



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

WRITTEN INPUT ON HUMAN RIGHTS COUNCIL RESOLUTION 43/1 BY THE INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANISATIONS (INCL0)

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Re: Written Input on Human Rights Council Resolution 43/1

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A. INTRODUCTION

1. This written contribution is submitted to the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) by the International Network of Civil Liberties Organisations (“INCLO”) in response to the call for inputs on the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the “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.” This written contribution includes input by 12 INCLO member organizations and was endorsed by 13 INCLO members. It relies on in-text hyperlinks for ease of reference.

B. ABOUT INCLO

2. INCLO is a network of 15 independent, national human rights organizations from different countries in the North and South that work together to promote fundamental rights and freedoms by supporting and mutually reinforcing the work of member organizations in their respective countries, and collaborating on a bilateral and multilateral basis.¹ INCLO works on four thematic issues: (1) protest rights and policing; (2) surveillance and human rights; (3) religious freedom and equal treatment; and (4) protecting civic space. The responses included in this written input are based on advocacy efforts led by INCLO members and their unique knowledge in the domestic contexts within which they operate. Given their areas of expertise, the contributions included here by INCLO members focus on unnecessary, excessive, and disproportionate forms of policing by law enforcement that overwhelmingly impacts African and African-descendant communities around the world, limits their rights to freedom of association, assembly and expression, and exacerbates inequities based on socio-economic and migratory status.²

C. RESPONSES TO THE OHCHR’S CALL FOR INPUT PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTION 43/1

Question 1: Measures taken to identify, address, reform and remedy systems, institutions, structures, mechanisms, legislation, policies and/or practices that give rise to, perpetuate, entrench and/or reinforce systemic racism, racial discrimination and associated human rights violations against Africans and people of African descent.

3. INCLO members monitor and denounce discriminatory policing practices that stigmatize Africans and people of African descent and violate their fundamental rights and freedoms,

¹ INCLO’s 15 member organizations are: Agora International Human Rights Group (Agora, Russia), the American Civil Liberties Union (ACLU, United States), the Association for Civil Rights in Israel (ACRI, Israel), the Canadian Civil Liberties Association (CCLA, Canada), Centro de Estudios Legales y Sociales (CELS, Argentina), the Commission for the Disappearances and Victims of Violence (KontraS, Indonesia) Dejusticia (Colombia), the Egyptian Initiative for Personal Rights (EIPR, Egypt), the Human Rights Law Centre (HRLC, Australia), the Human Rights Law Network (HRLN, India), the Hungarian Civil Liberties Union (HCLU, Hungary), the Irish Council for Civil Liberties (ICCL, Ireland), the Kenya Human Rights Commission (KHRC, Kenya), the Legal Resources Centre (LRC, South Africa), and Liberty (United Kingdom). This written contribution was endorsed by all members except for Agora and EIPR.

² The ACLU has also made a separate and more detailed submission addressing the United States, available at <https://www.aclu.org/other/written-submission-aclu-ohchr-human-rights-council-resolution-431>.

including through racial profiling, disproportionately targeting and criminalizing these communities, and using excessive and violent forms of policing with impunity.

Argentina

4. In Argentina, there is a historical lack of recognition of the African descendant population that is reflected in the absence of information or statistics about Africans and people of African descent. The police and security institutions do not register the race of people who are detained, stopped and searched, or held in custody. Consequently, there is no data on racial profiling in law enforcement actions. In an effort to bring visibility to contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance, the Centro de Estudios Legales y Sociales (CELS), with other partners, presented an alternative report on Argentina's performance related to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2016. The report highlights the human rights violations of migrants due to the lack of clear processes to regularize their migratory status, cases of institutional racism, and the practice of racial profiling by the metropolitan and federal police forces when detaining migrants on the streets. In 2017, CELS also reported to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance placing an emphasis on the disproportionate and systematic persecution of migrants, particularly members of the Senegalese community, who works as informal vendors on the streets, and the high levels of prosecutions and convictions they face.
5. In 2019, the United Nations Working Group of Experts on People of African Descent ("**Working Group**") visited Argentina. Diáspora Africana de la Argentina ("**DIAFAR**"), Asociación África y su Diáspora, and members of the Consejo Nacional de Organizaciones Afro ("**CONAFRO**") prepared a report focused on the situation of Afro-descendants in Argentina, which was supported by CELS and other organizations.³ This report highlighted the lack of statistics from the State regarding issues of poverty, homelessness, employment for people of African descent and the lack of policies directed at this particular community. In contrast, there is a multitude of evidence on the harmful effects of institutional and structural racism in the judicial system in Argentina. These findings were echoed in the Working Groups' preliminary statement that highlighted the "invisibilization" and persistent structural discrimination against Afro-Argentines, people of African descent and Africans in Argentina.

Canada

6. In Canada, racial profiling, involving the disproportionate targeting of Black, First Nations, and other racial minorities, leads to police disproportionately stopping, questioning them, and recording their personal information in police databases. Although not necessarily the result of deliberate or explicit policies to target racial minorities, racial profiling is the result of other implicit systemically racist policies, that, for example, surveil low-income areas, which are often highly represented by people of colour.

