgomery, Alabama. This is “the nation’s first memorial dedicated to the legacy of enslaved Black people, people terrorized by lynching, African Americans humiliated by racial segregation and Jim Crow, and people of color burdened with contemporary presumptions of guilt and police violence.”⁶⁹⁹

267. The 1921 Tulsa massacre continues to receive attention. Reports highlight that a “white mob descended on Greenwood, a successful black economic hub in Tulsa, Oklahoma then-known as “Black Wall Street,” and “destroyed 35 square blocks of Greenwood, burning down more than 1,200 black-owned houses, scores of businesses, a school, a hospital, a public library, and a dozen black churches”, and killing as many as 300 people.⁷⁰⁰ Related initiatives include the Tulsa Race Massacre Centennial Commission working with schools to develop a curriculum on the Tulsa Massacre and sponsoring the installation of a Black Wall Street Mural near the Greenwood Cultural Center (see further below). In September 2020, the Tulsa Community Remembrance Coalition unveiled a historical marker in front of the historic Vernon AME Church,⁷⁰¹ and in 2021 the President of the United States became the first president to visit Tulsa on the anniversary of what he referred to as “a massacre”. His statement highlighted that “we must address what remains the stain on the soul of America. What happened in Greenwood was an act of hate and domestic terrorism with a through line that exists today still”.⁷⁰²

⁶⁹³ <https://www.bankofengland.co.uk/news/2020/june/statement-in-relation-to-the-banks-historical-links-to-the-slave-trade>; <https://www.independent.co.uk/news/uk/home-news/lloyds-london-greene-king-slavery-links-apology-black-lives-matter-a9572421.html>; <https://fortune.com/2020/06/18/george-floyd-protests-uk-slavery-reparations/>.

⁶⁹⁴ <https://www.amnesty.org/en/latest/news/2020/06/i-cant-breathe-refrain-reignited-movement/>.

⁶⁹⁵ <https://www.washingtonpost.com/archive/politics/2005/06/20/seeking-more-than-apologies-for-slavery/cff95386-8fbf-417b-aae0-bdb85f1f1a97/>.

⁶⁹⁶ <https://www.theguardian.com/world/2005/jan/22/usa.davidteather>; <https://fortune.com/2020/06/18/george-floyd-protests-uk-slavery-reparations/>. See also <https://www.nytimes.com/2016/12/18/us/insurance-policies-on-slaves-new-york-lifes-complicated-past.html>.

⁶⁹⁷ <https://www.courant.com/news/connecticut/hc-xpm-2000-07-04-0007040049-story.html>.

⁶⁹⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/18/a-proclamation-on-juneteenth-day-of-observance-2021/>; <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117S475EIS.pdf>; <https://twitter.com/UNHumanRights/status/1406259518753935367>.

⁶⁹⁹ <https://museumandmemorial.eji.org/>.

⁷⁰⁰ https://www.hrw.org/sites/default/files/media_2020/11/tulsa-reparations0520_web.pdf, p. 1. See also <https://www.okhistory.org/research/forms/freport.pdf>.

⁷⁰¹ <https://eji.org/news/tulsa-installs-marker-commemorating-1921-racial-terror-massacre/>.

⁷⁰² <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/02/remarks-by-president-biden-commemorating-the-100th-anniversary-of-the-tulsa-race-massacre/>.

268. There have been calls for removal of tainted statues and monuments, including in some African countries.⁷⁰³ Cities in the United States and across Europe have begun dialogues on removing statues and/or renaming public spaces dedicated to individuals with links to enslavement, the transatlantic trade in enslaved Africans, colonialism and/or successive racially discriminatory policies and systems.⁷⁰⁴ In the United Kingdom, the mayor of London announced a Commission for Diversity in the Public Realm to review the landmarks that make up London's public realm, further the discussion into what legacies should be celebrated, and make recommendations aimed at establishing best practice and standards.⁷⁰⁵ He also advocated for a national slavery memorial to be erected in London.⁷⁰⁶ Additionally, London's Lambeth City Council launched an audit of the borough's public landmarks, statues, street names and works of art to look for links with slavery.⁷⁰⁷ In Switzerland, the mayor of Zurich said the city would examine how slavery can be made visible in public spaces in an appropriate manner.⁷⁰⁸

269. Other local level initiatives include the initiative announced by Trinity College Dublin, Ireland, to "examine, interrogate and reflect on its complex colonial legacies."⁷⁰⁹ In the United Kingdom, the University of Bristol is exploring the city's involvement in the transatlantic trade in enslaved Africans.⁷¹⁰ Further, the City of Edinburgh Council's Edinburgh Slavery and Colonialism Legacy Review Group will review features such as statues and street names in Edinburgh that commemorate those with close links to slavery;⁷¹¹ and the Commission established by the Governing Body of Oriel College Oxford considered issues raised by the memorials and legacy of Cecil Rhodes.⁷¹²

270. In 2020, Argentina launched a National Commission for the Historical Recognition of the Afro-Argentine Community, seeking "the historical reparation of the people of African descent in Argentina and [to] recover sites that have special meaning".⁷¹³ In 2019, France established a foundation to create a museum and memorials for its role in the trade in enslaved Africans.⁷¹⁴ In 2006, the city government of Bordeaux erected a plaque to commemorate the history of enslavement and, in 2019, a statue of an enslaved woman bought by two Bordeaux brothers, was erected on the riverbank.⁷¹⁵ In 2020, the city installed plaques on residential streets named after prominent local men to clarify their involvement in the transatlantic trade in enslaved Africans – for example, a plaque on Gramont Street, explained that Jacques-Barthélémy Gramont, a former mayor of Bordeaux, financed a number of slave-trading

⁷⁰³ <https://www.theguardian.com/global-development/2020/jul/01/decolonise-and-rename-streets-of-uganda-and-sudan-activists-urge>; <https://civicus.org/documents/SOCS2021Part1.pdf#page=2>.

⁷⁰⁴ <https://www.amnesty.org/en/latest/news/2020/06/i-cant-breathe-refrain-reignited-movement/>.

⁷⁰⁵ <https://www.london.gov.uk/press-releases/mayoral/mayor-unveils-commission-to-review-diversity>.

⁷⁰⁶ <https://www.independent.co.uk/news/uk/home-news/sadiq-khan-statues-london-diversity-edward-colston-black-lives-matter-a9555941.html>.

