

December 10, 2020

REF: Inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1

Your Excellency,

On behalf of the Inter-American Commission on Human Rights (IACHR), I have the honor of addressing Your Excellency to provide inputs regarding to “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”.

Background

The IACHR is a principal and autonomous body of the Organization of American States (“OAS”) whose mission is to promote and protect human rights in the American hemisphere. In 2005, the IACHR created the [Rapporteurship](#) on the Rights of Afro-descendants and against Racial Discrimination due the racial disparities that have marked the history and politics of all the countries in the hemisphere.

The current Rapporteur on the Rights of Afro-descendant persons and against Racial Discrimination is Commissioner Margarette May Macaulay; who also serves as a Rapporteur on Rights of Women. Commissioner Macaulay is in her second term, having been re-elected on June 28, 2019, by the 49th General Assembly of the OAS for a four-year term which ends December 31, 2023.

The core objectives of this Rapporteurship include working with OAS member States to generate awareness regarding its duties to **respect the human rights of Afro-descendants** and to eliminate all forms of racial discrimination. In order to achieve these tasks, the Rapporteurship analyzes the **challenges on the matter, formulates recommendations** designed to overcome these obstacles. Moreover, the office identifies and shares best practices in the region, providing **technical assistance** for member-states in the implementation of the recommendations into national level.

I. Context

The Commission has taken note of several acts brutality by police and other law enforcement officers across the Americas in 2020. Recently, on November 21 the IACHR expressed deep concern about the death of [João A. Silveira Freitas](#), an Afro-Brazilian man who was brutally beaten by private security agents in a supermarket in Porto Alegre, Rio Grande do Sul. The Commission reaffirms that this is not part of an one-off incident. During 2018 in Brazil, [75.4% of the 6,220 killings result of police brutality were of Afro-descendants](#) even though these persons make up only [56%](#) of the country’s population.

The Honorable Michelle Bachelet Jeria
United Nations High Commissioner for Human Rights
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In the same vein, Colombia has been facing issues of police violence and discrimination, particularly demonstrated by the death of [Anderson Arboleda](#), a 24-year-old Afro-Colombian man on May 19 in 2020. In the last months in 2020, there have been other documented deaths of young Afro-Colombians such as the case of [Harold Morales](#), a 17-year-old Afro-descendant, who died after being shot in the back by a police on August 24 in 2020, as well as [Julian Mauricio González](#), a 27-year-old who died after being shot twice in the abdomen while was protesting against police abuse in Bogotá on September 2020.

According to publicly available information, in the United States as of December 2020 several cases of police brutality have been reported; on October 26 in Philadelphia police shot [Walter Wallace](#) by the disproportionate use of force, according to footage published by the press. On August 21, [Trayford Pellerin](#) was shot dead by the police outside a store in Lafayette. In Kenosha, police officers shot [Jacob Blake](#) multiple times in the back on August 23. Likewise, the IACHR observed the murder of [Deon Kay](#) on September 2 in Washington D.C.; [Dijon Kizzee](#) on August 31 in Los Angeles; and [Daniel Prude](#) on March 23 in New York, according to the September 2 video footage released by his family.

In this regard, the Commission has previously expressed its deepest concern over the systematic escalation of police violence during law enforcement actions involving African-Americans, such as the violence seen in [Breonna Taylor](#)'s murder on March 13 in 2020 in Louisville; and the excessive use of force that resulted in the killing of [George Floyd](#) on May 25 in 2020 in Minneapolis. George Floyd's death triggered worldwide protests against police brutality, institutional racism, and lack of police accountability.

The IACHR also notes that across the United States, there have been more than 4,700 demonstrations, or an average of 140 per day, since the [first protests began in Minneapolis](#) on May 26 in 2020, according to a Times analysis. Turnout has ranged from dozens to tens of thousands in about 2,500 [small towns and large cities](#). In this regard, the IACHR highlights the report published by Princeton University showing that 93% of the demonstrations across the 50 states and Washington D.C. were peaceful.

The Commission monitored the developments of social protests in more than 40 states and the District of Columbia, and at the same time, over 125 incidents of excessive use of force by local and state police and security agents, documented up to June 5, 2020 in different states in the context of the "Black Lives Matter" protests, according to the database of [Mapping Police Violence across the USA](#).

The Commission continues monitoring the acts of police brutality and other forms of violence by law enforcement agents against Afro-descendant persons in all the countries of the region as well as the different social manifestations of the Black Lives Matter (BLM) that have spread in different countries of Latin America.

I. Inter-American System initiatives

A. “Police violence against Afro-descendants in the United States” (2019) report by Interamerican Commission on Human Rights

This thematic report examines the persistent situation of structural discrimination against African-Americans in the United States and, in particular, deep-seated racial disparities in policing and the criminal justice system. The Inter-American Commission has previously considered that racial bias forms the backbone of many problems of police abuse, overrepresentation of African Americans in arrests and in the prison system, and unequal access to justice, as well as wider issues of racialized poverty and unequal access to economic, social, cultural, and environmental rights in the U.S.