³ The reports were prepared and presented by the following CELS partners: AMUMRA Asociación Civil de Derechos Humanos Mujeres Unidas Migrantes y Refugiadas en Argentina, ANDHES – Abogados y abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales, CineMigrante, Colectivo para la Diversidad (COPADI), Comisión Argentina para Refugiados y Migrantes (CAREF), Equipo de Investigación en Antropología y Procesos Migratorios, ICA, FFyL, UBA, Facultad de Ciencias Sociales de la UBA, Frente Patria Migrante, Instituto Argentino para la Igualdad, Diversidad e Integración (IARPIDI), Instituto de Justicia y Derechos Humanos de la UNLa, Migrantes x Migrantes, and Red Nacional de Migrantes y Refugiadxs en Argentina.

7. The Canadian Civil Liberties Association (“**CCLA**”) has long been involved in efforts to combat racial profiling including fieldwork with affected youth, advocacy with policing bodies, consultation with government in the development of regulatory limits, and litigating several cases involving racial profiling and targeting of visible minorities in Canada. The CCLA was able to successfully intervene in the case of Tom Le who was arrested after police officers went to a private home, and despite seeing no wrongdoing, walked through the gateway without warning, consent, or warrant. Tom, who is Asian, was sitting in the backyard with four young men who were all Black. In 2019, the Supreme Court made a ruling recognizing that this police stop and demand for identification and information in a private backyard constituted arbitrary detention and a violation of the Canadian Charter of Rights and Freedoms.
8. The CCLA also recently issued a report that looked at various issues around police and bylaw officer action enforcing pandemic-related measures. That document noted numerous reports by Black, Indigenous and other racial minorities being disproportionately impacted by COVID-19 enforcement measures, while also highlighting the gap in data as a result of the failure of many law enforcement bodies to collect relevant demographic data. Moreover, the CCLA is currently engaging in consultations to explore the need for increased collection of race-based data within the criminal justice system, as well as assessing the risks and concerns associated with such collection in conjunction with the impacted communities.

Ireland

9. In 2019, the Irish Council for Civil Liberties (“**ICCL**”), alongside the Committee on the Administration of Justice (“**CAJ**”), sought to bring attention to the increasing number of passport and identity checks being carried out by police on cross-border transport routes within the Common Travel Area (“**CTA**”) on the basis of racial profiling. Immigration law allows police to request ID from non-nationals crossing the border into or from Northern Ireland. ICCL and CAJ consider that such checks cannot be carried out without racial profiling and that this law should be amended to remove the exception for non-nationals. Joint letters were sent to the Garda Commissioner, the Policing Authority, and the Irish government’s Minister for Justice. The ICCL and CAJ also wrote to the Minister for Justice and all justice spokespersons from across the political spectrum to highlight this issue in the context of reform of the relevant Immigration Act in the context of BREXIT. No substantive reply has been received at the time of this written input.
10. CAJ also submitted a breach of the equality scheme complaint against Translink in response to the company facilitating discriminatory passport checks on its cross-border transport services. In early 2020, the Equality Commission decided not to investigate Translink and CAJ requested a review into this decision by the Statutory Duty Investigations Committee (“**SDIC**”). On 2 December 2020, CAJ received a decision from the SDIC stating that they would not review the decision.

Israel

11. In Israel, discrimination in the exercise of enforcement powers and racial profiling is intensively applied to people who appear to be of Ethiopian, Arab, and Mizrahi origin. It generates a grave sense of exclusion, contempt, and degradation, and has severe social consequences. In 2019, the Association for Civil Rights in Israel (“**ACRI**”) petitioned the High Court of Justice, along with other partners, demanding that the court prohibit police from

detaining people for identification, without suspicion that they committed a transgression. ACRI demanded the annulment of the "procedure for presenting IDs and the requirement to identify oneself before a police officer," in which the illegal practice is anchored.

12. The petition attacked the systematic and long-standing conduct of police officers who detain people on the street, solely because of their subjective impression that they appear to be "problematic," requiring them to present an ID card without any explanation and checking the police database for information on them. Since the petition was issued, ACRI participated in two hearings in the Supreme Court on this issue. The Court issued an order *nisi* but has not made a ruling. A telling example of over-policing was evident in another lawsuit ACRI filed against the police on behalf of a 16-year-old Ethiopian boy who was detained three times for no evident reason, questioned, searched and asked to explain his whereabouts near his house during the daytime. The Court has yet to hand-down a decision.

South Africa

13. In South Africa, excessive use of force and violence is characteristic of law enforcement institutions. The prevalence of torture and other ill-treatment is unacceptably high, despite the country having progressive laws and institutional frameworks. In the 2018/2019 year, the South Africa Independent Police Investigative Directorate ("IPID") received 270 complaints of torture and over 1000 complaints about other forms of ill-treatment. Between 2014 and 2018, over 30,000 cases of human rights abuses by the police were recorded by IPID but only 1.3 per cent of these cases were prosecuted. Human rights violations in South Africa have a conspicuous racial dimension, a direct offshoot of the country's repressive apartheid history which was characterised by flagrant abuses of the majority African population by the State's law enforcement agencies. South Africa is proof that once a system of oppression is entrenched along racial lines, it can outlive even legalized racial policies and will continue to be carried out by law enforcement irrespective of the racial identification of individual officers. Since its inception in 1979, the Legal Resources Centre ("LRC") has been providing support to victims and families of victims of the excessive use of force and violence by South African law enforcement. Even though the majority of law enforcement officers in South Africa since 1994 are Black, in all cases of torture which the LRC is currently working on to assist victims in obtaining redress, the victims are also Black. All people that have been killed, tortured, or maimed by the South African police since 2014 according to IPID statistics, were and are Black.