⁷⁰⁷ <https://metro.co.uk/2020/11/19/chicago-offers-reparations-to-african-americans-can-the-uk-get-it-13451195/?ito=cbshare>.

⁷⁰⁸ <https://www.theguardian.com/world/2020/nov/19/banking-slavery-switzerland-examines-its-colonial-conscience>. See also <https://www.media.uzh.ch/en/Press-Releases/2020/Slavery.html>.

⁷⁰⁹ https://www.tcd.ie/news_events/articles/trinity-college-begins-two-year-investigation-into-its-colonial-past/.

⁷¹⁰ <https://www.bristol.ac.uk/news/2019/october/professor-of-the-history-of-slavery-.html>; <https://www.theguardian.com/education/2019/oct/30/olivette-ottele-uk-first-black-female-history-professor-to-research-bristol-slavery-links>.

⁷¹¹ <https://democracy.edinburgh.gov.uk/documents/s24854/6.7%20-%20Response%20to%20Motion%20-%20Black%20Lives%20Matter%20v2.pdf>; <https://www.edinburgh.gov.uk/news/article/13127/edinburgh-slavery-and-colonialism-legacy-review-group-an-update>.

⁷¹² <https://static1.squarespace.com/static/5ef1dc3c44302c215912e2d3/t/60a62e7f8c2e2e1f8d7756b0/1621503615191/20.05.21+Commission+Press+Statement+FINAL.pdf>; <https://www.orient.ox.ac.uk/about-college/news-events/news/decisions-made-college-following-completion-independent-commission>.

⁷¹³ Submission by Argentina.

⁷¹⁴ <https://memoire-esclavage.org/>. See also <https://unesdoc.unesco.org/ark:/48223/pf0000265488>, pp. 14-15; <https://www.independent.co.uk/travel/europe/amsterdam-black-lives-matter-netherlands-heritage-tour-slavery-dutch-east-india-company-a9595986.html>.

⁷¹⁵ <https://www.bordeaux.fr/p137697/modeste-testas>.

expeditions.⁷¹⁶ In Belgium, in 2020, regional education authorities promised history course reforms to depict more accurately the true character of colonialism.⁷¹⁷

271. UNESCO's Slave Route Project seeks to establish memorial sites and routes at the national, regional and international levels, by recreating the paths of slavery and providing a link between the countries and the regions of the world that share this history.⁷¹⁸ UNESCO has also established a Slave Trade Archives Project, "with the aim of improving access to, and safeguarding of, original documents related to the transatlantic slave trade and slavery throughout the world".⁷¹⁹ It has also produced an international overview of memorial initiatives, showing the diversity of projects focused on the history and memory of enslavement around the world. These include the House of Slaves memorial on the Island of Gorée in Senegal and the Mémorial ACTe museum in Guadeloupe, France.⁷²⁰

4. Other initiatives

272. Other reparations initiatives, spanning various elements including calls for compensation, have been launched in a number of States and at the regional level. In 2013, Caribbean Heads of Governments established the Caribbean Community (CARICOM) Reparations Commission with a mandate to prepare the case for reparatory justice for the region's indigenous and African descendant communities. The Commission developed a ten-point reparation plan outlining "the path to reconciliation, truth, and justice for victims and their descendants",⁷²¹ that has been supported notably by regional associations such as CELAC and the Association of Caribbean States.⁷²² The plan includes calls for: (1) full formal apology; (2) repatriation of the descendants of those enslaved to their homeland; (3) indigenous peoples (native Caribbean population) development program, (4) establishment of cultural institutions in the Caribbean; (5) addressing the public health crisis (highlighting that "the chronic health condition of Caribbean blacks now constitutes the greatest financial risk to sustainability in the region"⁷²³); (6) illiteracy eradication; (7) establishment of an African knowledge programme; (8) psychological rehabilitation through a reparatory justice approach to truth and educational exposure, to begin the process of healing and repair; (9) technology transfers; and (10) debt cancellation. The Reparations Commission has encouraged States to establish national reparations commissions, and urged "former slave-owning nations of Europe – principally Britain, France, Spain, Portugal, the Netherlands, Norway, Sweden and Denmark – to engage Caribbean governments in reparatory dialogue to address the living legacies of these crimes".⁷²⁴

273. In 2019, the European Parliament adopted a resolution, recalling that some Member States have taken steps toward meaningful and effective redress for past injustices and crimes against humanity against people of African descent. It called for the EU institutions and the remainder of the Member States to follow this example, which may include some form of reparations, such as offering public apologies and the restitution of stolen artefacts to their countries of origin.⁷²⁵

⁷¹⁶ <https://www.nytimes.com/2020/06/24/world/europe/france-george-floyd-racism-slave-trade.html>; https://www.lemonde.fr/afrigue/article/2019/12/03/a-bordeaux-une-sculpture-pour-rappeler-le-passe-negrier-de-la-ville_6021449_3212.html; <https://www.memoire-esclavage-bordeaux.fr/parcours-memoriel/rue-gramont>.

⁷¹⁷ <https://www.independent.co.uk/news/world/europe/belgium-king-leopold-statue-who-colonial-africa-congo-black-lives-matter-a9560291.html>.

⁷¹⁸ <https://unesdoc.unesco.org/ark:/48223/pf0000265488>.

⁷¹⁹ <https://en.unesco.org/news/slave-trade-archives>.

⁷²⁰ <https://unesdoc.unesco.org/ark:/48223/pf0000265488>, p. 53.

⁷²¹ <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/>; <https://caricom.org/reparations-for-native-genocide-and-slavery/>.

⁷²² http://celac.cubaminrex.cu/sites/default/files/ficheros/esclavitud_final.pdf; <https://acs-aec.org/index.php?q=press-center/releases/2019/sg-sooner-75-years-after-capitalism-and-slavery-work-still-important>; <https://caribbeanempowerment.wordpress.com/2021/03/12/reparations-issues/>.

⁷²³ <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/>.

⁷²⁴ <https://www.theguardian.com/world/2014/feb/24/uk-resists-reparation-slavery>.

⁷²⁵ https://www.europarl.europa.eu/doceo/document/B-8-2019-0212_EN.html, para. 8.

