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**Human Rights Council**  
Fifty-fourth session

**International Independent Expert Mechanism to Advance  
Racial Justice and Equality in the Context of Law Enforcement**

**Visit to the United States of America\***

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\* The information contained in the present document should be read in conjunction with the annual report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement (A/HRC/54/69), to be submitted to the Human Rights Council at its fifty-fourth session, pursuant to Council resolution 47/21.

## I. Introduction

1. Pursuant to Human Rights Council resolution 47/21, and at the invitation of the Government, the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement (The Expert Mechanism) undertook a visit to the United States of America (the United States or the US) from 24 April to 5 May 2023, where it visited the District of Columbia, Atlanta, Los Angeles, Chicago, Minneapolis and New York City.
2. The delegation included Dr. Tracie Keese<sup>1</sup> and Prof. Juan Méndez<sup>2</sup>, members of the Expert Mechanism. Justice Yvonne Mokgoro<sup>3</sup> (Chair) guided and participated in the planning, but was regrettably unable to join the visit as she was on medical leave. The Secretariat and the two other Mechanism experts wish to honour all the work and guidance of Justice Mokgoro, whose impact endures despite her absence.
3. During the visit, the Mechanism held dozens of meetings with federal and local authorities, judicial authorities, law enforcement, affinity groups of Black law enforcement officers, police unions, civil society organizations, among others. The experts heard direct testimony from 133 affected individuals,<sup>4</sup> in five different cities, and received several others from detainees during the visits to five different detention centres. The Mechanism also received dozens of written submissions that informed the present report.
4. The Expert Mechanism wishes to thank the Government of the United States of America for accepting its request to visit the country. The Mechanism is appreciative of the genuine cooperation extended throughout the visit, including for the numerous informative meetings with representatives of federal, state and local authorities and in the visit of five detention centres.
5. The Experts would also like to extend its deep appreciation to all the people met during the country visit, especially victims, their relatives, and all other affected communities and individuals who presented testimony before the Mechanism. The Expert Mechanism also thanks all the contributors of written submissions.

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<sup>1</sup> Dr. Tracie L. Keese (United States of America) served for 25 years in the Denver Police Department and subsequently served as New York City Police Department's (NYPD) Deputy Commissioner of Training and Deputy Commissioner of Equity and Inclusion. She served as Project Director of the National Initiative for Building Community Trust and Justice - a US Department of Justice project designed to improve relationships and increase trust between minority communities and the criminal justice system. She was also Adjunct Professor at the University of Colorado Denver, teaching courses on race, crime and justice. She is Co-Founder and Senior Vice President of Justice Initiatives of the Center For Policing Equity, which promotes police transparency and accountability.

<sup>2</sup> Prof. Juan E. Méndez (Argentina) is professor of human rights law in residence at the American University-Washington College of Law and member of the Board of Trustees of the UN Voluntary Fund for Victims of Torture. He was UN Special Rapporteur on torture; Special Advisor to the UN Secretary-General on the Prevention of Genocide and President of the International Center for Transitional Justice, as well as former Commissioner and President of the Inter-American Commission on Human Rights. He is commissioner to the International Commission of Jurists and was Special Advisor on Crime Prevention to the Prosecutor of the International Criminal Court. He also worked with Human Rights Watch for 15 years and was the Executive Director of the Inter-American Institute of Human Rights.

<sup>3</sup> Justice Yvonne Mokgoro (South Africa) is a former justice of the Constitutional Court of South Africa. She served on the South African Law Reform Commission and as President of Africa Legal Aid (AFLA). She is Chairperson of the Nelson Mandela Children's Fund and she served as Acting Justice at the Lesotho Appeals Court, the Namibia Supreme Court and as Chairperson of the United Nations Internal Justice Council. She has held academic positions at the University of Botswana, University of the Western Cape and University of Pretoria and has taught also in the United Kingdom, the United States and the Netherlands.

<sup>4</sup> See the Annex to the present report for the list of affected individuals who provided testimony before the Mechanism during the visit to the United States of America.

6. In the District of Columbia, the Mechanism met with several representatives of the Federal government, including from the Department of State;<sup>5</sup> the Department of Justice;<sup>6</sup> the Department of Homeland Security;<sup>7</sup> and members of the Domestic Policy Council of the Executive Office of the President at the White House. The Mechanism also met Congressional Staff at Capitol Hill, and with the National Organization of Black Law Enforcement Executives (NOBLE) and the United Nations Anti-Racism Coalition (UNARC). The Mechanism regrets not having met with Members of Congress or Supreme Court Justices despite being requested.

7. In Atlanta (Georgia), the Mechanism met with the Atlanta Police Department, the Georgia Bureau of Investigations (GBI), the Georgia Chapter of the National Organization of Black Law Enforcement Executives (NOBLE), the Carter Center and the American Civil Liberties Union (ACLU). At the Auburn Avenue Research Library on African American Culture & History, the Expert Mechanism heard 39 victims' testimonies related to police violence, policing in schools, access to justice, and detention including forced labour and solitary confinement.<sup>8</sup>

8. In Los Angeles (California), the experts met with the Los Angeles Police Department (LAPD); the Office of the Mayor, specifically with the Deputy Mayor for Community Safety and the Deputy Mayor for Public Safety; and the Los Angeles County Sheriff's Department. The Expert Mechanism visited four Los Angeles County detention facilities: the Men's Central Jail, the Twin Towers Correctional Facility, the Inmate Reception Center and the Century Regional Detention Facility (Women's jail in Lynwood, California). The experts also met with the Oscar Joel Bryant Foundation. At the Los Angeles Community Action Network, the Mechanism heard 26 victims' testimonies, primarily regarding police violence, access to justice, homelessness and law enforcement, Haitian migrants and asylum seekers, and conditions of detention in Los Angeles County Jails and other state prisons.<sup>9</sup>

9. In Chicago (Illinois), the Mechanism met with the Chicago Police Department, the Black Public Safety Alliance and the Cook County Sheriff's Office, specifically with the Cook County Department of Corrections, and conducted a visit to the Cook County Jail. At the DuSable Black History Museum & Education Center, the Mechanism heard 30 victims' testimonies mostly regarding police violence, torture, political prisoners, wrongful convictions and wrongful deaths, and youth, women and law enforcement.<sup>10</sup>

10. In Minneapolis (Minnesota), the Mechanism met with different city authorities, including Mayor Jacob Frey, the Community Safety Commissioner, the Civil Rights Department and the Office of Police Conduct Review. At the Urban League Twin Cities, the

<sup>5</sup> The Bureau of International Organization Affairs, the Bureau of International Narcotics and Law Enforcement Affairs, and the Special Representative for Racial Equity and Justice.

<sup>6</sup> The Civil Rights Division, the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), the Bureau of Prisons (BOP), the Office of Community Oriented Policing Services (COPS), the Bureau of Justice Statistics (BJS) and the National Institute of Justice (NIJ).

<sup>7</sup> The Office for Civil Rights and Civil Liberties (CRCL), U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

<sup>8</sup> The Mechanism is grateful to the following organizations for its support in the organization of these hearings: Mothers Against Police Brutality, UN Antiracism Coalition (UNARC), Malcolm X Grassroots Movement, Southern Center for Human Rights, Spelman College, Malcolm X Center for Self Determination, and the Southern Poverty Law Center.

<sup>9</sup> The Mechanism is grateful to the following organizations for its support in the organization of these hearings: Nathaniel H. Pickett II Foundation, Inc., UN Antiracism Coalition (UNARC), Los Angeles Community Action Network (LACAN), Haitian Bridge Alliance, International People's Democratic Uhuru Movement (InPDUM), Black Alliance for Just Immigration (BAJI), and Black Lives Matter Los Angeles.

<sup>10</sup> The Mechanism is grateful to the following organizations for its support in the organization of these hearings: The 411 Movement for Pierre Loury, UN Antiracism Coalition (UNARC), Women's All Points Bulletin, National Alliance Against Racist & Political Repression, and Chicago Torture Justice Center.

Mechanism heard 16 victims' testimonies principally regarding police violence, policing in schools, access to justice, solitary confinement, and youth and law enforcement.<sup>11</sup>

11. In New York City (New York), the Mechanism met with the Office of the New York State Attorney General, including with the Office of Special Investigation. At the Malcolm X and Dr. Betty Shabazz Memorial & Educational Center, the Mechanism heard 22 victims' testimonies principally regarding police violence, stop and frisk practice, access to justice, incarceration and conditions of detention at Rikers Island jail facilities and other state prisons, and criminalization of migration.<sup>12</sup> The Mechanism deeply regrets not having had the opportunity to meet any New York City authority, nor to visit the Rikers Detention Facilities (Rikers Island), despite having made the requests in advance and having had a previous informative meeting with the Mayor's Office.<sup>13</sup>

12. The Expert Mechanism also engaged in a fruitful and informative conversation with the Fraternal Order of Police (FOP), the US largest union of sworn law enforcement officers.<sup>14</sup>

13. In accordance with the Mechanism's mandate detailed in Human Rights Council resolution 47/21, the visit sought to focus on both good practices and challenges faced by the United States of America in upholding its human rights obligations on non-discrimination in the context of law enforcement and the criminal justice system, with a focus on Africans and people of African descent. With the purpose of advancing racial justice and equality in this context, the Mechanism highlights different concerns and makes a series of recommendations in this regard.

## II. Background

14. The United States of America is a party to, inter alia, the International Convention on the Elimination of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

15. It has a population of approximately 332 million people, of which approximately 205 million are "White alone" (62%), 62 million Hispanic or Latino of any race (19%) and 42 million are Black or African American (13%).<sup>15</sup>

16. As a federation, the United States comprises 50 states, the District of Columbia, and other territories, with 3,234 counties or county equivalents. It has at least 18,878 different law enforcement agencies (federal, state, local, and tribal)<sup>16</sup> and more than 6,364 detention facilities, including 1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities, 181 immigration detention facilities, and 80 Indian country jails.<sup>17</sup>

17. During the visit, the Mechanism was informed of different measures taken in recent years by the US Federal Government to try to address the issue of systemic racism against

<sup>11</sup> The Mechanism is grateful to the following organizations for its support in the organization of these hearings: Families Supporting Families Against Police Violence, UN Antiracism Coalition (UNARC), Atlas of Blackness, Urban League Twin Cities/Minneapolis, RFK Human Rights, University of Minnesota, Center for Victims of Torture, and Advocates for Human Rights.

<sup>12</sup> The Mechanism is grateful to the following organizations for its support in the organization of these hearings: Alliance of Families for Justice, UN Antiracism Coalition (UNARC), Black Alliance for Black Immigration, December 12th Movement, International Association Against Torture, National Lawyers' Guild, and National Conference of Black Lawyers.

<sup>13</sup> The Mechanism sent written questions to the NYC Mayor's Office after the visit, which have not been answered at the time of publishing this report.

<sup>14</sup> With more than 364,000 members and 2,200 lodges, according to their webpage: <https://fop.net/about-the-fop/>

<sup>15</sup> 2020 Census Results: <https://www.census.gov/en.html>

<sup>16</sup> According to the Federal Bureau of Investigation (FBI), Crime Data Explorer, Law Enforcement Collection. See: <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/pe>

<sup>17</sup> See: Prison Policy Initiative (using official figures), "Mass Incarceration: The Whole Pie 2023", March 2023, <https://www.prisonpolicy.org/reports/pie2023.html>

Africans and people of African descent, including Executive Order 13985 of January 20, 2021 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”; the Executive Order 14035 of June 25, 2021, “Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce”; the “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety” of 25 May 2022<sup>18</sup>, the Executive Order 14089 of December 13, 2022 that establishes the “President’s Advisory Council on African Diaspora Engagement in the United States”; and the more recent Executive Order 14091 of February 16, 2023 on “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”. The Mechanism welcomes these executive orders, seeing them as a first step to advance racial justice and equality in the context of law enforcement and the criminal justice system in the United States.

### III. Systemic Racism

18. 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, 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.<sup>19</sup> Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.<sup>20</sup>

19. Systemic racism against Africans and people of African descent exists in the United States and is a legacy of slavery and the transatlantic trade in enslaved Africans. The end of this heinous market and the abolition of slavery 158 years ago by the 13<sup>th</sup> Amendment of the United States Constitution did not in itself delete the racially discriminatory structures created by those practices. Those structures of racism, racial discrimination, inequalities, marginalization, exclusion and subordination, although to a lesser extent, are still felt to this day.

20. The abolition of slavery in 1865 was followed in the South by a short period that historians have called “Reconstruction”, in which the federal government attempted to ensure the access by former slaves to the full benefits of citizenship. Soon thereafter, however, the white majorities in Southern states enacted a series of measures labelled “Jim Crow laws” that imposed a system of segregation in housing, education, employment and access to all services. These laws were upheld by the Supreme Court in *Plessy v Ferguson* under the doctrine of “separate but equal” which in effect crystalized a system of inequality and oppression against people of African descent. This legalized system of American *apartheid* ended in 1954 with the Supreme Court decision in *Brown v Board of Education of Topeka*, and other decision extending the principle of equality and integration to housing, employment and voting rights, culminating in the Civil Rights Act of 1965. The present state of race relations in the United States is a legacy both of slavery and the slave trade and of the one hundred years of *de jure* discrimination against people of African descent that followed the abolition of slavery.