United Kingdom

14. Inspired by the wave of mass mobilizations in response to the killing of George Floyd, people took to the streets across the United Kingdom chanting "the UK is not innocent" alongside the names of the 183 people of colour who have died at the hands of police in England and Wales in the last 30 years. While the authorities have been quick to rely on the principles of "policing by consent" to distinguish Britain's form of policing from other jurisdictions, this does not reflect the experiences of communities who bear the brunt of policing malpractices. There are widening disparities in the use of police powers, increasing numbers of armed frontline officers, and the rolling out of intrusive technology, all of which has been magnified during the COVID-19 pandemic and highlighted the enduring legacies of structural racism.
15. Liberty provided a written submission in June 2020 to the United Kingdom's Home Affairs Select Committee ("HASC") marking the 21st anniversary of Macpherson Report. The submission highlighted the continued widening of ethnic disparities in the use of police powers

in the UK and supplemented written evidence submitted for a predecessor inquiry in 2019. Liberty considered a number of areas of law and policy in which urgent actions are needed to stop spiraling police disproportionality in the UK, including: stop and search, use of force, including the use of tasers, facial recognition software, predictive algorithms used for policing, and police powers during the COVID-19 pandemic. A recent study by the University College London's Institute for Global City Policing echoed these concerns and found that young Black males in London were 19 times more likely to be stopped and searched.

United States

16. In the United States, Black people are arrested at far higher rates than white people, in large part because broken-windows-style policing targets minor misconduct in low-income Black and Latinx communities that would escape police attention in wealthier white communities. In New York City, for example, between 2001 and 2013, 51 per cent of the city's population over age 16 was Black or Latinx. However, 82 per cent of those arrested for misdemeanors and 81 per cent of those who received summonses for administrative code violations were Black and Latinx. This is a product of racially disparate police enforcement patterns rather than race-based differences in the underlying conduct. For example, in 2020, the ACLU conducted a nationwide study that found that Black people were 3.6 times more likely to be arrested for marijuana possession than white people, even though both groups use marijuana at comparable rates. These individual trends add up to shocking racial disparities in arrests: although Black people comprise just 13 per cent of the nation's population, their arrests account for 27 per cent of the nation's arrests.
17. Racial profiling is a longstanding and deeply troubling national problem. It occurs every day, in cities and towns across the United States, when law enforcement target people of colour for humiliating and often frightening detentions, interrogations, and searches without evidence of criminal activity and based on perceived race, ethnicity, national origin, or religion. More than 240 years of slavery and 90 years of legalized racial segregation have led to systemic profiling of Black persons in traffic and pedestrian stops. The End Racial Profiling Act — a federal bill that would require law enforcement agencies to provide training on racial profiling, collect data, and codify procedures for handling complaints, and would require the Justice Department to withhold or reduce funding to public agencies that refuse to comply — has been re-introduced in every Congress for nearly two decades and yet not passed despite bipartisan support.
18. Just as police are more likely to stop, frisk, arrest, and jail Black people than white people, they are more likely to kill Black people in the United States. Decades of research suggest that these racial disparities in police killings stem from racial disparities in whom police stop and arrest, as well as disparities in citizen complaints, crime reporting, 911 calls, and access to trauma care. Eighty per cent of arrests in the United States are for misdemeanors, and we have witnessed many police killings — Philando Castile, Eric Garner, George Floyd, and more — that arose from enforcement of petty offences. Eliminating unnecessary interactions between law enforcement and community members, and more generally reducing the scope, size, and role of police in communities of colour will significantly decrease police violence and deaths.
19. Discriminatory practices in policing have a long history in Argentina, Canada, Ireland, Israel, South Africa, and the United States. Due to pervasive structural and institutional racism, these abusive practices go largely unchecked. Civil liberties organizations have used strategic litigation and monitoring to highlight the disproportionate effect of these systematic practices

on Africans and people of African descent. They have also sought to support victims and families of victims as they navigate legal systems in search of justice and reparations.

Question 2: Information regarding specific incidents of alleged 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.

20. INCLO members work within national and international systems to bring awareness to egregious human rights violations. This work is crucial given the high levels of impunity that law enforcement enjoys in terms of violations against Africans and people of African descent, especially if they are also part of historically marginalized groups, such as migrant or socio-economically disadvantaged communities.

Argentina

21. During the Working Group's visit to Argentina, concerns were raised regarding the high levels of impunity in cases of crimes committed against African migrants and people of African descent. In particular, the 2016 unresolved case of Massar Ba's murder bears reference. Massar Ba was a Senegalese migrant, activist, and human rights defender who was found gravely hurt in the Buenos Aires neighbourhood of San Cristobal and died shortly after. Two factors make the lack of justice more egregious. In the first place, the presiding judge on the case refused a request by the Asociación de Residentes de Senegal en la Argentina ("**ARSA**") to present itself as a complainant. Secondly, the Senegalese government, lacking diplomatic representation in Argentina, sent a government official to accompany the Senegalese community in its demands for justice and was not received by any Argentine officials. The lack of regard for the demands for justice by the Senegalese community in Argentina reflects the structural violence that Africans and people of African descent regularly face in Argentina.