274. In 1992, the Organization of African Unity established a Group of Eminent Persons “for appraising the issue of reparations in relation to the damage done to Africa and its diaspora by enslavement, colonization and neo-colonialism”.⁷²⁶ A Conference on Reparations, held in Nigeria in 1993 and sponsored by the Group of Eminent Persons and the Commission for Reparations of the Organization of African Unity, issued the Abuja Proclamation, which called for a national reparations committee to be set up throughout Africa and the Diaspora. These demands, which were further refined in subsequent meetings, consisted of capital transfer and debt cancellation, the return of “stolen goods, artefacts, and other traditional treasures” as well as increased African institutional representation in the UN.⁷²⁷

275. At the national level, in November 2019, the Evanston city council in the State of Illinois passed a funded reparations programme to acknowledge and address the intergenerational disparities of racial slavery, developed with Evanston’s Equity and Empowerment Commission. The USD 10 million fund will be resourced by a new municipal tax.⁷²⁸

276. Restitution claims related to property rights related to the 1923 Rosewood massacre in Florida remain one of few successful initiatives related to reparations in the United States.⁷²⁹ After years of lobbying for reparations by survivors and descendants of those killed, linked to a failure by the authorities at the time to stop the violence, the Florida House Speaker initiated a historical study of the massacre, which strengthened the restitution claims, followed by a Bill seeking damages in 1994, and a hearing. The initiative provided USD 150,000 to the four survivors who testified and allowed others to petition. It also funded loss of property and tuition scholarships. Since 1994, 297 students have received Rosewood scholarships.⁷³⁰

277. In October 2020, the State of California established a taskforce to develop recommendations for how California could provide reparations to “African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States”, and look into what form those reparations might take and who would receive them.⁷³¹ Also, in October 2020, a Durham City Council (North Carolina) resolution called for a federal program that would give reparations “sufficient to eliminate the racial wealth gap” to the descendants of people who were enslaved.⁷³² The mayor of Providence,

⁷²⁶ CM/Res.1339 (LIV); https://au.int/sites/default/files/decisions/9621-council_en_27_may_28_june_1991_council_ministers_fifty_fourth_ordinary_session.pdf; CM/Res.1373 (LV); https://au.int/sites/default/files/decisions/9618-council_en_24_28_february_1992_council_ministers_fifty_fifth_ordinary_session.pdf; CM/Res.1391 (LVI); https://au.int/sites/default/files/decisions/9616-council_en_22_28_june_1992_council_ministers_fifty_sixth_ordinary_session.pdf.

⁷²⁷ Ana Lucia Araujo, Reparations for Slavery and the Slave Trade: A Transnational and Comparative History, New York: Bloomsbury Academic, 2017, pp. 155-156; Elazar Barkan, The Guilt of Nations, Norton: New York, 2000, pp. 301-302; <https://journals.openedition.org/etudesafricaines/4543>; Lord Giffard, “Formulating the Case for Reparations” in Colonialism, Slavery, Reparations and Trade Remedyng the ‘Past’?, edited By Fernne Brennan, John Packer, Routledge 2013 (p. 84 onwards); <https://www.inosaar.llc.ed.ac.uk/en/timeline/first-pan-african-conference-reparations>.

⁷²⁸ <https://www.theguardian.com/news/2020/oct/06/long-fight-for-slavery-reparations-evanston-chicago>; <https://www.theguardian.com/us-news/2020/jan/19/reparations-program-evanston-illinois-african-americans-slavery>.

⁷²⁹ Submission by Rev. Dr. Robert Turner (Historic Vernon African Methodist Episcopal Church); Elazar Barkan, The Guilt of Nations, Norton: New York, 2000 pp. 296-299; <https://time.com/5887247/reparations-america-rosewood-massacre/>; <https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations>.

⁷³⁰ <https://www.washingtonpost.com/graphics/2020/national/rosewood-reparations/>.

⁷³¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3121&search_keywords=reparations; <https://www.theguardian.com/us-news/2020/sep/30/california-slavery-reparations-law>; <https://apnews.com/article/legislature-slavery-california-gavin-newsom-state-legislature-85b905e79384e5945ccab4e2930116d9>.

⁷³² <https://cityordinances.durhamnc.gov/OnBaseAgendaOnline/Documents/ViewDocument/Final-Published%20Attachment%20-%2014231%20-%20RESOLUTION%20-%20201%20-%20RESOLUTION%20IN%20SUPPORT%20.pdf?meetingId=417&documentType=Agenda&itemI>

Rhode Island also backed reparations in July 2020 in “committing the City to a process of truth, reconciliation and municipal reparations for Black, Indigenous People, and People of Color in Providence”.⁷³³

278. Attempts to seek reparations through litigation have mostly been dismissed due to statutes of limitation and as well for lack of firm legal grounds.⁷³⁴ For example, in 1995, a lawsuit was dismissed by the US District Court of the Northern District of California as the court was “unable to identify any legally cognizable basis upon which plaintiff’s claims may proceed against the United States”. The lawsuit had sought “for damages due to the enslavement of African Americans and subsequent discrimination against them, for an acknowledgement of discrimination, and for an apology”. The Court concluded that the legislature, rather than the judiciary, was the appropriate forum for such grievances.⁷³⁵

279. Other litigation strategies have been sought, including against individuals, municipal and state governments as well as US corporations that profited from enslavement.⁷³⁶ The path towards reparations for the aforementioned 1921 Tulsa massacre saw the state government creating the Tulsa Race Riot Commission in 1997, whose final report recommended that Oklahoma and Tulsa provide reparations. The Oklahoma state legislature adopted an Act, which while adopting many of the findings of the Tulsa Race Riot Commission and recognizing the state’s “moral responsibilities”, “did not admit legal culpability on the part of the state or its citizens”.⁷³⁷ In 2003, nearly two years after the final report, more than 200 survivors and descendants of victims sued the city of Tulsa, the Tulsa Police Department, and the state of Oklahoma. The Court subsequently dismissed the litigation due to the statute of limitations.⁷³⁸ In September 2020, survivors and their descendants filed a lawsuit against the city of Tulsa,⁷³⁹ arguing that local and state officials had created a “public nuisance” by allowing the massacre to happen – or according to some accounts that they participated in the violence;⁷⁴⁰ and sustained that “nuisance” over the course of generations through disinvestment from the Greenwood business district.⁷⁴¹ They further called for the city

d=18303&publishId=77278&isSection=false; <https://www.foxnews.com/us/durham-city-council-approves-reparations-resolution-enslaved-people>; <https://durhamnc.gov/DocumentCenter/View/32853/FINAL-REPORT-Durham-Racial-Equity-Task-Force-72220>.