Since the 2012 shooting death of Trayvon Martin, a series of high-profile deaths of African-Americans at the hands of police or in police custody—including Michael Brown, Eric Garner, Tamir Rice, Alton Sterling, Philando Castile, and Terence Crutcher, among many others—as well as public pressure from civil society groups and movements like Black Lives Matter, have made issues of racial bias in policing and the criminal justice system topics of increasing public discussion.

Therefore, the Commission issued a set of recommendations to the United States on the following matters:

General Recommendations

- Ensure proper funding for official studies— whether at the federal, state, or local level, regarding the causes and consequences of racial profiling and other racially discriminatory treatment or practices by law enforcement officials or agencies on African Americans; as well as the causes and impacts of disproportionate arrests, prosecutions, sentencing, incarceration, and reincarceration of African Americans and other communities of color.
- Design, implement, and fund governmental systems to collect accurate, disaggregated data and statistical and qualitative information on the human rights situation of African Americans.
- Create a national human rights mechanism for the protection and promotion of human rights, in line with the “Paris Principles” relating to the Status of National Institutions, addressing currently existing racial disparities as well as the historical and structural conditions that create them.

Recommendations Regarding Non-Discrimination

- Take all necessary steps to adjust the domestic legal framework to ensure that disparate impact claims regarding policing and the criminal justice system, among other areas, are justiciable under domestic law.

- Take the necessary steps to comprehensively review and reform protocols and guidelines for local, state, and federal law enforcement agencies to ensure that they comply with international law in the areas of non-discrimination. In particular, ensure that racial profiling and other explicit or implicit discrimination on the basis of race, ethnicity, color, national background.
- Create independent ombudsperson offices at the state and local levels to receive and take action regarding complaints about discriminatory treatment.

Recommendations Regarding the Use of Force

- As a matter of urgency, take the necessary steps to reform domestic law—both federal and state—and bring it in line with international law in the area of use of force and use of deadly force, observing the principles of exceptionality, necessity, proportionality, and legality.
- Implement federal legislation to require that all law enforcement agents receive human rights training, including regarding the obligation to respect and protect fundamental rights, such as the rights to life and personal integrity, without discrimination.
- Take effective measures to prevent and combat the stigmatization and criminalization of protesters, in particular where such stigmatization or criminalization may be racially discriminatory in nature, and fully guarantee the right to freedom of expression.

Recommendations Regarding Due Diligence and Accountability

- Establish permanent, independent, and specialized bodies at the local and/or state level with the capacity and expertise to supervise investigations of police misconduct and crimes committed by police.
- In order to ensure the non-repetition of police misconduct, brutality, and/or killings, consider the introduction of reforms at the local, state, and federal levels to ensure that when a criminal or civil judgment is rendered against a law enforcement officer or department, the department is effectively aware of the contents of the judgment and required to indemnify the payor party in any resulting judgment, in order to incentivize structural reforms within law enforcement departments and prevent patterns of abuses.

Recommendations Regarding Access to Justice and Reparations

- Ensure effective access to justice for African Americans and other communities of color, considering the material, economic, and juridical obstacles and systematic exclusion they face.
- Ensure appropriate and prompt reparation for all victims of police conduct and their next of kin, in line with the principles laid out in the previous sections.

- Undertake studies with the goal of creating guidelines for the reparation of historic and structural discrimination against African Americans and other historically marginalized groups.

B. Press releases and public hearings by Interamerican Commission on Human Rights

The mandate of the Inter-American Commission covers the promotion of the human rights of ethnic-racial minorities in the hemisphere and the combat to racial discrimination. Through its monitoring system, and together with the other sections of the Commission work synergistically, holding public hearings and speaking out through press releases.

Hearings

In the 177 period of the session, the IACHR held the hearing on [Structural racism and police violence in the United States](#), on October 7 in 2020. The applicant organizations submitted testimonies from mothers who lost their sons and daughters to police brutality in the United States. In the testimonies, the mothers highlighted the pain of the loss and the psychological effects on the families who were victims of violence. In addition, the petitioners presented the legislative proposal called the "[Breathe Act](#)" that seeks to address violence against Afro-descendants based on four components, including the allocation of resources for social policies and accountability and reparation measures for victims.

In turn, the State recognized the urgency of the issue raised during the hearing and highlighted the legal framework that allows the Department of Justice to prosecute and hold public agents accountable for acts of violence or discrimination. The State argued that measures to withdraw resources from the police forces would be counterproductive for the communities in need of protection. The IACHR highlighted the need for preventive and remedial measures, programmatic reform, training for security forces, and measures to end impunity; as well as the need to establish independent mechanisms for the supervision of police crimes.

In the 178 period of sessions, IACHR has held the hearing [Police violence and racism against Afro-descendant persons in the region](#), on December 9 in 2020. Civil society organizations denounced practices of racial profiling by police agents, especially in arrests, searches, and different forms of violence based on ethnic-racial origin, which disproportionately affect the Afro-descendant population. Further, they highlighted the prison over-representation of Afro-descendant people as a consequence of structural racism in the region; a situation that is more evident in countries like Brazil, Ecuador, Colombia, and the United States.

