



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

U.S. Response to the OHCHR Request for Supplemental Input into Special Report on Systemic Racism

We write in response to your letter of April 8, 2021, regarding the High Commissioner's report on systemic racism and violations of international human rights law against Africans and people of African descent by law enforcement agencies, as requested by Human Rights Council Resolution A/HRC/RES/43/1.

The United States is committed to upholding human rights, championing opportunity, defending freedom, respecting the rule of law, and treating every person with dignity. The United States was founded on the principle that all men are created equal and endowed with certain unalienable rights, a principle that continues to guide our pursuit of forming a more perfect union. But for too many and for too long, this principle has not translated to reality simply because of the color of their skin.

Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. However, entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities, particularly for people of African descent. The United States is committed to forthrightly, honestly, and powerfully addressing systemic racism and the legacy of discrimination in our country. As part of this commitment, the United States is dedicated to eliminating racial discrimination and the use of excessive force in policing. The tragic deaths of George Floyd and Breonna Taylor serve as a reminder of the pervasive nature of systemic racism in the United States and the urgent action needed to address this challenge.

According to charging documents from criminal proceedings in the State of Minnesota, Mr. George Floyd was killed on May 25, 2020, in the course of an arrest during which police officer Derek Chauvin used an unauthorized restraint technique that involved pressing his knee into Mr. Floyd's neck to restrict Mr. Floyd's movement while Mr. Floyd was handcuffed and lying on the pavement.^[1] While the officers restrained him nearly motionless on the ground, Mr. Floyd repeatedly told the officer he could not breathe and also said that he was about to die.^[2] Along with Mr. Chauvin, three other officers, J. Alexander Kueng, Thomas Lane, and Tou Thao, were involved in the arrest and restraint that led to Mr. Floyd's death. Mr. Chauvin was recently found guilty of second-degree murder and other charges in state court proceedings. The State of Minnesota has also filed aiding and abetting charges against the three other officers. All of the officers involved were fired as a result of their conduct.

The Department of Justice also recently launched a "pattern-or-practice investigation" of the Minneapolis Police Department (MPD).^[3] The investigation will assess all types of force used by MPD officers, including uses of force involving individuals with behavioral health disabilities and uses of force against individuals engaged in activities protected by the First Amendment. It will also assess whether MPD engages in discriminatory policing.

We understand that civil and legislative measures have also been undertaken at the state and local level. The city of Minneapolis settled a civil lawsuit with Mr. Floyd's family, agreeing to pay \$27 million.^[4] The State of Minnesota also passed a policing reform bill that restricts the use of chokeholds and neck restraints, changes the arbitration process that officers use to contest discipline actions, and establishes an independent unit within the Bureau of Criminal Apprehension to investigate police killings.^[5]

In addition to the criminal proceedings in the State of Minnesota, on May 7, 2021, a federal grand jury in Minneapolis, Minnesota, indicted all four officers named above for federal civil rights crimes for their roles in the death of Mr. Floyd. The indictment alleges, among other charges, that the officers, while acting under color of law, willfully deprived Mr. Floyd of his constitutional rights, in violation of Title 18, United States Code, Section 242. In particular, the indictment alleges, among other charges, that on May 25, 2020, Officer Chauvin held his left knee across Mr. Floyd's neck, and his right knee on Mr. Floyd's back and arm, as Mr. Floyd lay on the ground, handcuffed and unresisting, and kept his knees on Mr. Floyd's neck and body even after Mr. Floyd became unresponsive, and that these actions violated Mr. Floyd's constitutional right to be free from the use of unreasonable force by a police officer and resulted in Mr. Floyd's death. Another count in the indictment charges that Officers Thao and Kueng willfully failed to intervene to stop Officer's Chauvin's use of unreasonable force against Mr. Floyd. Title 18, United States Code, section 242, states that it is a crime for an official acting under color of law to willfully violate a person's constitutional rights.

Ms. Breonna Taylor was killed on March 13, 2020, when police officers in Louisville, Kentucky forced entry into Ms. Taylor's apartment while executing a "no-knock" warrant. According to press accounts, when the officers breached the apartment door, Ms. Taylor's boyfriend Kenneth Walker—believing the officers to be intruders—retrieved his gun and fired one shot toward the officers, striking officer Jonathan Mattingly.^[6] In response, three Louisville officers, Mr. Mattingly, Myles Cosgrove, and Brett Hankison, discharged additional rounds into the apartment, including 10 rounds shot by Mr. Hankison. Ms. Taylor was struck, causing her death.