Colombia

22. In Colombia, police violence continues to be legitimized and concealed by government institutions making it difficult to hold law enforcement accountable, allowing impunity to run rampant. During the COVID-19 lockdown, civil liberty organizations have identified 20 cases of aggression by the police. These ongoing abuses, along with other structural issues linked to inequality, poverty, discrimination, and violence, led to massive demonstrations between November and December of 2019, and as they became exacerbated by the government's COVID-19 response, leading to more demonstrations in 2020.
23. As protests triggered by the murder of George Floyd grew in the United States and around the world, Dejusticia drew parallels to the recent murders of two young people by police in Colombia. One of them, Anderson Arboleda, a person of African descent, was killed by police on 20 May 2020 outside of his home. Anderson was attacked by police for allegedly violating quarantine rules when saying goodbye to his younger brother from the door of his house. Police hit him on the head twice and used tear gas on him and his family. He died hours later in his bed from a cranio-cerebral injury. The death of Anderson Arboleda is part of a consistent pattern of arbitrary violence by law enforcement against vulnerable and historically marginalized populations in Colombia, an issue that became even more apparent in the enforcement of regulations in response to the COVID-19 pandemic.

Kenya

24. In Kenya, there have been numerous cases of brutality and excessive use of force during the COVID-19 pandemic by police while enforcing the dusk to dawn curfew. Members of the public, who were in a rush to beat the curfew were subjected to severe beatings, unlawful arrests, and in extreme circumstances, loss of life. To date, about 16 Kenyan's have lost their lives to unlawful police killings during the COVID-19 pandemic. The youngest victim being Yassin Moyo, a 13-year-old boy who was struck by a stray bullet when police officers conducting a routine patrol to enforce the curfew fired live ammunition towards the balcony of his home in Kiamaiiko. Together with civil society partners from the Police Reforms Working Group-Kenya, the Kenya Human Rights Commission ("KHRC") issued two press statements condemning unnecessary use of force by police and increased cases of extra-judicial killings and police brutality during the COVID-19 pandemic.
25. As a result of this killing, the Law Society of Kenya filed a suit against the Attorney General and the Inspector General of Police. The High Court has not only directed police to stop using excessive force or harassing Kenyans during the curfew but it has also directed the Inspector General of Police to publish guidelines on the conduct of police during curfews in major daily newspapers of national circulation. Fourteen police officers have since been interdicted as a result of misconduct while enforcing the curfew orders during the pandemic. As a result of the second press statement issued by the KHRC, the Inspector General of Police has since created an online platform to enhance public engagement with victims of police brutality and the public at large. The Director of Public Prosecutions has committed to ensuring that all police officers found culpable for human rights violations are prosecuted.

South Africa

26. South Africa has seen a spike in the number of cases torture and instances of cruel, inhuman, or degrading treatment ("**CIDT**") in 2020 as a militarized, hard lockdown ostensibly to "flatten the curve" was sanctioned by the South African government. At one point, the number of deaths occasioned by brutal policing against Blacks surpassed the number of deaths caused by the COVID-19 virus. During stage five of South Africa's COVID-19 lockdown, the South African Police Service ("**SAPS**") and other agencies killed at least 11 people who violated lockdown regulations within a period spanning one week beginning 26 March 2020. One of the victims was Mr Collins Khosa, who was beaten to death by members of the South African National Defence Force ("**SANDF**") while acquiescent police officers stood by. After a military board of inquiry exonerated the soldiers, the LRC stepped in to assist the family in obtaining compensation through the courts by commencing a civil process. Before the matter could be heard by the courts, the family of the deceased agreed to an undisclosed out of court settlement with the SANDF.

United States

27. The killing of George Floyd — an unarmed Black man who pleaded for his life while Minneapolis police officer Derek Chauvin kept his knee on Mr Floyd's neck for eight minutes and 46 seconds — on 25 May 2020 was horrific, but it was not unusual. Fatal killings by police are routine in the United States, like the killing of Breonna Taylor, a 26-year-old unarmed Black woman who was shot 8 times and killed by Louisville, Kentucky police officers in her own apartment on 13 March 2020, and Tony McDade, a Black trans man killed on 27 May 2020 in Tallahassee, Florida where witnesses said they never heard any warnings, "I never heard, 'Get

down, freeze, I'm an officer.' I never heard nothing. I just heard gunshots." Police in the United States kill more than 1,000 people annually. The actual number is not known because the data is not tracked, reported, collected, or analyzed in a systematic fashion. At a minimum, we know that at least 986 people have been shot and killed by law enforcement officers in 2020 alone. The overwhelming majority of law enforcement officers are never charged, let alone convicted, for using excessive and fatal force against civilians. The epidemic of police violence in the United States has been directly and disproportionately targeted at Black people. Just as police are more likely to stop, frisk, arrest, and jail Black people than white people, they are more likely to shoot and kill Black people. One study found that young unarmed male victims of deadly force by police are 13 times more likely to be Black than white. In 2019, Black and Native American/Indigenous people were approximately three times more likely than white people to be fatally shot by police. Compared to white men, Latinx men are almost twice as likely to be killed by the police.