<sup>18</sup> “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,” The White House, May 25, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>; See also: Justice Department Fact Sheet on Implementing Executive Order on Advancing Effective, Accountable Policing, and Criminal Justice Practices to Enhance Public Trust and Public Safety, last updated 31 May 2023. Available on: <https://www.justice.gov/olp/justice-department-fact-sheet-implementing-executive-order-advancing-effective-accountable>

<sup>19</sup> A/HRC/47/53, para 9.

<sup>20</sup> A/HRC/47/53, para 9.

21. The systemic racism faced today by Africans and people of African descent in the US is deeply affected also by intersectionality, that is, in combination with several other identities, including sex, gender, gender identity, sexual orientation, nationality, migration status, disability, religion, socioeconomic and other status. Women and girls of African descent experience greater forms of discrimination arising not only from their racial or ethnic origin and their sex, but also with gender-based discrimination and stereotyping. Migrants of African descent, including Haitian migrants, also face larger forms of discrimination arising from their nationality and migration status.

22. Systemic racism against Africans and people of African descent in the US affects their enjoyment of human rights in every part of their life. Its contemporary manifestations include several forms of marginalization, both socioeconomic and in terms of civil and political rights.

23. Indeed, systemic racism is also present in the context of law enforcement and the criminal justice system in the United States, as described below. This has long been documented by United Nations Human Rights Mechanisms, with multiple recommendations already made.<sup>21</sup>

24. Systemic racism creates prejudice in different sectors of society including harmful associations of Blackness with criminality and delinquency. This has a direct impact on the interactions of Africans and people of African descent with law enforcement officials and the criminal justice system.

25. The Mechanism is of the view that systemic racism and racial discrimination by law enforcement officials in the United States against Africans and people of African descent is a direct legacy of slavery, and dates back to the foundation of the country. The Mechanism encourages the United States to tackle the enduring challenges with a transitional justice approach; one focused on truth-seeking, justice, reparations and guarantees of non-repetition. Such an approach can shed light on the root causes of systemic racism and related injustice and violence, to dismantle this legacy of slavery and move forward.

## **IV. Law enforcement**

### **A. A human rights-based approach to policing**

26. Human rights are rights we have simply because we exist as human beings - they are not granted by any State (as opposed to Civil Rights). The United States has obligations and duties under international law to respect, protect and fulfil human rights. A Human rights-based approach to policing is a comprehensive, systematic and institutional approach to law enforcement that complies with international human rights standards and practices, and that promotes analysing policies and actions through the tripartite obligations to respect, protect and fulfil. Law-enforcement officers must be fully aware of all their human rights responsibilities, considering their work as duty bearers towards right holders, that is the individuals and community they serve. Law enforcement agencies must ensure that policies and actions of individual law-enforcement officers reflect international human rights norms

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<sup>21</sup> See recommendations of Treaty Bodies: the Committee on Racial Discrimination concluding observations of May 2008 (CERD/C/USA/CO/6); August 2014 (CERD/C/USA/CO/7-9); and September 2022 (CERD/C/USA/CO/10-12); and their statement of 2020 under its Early Warning and Urgent Action Procedure; the Committee Against Torture concluding observations of December 2014 (CAT/C/USA/CO/3-5); and the Human Rights Committee (CCPR/C/USA/CO/4) concluding observations of April 2014; and recommendations of Human Rights Council Special Procedures: report of the Special Rapporteur on minority issues of 2022 (A/HRC/49/46/Add.1); report of the Special Rapporteur on extreme poverty and human rights of 2018 (A/HRC/38/33/Add.1); report of the Working Group on Arbitrary Detention (A/HRC/36/37/Add.2) of 2017; report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association of 2017 (A/HRC/35/28/Add.2); reports of the Working group of Experts on People of African Descent of 2016 (A/HRC/33/61/Add.2) and of 2010 (A/HRC/15/18); and the report of the Special Rapporteur on contemporary forms of racism of 2008 (A/HRC/11/36/Add.3)

and standards without being influenced by considerations such as personal or political preferences.

27. During the visit, the Mechanism could feel the profound lack of trust of people of African descent in law enforcement and the criminal justice systems, mainly due to the historical and continuous police violence suffered, and the sense of systemic oppression and impunity for these violations, as described below. The Mechanism is troubled by this deeply rooted lack of trust and considers that a human rights-based approach in policing can try to reverse these deficits. This approach provides a framework for law enforcement institutions to build public trust and ensures confidence in the commitment of public officials to respect and protect the communities they serve. For example, a sound legal framework on the use of force establishes in clear and predictable terms modalities of oversight and basis for accountability. The Mechanism calls on the US to respect, protect and fulfil all human rights, establishing a substantial human rights-based approach in all public policies and practices, including in policing.

## B. Use of force regulations

28. During the visit, the Mechanism was informed that not all States in the US have regulations on the use of force and that there is no full nationwide regulation on the topic, with only a Supreme Court doctrine<sup>22</sup> and Fourth Amendment rights applicable.<sup>23</sup> The Mechanism is concerned that existing local and national standards on the use of force by law enforcement officials, including the Supreme Court rulings and the Department of Justice's updated policy<sup>24</sup>, do not meet international standards.<sup>25</sup>

29. The Mechanism is profoundly concerned that this current regulatory situation is conducive to the early and unjustified use of force, including lethal force, by law enforcement. The Mechanism has received evidence suggesting that numerous law enforcement practices do not prioritize de-escalation and other less harmful methods of control of the situation, contrary to the principles of strict necessity and precaution of international use of force standards.<sup>26</sup>

30. The United States must ensure that all laws, policies, procedures and practices to restrict the use of force are in compliance with international standards on the use of force and

<sup>22</sup> According to information received, the US Supreme Court ruled in *Tennessee v. Garner* 417 U.S. 1 (1985) that lethal force may not be used unless it is necessary to prevent escape of someone where the officer has probable cause to believe that the suspect committed a crime involving the infliction or threatened infliction of serious physical harm or where the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Also, in *Graham v. Connor*, the US Supreme Court established the standard by which a jury is to judge an officer's actions in the use of force - namely whether an officer's actions were "objectively reasonable in light of the facts and circumstances confronting them" and that the "reasonableness" of a particular use of force must be judged from the perspective of a "reasonable officer on the scene."

<sup>23</sup> The U.S. Department of Justice's Civil Rights Division enforces 18 U.S.C. 242, which allows it to prosecute unlawful use of force by local, state, and federal law enforcement officers, and 34 U.S.C. 12601, which allows the Division to take action against law enforcement agencies that are systematically violating these Fourth Amendment rights.

<sup>24</sup> During the visit, the Mechanism took note of the Department of Justice's updated policy on use of force of July 2022, which is only applicable to law enforcement agencies under the jurisdiction of the Department. See: <https://www.justice.gov/jm/1-16000-department-justice-policy-use-force>

<sup>25</sup> According to Amnesty International, by 2020, not a single US State had laws that met international standards for police use of lethal force. See: <https://www.amnestyusa.org/issues/deadly-force-police-accountability/>; and Amnesty International report "Deadly Force: Police Use of Lethal Force In The United States", June 2015 at <https://www.amnestyusa.org/reports/deadly-force-police-use-of-lethal-force-in-the-united-states/>. The U.S. Department of Justice's Civil Rights Division agrees that there is wide variability in legislation and regulation of use of force across states and local jurisdictions beyond the minimums required by the Fourth Amendment.

<sup>26</sup> As underlined by the Code of Conduct for Law Enforcement Officials of 1979, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement of 2020.

firearms by law enforcement officials, particularly the principles of legality, precaution, necessity, proportionality, accountability and non-discrimination.<sup>27</sup> These principles, and the obligation to protect and respect the right to life, should apply in all kind of operations and use of force by all law enforcement agencies in the United States.

31. The Mechanism welcomes the Executive Order 14074 of May 25, 2022, called “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety”<sup>28</sup>, in which the Federal Government lays the foundation for improving federal law enforcement agencies’ practices, but also with the aim for those good practices to permeate and set a future example for state and local law enforcement. In connection with this, the Mechanism also welcomes the restraints put in place by the Department of Justice concerning the use of Chokeholds and Carotid Restraints and the “no knock” entries.<sup>29</sup> The Mechanism calls for the adoption and legislation of these practices at the federal, state and local levels, providing the necessary resources to carry them out.

32. The United States must ensure that disaggregated data on all use of force encounters with police are well gathered, documented, analysed, and published. The Mechanism acknowledges the FBI National Use of force data collection initiative that collects data sent on a voluntary basis by law enforcement agencies since 2019, and that in the first months of 2023 received information from more than 60% of the nation’s law enforcement agencies.<sup>30</sup> The Mechanism encourages all law enforcement agencies in the US to participate in this initiative, that lays the foundation for a nationwide data collection repository on the use of force. The Mechanism further recommends the creation of a systematic data collection system made mandatory at all applicable levels of government.

### C. Racial profiling

33. Racial profiling<sup>31</sup> is not only unlawful but ineffective and counterproductive as a general law enforcement tool. Affected individuals and communities of racial profiling tend to have less general trust in law enforcement, and as a result, tend to be less willing to cooperate, eroding the police-community relations and law enforcement effectiveness.<sup>32</sup>

34. In the United States, racial bias, stereotypes and profiling play a recurrent role in portrayals or perceptions of what or who is “dangerous” and in presumptions of criminality. Systemic racism creates harmful and spurious associations of Blackness with criminality and delinquency. These bias, associations and stereotypes have a direct impact on the interactions of Africans and people of African descent with law enforcement officials and the criminal justice system.

35. Before and during the visit, the Mechanism received continuous evidence that suggest that racial profiling is used as a basis for discriminatory identity checks, stops-and-searches, arrests and related abuses and violence, including serious injury and deaths by law enforcement. The Mechanism listened to testimonies of young Black persons being regularly

<sup>27</sup> Ibid.

<sup>28</sup> <https://www.govinfo.gov/content/pkg/DCPD-202200454/pdf/DCPD-202200454.pdf>

<sup>29</sup> <https://www.justice.gov/opa/pr/department-justice-announces-department-wide-policy-chokeholds-and-no-knock-entries>

<sup>30</sup> Information received in the first three months of 2023 from 12,832 out of 18,514 federal, state, local, and tribal law enforcement agencies throughout the nation. See the FBI Crime Data Explorer at: <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/uof>

<sup>31</sup> Racial profiling is the practice of law enforcement authorities relying, to any degree, on grounds of race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity. Racial profiling is linked to stereotypes and biases, which can be conscious or unconscious, and individual or institutional and structural. In this sense, stereotyping becomes a violation of international human rights law when stereotypical assumptions are put into practice to undermine the enjoyment of human rights; See CERD General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials. CERD/C/GC/36, paras. 13-20.

<sup>32</sup> CERD/C/GC/36, para. 26.

subjected to racial profiling in their daily lives, affecting individuals and entire communities in many ways.

36. According to a Department of Justice special report<sup>33</sup>, Black persons were three times more likely to experience the threat of force or use of nonfatal force; three times more likely to be shouted at by police; and 11 times more likely to experience police misconduct (slur, bias or sexual misconduct), during their most recent police contact in 2020, than white persons.

37. In this sense, the Mechanism rejects the “bad apple” theory, suggesting that racial discrimination in policing is the result of isolated actions of a small number of rogue police officers. There is strong evidence that the abusive behaviour of some individual police officers is part of a broader and menacing pattern, connected into larger social, historical, cultural and structural contexts, within which policing is undertaken. Law enforcement officers in the United States share and reproduce values, attitudes and stereotypes of US society and institutions.

38. Generalized and systematic racial profiling by law enforcement officials in the United States against Africans and people of African descent is a practice that endures and must continue to be addressed. This historical and current practice has left cumulative damaging effects on affected individuals and communities. These damages must be recognised, prevented, attended and repaired.

#### **D. New technologies and law enforcement**

39. The Mechanism received worrying information suggesting that racial biases exist in the algorithms of facial recognition technologies used by law enforcement in the United States and they have already led to the wrongful arrests of Black people.<sup>34</sup> A study of three of the leading facial recognition companies reportedly found extreme racial and gender disparities in error rates having, on average, an error rate of 20-30% for Black women while an error rate of 0-0.8% for “white” men.<sup>35</sup> The Mechanism welcomes that this issue is being considered for study by the Federal Government which tasked the National Academy of Sciences to conduct a study of facial recognition technology, but notes the lack of any federal regulation on this issue.<sup>36</sup>

40. The Mechanism is also concerned about the possible negative impact of the increasing use of drones by law enforcement, including on the right to privacy. The Mechanism calls on all levels of government to strictly monitor and regulate the use of all these new technologies, including by law enforcement, to prevent human rights violations, specially a racist and discriminatory harmful impact.