⁷³³ <https://www.providenceri.gov/mayor-jorge-elorza-announces-truth-telling-reconciliation-municipal-reparations-process-2/> <https://www.providenceri.gov/mayor-jorge-elorza-joins-community-members-launching-truth-telling-phase/>.

⁷³⁴ See, e.g. *Lewis v. United States*, No. C 94-01380 CW, 1994 U.S. Dist LEXIS 7868 (N.D. Cal 7 June 1994) *US*; *Lloyd v. United States*, No. C 94-01192 CW, 1994 U.S. Dist LEXIS 7869 (N.D. Cal. 7 June 1994); *US Jackson v. United States*, No. C 94-01494 CW 1994 U.S. Dist. LEXIS 7872 (N.D. Cal. 7 June 1994).

⁷³⁵ *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995).

⁷³⁶ *Farmer-Paellmann v. FleetBoston Fin. Corp.* (E.D.N.Y. 2002) (No. 02-CV-1862). The class action lawsuit was filed against FleetBoston Financial Corporation; Aetna; and CSX railroad company and was dismissed for lack of standing (and alternative grounds, including justiciability and statute of limitations). See also J. Angelo Corlett in *Redress for Historical Injustices in the United States*, Editor(s): Michael T. Martin, Marilyn Yaqinto, Duke University Press, 2007; <https://www.washingtonpost.com/archive/politics/2000/03/09/in-aetnas-past-slave-owner-policies/faa58ed3-51ba-44e6-b59f-c36ae181e093/>; <https://www.washingtonpost.com/archive/politics/2005/06/20/seeking-more-than-apologies-for-slavery/cff95386-8fbf-417b-aae0-bdb85f1f1a97/>; <https://www.theguardian.com/world/2002/sep/05/usa.duncancampbell>; Elazar Barkan, *The Guilt of Nations*, Norton: New York, 2000, p. 291; Dinah Shelton in *Colonialism, Slavery, Reparations and Trade Remedyng the 'Past'*, edited By Fernne Brennan, John Packer, Routledge 2013.

⁷³⁷ “1921 Tulsa Race Riot Reconciliation Act of 2001,” 74 Okl. St. § 8000.1. See https://www.hrw.org/sites/default/files/media_2020/11/tulsa-reparations0520_web.pdf, p. 39.

⁷³⁸ *Alexander v. Oklahoma*, 382 F.3d 1206 (10th Cir. 2004). See also *Redress for Historical Injustices in the United States*, Editor(s): Michael T. Martin, Marilyn Yaqinto, Duke University Press, 2007, p. 13.

⁷³⁹ <https://www.hrw.org/news/2021/05/21/us-failed-justice-100-years-after-tulsa-race-massacre>.

⁷⁴⁰ <https://www.okhistory.org/research/forms/freport.pdf>, p. 74.

⁷⁴¹ https://www.hrw.org/sites/default/files/media_2020/11/tulsa-reparations0520_web.pdf.

council to restore the neighbourhood to the financial position it would have been in if not for the massacre.⁷⁴²

280. In his submission to OHCHR, Rev. Dr. Turner⁷⁴³ highlighted that community members in Tulsa “were robbed of intergenerational wealth” and that measures to address the massacre have been “grossly inadequate”, with survivors having repeatedly advocated for public recognition, restitution and reparation. He called for reparations that “should include efforts at restoring the Black community in Tulsa to its economic status, returning expropriated land in Greenwood to predominantly Black ownership, ending discrimination in the criminal justice system, granting social services to Black Tulsans including improved schools”. He also advocated for individual reparations to those who can trace their ancestry to survivors and victims of the massacre; and collective reparations for the expropriation of property.

281. In the United Kingdom, in 2009, five veterans of the Mau Mau movement (see above) filed suit requesting compensation for assault, battery and negligence, in relation to the violations suffered while held in detention camps by the United Kingdom Government in the 1950s. In 2012, the High Court of Justice granted three of the five cases the right to proceed, permitting the case to move forward. In 2013, these cases were settled and, while the United Kingdom denied “liability on behalf of the Government and British taxpayers today for the actions of the colonial administration in respect of the claims”, the Government agreed to pay 19.9 million GBP in damages to 5,228 survivors.⁷⁴⁴

282. In France, in December 2020, a law was adopted approving the “restitution” of a number of cultural items to Benin and Senegal,⁷⁴⁵ pursuant to a report commissioned by the President on the restitution of African cultural heritage.⁷⁴⁶ Germany and Belgium were also engaged in talks on similar returns of artefacts.⁷⁴⁷

283. Religious groups are also acknowledging roles in enslavement and discussing possible reparations. In the Episcopal Church, several dioceses launched reparations programs, and others are preparing them. These include scholarships for students attending seminaries or historically Black colleges and assistance for historically Black churches.⁷⁴⁸ In 2018, the Catholic sisters of the Society of the Sacred Heart created a reparations fund to finance scholarships for African-Americans in Grand Coteau, Louisiana, where nuns once owned about 150 enslaved persons.⁷⁴⁹ The United Church of Canada and the United Church of Christ have also taken steps to provide reparations for their role in “in racial subordination rooted in historic injustice”.⁷⁵⁰ The Church of England apologized to the descendants of enslaved persons in relation to a church organization that had owned a plantation in Barbados and was compensated when the enslaved persons were emancipated.⁷⁵¹ It also issued guidance in 2021 on “the memorialisation in tangible form of people or events connected with racism and

⁷⁴² <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/03/909151983/oklahoma-lawsuit-seeks-reparations-in-connection-to-1921-tulsa-massacre?t=1607619507261> (copy of the petition).

⁷⁴³ Submission by Rev. Dr. Robert Turner (Historic Vernon African Methodist Episcopal Church).

⁷⁴⁴ <https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims>.

⁷⁴⁵ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042738023>.

⁷⁴⁶ <https://www.elysee.fr/emmanuel-macron/2018/11/23/remise-du-rapport-savoy-sarr-sur-la-restitution-du-patrimoine-africain>; <http://restitutionreport2018.com/>.