28. Specific instances of human rights violations against Africans and people of African descent that have garnered wider attention in Argentina, Colombia, Kenya, South Africa, and the United States are indicative of wider and pervasive trends, rather than the exceptions they tend to be consistently perpetrated by government authorities and law enforcement. Many of these cases highlight the high levels of impunity within which law enforcement operates and the failure of legal systems to ensure compliance with the law.

Question 3: Measures taken to ensure accountability, remedy and redress and address any impunity for human rights violations against Africans and people of African descent, particularly by law enforcement agencies; and the outcomes and effectiveness of such measures. Please also share information about the functioning of accountability mechanisms and associated decision-making processes addressing human rights violations, and identify any patterns or trends in the outcomes of these mechanisms and processes that show or suggest differential experience of Africans and people of African descent with respect to accountability for violations suffered by them. Please also identify or include related public reports in this regard.

29. An important area of work for INCLO's network is ensuring that law enforcement and government authorities are accountable to the communities they are meant to protect and support. Challenging cases of impunity and advocating for redress for victims and families of victims has led INCLO members to denounce discriminatory practices at relevant national oversight bodies, challenge the constitutionality of violent police practices, support legal actions against police officers, and offer channels for victims to safely report abuses.

Argentina

30. In 2020, the Inter American Court of Human Rights issued an important ruling regarding the case of Delfín Acosta Martínez, a person of African descent of Uruguayan nationality who was arbitrarily detained, and beaten to death in custody by police officers. The Court ordered the Argentinian state to open a mechanism to register claims of people who were arbitrarily detained based on their race. The ruling also ordered the creation of a register of people of African descent in Argentina to evaluate the extent of the racial profiling in law enforcement actions.

Colombia

31. Following the violent repression of protests in September 2020, Dejusticia added new facts to a legal action (Tutela) presented in 2019 requesting the protection of the fundamental right to protest, due process, freedom of expression, and press freedom as a result of what happened during the National Strike in November and December 2019. This petition asked for recent abuses by police to be considered in addition to those included in the previous 2019 Tutela presented by a coalition of citizens, academics, human rights organizations, and victims of police violence. The previous Tutela identified four types of violent practices that exceeded the constitutional and legal function of the national police and violated fundamental rights: (i) systematic, arbitrary, and unjustified dissolution of peaceful protests; (ii) illegal use of potentially lethal arms; (iii) arbitrary use of chemical mechanisms for crowd dispersal; and (iv) arbitrary use of police mechanism for the arrest of demonstrators. The new petition denounced an additional violent practice: the indiscriminate use of firearms against demonstrators. On 22 September 2020, the Supreme Court of Justice safeguarded the right of all people to demonstrate and the duty of the authorities to “ward off, prevent and punish the systematic, violent and arbitrary intervention of the public force in demonstrations and protests.” The ruling ordered the National Government, the Prosecutor’s Office, the Public Ministry, the National Police, and the Mayor’s Office of Bogotá to take specific actions to safeguard the fundamental right to protest, many of which have still not been taken place at the time that this contribution was written. Given the documented disproportionality of police violence against African communities in Colombia, the Supreme Court ruling is an important step to prevent further deaths and human rights violations.

Kenya

32. In Kenya, the KHRC has successfully supported justice against abusive police officers which has led to six successful convictions of police officers for excessive use. Additionally, KHRC and other civil society partners issued several press statements condemning the excessive use of force by the police during routine operations. These statements called on the relevant state agencies to investigate and prosecute police officers found culpable. As a result of these interventions, there are currently about seventy-five cases of police excesses pending before courts of law. KHRC has also supported the families of victims of unlawful killings through documentation, enhanced visibility, memorialization, and legal interventions. To this end, through the Missing Voices coalition, members of the public have been able to report several cases of unlawful killings by police officers. As a result of this intervention, KHRC and other partners were able to release a report that had documented 107 killings by the police. Most of these cases have been forwarded to the Independent Policing Oversight Authority for investigation. KHRC supported mothers and widows to sue the government for unlawful killings and was able to join one of these cases as an interested party.

South Africa

33. The LRC is currently working in collaboration with the Omega Research Foundation (UK), Justica Global (Brazil) and KontraS in a project whose aim is to advocate for the regulation and banning of some law enforcement equipment which serves no legitimate law enforcement purpose except to facilitate torture and other ill-treatment. The project also aims at instituting action for legal redress on behalf of torture survivors. Pursuant to the objectives of this project, the LRC has launched a website which allows victims to anonymously report abuses whereupon further investigations are carried out to institute both criminal and civil

proceedings against the responsible State institutions and individuals. The organisation has also compiled a guideline document that assists frontline personnel who deal with torture survivors to document torture and CIDT cases with a view to enhancing the probative value of evidence emanating from such investigations. Due to the high number of torture and CIDT cases in South Africa, the LRC is also working with a network of organisations⁴ and individuals to train and empower them to take on cases on a contingency basis when LRC reaches capacity.