#### **E. Killings by law enforcement**

41. The Mechanism is alarmed by the figures and circumstances in which people are killed by police in the United States. Every year, more than 1,000 individuals are reportedly

<sup>33</sup> Special Report “Contacts Between Police and the Public, 2020”, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2022.

<https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2020>

<sup>34</sup> See the recent case of Porcha Woodruff: “Eight Months Pregnant and Arrested After False Facial Recognition Match” <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>

<sup>35</sup> MIT, “Study finds gender and skin-type bias in commercial artificial-intelligence systems” <https://news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212>

<sup>36</sup> “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,” The White House, May 25, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>

killed by law enforcement throughout the country.<sup>37</sup> Available data shows that Black people are three times more likely to be killed by police than white people,<sup>38</sup> and reports suggest that 33% of all persons killed between 2015 and the first half of 2023 were running or driving away or otherwise trying to flee from law enforcement.<sup>39</sup>

42. The Mechanism was concerned by reports suggesting that in 2022, the US had the higher number of police killings in a decade, with more than 1,200 people killed by law enforcement.<sup>40</sup> Among these, 281 were Black people. The Mechanism is troubled by the fact that 59% (685) of all killings by police in 2022 were related to traffic stops, mental health crisis, or people not alleged to be threatening anyone with a gun.<sup>41</sup>

43. Evidence suggest that a number of other police-related killings of Africans and People of African Descent occur also in the context of special operations, such as the ones involving no-knock warrants. A no-knock search warrant<sup>42</sup> allows law enforcement to force their way into a premises without following the “knock-and-announce rule”<sup>43</sup>, in which an officer must first knock, identify themselves and their intent, and wait a reasonable amount of time for the occupants to let them into the premises. The Mechanism is of the view that no-knock warrants should be restricted by national and local legislation to the maximum extent possible.

44. During the visit, the Mechanism heard dozens of heart-breaking testimonies from relatives of persons of African descent killed by police.<sup>44</sup> Before the visit, the Mechanism received information on these type of cases in the US, and decided to take action in some of them through written dialogue with the Government, including the cases of: Patrick Lyoya, shot and killed by police in Grand Rapids, Michigan; Jayland Walker, shot at multiple times by police officers in Akron, Ohio; Keenan Anderson, killed by the use of tasers in Los Angeles, California; and Tyre Nichols, killed by police in Memphis, Tennessee.<sup>45</sup>

45. Killings by excessive use of force by law enforcement against people of African descent in the United States cannot be only analysed case by case. As stated above, numbers show a pattern that points to a systemic problem that needs be addressed as such.

## F. Traffic enforcement

46. Traffic stops are the most common reason for contact with the police in the United States, with more than 20 million people being stopped a year.<sup>46</sup> According to information received, law enforcement often use minor traffic violations to initiate discretionary stops, then using the stop as a pretext to initiate an onsite investigation to seek evidence of a more serious crime despite lacking reasonable suspicion. Nationally, the annual stop rate for Black

<sup>37</sup> See: <https://policeviolencereport.org/>; <https://mappingpoliceviolence.us/>; and <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

<sup>38</sup> See: <https://policeviolencereport.org/>; <https://mappingpoliceviolence.us/>; and <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

<sup>39</sup> See <https://mappingpoliceviolence.us/>

<sup>40</sup> 1,242 people killed by police were reported by <https://mappingpoliceviolence.us/>; 1,201 by <https://mappingpoliceviolence.us/>; 1,200 by <https://policeviolencereport.org/> and 1,096 by <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

<sup>41</sup> Of all killings in 2022, 97% were as a result of the use of a firearm by police, the rest as a result of other type of force, such as tasers, restraints or physical force. 381 persons were killed after police responded to reports of a violent crime; 223 to reports of a non-violent offense, 111 to reports involving a mental health crisis; 92 to reports of domestic disturbance; 87 during traffic stops; and 43 involving reports on other crimes. 681 of these persons were reportedly armed with a gun; 197 with a knife or sharp object; 98 were unarmed; 90 were using another object; and 73 using a vehicle. Reportedly, 18% of the persons armed with a gun were not threatening anyone when they were killed. See: <https://policeviolencereport.org/>.

<sup>42</sup> See: [https://www.law.cornell.edu/wex/no-knock\\_warrant](https://www.law.cornell.edu/wex/no-knock_warrant)

<sup>43</sup> See: [https://www.law.cornell.edu/wex/knock-and-announce\\_rule](https://www.law.cornell.edu/wex/knock-and-announce_rule)

<sup>44</sup> See Annex.

<sup>45</sup> See the letters sent and responses received: <https://www.ohchr.org/en/hrc-subsiidiaries/expert-mechanism-racial-justice-law-enforcement/communications>

<sup>46</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Traffic Stops,” <https://www.bjs.gov/index.cfm?tid=702&ty=tp>.

drivers was 1.4 times higher as compared to white drivers.<sup>47</sup> In general, Black drivers are more likely to be stopped, searched, and arrested for routine violations than white drivers; are more likely to have force used against them; and they incur greater fines and fees resulting from these traffic stops.<sup>48</sup>

47. Although traffic enforcement is necessary to prevent behaviours that jeopardize community safety, such as “driving under the influence” leading to fatal accidents, the Mechanism received evidence stating that in general, traffic enforcement in the US can lead to unaffordable fines and fees, mounting debt, driver’s license suspensions, lost employment, unnecessary arrests, criminalization, and eventually to injury or death for use of force by law enforcement. To reduce all these harms, the United States and its jurisdictions should consider putting in place civilian traffic response units with expertise in transportation, mediation and road safety, housed in a department of transportation or public works, instead of police departments. In this way, the US should consider gradually withdrawing armed law enforcement from routine traffic enforcement, and in general removing their authority to stop cars only for minor traffic violations. Alternatives should be put in place, including civilian traffic units and the use of technology (e.g. traffic enforcement cameras).

## G. Law enforcement as first responders during mental health crises

48. The interaction of law enforcement and the criminal justice system regarding people having mental health crises or in general people with mental health conditions or psychosocial disabilities seems to be disproportionate. With more than 240 million 911 emergency calls a year in the US, police officers have become the default first responders to nearly every social issue.<sup>49</sup>

49. During the visit, the Mechanism repeatedly heard of mental health crises having worsened following interactions with law enforcement, in many cases leading to death. The mere presence of armed and uniformed police officers can exacerbate a person’s feelings of distress and escalate mental health-related situations.<sup>50</sup> Information received confirms that a significant percentage of people killed by law-enforcement every year in the US were experiencing a mental health crisis or in general had a mental health condition or psychosocial disability.<sup>51</sup>

50. The Mechanism also received information regarding promising initiatives of civilian crises response teams, composed of behavioural health professionals and other experienced civilians, being implemented in different parts of the United States, including in Eugene, Oregon; in Denver, Colorado; in New York City; in San Francisco; and in Los Angeles.<sup>52</sup>

51. Law enforcement should not be the answer to all emergencies, and alternative responses must be always considered and resourced. In general, police officers should not be the first respondents during mental health crises. Other types of intervention need to be prioritized and resourced, including medical and psychosocial, like the unarmed civilian first responder programs mentioned above. Yet, law enforcement officials should always be

<sup>47</sup> Emma Pierson et al., “A large-scale analysis of racial disparities in police stops across the United States”, *Nature Human Behavior* 4 (2020), <https://5harad.com/papers/100M-stops.pdf>.

<sup>48</sup> Ibid.

<sup>49</sup> NENA, the 911 association, <https://www.nena.org/page/911Statistics>

<sup>50</sup> Vera Fact Sheet, “Investing in Evidence-Based Alternatives to Policing: Civilian Crisis response”, August 2021, <https://www.vera.org/downloads/publications/alternatives-to-policing-civilian-crisis-response-fact-sheet.pdf>

<sup>51</sup> According to the Washington Post figures, of the 8,643 persons killed by police since 2015, 1,175 (21%) were experiencing a mental health crisis. See: <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>; According to the “Police Violence Report”, in 2022, 111 persons were killed by police in the US after law enforcement responded to calls regarding people having a mental health crisis. See: <https://policeviolencereport.org/>

<sup>52</sup> Vera Fact Sheet, “Investing in Evidence-Based Alternatives to Policing: Civilian Crisis response”, August 2021, <https://www.vera.org/downloads/publications/alternatives-to-policing-civilian-crisis-response-fact-sheet.pdf>

adequately trained to deal with violent mental health crises in compliance with human rights standards.

## H. Law enforcement in schools

52. In 2019, the United States had approx. 24,900 sworn and 3,100 nonsworn law enforcement officers responsible for safety and crime in schools, employed by about 5,000 law enforcement agencies.<sup>53</sup> Of these law enforcement agencies, 50% allowed officers to interview students without parental permission or presence; 96% of the agencies permitted officers to carry an agency-issued firearm in schools; 87% tasers or conducted energy devices; 83% batons; 88% chemical irritants; and 42% hobble restraints. Law enforcement officials in schools are expected by their agencies to issue criminal citations (88%), make arrests (94%), patrol school facilities (94%), respond to calls for service on the school campus (95%), and respond to incidents in the classroom (91%).<sup>54</sup>

53. During the visit, the Mechanism received several reports of a trend towards a growing police presence in schools, and accounts of excessive use of force by law enforcement against children in this context, including as a result of non-violent infringements of school codes of conduct. It received testimonies of children being arrested for offenses such as dress code violations or taking too many milk cartons in the lunchroom. For example, information received indicates that Florida police arrested elementary school students, as young as 5 years old, 345 times in one year. In this context, the Mechanism is concerned by received evidence of the so called “school-to-prison pipeline”, in which education and public security policies are pushing children, many of them Africans and of African descent, into the criminal justice system. The Mechanism received evidence asserting that police presence in schools results in more arrests, particularly of Black students and boys.

54. Law enforcement officers should not be responsible for the implementation of school discipline. A national strategy should be put in place to reduce to the maximum extent possible police presence in schools, to eliminate all use of force and arrests, and to avoid the criminalization of disciplinary infractions. Alternatives should be implemented. The education system should invest in promoting positive student development with sufficient qualified personnel such as counsellors, social workers, nurses and mental health professionals.

## I. Immigration enforcement

55. The Mechanism is alarmed at reports of overt systemic racism against Africans and people of African descent in law enforcement immigration authorities. During the visit, the Mechanism received several detailed accounts of anti-Black and racially based arbitrary detention and ill-treatment against migrants and asylum seekers of African Descent, including Haitians, by US immigration authorities.

56. According to information received, Haitian migratory-detained persons were denied access to sufficient food, health care, interpreters, information and legal counsel; after which they were returned to Haiti by plane<sup>55</sup> restrained in handcuffs and shackles causing severe additional psychological suffering due to the association of this practice not only to

<sup>53</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Report on Law Enforcement Agencies that Employ School Resource Officers, 2019”, November 2022. <https://bjs.ojp.gov/library/publications/law-enforcement-agencies-employ-school-resource-officers-2019>

<sup>54</sup> Ibid.

<sup>55</sup> According to unofficial reports, the US expelled more than 25,000 Haitian persons only between September 2021 and May 2022, see: Amnesty International report, ““They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA”, September 2022 <https://www.amnesty.org/en/wp-content/uploads/2022/09/AMR3659732022ENGLISH.pdf>; and <https://www.nytimes.com/2022/06/09/us/politics/haiti-migrants-biden.html>

criminality, but to slavery.<sup>56</sup> Evidence further suggests that these practices towards Haitian persons are not new, pointing to long-term systemic racism against people of African Descent inside the US immigration system.

57. The Mechanism was shocked by allegations of an unofficial challenge coin<sup>57</sup> circulating among US immigration law enforcement showing a picture of the excessive use of force incident occurred near Del Rio, Texas in September 2021, when a mounted officer reportedly used his split reins to lash a Haitian migrant and drag him.<sup>58</sup> The Mechanism also received information on this emblematic case of excessive use of force against Africans and people of African descent by immigration law enforcement, where reportedly approx. 15,000 migrants, most of them Haitian and Black, suffered lack of adequate food, physical violence, verbal threats, and other acts of intimidation. An internal investigation later found that the force used had been unnecessary, and reportedly referred four US Border Patrol agents to disciplinary proceedings, with no more information available.<sup>59</sup>

58. The Mechanism also received reports of other Africans and people of African descent being ill-treated by immigration authorities in detention, including Cameroonians in detention facilities in New Orleans.

59. The Mechanism joins the UN Committee on the Elimination of Racial Discrimination's statement of April 2023 calling for the suspension of forced returns of Haitians, investigate allegations of excessive use of force, ill-treatment and racial profiling against migrants.<sup>60</sup> The Mechanism calls on the United States to adopt an immigration system with a human rights-based approach and to address systemic racism within the ranks of immigration authorities.