⁷⁴⁷ <https://www.auswaertiges-amt.de/en/newsroom/news/-/2462510>;
https://www.brusselstimes.com/news/belgium-all-news/174486/africa-museum-will-return-stolen-artworks-to-congo/?fbclid=IwAR0tcc_4o6p4zlajONC1_KV4j4P-bISFPZA7jM1g6CuwNyljHoKtdyrZCpk;
<https://twitter.com/ThomasDermine/status/1406195836443320321>.

⁷⁴⁸ https://www.washingtonpost.com/religion/maryland-episcopal-church-commits-1-million-to-reparations-seed-fund/2020/09/18/bcabd4e6-f8fb-11ea-a275-1a2c2d36e1f_story.html;
<https://www.washingtontimes.com/news/2021/jan/29/church-established-by-slave-owners-creates-reparat/>.

⁷⁴⁹ <https://www.nytimes.com/2019/10/21/nyregion/princeton-seminary-slavery-reparations.html>.

⁷⁵⁰ A/74/321, para. 62.

⁷⁵¹ <https://www.theguardian.com/uk/2006/feb/09/religion.world>.

slavery” aiming to establish a methodology with which other forms of contested heritage in cathedrals and church buildings can be addressed.⁷⁵²

284. Other reparations initiatives have arisen within universities following studies on the links they had with enslavement and the transatlantic trade in enslaved Africans and the profits or benefits that the university derived from profited from them. In the United States,⁷⁵³ for example, in 2017 Georgetown University began giving descendants of the 272 enslaved persons sold for the university’s benefit preferential treatment in admissions,⁷⁵⁴ and students also voted for taxing themselves to pay these descendants.⁷⁵⁵ Similar cases for reparations have been made at the University of Chicago⁷⁵⁶ and Brown University.⁷⁵⁷ In 2019, Princeton Theological Seminary announced it would spend \$27 million on scholarships and other initiatives to make amends for its ties to enslavement; while Virginia Theological Seminary, which relied on enslaved labourers, created a \$1.7 million reparations fund.⁷⁵⁸

285. The University of Glasgow and the University of the West Indies signed a Memorandum of Understanding committing to work together to found a Glasgow-Caribbean Centre for Development Research, delivering on one of a series of recommendations in a report based on comprehensive research conducted by the university “into its links with historical slavery”.⁷⁵⁹

286. In Latin America, some States have conceived possible forms of reparations by addressing the issue of land redistribution to communities of people of African descent and by proposing measures to combat racial inequalities. In Brazil, the 1988 Constitution granted ownership of lands to Quilombo communities, and the Palmares Cultural Foundation was established to preserve and promote Afro-Brazilian heritage, as well as to identify and delimitate territories and confer legal land titles to these communities.⁷⁶⁰ Subsequent legislation extended the historical definition of the Quilombo to include other communities that were historically excluded from access to land ownership.⁷⁶¹ Legislation was also passed in 2003 to make the inclusion of Afro-Brazilian history and culture mandatory in the curricula of primary and high schools.⁷⁶² The 1998 and 2008 Constitutions of Ecuador granted Afro-

⁷⁵² https://www.churchofengland.org/sites/default/files/2021-05/Contested_Heritage_in_Cathedrals_and_Churches.pdf, p. 7.

⁷⁵³ See e.g. https://www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2feducation%2f2021%2f06%2f05%2fjohn-hopkins-slavery-founder-inquiry%2f.

⁷⁵⁴ <https://www.georgetown.edu/news/georgetown-apologizes-for-1838-sale-of-272-slaves-dedicates-buildings/>; https://www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2fnews%2fgrade-point%2fwp%2f2016%2f09%2f02%2fnow-is-the-time-descendants-respond-to-georgetowns-efforts-to-confront-the-legacy-of-slavery%2f.

⁷⁵⁵ <https://www.theatlantic.com/education/archive/2019/04/why-are-georgetown-students-paying-reparations/587443/>; <https://www.nytimes.com/2019/04/12/us/georgetown-reparations.html>; <https://www.washingtonpost.com/education/2019/10/03/georgetown-students-protest-demanding-action-reparations-descendants-enslaved-people/>.

⁷⁵⁶ <https://www.aaihs.org/a-case-for-reparations-at-the-university-of-chicago/>; <https://www.lib.uchicago.edu/collex/exhibits/case-reparations-university-chicago-sources/>.

⁷⁵⁷ https://www.brown.edu/Research/Slavery_Justice/documents/SlaveryAndJustice.pdf.

⁷⁵⁸ <https://www.nytimes.com/2019/09/12/us/virginia-seminary-reparations.html>. See also <https://www.nytimes.com/2019/11/06/us/harvard-antigua-slavery-reparations.html>; <https://www.washingtonpost.com/religion/2018/12/12/southern-baptist-conventions-flagship-seminary-admits-all-four-its-founders-owned-slaves/>.

⁷⁵⁹ https://www.gla.ac.uk/news/archiveofnews/2019/september/headline_667960_en.html; https://www.gla.ac.uk/media/Media_607547_smxx.pdf.

⁷⁶⁰ Ana Lucia Araujo, Reparations for Slavery and the Slave Trade: A Transnational and Comparative History, New York: Bloomsbury Academic, 2017, p. 155.

⁷⁶¹ Presidential Decree no.4.887 of 20 November 2003.

⁷⁶² Law no. 10.639 of 9 January 2003. See also <https://unesdoc.unesco.org/ark:/48223/pf0000265488>, p. 14.