United Kingdom

34. In the United Kingdom, Liberty launched a new investigative journalism platform, ‘Liberty Investigates’, to expose human rights violations. Liberty warned that police being urged to use “their discretion” when enforcing new rules during the pandemic would lead to communities of colour bearing the brunt of arbitrary policing. Analysis by Liberty Investigates found that nationally people of colour were over 50 per cent more likely than white people to be handed a fine for breaching the lockdown. Given that in most instances individuals receiving fines will not go through the trouble of challenging them and in an attempt to document these injustices, a group of lawyers and CSOs, which includes Liberty, wrote to the National Police Chiefs Council (“NPCC”) on 20 May 2020 to call for a review into the issuing of Fixed Penalty Notices, which could help explain the ethnic disparities within them. That same day, the Joint Committee on Human Rights called for a similar review. This is something that Wiltshire Police has already started to do, rescinding 13 fines as of 7 May. Liberty also warned that the use of expansive powers by police during the coronavirus lockdown has led to the discriminatory use of tasers and stop and searches on communities of colour. In London, levels of stop and search rose to their highest in over seven years.

United States

35. In the United States, the police are regularly shielded from accountability for excessive use of force. Although exact statistics are difficult to find, often officers are not investigated or prosecuted for the killings of civilians. A central, contributing factor to this impunity is the legal standard by which police officers’ use of deadly force is evaluated: the United States Supreme Court has established the Constitutional boundary to be one of “reasonableness”, which in practice creates a wide breadth of discretion for police action and “justified” use of force, while making it difficult to hold officers accountable through the criminal legal system. Beyond the failings of the legal framework, each of the primary avenues for accountability available to victims of police misconduct are plagued by institutional deficiencies, procedural obstacles, and high rates of acquittal. Prosecutors are less likely to file charges against police officers than civilian suspects. In fact, between 2005 and 2015, only 54 officers were charged after police-involved killings, despite the thousands of such incidents that occurred over the same time-period. Even in the rare instances when an investigation leads to possible charges being filed, presiding juries and grand juries frequently evidence bias in favour of the police. When trials do take place, police are held to a less stringent legal standard for their use of deadly force than their civilian counterparts, making it more difficult for prosecutors to prove a violation of the law. The legal doctrine of qualified immunity often shields officers from liability for many constitutional violations, including fatal use of force. Ultimately, even in the rarest of instances — when a police officer is convicted of a crime, sentences are often more lenient than those applied to civilians convicted of similar crimes.

⁴ These organizations include the Centre for the Study of Violence and Reconciliation, Benchmarks Foundation, Lawyers for Human Rights, African Police Civilian Oversight Forum, and the Right to Know Campaign (R2K).

36. There are straightforward reforms that would curb impunity in the United States, including increased oversight, ending police-protective doctrines like qualified immunity, and electing truly independent prosecutors. Use-of-force statutes must also be dramatically reformed so that deadly force is only allowed if necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, and only after all other alternatives to lethal force have been exhausted. Whether such force is necessary should involve consideration of an officer's conduct and decisions leading up to the use of deadly force, including decisions that create unnecessary risks or ignore reasonable and available alternatives to such force.
37. However, improved oversight policies, more training, and better procedures and policies alone will not curb racially discriminatory police violence in the United States. The United States must reduce police departments' role, presence, responsibilities, and funding, and instead reinvest into community-based services that are better suited to respond to actual community needs. These measures can lead to a reduction in police interactions, and in turn, help put an end to racist police violence. Prohibiting police from enforcing a range of non-serious offences, including issuing fines and making arrests for non-dangerous behaviours, would eliminate many of the unnecessary interactions between the police and community members that have led to so much violence and so many deaths. It is time to embrace alternatives like civilian-led crisis intervention teams composed of highly trained professionals, including nurses, doctors, psychiatrists, and social workers, to respond to incidents with people who are in mental health crises. For instance, following the unjust killing of Walter Wallace Jr at the hands of the Philadelphia Police Department on 26 October 2020 while he was experiencing a mental health crisis, the ACLU of Pennsylvania has taken a lead in campaigning for police divestment in Philadelphia. The campaign addresses the failure of previous reforms that relied on more training for police and calls for city officials to divest from the Philadelphia Police Department and invest in community-based services and responses for people in crisis.
38. Civil liberty organizations have brought cases of discriminatory policing practices to the highest courts in Argentina, Colombia, Kenya, South Africa, United Kingdom, and the United States, as well as to regional human rights systems. As calls for more radical change at the level of policing are heard worldwide, further efforts are being made to obtain reparations for victims and community-based responses are being proposed as alternatives to current models of law enforcement.

Question 4: Information concerning Government responses to anti-racism peaceful protests, within the meaning of resolution 43/1, including the alleged use of excessive force against protesters, bystanders and journalists, as well as applicable laws, regulations, policies, practices and other measures, and their impact and effectiveness.

39. The many instances of excessive repression of anti-racism peaceful protests is a telling sign of governmental and law enforcement systems that do not respect, protect, and fulfill the human rights of all its citizens equally. INCLO members continue to condemn these discriminatory actions and have conducted monitoring that allows them to place these actions as part of wider and pervasive trends.