## J. Antiracism protests

60. The Mechanism received information on law enforcement responses to anti-racism protests, including human rights violations in this context. Particularly, the Mechanism received accounts on the authorities' response to anti-racism protests in 2020, that led to thousands of arbitrary arrests and hundreds of people injured, mostly by the misuse or excessive use of less lethal weapons against protestors, such as batons, chemical irritants and kinetic impact weapons (for example rubber bullets). For example, 115 people were shot in the head and neck with kinetic impact projectiles by police between May 26 and July 27, 2020.<sup>61</sup>

<sup>56</sup> See: Amnesty International report, ““They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA”, September 2022. <https://www.amnesty.org/en/wp-content/uploads/2022/09/AMR3659732022ENGLISH.pdf>

<sup>57</sup> The use challenge coins is a military tradition that passed down to law enforcement. A challenge coin is a token with the organization insignia or emblem usually carried and exchanged between members of law enforcement agencies as a sign of friendship or shared values. See: <https://www.defense.gov/News/Inside-DOD/Blog/article/2567302/the-challenge-coin-tradition-do-you-know-how-it-started/> See also: <https://www.nytimes.com/2018/04/11/us/politics/challenge-coins.html>

<sup>58</sup> See: <https://www.npr.org/2022/06/17/1105901312/ebay-seller-challenge-coins-border-patrol-horseback-haiti-migrants-mexico>

<sup>59</sup> In a statement, Department of Homeland Security Secretary Alejandro Mayorkas said, "The misconduct of several individuals does not reflect the brave and distinguished service of the agents of the United States Border Patrol. The organizational failures of policy, procedures, and training that the investigation identified were a disservice to the agents and the public they serve. CBP must and will do better." See: <https://www.cbsnews.com/news/border-patrol-agents-on-horseback-used-unnecessary-force-against-haitian-migrants-last-year-investigators-find/>; and <https://www.nbcnews.com/politics/immigration/dhs-report-says-border-patrol-agents-used-unnecessary-force-haitians-t-rcna36992>

<sup>60</sup> Statement by CERD under its early warning and urgent action procedure, “Situation of migrants, asylum seekers and refugees of Haitian origin in the Americas region”, 28 April 2023. <https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters>

<sup>61</sup> Physicians for Human Rights, “Shot in the head”, September 2020, <https://phr.org/our-work/resources/shot-in-the-head/>

61. Information received make clear that in the 2020 anti-racism protests law enforcement confronted peaceful manifestations with riot gear as a first level response, rather than only in response to specific incidents of violence. Evidence suggests that law enforcement use a variety of unjustified levels of force, including less lethal weapons, against large peaceful demonstrations and against journalists, legal observers and paramedical teams, in violation of human rights standards.

62. The Mechanism welcomed information received on some cities' initiatives of collective reparations for the excessive use of force and other human rights violations during the anti-racism protests of 2020, for example in New York<sup>62</sup> and Philadelphia.<sup>63</sup> However, it did not receive information on individual criminal accountability of law enforcement officials and its command for these acts.

63. The Mechanism is particularly concerned over reports that the 2020 anti-racism protests were followed by widespread legislative measures and initiatives in some states, which would unduly restrict the right to peaceful assembly.

64. The Mechanism is also concerned that similar law enforcement approaches continue to occur in response to anti-racism and anti-police brutality protests. A recent example is the authorities and law enforcement response to protests in Akron, Ohio in 2022, following the killing by police of Jayland Walker, a 25-year-old American man of African descent who was unarmed at the time of the shooting and received 46 gunshots by at least eight different law enforcement officials of the Police Department of the city.<sup>64</sup> The Mechanism received reports of excessive use of force against demonstrators, including the use of tear gas and stunt grenades, and the arrest of more than 75 of them, many of whom may still be facing criminal charges.

65. Most notably, during its visit to Atlanta, Georgia, the Mechanism received allegations regarding the response to protests around the construction of the "Atlanta Public Safety Training Center", also known as "Cop City". In addition to reports over an activist killed by the police, which is under investigation, the Mechanism received reports over several demonstrators currently facing criminal charges for domestic terrorism.<sup>65</sup> The Mechanism is deeply concerned that, in this case and others, local authorities appear to be using terrorism classification and terrorist criminal charges to punish dissent.<sup>66</sup>

66. The Mechanism would like to emphasize that all legislation regulating the right to peaceful assembly should be in compliance with international human rights standards, including with the principles on the use of force by law enforcement (legality, precaution, necessity, proportionality, accountability and non-discrimination).<sup>67</sup> Authorities must develop a system for the collection and distribution of a wider range of disaggregated data on the policing of protests and the treatment of protesters in the criminal justice system more broadly. Authorities should investigate, prosecute, and provide redress to all allegations of human rights violations in the context of protests, including arbitrary arrests and excessive use of force by police.

67. The Mechanism calls the United States to review in detail and strictly regulate the design, manufacture, trade and use of all less-lethal weapons by law enforcement. The United States must consider imposing tighter restrictions on weapons that may be used indiscriminately and prohibitions on weapons that cause excessive harm or that result in

<sup>62</sup> <https://www.theguardian.com/us-news/2023/jul/20/new-york-nypd-george-floyd-protests-2020>

<sup>63</sup> <https://fortune.com/2023/03/20/philadelphia-settlement-protesters-9-25-million-george-floyd-2020/>

<sup>64</sup> See the letter sent by the Mechanism to the United States of America on this specific case.

<https://www.ohchr.org/en/hrc-subsiidiaries/expert-mechanism-racial-justice-law-enforcement/communications>

<sup>65</sup> <https://edition.cnn.com/2023/03/06/us/atlanta-cop-city-protests/index.html>

<sup>66</sup> <https://www.aclu.org/news/national-security/how-officials-in-georgia-are-suppressing-political-protest-as-domestic-terrorism>

<sup>67</sup> See footnote 25, *supra*.

collective punishment, in accordance with the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.<sup>68</sup>

## K. Accountability

68. During the visit, the Mechanism heard repeatedly, directly from the victims, about the lack of accountability in cases related to police abuse. It heard of cases not investigated, perpetrators not prosecuted, and cases closed. Only 1.9% of all killings by police in the past decade (2013-2022) resulted in police officers being charged with a crime.<sup>69</sup> In 2022, available data indicates the proportion was only in 1% of the cases.<sup>70</sup>

69. The Mechanism received allegations of cases in which police officers involved in killings of Africans and people of African descent had already prior complaints filed against them for police misconduct including excessive use of force. The Mechanism also received allegations of cases where police officers who had previously been disciplined for misconduct or had left the force before the completion of the investigation, were later hired by a different police department. The Mechanism is concerned on the possibility that an individual facing different complaints or even found criminally or administratively responsible for police misconduct in one police department, can retake a sworn law enforcement post in another law enforcement agency. This practice denies the guarantees of non-recurrence for victims. Federal, state and local authorities must ensure coordination across law enforcement agencies to create an effective nationwide record system to keep track of such cases, so as to ensure non-repetition for victims and communities. The Mechanism takes note of the efforts being made to establish a National Law Enforcement Accountability Database<sup>71</sup>, as mandated by the Executive Order 14074. The Mechanism encourages all US authorities and law enforcement agencies to contribute to this initiative, that lays the foundation for a nationwide repository of law enforcement officer misconduct.

70. The Mechanism is aware that the US Department of Justice can respond to allegations of general police misconduct by initiating formal investigations into police departments, file lawsuits against them and establish “Consent Decrees”.<sup>72</sup> The Department of Justice has initiated nine of these investigations during the current federal administration and has other six ongoing.<sup>73</sup> Most recently, it opened an investigation in the Memphis Police department focusing on use of force and its stops, searches and arrests, as well as whether it engages in discriminatory policing.<sup>74</sup> For example, in June 2023, the Department of Justice Investigation found that the Minneapolis police department “uses excessive force, including unjustified deadly force and unreasonable use of tasers; unlawfully discriminates against Black people and Native American people in its enforcement activities, including the use of force following

<sup>68</sup> <https://www.ohchr.org/en/publications/policy-and-methodological-publications/united-nations-human-rights-guidance-less>

<sup>69</sup> See <https://mappingpoliceviolence.us/>

<sup>70</sup> See: <https://policeviolencereport.org/>

<sup>71</sup> Justice Department Fact Sheet on Implementing Executive Order on Advancing Effective, Accountable Policing, and Criminal Justice Practices to Enhance Public Trust and Public Safety. Available on: <https://www.justice.gov/olp/justice-department-fact-sheet-implementing-executive-order-advancing-effective-accountable>

<sup>72</sup> “Consent Decrees” are settlements between police departments and the federal government, which are overseen and enforced as an order of a court, and are often monitored by a third party to ensure compliance.

<sup>73</sup> Ongoing investigations into the Phoenix Police Department; the Mount Vernon Police Department; the Louisiana State Police; the New York City Police Department’s Special Victims Division; the Worcester Police Department; and the Oklahoma City Police Department. See: Department of Justice Press Release, “Justice Department Announces Pattern or Practice Investigation of the City of Memphis and the Memphis Police Department”, July 2023, <https://www.justice.gov/opa/pr/justice-department-announces-pattern-or-practice-investigation-city-memphis-and-memphis>

<sup>74</sup> See: Department of Justice Press Release, “Justice Department Announces Pattern or Practice Investigation of the City of Memphis and the Memphis Police Department”, July 2023, <https://www.justice.gov/opa/pr/justice-department-announces-pattern-or-practice-investigation-city-memphis-and-memphis>

stops; violates the rights of people engaged in protected speech; and along with the city, discriminates against people with behavioural health disabilities when responding to calls for assistance.”<sup>75</sup> Similar findings were made recently inside the Louisville Metro Police Department.<sup>76</sup> At least 14 Consent Decrees have been implemented since 2012.<sup>77</sup> The Mechanism welcomes this investigation procedure and its follow-up formula, as it considers that they are a good practice towards guaranties of non-recurrence. The Mechanism calls on the federal government to keep this practice and on local police departments to collaborate with it.

71. The US Department of Justice also engages in federal criminal civil rights investigations for law enforcement misconduct in certain cases, against the police officers involved.<sup>78</sup> For example, the one against Memphis Police department’s officers related to the death of Tyre Nichols in January 2023.<sup>79</sup>

72. The Mechanism also notes that victims of police violence may obtain some form of financial compensation through civil lawsuits against authorities. Between 2009 and 2022, at least 217 publicly reported settlements for police misconduct were identified, which resulted in some policy changes and over USD 2.340 billion in monetary compensation to victims.<sup>80</sup> However, the Mechanism heard various allegations about the complexity of these procedures, and the difficulty of being able to sue police officers civilly for the so-called doctrine of “qualified immunity”, which is a judicially created doctrine that protects government officials against civil liability for conduct that violates the rights of others.<sup>81</sup> The Mechanism emphasizes that the victims’ right to reparations must always be protected and guaranteed, including restitution, compensation, rehabilitation and satisfaction.<sup>82</sup> This right should include the possibility of seeking reparation through civil lawsuits against the perpetrators and authorities involved. The Mechanism stresses that civilian settlements for damages are only a partial form of reparation and should never replace prompt, effective and independent criminal investigations, with a view to holding perpetrators accountable.

73. The Mechanism strongly emphasizes that the United States must ensure accountability in all cases of excessive use of force and other human rights violations by law enforcement officials. This is a systemic issue that calls for a systemic response. All actors involved, including police departments and police unions, must join forces to combat the prevailing impunity. Further, the Mechanism would like to stress that as long as the regulations on the use of force in the United States are not in accordance with international standards, as mentioned above, many of the acts of excessive use of force by the police will continue to go unpunished.

<sup>75</sup> See: Department of Justice Press Release, “Justice Department Finds Civil Rights Violations by the Minneapolis Police Department and the City of Minneapolis”, June 2023, <https://www.justice.gov/opa/pr/justice-department-finds-civil-rights-violations-minneapolis-police-department-and-city>

<sup>76</sup> See: Department of Justice Press Release, “Justice Department Finds Civil Rights Violations by the Louisville Metro Police Department and Louisville/Jefferson County Metro Government”, March 2023. <https://www.justice.gov/opa/pr/justice-department-finds-civil-rights-violations-louisville-metro-police-department-and>

<sup>77</sup> See: National police funding database, LDF’s Thurgood Marshall Institute, “Consent Decrees” <https://policefundingdatabase.org/explore-the-database/consent-decrees/>

<sup>78</sup> See: <https://www.justice.gov/crt/law-enforcement-misconduct#iap>

<sup>79</sup> See: Press release from the United States Attorney for the Western District of Tennessee: <https://www.justice.gov/usao-wdtn/pr/statement-united-states-attorney-kevin-g-ritz-0> ; See also the communication send by the Mechanism to the United States of America on this case: <https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-racial-justice-law-enforcement/communications>

<sup>80</sup> See: National police funding database, LDF’s Thurgood Marshall Institute, “Settlements”, July 2023, <https://policefundingdatabase.org/explore-the-database/settlements/>

<sup>81</sup> See: Novak, K “*Policing the Police: Qualified Immunity and Considerations for Congress*”, Congressional Research Service (February 21, 2023). Also see: Legal Defense Fund, “Qualified Immunity FAQ”, <https://www.naacpldf.org/qualified-immunity/>

<sup>82</sup> See: “Reparations”, OHCHR, <https://www.ohchr.org/en/transitional-justice/reparations>

## L. Law enforcement officials' wellness

74. In meetings with Police Departments, we received information stating that law enforcement agencies are experiencing problems to recruit new people, which leads to overtime workload for officials, which in turn can lead to stress and other mental health conditions that can finally impact the actions of police officers.