Ecuadorian populations notably the right to ownership of collective and ancestral lands,⁷⁶³ recognizing that “the ancestral, indigenous, Afro-Ecuadorians and Montubio [mestizo indigenous of the coastal areas] peoples may constitute territorial districts for the preservation of their culture [...] communes with collective ownership of land, as an ancestral form of territorial organisation, are recognised”. In Colombia, in 1993, a law recognized the right of collective land ownership of Afro-Colombia populations in some areas – a measure that has been described as a form of empowerment rather than reparations.⁷⁶⁴

5. Challenges and opportunities

287. Notwithstanding these and other initiatives in multiple countries, no State has put in place a comprehensive package of measures that halts, acknowledges and repairs the lasting consequences and ongoing manifestations of systemic racism suffered by people of African descent, nor identified or eradicated its root causes, drivers and incentives. People of African descent have also demanded full and effective participation in these measures. A gender perspective has often been lacking from these initiatives. Notably, women of African descent have endured sexual and gender-based violence,⁷⁶⁵ the legacies of which continue to be felt today. A 2021 UNESCO study highlighted how women experience the traumas of the legacies of enslavement, and how these traumas are transmitted intergenerationally.⁷⁶⁶ Further, as noted above, women have long been caricatured by negative stereotypes rooted in a history of racism and enslavement;⁷⁶⁷ and research shows for example that unconscious bias affects the quality of health care that women of African descent receive.⁷⁶⁸

288. Behind today’s systemic racism, racial violence, dehumanisation and exclusion lies the lack of formal acknowledgement of the responsibilities of States - in addition to that of institutions, business enterprises, religious groups, universities and individuals that engaged in or profited from, and continue to profit from the legacy of, enslavement, the transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies and systems.⁷⁶⁹

289. There is no one-size-fits-all model to address these issues, which transcend individual claims and require also addressing collective claims. Some argue against accountability and redress for historical legacies, citing the complexity of considering centuries-old serious human rights violations and abuses with now-deceased perpetrators and victims, and the presumption that harms of systemic racism ended with the abolition of chattel slavery itself. Additionally, delineations of State responsibility and the design and financing of effective reparations programmes that address the temporal and material scope and possible beneficiaries are challenging to define and negotiate, and raise complex issues notably regarding financial compensation claims.⁷⁷⁰ Yet, in some contexts victims and perpetrators may still be alive. Further, the continuous nature of some acts and crimes, as well as the exceptions of statute of limitations for serious human rights violations that constitute international crimes may also provide possible avenues to surmount challenges. Ultimately, the greatest barrier to reparations for colonialism and slavery may be that “the biggest beneficiaries of both lack the political will and moral courage to pursue such reparations”.⁷⁷¹

⁷⁶³ <https://pdbs.georgetown.edu/Constitutions/Ecuador/ecuador98.html>; <https://pdbs.georgetown.edu/Constitutions/Ecuador/english08.html>. See also the 2006 Law of Collective Rights of Black and Afro-Ecuadorian people.

⁷⁶⁴ Ana Lucia Araujo, Reparations for Slavery and the Slave Trade: A Transnational and Comparative History, New York: Bloomsbury Academic, 2017, p. 155.

⁷⁶⁵ <https://eji.org/news/history-racial-injustice-sexual-exploitation-black-women/>.

⁷⁶⁶ https://healingthewoundsofslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP_2020_Healing-the-Wounds-of-Slavery_Desk-Review_Report.pdf, p. 11.

⁷⁶⁷ A/74/274, para. 42.

⁷⁶⁸ Ibid., para. 70.

⁷⁶⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25968&LangID=E>.

⁷⁷⁰ A/74/321, para. 53. See also Shelton in Colonialism, Slavery, Reparations and Trade Remediating the ‘Past’?, edited By Fernne Brennan, John Packer, Routledge 2013.

⁷⁷¹ Ibid., para. 15.

290. The International Decade for People of African Descent and its programme of activities provide a framework to strengthen action and cooperation in relation to the full enjoyment of all rights by people of African descent, and their full and equal participation in all aspects of society.⁷⁷² In implementing its themes of recognition, development and justice, States can improve the lives of millions of people of African descent throughout the world. In particular, under the justice theme, States should take further measures to ensure justice and honour the memory of these tragedies. This includes acknowledging the untold suffering and evils inflicted on millions of men, women and children as a result of enslavement, the transatlantic trade in enslaved Africans, colonialism, apartheid, genocide and past tragedies.⁷⁷³ In the years since the adoption of the Decade, there has been a growing acceptance about the timeliness of considering issues of reparations and reparatory justice.⁷⁷⁴ Possible actions points arising from these frameworks and more broadly from international human rights law are detailed further below.

291. The 2030 Agenda for Sustainable Development (2015-2030) and the operational guidelines on the inclusion of people of African descent in the 2030 agenda, issued by the Working Group of Experts on People of African Descent can assist in overcoming the historically-rooted systemic and structural discrimination against people of African descent around the world and include them in the implementation of the 2030 Agenda.⁷⁷⁵ In particular, SDG 16 on peaceful and inclusive societies can serve as a benchmark to address the contemporary manifestations of violence against people of African descent, as elaborated in this conference room paper. Further, the upcoming high-level meeting in September 2021 on the occasion of the 20th anniversary of the Durban Declaration and Programme of Action on “Reparations, racial justice and equality for people of African descent” presents another opportunity to increase global understanding on the issues pertaining to reparatory justice for people of African descent.⁷⁷⁶

C. Agenda Towards Transformative Change for Racial Justice and Equality - The Way Forward - REDRESS: Confront past legacies, take special measures and deliver reparatory justice

292. It is time for political leadership, creative, effective and comprehensive responses, empowerment measures and honest dialogue about the long-lasting impact of the past legacies on contemporary forms of racism.

393. A comprehensive approach to repair the legacies of the past must be grounded in an intersectional and intergenerational analysis of the impacts of enslavement, the transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies and systems. These impacts should be recognized, acknowledged and redressed.

294. The experiences of women of African descent must be central to these processes. Going forward, a gender perspective will be critical to understanding their unique needs and contributions to addressing racism and the legacies of enslavement and colonialism. For example, truth-seeking initiatives should contain an explicit reference to examining the causes and consequences of sexual and gender-based violence; and reparation programmes should incorporate a gender perspective by identifying measures with differential impact notably between the sexes.⁷⁷⁷

295. Individual measures are not enough – what is required is a plurality of measures in recognition of the magnitude and seriousness of the violations, the collective suffering and inter-generational transmission thereof, and the need to work together in solidarity towards restoring the dignity of people of African descent.

⁷⁷² A/RES/69/16, Annex, para. 9(a).

⁷⁷³ A/HRC/45/47 para. 60.

⁷⁷⁴ Ibid., para. 61.

⁷⁷⁵ Ibid., para. 14;

⁷⁷⁶ https://ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf.

⁷⁷⁷ A/RES/75/237 para. 27.