Australia

40. In June 2020, massive Bla(c)k Lives Matter/Aboriginal Lives Matter protests took place across Australia, involving many tens of thousands of protesters in Sydney and Melbourne. Organisers distributed masks and hand sanitizer and took extra measures to allow social distancing. However, the Australian Prime Minister made a statement that protestors marching for Black Lives Matter threatened the country's economic recovery from the pandemic and should be charged if they marched. This statement came just days before the Prime Minister announced football stadiums with crowds of up to 10,000 were to reopen the following month. Some government ministers suggested Black Lives Matter protesters should lose social security payments, with one minister calling for protesters to hand back health-related payments in advance of attending the protests. Several protests were ruled unlawful by the courts.
41. Australia's Human Rights Law Centre ("HRLC") in conjunction with other human rights organisations issued a statement condemning the federal and state governments' approach to the Black Lives Matter protests, calling out its inconsistency with democratic rights and freedoms, and calling on governments to address protestors' calls and end police violence and Black deaths in custody.

Israel

42. In Israel, the gap between the presence of members of the Ethiopian community in criminal proceedings and their proportion of the population (1.6 per cent) remains enormous: according to data published in an activity report by The Anti-Racism Government Coordinating Unit. The proportion of youth of Ethiopian origin in Ofek prison in 2018 stood at roughly 14.3 per cent, and the proportion of minors of Ethiopian origin arrested in 2018 was 5.4 per cent. Media publications indicate that over the past two decades, 11 young people in the community have been killed in police encounters. In 2019, two young members of the Ethiopian community were killed — their names were Yehuda Biadga and Solomon Teka. As part of its DocoRights project, ACRI has documented the excessive use of force by police during non-violent demonstrations held by the Ethiopian community protesting the excessive policing in Israel.

United Kingdom

43. In the United Kingdom, serious threats of legal prosecution against protesters were made by government officials after the removal of a slave trader statue by anti-racism protesters in Bristol sparked violent counter-protests from conservative groups. Ministers indicated they would support extending sentences for damaging statues, while other government authorities put forward a measure under which violent protesters could be jailed within 24 hours. This was particularly alarming given the Liberty report that found that expanded police powers during the pandemic had been disproportionately deployed against people of colour.

United States

44. Following the killing of George Floyd by police officers in Minneapolis, United States, protests were organized across the country and in other countries and were met overwhelmingly by force. The ACLU and other groups have documented and brought legal challenges to end serious violations of the right to assemble in the context of Black Lives Matter protests. Since

26 May 2020, there have been over 400 instances of journalists being detained, assaulted, or otherwise prevented from performing their duties by police. Protesters have experienced injuries, and sometimes death, from tear gas, pepper spray, rubber bullets, and other crowd control tactics used by the police. Over 10,000 protesters have been arrested.

45. In Washington D.C., peaceful protesters were tear-gassed to facilitate a photo opportunity for President Trump. On 3 June 2020, New York Police Department vehicles drove into protesters and one police officer pulled a Black protester's mask down to pepper spray him in the face. INCLO issued a statement condemning the use of excessive force and the misuse of less-lethal weapons against protesters. The ACLU filed a lawsuit against state and local law enforcement for using excessive force in Minnesota, Washington DC and Seattle, Washington and other jurisdictions. In July 2020, federal agents intervened in protests in Portland, Oregon exacerbating tensions using unnecessary force and detaining and taking protesters in unmarked cars. The ACLU filed a lawsuit challenging the violent behaviour of federal law enforcement agents and a federal court issued a restraining order a few days later. These law enforcement responses against anti-racism demonstrations stand in stark contrast with the peaceful police responses to anti-lockdown protests that were held in dozens of states led by mostly white-armed demonstrators.
46. Despite the risks posed by COVID-19 pandemic, demonstrations have been a prominent part of 2020, especially those connected to and inspired by the Black Lives Matter movement. The misuse of force by law enforcement and the criminalization of protests is a well-documented issue which once again is disproportionately levelled against communities of colour highlighting the structural racism of law enforcement institutions.

Question 5: Specific information pertaining to all other aspects of the mandate set out in resolution 43/1, including regarding the situation and perspectives of African women and children and of women and children of African descent, as well as other relevant gender and intersectional dimensions, including discrimination based on colour, sex/gender, economic and social status, disability, or other status.

47. Throughout their work on abusive policing practices, INCLO members identify and seek to address other forms of discrimination that intersect and exacerbate racial discrimination against Africans and people of African descendants. In particular, our work points towards the compounding vulnerability of Africans and people of African descent who are also migrants or from disadvantaged socio-economic backgrounds to abusive policing practices.

Argentina

48. During the visit of the Working Group, CELS in conjunction with other partner organizations presented a second report focused on African migrants highlighting once more the criminalization of informal sellers who are often African migrants. The report also made reference to demands set forth by a coalition of organizations in late 2019 to suspend the law DNU 70/2017 which backtracked on substantial parts of the Migration Law in Argentina guaranteeing the rights of migrants. It also advocated for the Argentine government to implement a migrant agenda that would facilitate the regularization of the migration status for migrants from outside Mercosur, allow for better access to education and health services, and address institutional racism and violence through a first-time governmental policy against racism and xenophobia.