75. In meetings with different associations of Black law enforcement officers, ranging from patrol officers to Chiefs, the Mechanism repeatedly heard concerns regarding police officers' wellness and mental health linked to additional challenges caused by pervasive racism and racial discrimination against them inside police departments. In particular, the Mechanism was alarmed by the testimony of Black police officers regarding the effective impact of systemic racism and discrimination within law enforcement on their mental health.

76. Law enforcement officials' wellness in turn impacts their interactions with communities. Expecting law enforcement officers to respect and protect human rights also presupposes a culture of respect and wellbeing within the ranks. The United States must ensure that all law enforcement agencies develop programs to provide mental health care and wellness for officials and should firmly address the issues of systemic racism against Black law enforcement officers and issues of white supremacy ideology inside the agencies.

## V. Criminal Justice System

### A. Overrepresentation of people of African descent in detention

77. The United States imprisons more people<sup>83</sup> than most of the other Member State of the United Nations.<sup>84</sup> With 6,900,000 annual admissions in the jail system in 2021<sup>85</sup>, by the end of that year: 1,775,300 persons were incarcerated in state (959,000) or federal (171,000) prisons or local jails (636,000), giving an incarceration rate of 680 per 100,000 adult US residents.<sup>86</sup> Other 3,745,000 persons were under probation or parole, giving a total of 5,444,900 persons under the supervision of a criminal authority by the end of 2021.<sup>87</sup>

78. Black people are the most incarcerated and most criminally supervised persons in the United States.<sup>88</sup> In 2021, 1,704,000 Black persons were under criminal administration: 591,000 incarcerated (391,000 in prison and 221,000 in a local jail) and 1,136,000 under probation (864,000) or parole (280,000). An estimated 1 in 19 (rate of 5,350 per 100,000) Black adult was under correctional supervision, compared to 1 in 62 (rate of 1,620 per 100,000) white adult. 3,560 (per 100,000) Black persons were under probation or parole, compared to 1,240 (per 100,000) white persons. 1,850 (per 100,000) Black persons were incarcerated, compared to 410 (per 100,000) white persons.<sup>89</sup> On that account, in 2021, Black

<sup>83</sup> Although showing a downward trend in the past 10 years, according to the Department of State. See: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Correctional Populations in the United States, 2021 – Statistical Tables", February 2023.

<https://bjs.ojp.gov/library/publications/correctional-populations-united-states-2021-statistical-tables>.

<sup>84</sup> According to data of the World Prison Brief, in terms of number of people in prison it may be only below to the People's Republic of China (2,340,000 people incarcerated), and in terms of imprisonment rate per 100,000 inhabitants, close to El Salvador (1086), Cuba (794), Rwanda (621), and Turkmenistan (576). See the World Prison Brief data:

<https://www.prisonstudies.org/country/united-states-america>

<sup>85</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Jail Inmates in 2021 – Statistical Tables", December 2022, <https://bjs.ojp.gov/library/publications/jail-inmates-2021-statistical-tables>

<sup>86</sup> See: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Correctional Populations in the United States, 2021 – Statistical Tables", February 2023.

<https://bjs.ojp.gov/library/publications/correctional-populations-united-states-2021-statistical-tables>

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

persons were 4.5 more incarcerated, 2.8 more under probation or parole and 3.3 times more under criminal supervision in general, than white persons in the United States.

79. The Mechanism is deeply concerned by these numbers. These significantly disproportionate rates between Black and white persons are staggering. The Mechanism condemns not only the general overuse of incarceration and criminal supervision in the United States, but above all the appalling overrepresentation of people of African Descent in the US criminal justice system.

80. The Mechanism sees this disproportionality as a manifestation of the entrenched systemic racism against people of African descent in the United States. As a legacy of slavery, this permeates the entire spectrum of the law enforcement and judicial system. Poverty and lack of quality education, employment opportunities, healthcare, adequate housing, among others, coupled with racism within the criminal justice system, generate vicious circles from which people cannot escape.

81. The consequences of this disproportionate incarceration are devastating on individuals, families and communities of African descent across the United States. In general, more than one out of six men of African descent between the ages of 25 and 54 years old are missing from daily life.<sup>90</sup>

## B. Incarcerated Women

82. African American women prisoners represent 34% of all incarcerated women. They are reportedly more likely to be restrained and shackled than their white counterparts. The Mechanism heard, first hand, unbearable direct testimonies of pregnant women shackled during labour, who due to the chaining, lost their babies. Also, it heard testimony of how pregnant women in detention are often induced for delivery; are entitled limited time with their new-born, some only two hours and at the discretion of the correctional authorities; and provided 24 hours to make arrangements for their baby, otherwise the baby is taken into state care. All these practices, including shackling pregnant women before, during and after labour are an affront to human dignity and the best interest of the child. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, Rule 48.2).

## C. Children Incarceration

83. In 2020, 25,014 children were in detention in the US<sup>91</sup>, and in 2021, 2,250 children were held in adults' prisons.<sup>92</sup> However, according to information received, these figures only show the count of detention on a single day of the year, therefore they underestimate reality by at least 80%: only in 2019, there were more than 240,000 occurrences of children detained, committed, or both in the juvenile justice system.<sup>93</sup> By 2019, Black children were more than four times as likely to be detained or committed in juvenile facilities as their white peers.<sup>94</sup>

<sup>90</sup> See Prison Policy Initiative, "Mass Incarceration: The Whole Pie 2022 (March 14, 2022)". <https://www.prisonpolicy.org/reports/pie2022.html>

<sup>91</sup> U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention report, "Highlights From the 2020 Juvenile Residential Facility Census", October 2022, <https://ojjdp.ojp.gov/library/publications/highlights-2020-juvenile-residential-facility-census>

<sup>92</sup> U.S. Justice Department's Bureau of Justice Statistics, "Juveniles Incarcerated in U.S. Adult Jails and Prisons, 2002–2021", June 2023, <https://bjs.ojp.gov/juveniles-incarcerated-us-adult-jails-and-prisons-2002-2021>

<sup>93</sup> The Sentencing Project, "Too Many Locked Doors: The scope of youth confinement is vastly understated", March 2022, <https://www.sentencingproject.org/reports/too-many-locked-doors-the-scope-of-youth-confinement-is-vastly-understated/>

<sup>94</sup> See: U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention, 2019 Census of Juveniles in Residential Placement, <https://ojjdp.ojp.gov/publications/juveniles-in-residential-placement-2019.pdf>; and The Sentencing Project, "Black Disparities in Youth Incarceration", July 2021, <https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/>

The detention rate of Black children was 315 per 100,000, compared to the rate of white children of 72 per 100,000.<sup>95</sup> For example, in Louisiana about 83% of youth in the Louisiana Office of Juvenile Justice’s custody are Black, while only about 31% of Louisiana’s population is Black.

84. Further, the Mechanism was shocked by information stating that at least 32,359 individuals are currently incarcerated in the US for offenses they committed when they were children, and that 80% of those are non-white and 58% are Black.<sup>96</sup> 6,301 (19.47%) of these children were sentenced to life term and 3,162 are serving de facto life sentences (sentence over 39 years<sup>97</sup>). The ones who did not receive life sentences, will spend, on average, between 14.59 to 21.72 years behind bars.<sup>98</sup>

85. The Mechanism is concerned about the prevalent interaction of children with the criminal justice system, which disproportionately affects children of African descent. This concern is closely linked to the one made above about the “school to prison pipeline”. The Mechanism acknowledges incarceration of children has been on the decline in recent years, but numbers remain high and astonishing. The Mechanism calls on the US to protect all children (below 18 years old) from the adult criminal legal system and to raise the age to 15 years old for entering for the juvenile system, in accordance with international human rights standards.<sup>99</sup>

#### D. Pre-trial detention

86. About 451,400 people are detained pretrial on any given day in the United States.<sup>100</sup> In 2002, 29% of people in jails were held pretrial;<sup>101</sup> by 2023, that number increased to 71%.<sup>102</sup> During the visit to the Los Angeles County Jails and the Cook County Jail, the Mechanism was shocked by allegations of inmates being held in pre-trial detention for long periods (i.e. more than 10 years) and for periods longer than the eligible sentence of the offence they may have committed, if convicted.

87. The Mechanism received allegations that national demographic data on pretrial detention and cash bail is severely outdated, with the last government data collected in 2002. That data found that 69% of people detained pretrial were people of colour, with Black people representing 43% of the pretrial detention population.<sup>103</sup> Another study found that Black and brown defendants are imposed bail amounts that are twice as high as white defendants and are less likely to afford cash bail.<sup>104</sup>

88. People of African descent are held in pretrial detention at highly disproportionate rates, not only because of general overrepresentation in detention, but also because of the

<sup>95</sup> The Sentencing Project, “Black Disparities in Youth Incarceration”, July 2021, <https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/>

<sup>96</sup> Human Rights for Kids, “Crimes Against Humanity - The Mass Incarceration of Children in the United States”, 9 May 2023, <https://humanrightsforkids.org/publication/crimes-against-humanity-the-mass-incarceration-of-children-in-the-united-states/>

<sup>97</sup> According to information, the U.S. Sentencing Commission considers a sentence over 39 years, effectively a life sentence.

<sup>98</sup> Human Rights for Kids, “Crimes Against Humanity - The Mass Incarceration of Children in the United States”, 9 May 2023, <https://humanrightsforkids.org/publication/crimes-against-humanity-the-mass-incarceration-of-children-in-the-united-states/>

<sup>99</sup> See General Comment No. 24 on children’s rights in the child justice system by the Committee on the Rights of the Child, 18 September 2019, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

<sup>100</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Jail Inmates in 2021 – Statistical Tables”, December 2022, <https://bjs.ojp.gov/library/publications/jail-inmates-2021-statistical-tables>

<sup>101</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Profile of Jail Inmates, 2002”, July 2004, <https://bjs.ojp.gov/library/publications/profile-jail-inmates-2002>

<sup>102</sup> See footnote 96, *supra*.

<sup>103</sup> See footnote 97, *supra*.

<sup>104</sup> Prison Policy Initiative, “How Race Impacts Who Is Detained Pretrial,” 2023, [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/)

high cost of bail and an inability to pay, frequently as a socio-economic consequence of entrenched racism. This in turn impacts sentencing, since pretrial detention makes more likely that an individual will plead guilty, irrespective of the actual culpability of the person, subsequently being sentenced to incarceration and even be given longer sentences. Systemic racism and racial bias in jury selection and verdicts also results in unfair sentences and wrongful convictions of African descent defendants.<sup>105</sup>

89. Further, during the visit to the Los Angeles County Jails, the Mechanism observed that pre-trial and sentenced inmates were not segregated. The Mechanism recalls that the separation between untried and convicted detainees is based on the principle of the presumption of innocence and allows the different regimes to adapt regarding matters such as contact with the outside world, work, or access to vocational training. Untried inmates should always be held separately from those serving a sentence, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

90. The Mechanism is concerned about this information and testimonies on the excessive use of pre-trial detention in the United States, including its elevated increase in the last two decades. The Mechanism calls on the United States to reverse this tendency. It wants to emphasize that detention before trial should be used only to the extent it is lawful, reasonable, and necessary. Prolonged pretrial detention violates human rights standards by jeopardizing the presumption of innocence and other principles. When delays in the trial become necessary, the judicial authorities must reconsider alternatives to pretrial detention.

## E. Immediate access to legal representation

91. The Mechanism is concerned about received information stating that in the US, the earliest an individual meets a lawyer after arrest is usually at a first court hearing, which can occur up to a week after the arrest. Even if an explicit request for an attorney is made, law enforcement is not required to ensure access to legal counsel before this first hearing.<sup>106</sup> Other accounts received describe multiple cases of incommunicado detention, including during arrests following the 2020 anti-racism protests, for example in New York City<sup>107</sup>, or the publicly denounced generalized practice at Homan Square police facility in Chicago between 2004 and 2015.<sup>108</sup>

92. The Mechanism would like to emphasize that immediate access to a lawyer and legal counsel and contact with family or other person of choice is crucial for police oversight and for the prevention of torture and ill-treatment. The right to access to legal representation entails prompt confidential access to, and consultations in private with, an independent lawyer or a counsel of the detainee's own choice, in a language he or she understands, from the moment of deprivation of liberty and throughout the period of detention, but especially during the process of interrogation, investigation and questioning.<sup>109</sup> The United States jurisdictions should ensure access to legal counsel, family or other person of choice, and medical examination and care, immediately upon arrest and throughout law enforcement custody. The Mechanism recalls that incommunicado detention may amount to an enforced disappearance if the detention is not officially acknowledged and no information is provided about the fate and whereabouts of the detainee. It calls on the US government to firmly investigate all allegations of incommunicado detention.