⁷⁷⁷ A/75/174.

1. Acknowledge that truth, justice and reparations with regard to enslavement, the transatlantic trade in enslaved Africans and colonialism and their legacies contribute to non-recurrence and reconciliation and benefit all of society

296. Truth, justice and reparations – in particular memorialization, education and awareness-raising - are catalytic to bolstering demands for change in attitude; and debunking false narratives which permit successive sets of racially discriminatory policies and systems to persist. Establishing the truth on the causes and impact of systemic racism and historical legacies is crucial to building support for reparatory justice among policy-makers and societies and transforming the discourse. These are essential elements for reconciliation and the creation of societies for all based on justice, equality and solidarity,⁷⁷⁸ and have the potential to benefit all of society.

297. Efforts in addressing the past, and contributions to non-recurrence and reconciliation for the future, should strive to ensure recognition of the inherent dignity and rights of people of African descent. States that have not yet contributed to restoring the dignity and rights of the victims should find appropriate ways to do so,⁷⁷⁹ and work towards ensuring that violations of the past no longer translate into lasting consequences in the present and the future.

298. States should acknowledge the negative effects of the wrongs occasioned on people of African descent in the past, the effects of which continue to disadvantage people of African descent today.⁷⁸⁰ They are also encouraged to consider initiatives of recognising slavery as a crime against humanity.

2. Create, reinforce and fully fund national and other processes to construct a shared narrative on enslavement, the transatlantic trade in enslaved Africans and colonialism and their lasting consequences for Africans and people of African descent

299. A serious barrier to reparatory justice is the lack of awareness and understanding among the public and political leaders regarding the persisting legacies of enslavement, transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies and systems.⁷⁸¹ Remembering the crimes or wrongs of the past, wherever and whenever they occurred, unequivocally condemning tragedies and seeking the truth about history are essential.⁷⁸² The right to truth requires States to establish processes that lead to the revelation of the truth about what took place.⁷⁸³

300. Existing initiatives indicate an increasing willingness and emerging practice to acknowledge the need to repair the continuing impacts of enslavement, the transatlantic trade in enslaved Africans and colonialism. Building on these initiatives, States should initiate comprehensive processes designed notably to seek truth and define harm suffered, as well as contribute to non-recurrence and reconciliation.⁷⁸⁴ Specific recommendations made by UN human rights mechanisms, notably the Working Group of Experts on People of African Descent pursuant to its country visits, should be considered. These range from the need for a public dialogue on these issues as well as reviewing educational materials⁷⁸⁵ and erecting monuments, memorials and markers;⁷⁸⁶ to issuing an apology and consider providing reparations;⁷⁸⁷ to confronting and acknowledging the past, while removing “colonial

⁷⁷⁸ Durban Declaration and Programme of Action, para. 106.

⁷⁷⁹ Durban Declaration and Programme of Action, paras. 100-101.

⁷⁸⁰ A/HRC/45/47, para. 60; CERD/C/GC/34, para. 17.

⁷⁸¹ A/74/321, para. 60.

⁷⁸² Durban Declaration and Programme of Action, para. 106.

⁷⁸³ See Updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1).

⁷⁸⁴ A/HRC/45/47; A/74/321; A/HRC/27/68; country-specific recommendations in A/HRC/33/61/Add.2; A/HRC/36/60/Add.1; A/HRC/42/59/Add.1; A/HRC/39/69/Add.2.

⁷⁸⁵ E.g. A/HRC/33/61/Add.2; A/HRC/36/60/Add.1; A/HRC/42/59/Add.1; A/HRC/39/69/Add.2 and CERD/C/ESP/CO/21-23, para. 30; A/HRC/36/60/Add.2; CERD/C/GBR/CO/21-23, para. 34.

⁷⁸⁶ E.g. A/HRC/33/61/Add.2; A/HRC/36/60/Add.1; A/HRC/36/60/Add.2.

⁷⁸⁷ E.g. A/HRC/36/60/Add.1; A/HRC/42/59/Add.1; A/HRC/36/60/Add.2.

propaganda”;⁷⁸⁸ and establishing a truth commission.⁷⁸⁹ Moreover, States should consider officially acknowledging and marking the histories, achievements and positive contributions of people of African descent.

301. Such efforts should reflect the realities that enslavement, the transatlantic trade in enslaved Africans and colonialism were transatlantic and global in nature: “slavery and colonialism were global projects, and reparations for both require global intervention”.⁷⁹⁰ National processes should be complemented by initiatives involving inter-State, cross-boundary dialogue and cooperation, including with affected communities in former colonies.

302. Further, relevant business enterprises should assess their own links to and how they benefited from enslavement, the transatlantic trade in enslaved Africans and colonialism in their ongoing and past operations. Business enterprises should identify if, where and how they may have benefited from the past of enslavement. Where links to their operations, products or services are found, they should acknowledge and apologise for their involvement in or profiting from slave trade and slavery. Where business enterprises identify that they have caused or contributed to this adverse impact, they should provide for or cooperate in their remediation through legitimate processes. In parallel, they are encouraged to also consider funding development in originally enslaved communities and contributing to racial equity programmes.

3. Ensure effective participation of people of African descent and their communities to guide the design and implementation of these processes including broad and inclusive consultations

303. Achieving truth, justice, reparations, non-recurrence and reconciliation requires a fully participatory process. Accountability and redress measures must reflect the experiences and views of victims and affected communities, taking into account their needs. Lived experiences and the continued collection of history are essential for truth-seeking and establishing shared narratives, as a means to memorialize the suffering and the resilience and dignity of victims through vigorous and respectful dialogue where all are given the space to express themselves freely in a secure environment. People of African descent and their communities should guide the design and implementation of these processes through effective participation, including broad and inclusive consultations.⁷⁹¹ In particular, gender-sensitive consultative processes should be implemented throughout.⁷⁹²

304. Such processes must be tailored to the specificities of the situation in the country including at the local level, and to the demands of affected communities. Processes should seek to mobilise civil society, religious leaders, community leaders and business, together with politicians and public servants. All must be shown the benefit of this joint exercise. Anything less will risk failing individuals, communities and society as a whole.