Colombia

49. In Colombia, Dejusticia highlighted the relationship between socioeconomic inequality and police abuse. After heavy police repression occurred during #9S, protests on 9, 10 and 11 September 2020, Cerosetenta conducted an investigation using more than 200 videos collected on social media that proved that police disproportionately used excessive force when responding to demonstrations in middle-class or poor neighbourhoods. Data regarding shots fired and people injured and killed by police were consistent with the trends found in investigations carried out by Dejusticia in 2013 and 2015, both focused on police forces, security and inequality. These investigations found that those most likely to suffer from police abuse were lower-income persons, that identify as Black or indigenous and whose appearance is connected to an urban subculture. All reports indicate an urgent need for structural reform of Colombian police forces given that their application of the use of force is discriminatory. Another challenge to police accountability is that police do not comply with transparency and access to information for citizens, which makes the available official data needed to obtain solid conclusions limited and hinders civil society from making strong reform proposals.

Hungary

50. In Hungary, although there is not a large African community, ethnic profiling by police is a serious concern that mainly affects members of the Roma population. Human rights groups have also been concerned that since 2015, anti-immigration propaganda, initiated, catalyzed, and upheld by the right-wing government and the occupied media has encouraged acts of xenophobia and harassment against migrants, including African people or people of African descent. The Hungarian Helsinki Committee provided a list of these incidents as part of the civil society contribution to the annual hate crime reporting of the OSCE Office for Democratic Institutions and Human Rights (“**ODIHR**”).

Indonesia

51. In mid-2020, the Commission for the Disappeared and Victims of Violence (KontraS) in Indonesia received complaints from several Nigerian citizens who had experienced extortions and been persecuted by immigration officers in Jakarta, Indonesia. These alleged extortions and forms of persecution had been going on for several years and occurred in several places in the Jakarta Greater Area, targeting Nigerian citizens with expired living permits. In most cases, immigration officers were not threatening to deport the Nigerian citizens but threatened to subject them to cruel and inhumane treatment such as beatings, floggings, and being interrogated and detained without drink and food, unless they paid a sum of money requested by the immigration officers (a minimum of IDR 10,000,000 or USD 707 per person). KontraS received reports of Nigerian citizens being subjected to electric shocks to force them to pay the bribes demanded. KontraS also received reports of immigration officers using vigilante groups in extorting, threatening, and arresting Nigerian citizens in Jakarta. Since those reports, KontraS has brought these cases of alleged abuse to several governmental agencies, including the immigration authorities themselves, the Ombudsman, Indonesian National Human Rights Commission, and the Nigerian Embassy in Jakarta. Although KontraS has not heard of new reports of extortion and persecution toward Nigerian citizens, it has been concerned that there has not been a resolution reached on these cases as they have not been processed according to the law, especially the national criminal law.

Kenya

52. The implementation of the COVID-19 governmental response in Kenya has highlighted long-term structural issues that overwhelmingly affect the economically vulnerable and reaffirm discriminatory and excessive policing practices that target marginalized communities. On 4 May 2020, police officers and officials from the National City Water and Sewerage Company supervised the unlawful eviction of over 5000 families in Nairobi's Kariobangi area. These evictions were not only conducted in total disregard of legal procedures but also after a Court order was issued stopping the same. After houses were bulldozed, residents and traders blocked a busy bridge to a nearby market in Kariobangi North next to the intersection and burned tires as they demanded to speak with President Uhuru Kenyatta. Police officers forcefully disrupted and dispersed the protest using tear gas and water cannons. Many citizens were subjected to arbitrary arrests by police officers for being found out of their homes or in public places during the national lockdown.

South Africa

53. In the past two decades, and increasingly under the COVID-19 lockdown, the mostly poor and marginalised Black majority in South Africa has borne the brunt of police brutality especially during service delivery protests. During these protests, the South African Police Services (“SAPS”) have assaulted, tortured, and even killed peaceful protestors. It is apparent that the South African Black government is anti-black poor because given that when other non-African racial groups have protested sometimes violently, the police have not reacted violently and often do not even show up at all. The 2012 Marikana massacre which saw 34 protestors shot in cold blood as they protested against meagre wages paid by the mining company Lonmin, was perhaps a watershed moment in the brutality of the post-apartheid State's law enforcement apparatus against poor marginalised Black people. This brutality has been continual and sustained over the years and saw the likes of Andries Tatane, Mido Macia and Collins Khosa, all Black males, die at the hands of South Africa's law enforcement institutions. The LRC represented the families of the Marikana victims and worked with other civil society organisations on the Khosa case.

United States

54. In the United States, while there is a dearth of research examining racial disparities in police killings among non-male and nonbinary populations, some data indicates that although women are less likely than men to be killed by police overall, Black women and Native American/Indigenous women are more likely to be killed by police than white women. Furthermore, while police killings are higher in high-poverty areas than low-poverty areas for all racial groups, Black people who live in more affluent areas are almost as likely to be killed by police as white people who live in the poorest areas.
55. An intersectional lens is key to understanding the overlapping and reinforcing forms of discrimination that affect Africans and people of African descent. INCLO members in Argentina, Colombia, Hungary, Indonesia, Kenya, and South Africa have found that those from migrant communities and those from socio-economic disadvantaged backgrounds are even more vulnerable and likely to experience abuse at the hand of law enforcement.

D. CONCLUSION

56. INCLO is thankful to the Office of the United Nations High Commissioner for Human Rights for its consideration of this contribution and remains at its disposal for any further consultation that would benefit the preparation and drafting of the report pursuant to Human Rights Council resolution 43/1 on the “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.”

ENDS.