<sup>105</sup> See: Equal Justice Initiative, "Race and the Jury: illegal discrimination in jury selection", 2021, <https://eji.org/report/race-and-the-jury/>

<sup>106</sup> Fair Trials, "Access to counsel in the US", <https://www.fairtrials.org/campaigns/the-right-to-counsel/#access-to-counsel-in-the-us-21>

<sup>107</sup> <https://www.theguardian.com/us-news/2023/jul/20/new-york-nypd-george-floyd-protests-2020>

<sup>108</sup> See: <https://www.cbsnews.com/chicago/news/protesters-demand-closure-of-cpd-homan-square-facility/> and <https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands>

<sup>109</sup> Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners, CAT/C/51/4, 28 March 2014, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2F%20F51%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2F%20F51%2F4&Lang=en)

## F. Prison sentences beyond life expectancy

93. The Mechanism was deeply alarmed by information on prison sentencing policies and practices commonly referred to as “death by incarceration” sentences, such as “life without parole”, “life with parole” or in general any sentence that exceeds life expectancy (“virtual life”), particularly because of the disparate impact on people of African descent and other racial and ethnic minorities and because of the use of these sentences against children.

94. Data received reveals that 15% of the total prison population nationwide in 2020 (203,865 incarcerated individuals) were serving life or virtual life sentences.<sup>110</sup> People of African descent make up 46% of the prison population serving life sentences nationwide even though they comprise only 12% of the general population.<sup>111</sup> Women represent the 3% of the population serving life sentences, but the number raised 32% faster compared to men over the past decade. One in every 15 women in prisons was serving a life sentence in 2021, with one third being ineligible for parole.<sup>112</sup>

95. Further, information states that the United States is the only country in the world that sentences children to life without parole, an option contemplated in both federal and State laws. Data also indicates that 62% of juveniles serving life without parole are of African descent.<sup>113</sup>

96. Evidence suggests that “death by incarceration” sentences are increasing overtime, while the use of parole and clemency is declining. This results in numerous individuals, particularly of African descent or other racial and ethnic minorities, condemned to death in prison.

97. The Mechanism would like to emphasize that disproportionate, excessive and discriminatory sentencing beyond life expectancy is a cruel, inhuman and degrading treatment, in violation of international human rights standards protecting life, liberty and against torture. All prison sentences in the United States should include parole eligibility within a reasonable number of years, and always below life expectancy. Federal and state executive branches should keep exercising clemency powers in favour of persons already serving sentences beyond life expectancy, especially benefiting children and persons who committed crimes when they were children and older persons.

## G. Death penalty

98. In the United States, the death penalty still exists in 27 American states, the federal system and the military. By the end of 2020, 2,469 people were on death row.<sup>114</sup> In 2022, 18 prisoners were executed in six different states<sup>115</sup> and 15 more in 2023 (end of July).<sup>116</sup> As of

<sup>110</sup> See The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment 10 (2021)”, <https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf>

<sup>111</sup> Ibid.

<sup>112</sup> See The Sentencing Project, National Black Women’s Justice Institute and Cornell Center on the Death Penalty Worldwide, “In the Extreme: Women Serving Life without Parole and Death Sentences in the United States (2021).” <https://www.sentencingproject.org/wp-content/uploads/2021/09/In-the-Extreme-Women-Serving-Life-without-Parole-and-Death-Sentences-in-the-United-States.pdf> and The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment 10 (2021)”, <https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf>

<sup>113</sup> See The Sentencing Project, “Juvenile Life Without Parole: An Overview”. <https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/>

<sup>114</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Capital Punishment, 2020 – Statistical Tables, December 2021, <https://bjs.ojp.gov/library/publications/capital-punishment-2020-statistical-tables>

<sup>115</sup> Death penalty information center, execution list 2022, <https://deathpenaltyinfo.org/executions/2022>

<sup>116</sup> Death penalty information center, execution list 2023, <https://deathpenaltyinfo.org/executions/2023>

1<sup>st</sup> October 2022, 970 Black persons were on death row, representing 41% of the total.<sup>117</sup> At least 156 innocent people have been sentenced to death since 1973.<sup>118</sup>

99. The population sentenced to death in the United States is also overrepresented by people of African descent. The Mechanism would like to stress that use of the death penalty is not consistent with the right to life and the right to live free from torture or cruel, inhuman or degrading treatment or punishment.<sup>119</sup> Therefore, the Mechanism calls on the United States to abolish the death penalty in all its jurisdictions.

## H. Solitary confinement

100. The Mechanism is alarmed over reports, and upon witnessing first hand during jail visits, by the generalized practice of solitary confinement use in the United States. It is estimated that over 80,000 prisoners are held in isolated confinement on any given day in the US,<sup>120</sup> including 41,000 to 48,000 for 15 days or longer.<sup>121</sup> When calculating any number of days in a cell for 22 hours or more, the estimate increases to 122,840 people.<sup>122</sup> Of the persons in solitary confinement for 15 days or longer, more than 75% were held between 15 days and a year; the remaining quarter were reported to have been isolated for more than a year, with 14.4% for one to three years, 4.0% for three to six years, 2.1% for six to 10 years, and 3.7% for more than a decade in solitary confinement.<sup>123</sup>

101. In the Los Angeles County Jails, the Mechanism could speak to several persons, most of them Black men, held in solitary confinement. Experts could observe how each individual was held alone in a little cell containing a bunk, a toilet, and a sink for more than 23 hours a day with little human contact or interaction; reduced natural light; limited visitation; and absence of group activities such as sharing a meal with other inmates, or even speaking to others. In general, the Mechanism noticed that solitary confinement in LA jails appeared to have a disproportionate impact on persons of African descent. The experts spoke to older persons of African descent held in solitary confinement, including one Black man who had been detained in isolation for 11 years in a row. The Mechanism was informed that inmates could legally be held in isolation for a maximum of 30 days, but that this period could be renewed several times without a specific maximum limit, at the discretion of correctional authorities.

102. The Mechanism further received numerous testimonies from formerly incarcerated individuals of African descent, around the deleterious long-term effects of solitary confinement, including anxiety, sleep disorders, panic attacks, depression, and suicide. The Mechanism is especially alarmed as the practice is reported to also apply to children, with also dramatic effects on their mental health, sometimes leading to suicides. Children held in

<sup>117</sup> Death penalty information center, Race and death penalty by the numbers, <https://deathpenaltyinfo.org/policy-issues/race/race-and-the-death-penalty-by-the-numbers>

<sup>118</sup> “Since 1973, over 156 people have been released from death rows in 26 states because of innocence. Nationally, at least one person is exonerated for every 10 that are executed.” See: ACLU, “The case against the death penalty”, December 2012, <https://www.aclu.org/documents/case-against-death-penalty>

<sup>119</sup> See report of the UN Special Rapporteur on torture on the death penalty as a violation of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, 2012, A/67/279, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F67%2F279&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>120</sup> See: ACLU, “The Dangerous Overuse of Solitary Confinement in the United States” <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states> See also SPLC report, “Solitary Confinement: Inhumane, Ineffective, and Wasteful”, [https://www.splcenter.org/sites/default/files/com\\_solitary\\_confinement\\_0.pdf](https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf)

<sup>121</sup> “Time-In-Cell: A 2021 Snapshot of Restrictive Housing Based on a Nationwide Survey of U.S. Prison Systems” <https://law.yale.edu/centers-workshops/arthur-liman-center-public-interest-law/liman-center-publications/time-cell-2021>

<sup>122</sup> “Calculating Torture: The Most Accurate Count to Date of People Being Held in Solitary Confinement,” Solitary watch, <https://solitarywatch.org/calculating-torture/>

<sup>123</sup> “Calculating Torture: The Most Accurate Count to Date of People Being Held in Solitary Confinement,” Solitary watch, <https://solitarywatch.org/calculating-torture/>

adult facilities are reportedly 36 times more likely to commit suicide than adults. The Mechanism heard the testimony of family member of Kalief Browder, arrested at the age of 16, who committed suicide after being held in solitary confinement for two years in the Rikers Island detention facility in New York. The Mechanism stresses that the practice of solitary confinement contributes to the acuity of the mental health crisis in the criminal justice system across in the US and that severe cases amount to torture or ill-treatment. The Mechanism regrets the mistaken idea that solitary confinement can be a long-lasting and satisfactory means of offering protection for detainees at risk. On the contrary, this should be considered a practice of last resort, and conditional to the detainees' consent.

103. The Mechanism also rejects the belief that security can be achieved by using more restrictions and disciplinary measures upon persons deprived over their liberty, rather than by improving conditions of detention, including by offering fair and constructive training and occupations, adequate treatment for substance dependence and/or mental health conditions, education, recreation and a prison regime which increases the potential for prisoners to be rehabilitated upon release, to avoid recidivism.

104. The Mechanism is aware of several ongoing lawsuits binding the LA County Jails to comply with detention minimum standards. It urges the US and California authorities to urgently improve material conditions of detention in the Los Angeles County jails, including for the population with mental health conditions or psychosocial disabilities.

105. The Mechanism calls upon the US authorities, including all relevant State correctional authorities, to ensure that restrictions on detainees in State and federal prisons and jails are only imposed in exceptional circumstances, as a measure of last resort, and for as short a time as possible. It further reminds the US authorities that solitary confinement shall never be imposed upon children. All use of restrictions on detainees, including solitary confinement must be in accordance with international human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

## I. Mental health conditions in detention

106. The Mechanism was alarmed over the fact that U.S. prisons and jails incarcerate a disproportionate amount of people who have a current mental health condition or psychosocial disability: 43% in state prisons<sup>124</sup> and 44% in local jails.<sup>125</sup> Many of these persons are Africans and people of African descent. During the visit to the Los Angeles County jails, the facility of the Twin Towers was described by the correctional authorities themselves as the “largest state provider of mental health”. The majority of the 2400 men held in the LA Twin Towers facility at the time of the Mechanism’s visit reportedly suffered from a mental health condition or psychosocial disability. At the time of the visit to the Cook County Jail (Illinois), 65% of the inmates reportedly had a mental health condition or psychosocial disability. Many of these detainees were reported to be waiting for a mental competency assessment to stand trial, or to remain in detention for lack of places in mental health institutions. Priority was given to forensic in-patients with acute psychiatric needs, who were transferred to hospital for the forced administration of treatment.

107. The Mechanism is concerned over the management of this population by the carceral system, symptomatic of an inherently punitive approach, which is incompatible with a therapeutic mission and with the needs of these vulnerable persons. The Mechanism is of the view that the population with mental health conditions or psychosocial disabilities, many of whom are of African descent, should not be in prison or jail.

108. The mechanism welcomes that on 22 June 2023, the District Court of California approved an extraordinary settlement between people incarcerated in Los Angeles jails — represented by the ACLU— and the Los Angeles County Board of Supervisors which,

<sup>124</sup> Prison Policy Initiative, “Chronic Punishment: The unmet health needs of people in state prisons”, June 2022, <https://www.prisonpolicy.org/reports/chronicpunishment.html#mentalhealth>

<sup>125</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special report: “Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12”, June 2017, <https://bjs.ojp.gov/content/pub/pdf/imhrpji1112.pdf>

inter alia, requires the creation of at least 1,925 new community beds by the county as alternatives to jailing people with mental illness<sup>126</sup> and increase of mental health staffing.<sup>127</sup> This good example could be considered to be replicated in many other parts of the country.

109. The Mechanism recommends to the US, and all relevant state correctional authorities, to address the root causes that drive criminal-legal involvement of persons with mental health conditions or psychosocial disabilities, including racial discrimination, substance abuse and homelessness, considering their disproportionate representation among the African American population. It also calls the US to put in place adequate and appropriate data collection, analysis and publication on mental health conditions and psychosocial disabilities in jails and prisons, and an intersectional analysis of such data, which is fundamental to drive informed responses for the criminal justice system.

## J. Forced prison labour

110. In 1865, the 13<sup>th</sup> amendment to the United States Constitution prohibited slavery, except as a punishment for a crime: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”<sup>128</sup> The Mechanism received reports describing how, after the abolition of slavery, the arrest and incarceration of people of African descent for petty crimes or vagrancy increased, with a view to having access to free or almost free cheap labour.