4. Make amends for centuries of violence and discrimination through wide-ranging and meaningful initiatives, within and across States, including through formal apologies, truth-telling processes, and reparations in various forms

305. Reparatory justice requires a multi-pronged and comprehensive approach, grounded in international human rights law and the right to adequate, effective and prompt reparation.⁷⁹³ As has long been recognised, “it is a principle of international law that the

⁷⁸⁸ E.g. A/HRC/42/59/Add.1.

⁷⁸⁹ E.g. A/HRC/42/59/Add.1.

⁷⁹⁰ A/74/321, para 61.

⁷⁹¹ A/69/518, section E.

⁷⁹² A/75/174, paras. 81-91.

⁷⁹³ See Updated Set of Principles for the protection and promotion of human rights through action to combat impunity; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. See also CCPR/C/GC/ 31; American Convention on Human Rights art. 25; European Convention on Human Rights, art. 13; African Commission on Human and Peoples’ Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, sect. C.

breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement to a [breach].⁷⁹⁴ Reparations are one element of accountability and redress, and should not be purely equated with financial compensation. They also comprise measures aimed at restitution, rehabilitation, satisfaction and guarantees of non-repetition, including, for example, formal apologies,⁷⁹⁵ memorialization⁷⁹⁶ (see further below), institutional and educational reforms. Comprehensive reparations imply human rights at their centre, accompanied by an acknowledgement of the State's legal responsibility for the violations suffered and linked to truth, justice and guarantees of non-recurrence.

306. Reparations are essential to transforming relationships of discrimination and inequity, mutually committing to and investing in a stronger, more resilient future of dignity, equality and non-discrimination for all. Reparations help promote trust in institutions and the social reintegration of people whose rights may have been discounted, providing recognition to victims and survivors as rights-holders.⁷⁹⁷

5. Dismantle structures and systems designed and shaped by enslavement, colonialism and successive racially discriminatory policies and systems; re-envision public spaces, including by memorializing the contributions of and harms against people of African descent and ensuring that enslavement, the transatlantic trade in enslaved Africans and colonialism are not glorified

307. Measures taken to address the past should seek to transform the future of societies. Structures and systems which were designed and shaped by enslavement, colonialism and successive racially discriminatory policies and systems must be transformed.⁷⁹⁸

308. Measures of memorialization in particular are a vital reparatory tool.⁷⁹⁹ States and other stakeholders should build upon the efforts for example of the UNESCO Slave Route Project by developing texts and testimony, multi-media centres, educational curricula and/or programmes that will collect, record, organize, exhibit and publish the existing data relevant to the history of enslavement, the transatlantic trade in enslaved Africans, colonialism and successive racially discriminatory policies.⁸⁰⁰

309. The revision of school and university curricula, particularly in history teaching, and memorialization, including through museums, can act as substantive and symbolic forms of redress for historical legacies and their impacts, as well as contribute to reforming historical narratives that frequently exclude contributions by Africans and people of African descent. In this respect, States should include in textbooks, at all appropriate levels, chapters about the history and cultures of people of African descent and preserve this knowledge in museums and other forums for future generations. They should also, encourage and support the publication and distribution of books, other print materials, and the broadcasting of television and radio programmes about their history and cultures.⁸⁰¹

310. Justice requires effective measures that give practical meaning to the premise that all human beings are born equal in dignity and rights. This means confronting ideologies that seek to underpin continued discrimination, as well as altering the conditions of life that have bred inequality, indignity and injustice. Comprehensive reparation programmes must be put in place to achieve these ends.

⁷⁹⁴ Case concerning the Factory at Chorzow, Merits, Judgment No.13, 1928, P.C.I.J., Series A, No.17, p.47; CCPR/C/21/Rev.1/Add.13.

⁷⁹⁵ A/74/147.

⁷⁹⁶ A/HRC/45/45; <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-3-19-es.pdf>.

⁷⁹⁷ A/HRC/34/62.

⁷⁹⁸ A/74/321, para.10.

⁷⁹⁹ A/HRC/45/45; <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-3-19-es.pdf>.

⁸⁰⁰ Durban Declaration and Programme of Action, para.119;

<https://unesdoc.unesco.org/ark:/48223/pf0000265488> (recommendations).

⁸⁰¹ CERD/C/GC/34, para 66.

VI. Conclusions

311. This conference room paper, read together with A/HRC/47/53, is grounded in the lived experiences of families of victims and people of African descent, whose courage and determination are pushing States, the United Nations and others to take bolder steps to address long-standing human rights violations and achieve reparatory justice.

312. There is today a momentous opportunity to achieve a turning point for racial equality and justice. Africans and people of African descent, like all human beings, are born free and equal in dignity and rights. Drawing upon international obligations and commitments, States must show stronger political will to accelerate action for racial justice and equality, including by taking concrete steps to implement the recommendations made by United Nations and regional human rights mechanisms, national commissions of inquiry, national human rights institutions and equality bodies. Volumes upon volumes of recommendations have been made. Now, action needs to be taken.

313. Listening to the voices of people of African descent, the need for a global transformative agenda for racial justice and equality is clear. The four-point agenda in the annex to A/HRC/47/53 sets out the key changes that are needed, which have also been elaborated in the present conference room paper under the subheadings on the way forward. Comprehensively implemented, the agenda would:

- (a) Reverse the cultures of denial, dismantle systemic racism and accelerate the pace of action;
- (b) End impunity for human rights violations by law enforcement officials and close trust deficits;
- (c) Ensure that the voices of people of African descent and those who stand up against racism are heard and that their concerns are acted upon;
- (d) Confront legacies, including through accountability and redress.

314. The High Commissioner calls upon all States to translate the agenda into action plans and concrete measures developed through national dialogues.

315. In particular, the High Commissioner looks forward to working with States and the Human Rights Council to implement a transformative agenda, including by strengthening assistance to States and other stakeholders, particularly Africans and people of African descent and their organizations, by documenting and following-up on specific incidents, by consulting and partnering with victims, survivors and affected communities and by providing guidance for relevant racial justice processes in States, for which additional resources are required.

316. The High Commissioner recommends that the Human Rights Council sustain its close engagement on these issues and establish a specific, time-bound mechanism, or that it strengthen an existing mechanism by providing it with additional capacity, in order to advance racial justice and equality in the context of law enforcement in all parts of the world, including by examining relevant patterns, incidents, policies and processes, such as those highlighted in the present conference room paper and in A/HRC/47/53.