IACHR underscored the importance of the ratification of inter-American treaties to combat racial discrimination; also, recalled incorporating an intersectional approach in measures to combat racial discrimination, including immigration status. Finally, called on the need to recognize a symbolic and comprehensive reparation for Afro-descendant people who are victims of police violence.

Press releases

Throughout 2020, the IACHR has published several releases on police violence against Afro-descendants in the Americas. In its press release [No. 129/20](#), on June 8, the IACHR expressed strong condemnation for George Floyd's murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States. The Commission and its Office of the Special Rapporteur for Freedom of Expression also expressed serious concern about the stigmatization, mass arrests, and excessive use of force by the authorities in some of the protests that have occurred in all 50 states of the United States. At the same time, underscored that the perpetration of some isolated acts of violence did not make a threat to the public order of the entire social movement that has exercised their rights to freedom of expression, freedom of association, and assembly.

On August 8 in 2020, in press release [No. 187/20](#), IACHR called on the United States to implement structural reforms in the institutional systems of security and justice to counter historical racial discrimination and institutional racism. The Commission took note of progress with various legislative processes in the area of security, such as the [Executive Order on Safe Policing for Safe Communities](#) and initiatives such as the [George Floyd Justice in Policing Act of 2020](#). In this regard, the IACHR values efforts made for comprehensive changes and urges that these proposals extend to the justice system, which require sound reforms that seek to eradicate structural racism.

In this regard, the Commission in its press release [No. 187/20](#) on August 2 in 2020, condemned violent police actions in Brazil and urged it to adopt measures to combat social and racial discrimination against Afro-descendant persons, and called on the State to adopt a security policy with a citizen focus, as well as to combat and eradicate the historical structural discrimination that results in disproportionate patterns of institutional violence against people of African descent and those exposed to poverty and extreme poverty.

C. Inter-American jurisprudence by Inter-American Court of Human Rights

Recently the Inter-American Court of Human Rights in the case [Acosta Martínez and others vs. Argentina](#), considered that the arrest and detention of Mr. Acosta Martínez were not only illegal but also arbitrary. Indeed, Court stressed that the police action was motivated more by racial profiling than by the suspicion of committing an offense.

In this case, police officers justified the detention of Mr. Acosta Martínez by his alleged state of drunkenness. By using a regulation as broad as the regulations against drunkenness, this resulted in covering up the use of a racial profile as the main reason for his arrest. In this case, police officers justified the detention of Mr. Acosta Martínez by his alleged state of drunkenness. In this case, police officers justified the detention of Mr. Acosta Martínez by his alleged state of drunkenness. By using a broad regulation as the "edicts" against drunkenness, it resulted in covering up the use of a racial profile as the main reason for his arrest. Therefore, the deprivation of his liberty turns out to be considered arbitrary.

The Court accredited in its sentence that Acosta Martínez was victim of arbitrary detention and as a result, he lost his life. All of the above framed in a context of violence against the Afro-descendant population in Argentina.

Finally, the State acknowledged that the case of Acosta Martínez was not about an one-off event, but rather “is paradigmatic of the persecution and stigmatization of Afro-descendant collective in that country”. The facts described in this case are then part of a context of both racial discrimination and police violence against the Afro-descendant population in Argentina which still exists present.

II. Conclusions and recommendations

1. Structural racism and discrimination are closely linked to other systemic issues, including discrimination in the wider criminal justice system and in access to and quality of housing, education, healthcare, employment, and other rights.
2. The Commission has reiterated the need to move forward with the adoption of radical public policies that promote cultural change in society aimed at eliminating structural and systemic racism, as well as promoting equality and ethnic and racial diversity. Also, to review its justice system in order to eliminate structural racism, pursuant to inter-American standards on citizen security.
3. Making progress with structural reforms of law in its security and justice systems is needed. The IACHR urges the State to make said reforms a central axis of transformation in eradicating institutional racism present in the actions of law enforcement authorities, as well as in the operation of the justice system, including an equal and intersectional approach.
4. The Commission considers it necessary to implement measures such as independent instances of police surveillance and control; as well as a community policing model that guarantees social participation and monitoring; activate training curricula for police, security and justice agents, focused on initial training and continuing education covering human rights, conflict mediation and violence reduction with an ethnic-racial perspective.
5. Regarding the Black Lives Matter, it is essential that all levels and agencies of the State respect and ensure that no one will be criminalized for exercising the rights to freedom of expression, assembly, and association in the context of demonstrations and protests, nor be subjected to threats, harassment, violence, persecution, or retaliation for participating in protests.
6. Any restrictions on the rights involved in demonstrations and protests may only be stipulated by law, based on one of the legitimate interests recognized by the American Convention, and must be necessary and proportionate to protect that interest, in accordance with the inter-American human rights instruments.