111. The Mechanism is astonished by evidence stating that this access to free or almost free Black work force, through free or poorly paid prison forced labour, exists to this day in the United States, constituting a contemporary form of slavery. Further, it received information stating that workers in prison are assigned hazardous work in unsafe conditions without the training or protective gear needed, and, if they refused to work, even for a medical condition or disability, they are punished accordingly.<sup>129</sup>

112. The delegation received shocking information over “plantation-style” prisons in Southern States, in which contemporary forms of slavery are reported. Commonly known as “Angola”, the Louisiana State Penitentiary occupies an 18,000-acre former slave plantation, larger than the island of Manhattan. The plantation prison soil worked by incarcerated labour today is the same soil worked by slaves before the civil war. “Angola” currently houses nearly 5000 adult men, the majority of them Black men, forced to labour in the fields (even picking cotton) under the watch of white “freemen” on horseback,<sup>130</sup> in conditions very similar to those of 150 years ago. The Mechanism received direct testimonies from “Angola” victims and allegations of children being transferred to this prison, held in solitary confinement and in general under appalling detention conditions.<sup>131</sup>

113. Further, the Mechanism received direct testimonies that in the state of Georgia detainees are unpaid in jails and prisons. In the Cook County Jails (Illinois), which the Mechanism visited, inmates are reportedly paid 5 to 6 dollars for a whole day of cooking or laundry work. This seems to be above the national average, since works in prison in the US

<sup>126</sup> <https://www.aclu.org/press-releases/aclu-reaches-landmark-settlement-in-l-a-county-jails-case>.

<sup>127</sup> <https://www.aclu.org/cases/rutherford-v-luna?document=rutherford-v-villanueva-exhibits-q-support-declaration-melissa-camacho-cheung-doc-319>.

<sup>128</sup> <https://www.archives.gov/milestone-documents/13th-amendment>

<sup>129</sup> ACLU and the University of Chicago (the law school global human rights clinic), “Captive Labor: Exploitation of Incarcerated Workers”, 2022, <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>

<sup>130</sup> The Promise of Justice Initiative, “End plantation prisons project”, <https://labor.promiseofjustice.org/>

<sup>131</sup> <https://theappeal.org/angola-prison-children-death-row-louisiana/>  
<https://edition.cnn.com/2023/07/19/us/louisiana-juveniles-angola-heat-isolation/index.html>  
<https://www.splcenter.org/news/2023/03/20/investigate-childrens-rights-violations-angola-prison>

reportedly rarely pay more than one dollar an hour, many of them paying just a few pennies.<sup>132</sup> Such unpaid, or unfairly remunerated labour appears to lead to private profiteering of corporations managing jails and prisons, to the detriment of the wellbeing, rights, and dignity of inmates. Reportedly, incarcerated workers produce more than \$2 billion a year in goods and commodities and over \$9 billion a year in services for the maintenance of the prisons where they are warehoused.<sup>133</sup>

114. The Mechanism is of the view that unpaid or poorly unpaid forced prison labour in the United States perpetuates slavery to the present day. It represents the worst version of a racist criminal legal system and erodes efforts towards addressing systemic racism. The Mechanism stresses that slavery, servitude, and torture and ill-treatment, have no room in our world today, even for persons condemned for the most serious crimes. The Mechanism calls the United States to eliminate these practices in accordance with international human rights standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Incarcerated workers in the US should have their labour rights assimilated to the rights of all other non-incarcerated workers.

## K. Disenfranchisement

115. With 48 states banning people with felony convictions from voting, an approximate of 4.6 million citizens in the United States (two percent of the adult voting-age population) are unable to vote due to this disenfranchisement.<sup>134</sup> African Americans are disenfranchised at a rate 3.5 times higher than the general population, but in some states, the rates are much higher.<sup>135</sup>

116. Many of these citizens remain disenfranchised long after their sentence has been served and the period of carceral punishment has ended: 77% of disenfranchised Americans are post-incarceration, living already in their communities.<sup>136</sup> Financial and bureaucratic impediments, such as outstanding fines, fees, court costs, and restitution, are the main cause that prevent citizens from regaining their voting rights after they are legally allowed to do so.<sup>137</sup>

117. The Mechanism is concerned about the generalized practice of disenfranchisement in the United States, especially because of the disproportionate impact on Afro-descendant persons and communities in exercising their civil and political rights. The US should diminish disenfranchisement to the maximum extent possible, eliminating the financial and legal barriers to re-enfranchisement. Legislation, such as S.481, “Democracy Restoration Act”, should be considered, to ensure all citizens regain their right to vote after serving their criminal sentence.

<sup>132</sup> ACLU and the University of Chicago (the law school global human rights clinic), “Captive Labor: Exploitation of Incarcerated Workers”, 2022, <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>

<sup>133</sup> ACLU and the University of Chicago (the law school global human rights clinic), “Captive Labor: Exploitation of Incarcerated Workers”, 2022, <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>

<sup>134</sup> The Sentencing Project, “Locked Out 2022: Estimates of People Denied Voting Rights”, October 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

<sup>135</sup> Alabama, Arizona, Florida, Kentucky, Mississippi, South Dakota, Tennessee, and Virginia. See: The Sentencing Project, “Locked Out 2022: Estimates of People Denied Voting Rights”, October 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

<sup>136</sup> The Sentencing Project, “Locked Out 2022: Estimates of People Denied Voting Rights”, October 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

<sup>137</sup> Joshua M. Feinzig, "Felon Re-enfranchisement and the Problem of Lost Rights," *Yale Law Journal Forum* 13, no.1 (2021): 142-161, <https://www.yalelawjournal.org/forum/felon-re-enfranchisement-and-the-problem-of-lost-rights>; and "Felony Voting Rights Restoration in Alabama," Campaign Legal Center, <https://campaignlegal.org/cases-actions/felony-voting-rights-restoration-alabama>

## L. Chicago Torture

118. The Mechanism received several testimonies from African American victims of torture, which was inflicted upon the victims between the 1970's and 1991 in Chicago, including against children. The torture described included electric shocks, burns and mock executions, among other brutal acts, in order to extract confessions. Even though the City of Chicago officially apologized for these events<sup>138</sup> and some victims received compensation in recent years<sup>139</sup>, the police officers were reportedly never charged with crimes directly stemming from the torture inflicted despite reports of at least 118 victims of torture<sup>140</sup>. A victim told the Mechanism he served 25 years in prison following torture with electric shocks at the age of 17, he was ultimately exonerated, but is still waiting for his certificate of innocence.<sup>141</sup>

119. The Mechanism is alarmed at the protracted delays faced by victims seeking justice and by the reports that some remain in prison decades later, under torture confessions. It calls upon the relevant State authorities to ensure that all victims receive justice and full reparations, including those still in prison.

## M. Homelessness

120. On a single night in 2022, more than a half million people (582,000 persons) experienced homelessness in the United States,<sup>142</sup> with an overrepresentation of Africans and people of African descent.<sup>143</sup> During its visit to Los Angeles, the Mechanism was informed that 35% of the 40,000 homeless persons in the city are Africans or people of African descent.

121. The Mechanism is not only deeply concerned by these overwhelming figures, but also by information received on the harmful interaction of law enforcement and the criminal justice system with homelessness, including its criminalisation. The Mechanism wants to emphasize that homelessness persecution and criminalization is ineffective in addressing the issue and deeply damaging to individuals and communities. Arrests, fines, and consequently criminal convictions result in incarceration, where persons may remain for prolonged periods because of inability to pay bail. This carries a vast array of social consequences, including losing their jobs, custody of their children, property and employment. Once released, a criminal record makes it even more difficult to find a new employment and housing, leading to more risks of homelessness, and more arrest and incarceration.<sup>144</sup>

122. The Mechanism reiterates that policing and criminalization cannot and should not be the default solution to social problems and encourages efforts translating into non-coercive non-policing responses to homelessness.

123. While acknowledging some of the efforts devoted to the issue, including some substantial allocation of resources devoted to material solutions (e.g. beds and shelters), the Mechanism considers that a more robust approach is needed. The Mechanism encourages the United States, and all relevant State and local authorities, to address the root causes of homelessness, including the confluence of various and intersecting layers of discrimination and systemic racism at the heart of the housing problem, including related to mental conditions and disabilities and drug abuse. In tackling this social issue, the US needs to

<sup>138</sup> <https://chicagotorture.org/reparations/ordinance/>

<sup>139</sup> <https://www.reuters.com/article/us-usa-chicago-torture-idUSBRE98B00V20130912>

<sup>140</sup> <https://www.theguardian.com/us-news/2018/sep/19/chicago-cop-jon-burge-torture-dies>

<sup>141</sup> Testimony heard during the visit to Chicago on 30 April 2023.

<sup>142</sup> US Department of Housing and Urban Development, "The 2022 Annual Homelessness Assessment Report (AHAR) to Congress", December 2022, <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>

<sup>143</sup> "People who identify as Black made up just 12 percent of the total U.S. population but comprised 37 percent of all people experiencing homelessness" See: US Department of Housing and Urban Development, "The 2022 Annual Homelessness Assessment Report (AHAR) to Congress", December 2022, <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>

<sup>144</sup> See: Prison Policy Initiative, "Nowhere to Go: Homelessness among formerly incarcerated people", August 2018, <https://www.prisonpolicy.org/reports/housing.html>

consider underlying needs associated with decades of discriminatory policies resulting in segregation, poverty and inequality, including the lack of adequate education, healthcare, jobs and other economic opportunities faced by many marginalized communities, including of Africans and people of African Descent.

## N. Drug policies

124. Interconnected with systemic racism, the “war on drugs” i.e., drug laws and policies in place for at least five decades in the United States, makes Africans and persons of African descent disproportionately more likely to experience harmful interaction with law enforcement and the criminal legal system.

125. Drug related offenses are the leading cause of arrest in the United States.<sup>145</sup> Numbers on the general overuse of incarceration and criminal supervision, and of the overrepresentation of people of African descent, as well as other evidence received by the Mechanism, indicate that Black persons are targeted more by law enforcement and are more overrepresented in drug related arrests than other race groups, despite similar rates of drug use and sales. For example, in the US Black people are 3.6 times more likely than white people to be arrested for marijuana possession, albeit comparable usage rates. But in some specific US states, disparities can be greater, as much as six, eight or almost 10 times more likely to be arrested.<sup>146</sup>

126. The Mechanism joins other UN mandates stating that the ‘war on drugs’ “has been more effective as a system of racial control than as a tool to reduce drug markets. Policing interventions based on racial profiling remain widespread, whilst access to evidence-based treatment and harm reduction for people of African descent remains critically low.”<sup>147</sup>

127. The Mechanism received information on the inseparable links between the federal drug policy, the federal programs funding and transferring military equipment to law enforcement agencies, and police killings of inhabitants in the US.<sup>148</sup> Black people are more impacted by the use of this kind of equipment and tactics deployed in drug related raids, despite the fact that people of all races use and sell drugs at similar rates.<sup>149</sup> Normalization of military equipment in law enforcement agencies can enable and encourage a type of policing that prioritize use of force, including excessive use of force.

128. The Mechanism welcomes that the question of “Limiting the Transfer or Purchase of Certain Military Equipment by Law Enforcement” was addressed by the Presidential Executive Order 14074 of May 25, 2022. However, encourages all authorities involved to keep delivering on the matter, including through more comprehensive legislation, taking into account initiatives such as the “Stop Militarizing Law Enforcement Act” of 2021.<sup>150</sup>

<sup>145</sup> With 11,858,126 arrests in 10 years (2011-2021). See: Federal Bureau of Investigation Crime Data explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest>

<sup>146</sup> ACLU research report, “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform”, 2020. <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

<sup>147</sup> Press release of 23 June 2023: UN experts call for end to global ‘war on drugs’. <https://www.ohchr.org/en/press-releases/2023/06/un-experts-call-end-global-war-drugs>

<sup>148</sup> “Across the country, heavily armed Special Weapons and Tactics (SWAT) teams are forcing their way into people’s homes in the middle of the night, often deploying explosive devices such as flashbang grenades to temporarily blind and deafen residents, simply to serve a search warrant on the suspicion that someone may be in possession of a small amount of drugs.” ACLU, “War comes home: the excessive militarization of American Policing”, June 2014. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>

<sup>149</sup> ACLU, “War comes home: the excessive militarization of American Policing”, June 2014. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>

<sup>150</sup> H.R.1694 - Stop Militarizing Law Enforcement Act, Introduced in House of Representatives (03/09/2021) <https://www.congress.gov/bill/117th-congress/house-bill/1694>

## VI. Recommendations

129. The Expert Mechanism acknowledges the efforts the federal government and other state and local governments are taking to address systemic racism against Africans and people of African descent in the context of law enforcement and the criminal justice system. It also expresses satisfaction at the willingness to engage in dialogue and cooperate with the Expert Mechanism to address these issues. The Mechanism looks forward to continuing to cooperate with the United States to implement its recommendations.

130. In addition to all the recommendations detailed throughout this report, the Mechanism addresses the following to all the United States, including all its jurisdictions and domestic authorities, states and territories, including the more than 18,000 law enforcement agencies:

131. Fully implement the United Nations High Commissioner for Human Rights' four-point agenda towards transformative change for racial justice and equality, containing 20 actionable recommendations to end systemic racism and human rights violations by law enforcement against Africans and people of African descent.<sup>151</sup>

132. Implement the general recommendations of this Expert Mechanism contained in its two first thematic reports, on data collection and policing. Ensure by legislation the required capacity to collect, compile, analyse and publish data, disaggregated by race or ethnic origin, on direct interactions of the population with law enforcement and the criminal justice system, including stop-and-search, arrests, racially motivated crimes, the use of force, and on related complaints, investigations, prosecutions, and convictions.