On September 23, 2020, Kentucky Attorney General Daniel Cameron announced that the grand jury had not brought any homicide charges against the officer, finding that the officers were justified in the return of deadly fire after having been fired upon by Mr. Walker. Mr. Hankison was charged with wanton endangerment for his shots fired from outside of the apartment. Mr. Hankison and Mr. Cosgrove were fired for wanton conduct and detective Joshua Jaynes was fired for falsifying information in the warrant application that led to the raid on Ms. Taylor's home. In September, the city of Louisville, Kentucky, announced a \$12 million settlement in the wrongful death lawsuit filed by Ms. Taylor's family, which also included several police reforms.^[7] A federal civil rights investigation led by the U.S. Department of Justice remains ongoing.

The Department of Justice recently also opened a pattern-or-practice investigation into the Louisville/Jefferson County Metro Government (Louisville Metro) and the Louisville Metro Police Department (LMPD).^[8] The investigation will assess all types of force used by LMPD officers, including use of force against individuals with behavioral health disabilities or individuals engaged in activities protected by the First Amendment. The investigation will assess whether

LMPD engages in discriminatory policing, and also whether it conducts unreasonable stops, searches, seizures, and arrests, both during patrol activities and in obtaining and executing search warrants for private homes. The investigation will include a comprehensive review of LMPD policies, training, and supervision, as well as LMPD's systems of accountability, including misconduct complaint intake, investigation, review, disposition, and discipline.

The United States has also taken action at the federal level to address the underlying issues of racial discrimination and the use of excessive force in policing. In 2014, the Department of Justice issued guidance stating unequivocally that racial profiling is wrong and has prohibited racial profiling in federal law enforcement practices. This policy remains in place today. The Department of Justice may prosecute individual officers whose conduct "under color of law" violates a person's rights under the U.S. Constitution or a federal statute. The Department of Justice also may investigate and bring suit against state and local law enforcement agencies that might be engaging in a pattern or practice of conduct that deprives persons of their rights under the Constitution or federal law. The United States seeks to proactively prevent discrimination or the use of excessive force by participating in increased training of federal, state, and local law enforcement officers across the country. Congress is also currently considering broader policing and accountability reforms through the George Floyd Justice in Policing Act. To address broader issues of systemic racism, President Biden issued Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," requiring the federal government to identify and address potential barriers that underserved communities face to accessing benefits and services in federal programs.

The United States is committed to engaging with the international community to find effective means to address systemic racism both at home and around the world. In its recent Universal Periodic Review, the United States supported almost all of the recommendations received in the area of civil rights and discrimination, including those recommending that the United States identify best practices for the use of force by police and for improving the enforcement of laws that prohibit racial profiling and excessive use of force in policing.

In the pursuit of a more perfect union, the United States always seeks to improve its ability to live out its core commitment to human rights and is open to being examined on its record. The United States welcomes your report on such a vital issue.

^[1] Press release - Office of Minnesota Attorney General Keith Ellison, *Attorney General Ellison charges Derek Chauvin with 2nd-degree murder of George Floyd, three former officers with aiding and abetting 2nd degree murder* (June 3, 2020), available at https://www.ag.state.mn.us/Office/Communications/2020/06/03_GeorgeFloyd.asp

^[2] *Id.*

^[3] U.S. Department of Justice – Press Release, *Attorney General Merrick B. Garland Announces Investigation of the City of Minneapolis, Minnesota, and the Minneapolis Police Department* (Apr. 21, 2021), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-investigation-city-minneapolis-minnesota-and>

^[4] Star Tribune, *Minneapolis to pay record \$27 million to settle lawsuit with George Floyd's family* (Mar. 12, 2021), available at <https://www.startribune.com/minneapolis-to-pay-record-27-million-to-settle-lawsuit-with-george-floyds-family/600033541/>

^[5] <https://www.house.leg.state.mn.us/amend/A20-0819.htm>; see also Press Release - Minnesota Governor's Office, *Governor Walz Signs Minnesota Police Accountability Act* (July 23, 2020), available at <https://mn.gov/governor/news/?id=1055-441356>

^[6] See, e.g., New York Times, *What to Know About Breonna Taylor's Death*, (Apr. 26, 2021), available at <https://www.nytimes.com/article/breonna-taylor-police.html>

^[7] City of Louisville Press Release, *Mayor Fischer announces settlement in civil lawsuit filed by Breonna Taylor's estate* (Sept. 14, 2020), available at <https://louisvilleky.gov/news/mayor-fischer-announces-settlement-civil-lawsuit-filed-breonna-taylors-estate>

^[8] U.S. Department of Justice – Press Release, *Department of Justice Announces Investigation of the Louisville/Jefferson County Metro Government and Louisville Metro Police Department* (Apr. 6, 2021), available at <https://www.justice.gov/opa/pr/departement-justice-announces-investigation-louisvillejefferson-county-metro-government-and>