133. Combat systemic racism and racial discrimination against Africans and people of African descent with a systemic human-rights-based approach, considering a transitional justice approach.

134. Tackle poverty and lack of quality education, employment opportunities, healthcare, adequate housing and other human rights violations as a way to combat systemic racism against Africans and people of African descent, including in the context of law enforcement and the criminal justice system.

135. Adopt a human-rights-based approach to policing. Strictly review and modify all laws, policies, procedures and practices to restrict the use of force to ensure they are in compliance with international standards on the use of force and firearms by law enforcement officials, particularly the principles of legality, precaution, necessity, proportionality, accountability and non-discrimination. Apply these principles in all kind of police operations and all use of force. Ban the use of chokeholds and carotid restraints.

136. Adopt a national strategy, including with national legislation, to reduce to the maximum possible the number of killings by law enforcement. Gradually withdraw all armed officers from routine traffic enforcement and remove their authority to stop cars only for minor traffic violations. Instead, consider putting in place civilian traffic response units. Prioritize unarmed civilian first responder programs to mental health crises.

137. Eliminate all racial profiling. Describe and prohibit racial profiling in federal, state and local legislation, taking into account initiatives like the "End Racial and Religious Profiling Act"; all allegations of racial profiling should be investigated and prosecuted or disciplined accordingly; disaggregated data for all incidents, complaints and investigations on racial profiling should be collected, analysed, and publicized by all law enforcement agencies; law enforcement should receive adequate training to acknowledge and tackle this widespread bias; new technologies should be regulated.

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<sup>151</sup> A/HRC/47/53

138. Create an effective nationwide record system of individuals under investigation or found criminally or administrative guilty for police misconduct, with a view to preventing these individuals from being rehired by other law enforcement agency.
139. Remove police presence in schools and implement alternatives, including investing in sufficient qualified personnel such as counsellors, social workers, nurses and mental health professionals.
140. Adopt an immigration system with a human rights-based approach and address systemic racism within the ranks of immigration authorities.
141. Ensure that all legislation regulating the right to peaceful assembly follows international human rights standards.
142. Stop the generalized normalization of military equipment in law enforcement. Limit and strictly regulate the acquisition, trade and use of military equipment by law enforcement. Review in detail and strictly regulate the design, manufacture, trade and use of all less-lethal weapons.
143. End the “war on drugs” and adopt a human rights-based approach to drug policies. Decriminalize low-level drug offenses. Reduce and strictly regulate “no knock” entries and the use of militarized enforcement teams.
144. Ensure accountability in all cases of excessive use of force and other human rights violations by law enforcement officials, by prompt, effective and independent criminal investigations, with a view to holding perpetrators accountable. Address the actual effect of the standard of “reasonable police officer” in assessing whether to prosecute criminal charges of police abuse.
145. Guarantee the victims' right to reparations, covering restitution, compensation, rehabilitation and satisfaction, including addressing the actual effects of the doctrine of qualified immunity in cases pursuing civil damages for serious police violence. Improve civilian and criminal oversight mechanisms to law enforcement and provide them with compelling power and the allocation of appropriate resources.
146. Develop programs to provide mental health care and wellness for law enforcement officials.
147. Firmly address the issues of systemic racism and white supremacy ideology inside law enforcement agencies, including against Black law enforcement officers.
148. Evaluate the recruitment and training of police officers to ensure appropriate education on human rights standards and non-discrimination and provide for independent and impartial periodic review of law enforcement practices to ensure compliance with constitutional and international standards.
149. Adopt a national strategy to reduce the overrepresentation of people of African descent in the criminal justice system. Revert the increase and reduce to the maximum extent possible pretrial detention. Guarantee the right to immediate access to legal representation. Privilege alternatives to detention in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).
150. Protect all children below 18 years old from the adult criminal legal system. Eliminate the detention of all children for misdemeanour-level offenses. Abolish children life sentences without the possibility of parole. End the detention and processing in the criminal justice system, including the juvenile system, of all children under (at least) 15 years of age. Apply the juvenile (child) justice system only to children that were more than 15 and less than 18 years old at the time of the offense, regardless of the age at which they are being sentenced.
151. Eliminate “death by incarceration” sentences. Ensure that all sentences include parole eligibility within a reasonable number of years, and always below life expectancy.
152. Abolish the death penalty.

153. Exercise clemency powers in favour of all persons already in death row, persons serving sentences beyond life expectancy, and persons who were convicted for confessions under torture, especially children and persons who committed crimes when they were children and older persons.

154. Strictly regulate solitary confinement and other forms of restrictions in detention in accordance with international standards. Ensure that these restrictions are only imposed in exceptional circumstances, as a measure of last resort, and for as short a time as possible. These restrictions should only be imposed with adequate due process safeguards to ensure that detainees enjoy fair opportunity to challenge them. Never impose solitary confinement upon children, or upon persons with any form of psychosocial disability, or upon pregnant or breast-feeding women. Gather, analyse, and publish disaggregated data on these restrictions, including solitary confinement, in all kinds of detention centres, specifying the reasons for imposing, and the duration of it.

155. Reduce to the maximum extent possible the care and management by the criminal justice system of persons with mental health conditions or psychosocial disabilities. Address the root causes that drive their alleged criminal conduct, including racial discrimination, substance abuse and homelessness.

156. Eliminate the free or poorly paid prison forced labour. Ensure that incarcerated workers have their labour rights assimilated to the rights of all other non-incarcerated workers, including the payment of the local minimum wage.

157. Diminish disenfranchisement to the maximum extent possible, eliminating the financial and legal barriers to re-enfranchisement.

158. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and consequently establish one or several National Preventive Mechanisms.

159. Establish a national human rights institution in accordance with the Paris Principles, to streamline ongoing implementation of existing recommendations including those in this report.

160. Echoing existing recommendations of other UN human rights mechanisms (WGPAD, CERD), we encourage the establishment of a commission to study and develop reparation proposals for people of African descent, in close consultation with those most impacted.

## Annex

The Mechanism extends its deep appreciation to the affected individuals who provided testimony before the Mechanism during the visit to the United States of America, as listed below, and to all others who contributed in one way or another.

### *In Atlanta,*

*at the Auburn Avenue Research Library on African American Culture & History:*

- |                          |   |
|--------------------------|---|
| ▪ Bridgette Simpson      | ▪ Adrienne Hood, Columbus OH - Honoring Henry Green V                       |
| ▪ Darius Gamble          | ▪ Angela Y. Davis (Ruchell Magee)   |
| ▪ Dominique Hill         | ▪ Anita Wills, San Leandro CA - Honoring Kerry L. Baxter, Jr.               |
| ▪ Engrid Hamilton        | ▪ Bilal Sunni Ali (Imam Jamil Al-Amin) (H. Rap Brown)                       |
| ▪ Keyanna Jones          | ▪ Chinganji Akinyela (Assata Shakur and Nehanda Abiodun)                    |
| ▪ LaShundra Mitchell     | ▪ Dalphine Robinson, Atlanta GA - Honoring Jabril Robinson                  |
| ▪ Leah Spann             | ▪ Deborah Bush, San Antonio TX - Honoring Marquise Jones                    |
| ▪ Leroy Spann            | ▪ DeLisa Davis, DeKalb County GA - Honoring Kevin Davis                     |
| ▪ Melodie Jones          | ▪ Ingrid Smyrna, Atlanta GA - Honoring Andrew Smyrna                        |
| ▪ Mikia Hutchings        | ▪ Janet Baker, Houston TX [read by Shunkecia Lewis] - Honoring Jordan Baker |
| ▪ Mumia Abu Jamal        | ▪ Jeralynn Brown-Blueford, Tracy CA - Honoring Alan Blueford                |
| ▪ Nia Thomas             | ▪ Jimmy Hill, Atlanta GA - Honoring Jimmy Atchison                          |
| ▪ Pamela Winn            | ▪ Kathy Scott-Lykes, Columbus GA - Honoring Jarvis Lykes                    |
| ▪ Rev. Edward Pinkney    | ▪ Masai Ehehosi (Major Tillery)   |
| ▪ Ronald Marshall        | ▪ Montye Benjamin, Decatur GA - Honoring Jayvis Benjamin                    |
| ▪ Sandra Barnhill        | ▪ Sacajawea Hall (Pete O'Neal and Charlotte O'Neal)                         |
| ▪ Terrance Winn          | ▪ Shelia Banks, Palm Beach Gardens FL - Honoring Corey Lamar Jones          |
| ▪ Toni-Michelle Williams | ▪ Toni Franklin Boykins, Paulding County GA - Honoring Le'Den Boykins       |
| ▪ Waleisah Wilson        | ▪ Venethia Cook, Cobb County GA - Honoring Vincent D. Truitt                |
|                          | ▪ Watani Tyehimba (Dr. Mutulu Shakur)                                       |

### *In Los Angeles,*

*at the Los Angeles Community Action Network:*

- |                             |                      |
|-----------------------------|----------------------|
| ▪ Billion Godsun            | ▪ April Adkins       |
| ▪ Daniel Tse                | ▪ Beatrice X Johnson |
| ▪ Dennis Childs             | ▪ Bobby X Johnson    |
| ▪ Dominic Archibald         | ▪ Curtis Howard      |
| ▪ General Dogon             | ▪ Denise Friday      |
| ▪ Guerline Jozef            | ▪ Dorsey Nunn        |
| ▪ Mirard Joseph             | ▪ Fouzia Almarou     |
| ▪ Natosha Smith             | ▪ Pam Fields         |
| ▪ Paul Pierrilus            | ▪ Quintus Moore      |
| ▪ Pete White                | ▪ Robyn Williams     |
| ▪ Rebecca Alemayehu         | ▪ Rolanda Ashley     |
| ▪ Stephanie Arnold Williams | ▪ Shemeka Smith      |
| ▪ Tremaine Wade             | ▪ Stephanie Jeffcost |

*In Chicago,  
at the DuSable Black History Museum & Education Center:*

- Aislinn Pulley
- Anthony Holmes
- Carl Williams
- Crista Noel
- Damon Williams
- Elijah Hudson
- Frank Chapman
- James Robinson
- Jasmine Smith
- Jermaine Johnson
- Kaleed London
- Mark Clements
- Pebbles Prince
- Sean Tyler
- Alonzo and Cara Wilson - Parents of Alexis Wilson
- Anthanette Marshbanks - Mother of Archie Chambers
- April Ward - Mother of Michael Ward
- Arwena Karen Winterns – Aunt of Pierre Loury
- Carolyn Wiggins - Mother of Marcus Wiggins
- Cynthia Hendrix - Mother of Treasure Hendrix
- Cynthia Lane McIntosh - Mother of Roshad McIntosh
- Denise Spencer - Mother of Michael Carter
- Dorothy Holmes - Mother of RonnieMan
- Iletha & Dexter - Family Members of Madeline Miller
- Rosemary Cade - Mother of Antonio Porter
- Takeya Law - Wife of Marcellus French (incarcerated)
- Tambrasha Hudson - Mother of Pierre Loury
- Tiffany Boxley - Mother of Joshua Beal

*In Minneapolis,  
at the Urban League Twin Cities:*

- Antonio Williams
- Breanna Buckhalton
- Elizer Darris
- Lucina Kayee
- Myon Burrell
- Amity Dimock – Honoring Kobe heisler
- Bayle Adod Gelle – Honoring and Father of Dolal Idd
- Courtney Ross – Honoring George Floyd
- Deborah Watts – Honoring Emmitt Till
- Karen Wells – Honoring Amir Locke
- Marvinna Haynes – Honoring Marvin Haynes (incarcerated)
- Matilda Smith – Honoring Jaffort smith
- Monique Johnson – Honoring Howard Johnson
- Tahisha William – Honoring Courtney William
- Toshira Garraway– Honoring Justin Teigen
- Valerie Castile– Honoring Philando Castile

*In New York City,  
at the Malcolm X and Dr. Betty Shabazz Memorial & Educational Center:*

- Abraham Paulos
- Aneiry Zapata
- Aqirah Stanley
- Assia Serano
- Iisha Stevens-Hamilton
- Jean Montrevil
- Karim Golding
- Lonnie Lewis, Jr.
- Roslyn Smith
- Tyrrell Muhammad
- Uchechukwu Onwa
- Akeem Browder - Brother of Kalief Browder
- Angelica Charles
- Anna Williams - Aunt of Elijah Muhammad
- David Norman
- Gwen Carr - Mother of Eric Garner
- Hortencia Peterson - Aunt of Akai Gurley
- Lezandre Khadu - Mother of Stephan Khadu
- Luqman Stroud
- Natacha Pannell - Brother of Phillip Pannell
- Stanley Bellamy
- Victor Dempsey - Brother of Delrawn Smalls