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Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action

Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers

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

Summary

In the present report, submitted pursuant to Human Rights Council resolution 47/21, the International Independent Mechanism to Advance Racial Justice and Equality in Law Enforcement provides an overview of activities undertaken since its previous report.

In the present report, the Mechanism also focuses on reimagining policing, and exploring ways to close trust deficits, strengthen institutional oversight, adopt alternative and complementary methods to policing and the use of force and encourage stocktaking of lessons learned, and proposes a series of recommendations in this regard.

* Agreement was reached to publish the present document after the standard publication date owing to circumstances beyond the submitter's control.

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I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with resolution 47/21.

2. In 2021, the Council established the International Independent Mechanism to Advance Racial Justice and Equality in Law Enforcement and, on 16 December 2021, the President of the Council appointed Yvonne Mokgoro (Chair, South Africa); Tracie Keesee (United States of America) and Juan Méndez (Argentina) to serve as experts on the Mechanism. As of April 2023, Ms. Mokgoro has been on medical leave; on 12 June 2023, the secretariat was informed that she would be resigning from the Mechanism. The Mechanism is currently chaired jointly by Ms. Keesee and Mr. Mendez.

3. In the present report, the Mechanism sets out an overview of its activities since its previous report and its reflections and recommendations with regard to reimagining policing, with a view to addressing systemic racism, closing trust deficits, strengthening institutional oversight, adopting alternative and complementary methods to policing and the use of force and encouraging stocktaking of lessons learned.

II. Activities

A. Country visits

1. Sweden

4. At the invitation of the Government, the Mechanism undertook its first country visit to Sweden from 31 October to 4 November 2022, visiting Stockholm, Malmö and Lund.[1] The aim of the visit was to focus on both the good practices of and the challenges faced by Sweden 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.

5. At the conclusion of its visit, the Mechanism recommended, inter alia: making racial discrimination visible as a precondition for any remedial action, through effective capacity to collect, compile and analyse statistical data, disaggregated by race or ethnic origin, on direct interactions of the population with law enforcement and the criminal justice system; amending the Anti-Discrimination Act so that it fully applied to the conduct of State agents, including law enforcement and officials in the criminal justice system; amending the Police Act of 1984, and the Government Decree on Use of Firearms in the Police Service of 1969, to align them with the most recent international standards governing the use of force; detaching the Special Investigations Department from the police authority; adapting the National Police entry and examination requirements to effectively and efficiently increase diversity, including with regard to race and gender, within the ranks of the police force; pursuing efforts to prevent and prosecute hate crimes and all offences motivated by discrimination, intolerance or hatred and systematically collect statistics, disaggregated by race or ethnic origin, on the number and type of hate crimes, and on related accountability measures; addressing disparities in access to housing, health care, education and employment for people of African descent, taking a close look at the correlation between ethnic segregation and socioeconomic segregation; addressing the root causes of criminality among communities living in marginalized and racially segregated neighbourhoods; using pretrial detention as a measure of last resort, privileging alternative measures to detention; and fully outlawing the use of solitary confinement for children.

2. United States

6. At the invitation of the Government, from 24 April to 5 May 2023, the Mechanism visited Washington D.C., Atlanta, Los Angeles, Chicago, Minneapolis and New York City,

[1] See https://www.ohchr.org/en/documents/country-reports/ahrc54crp1-international-independent-expert-mechanism-advance-racial.

United States, where it met with representatives of civil society, victims and survivors of excessive use of force in policing, and federal, State and local officials, including from law enforcement, city administrations, judicial actors, police unions and affinity groups.[2] While it welcomed various promising initiatives, including the reparatory measures taken so far, including executive orders signed in 2021 and 2022, and individual reparation initiatives at the state level by way of civilian settlements for damages, the Mechanism called for more robust action, including on the part of the federal authorities to translate measures for past and future violations into accountability.

7. The Mechanism stressed that the Government needed to, inter alia: boost oversight mechanisms with compelling power; allocate appropriate resources; provide robust and holistic reparation, support and rehabilitation to victims and survivors, including access to justice and health; address and unpack the effects of intersectional discrimination, including the circle of poverty, on people of African descent; and replace the existing criminal justice response with a human rights-centred response to poverty, homelessness, substance abuse and mental illness. The Mechanism also called for federal standards of policing, federal criminal investigations into cases of excessive use of force by law enforcement and whole-of-government reforms to redefine the mission and scope of the police.

B. Communications

8. Since the inception of its mandate, the Mechanism has submitted seven individual communications to five countries (see annex). On 18 July 2022, jointly with the Working Group of Experts on People of African Descent, it issued a public press release on the situation of more than 23 African migrants attempting to cross the Spain-Morocco border in Melilla.[3]

9. On 10 February 2023, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Expert Mechanism issued a public statement on the cases of Keenan Anderson and Tyre Nichols.[4]

C. Regional consultations

10. The Mechanism held its first inclusive regional consultations with States, directly affected individuals and communities and other stakeholders in South America, with the support of the regional office of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The consultations were held in a hybrid format to ensure greater participation with the affected people and communities, and took place from 28 November to 2 December 2022 in Santiago. In addition to over 40 directly affected individuals,[5] participants included law enforcement agencies, members of police oversight bodies, representatives of offices of the prosecutor, national human rights institutions, civil society organizations, researchers and academics and the national statistical offices of Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of).

[2] See https://www.ohchr.org/en/press-releases/2023/05/usa-whole-government-leadership-needed-address-legacy-slavery-and-redefine.

[3] See https://www.ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy.

[4] See https://www.ohchr.org/en/press-releases/2023/02/un-experts-call-new-approaches-policing-united-states-following-deaths.

[5] See https://twitter.com/un_hrc/status/1599363625403453440?s=46&t=l1NwaGq5J6rqdapQ9IBsiw; https://www.instagram.com/p/Clvo5VcN1_7/?igshid=YmMyMTA2M2Y%3D; and https://m.facebook.com/story.php?story_fbid=pfbid0jH3dCQsmJUsr1XLkNGx1Sw5FCzgGwU6rHTjZukhCX13EAkPPz5VC3VxL6i18Jpbkl&id=100064697285743.

D. Thematic consultations

11. The Mechanism held three meetings and consultations remotely, with a wide variety of stakeholders, including States, United Nations agencies and civil society organizations, on the theme of reimagining policing, with the following objectives: (a) to gather information, views and opinions with regard to legislative initiatives, policies and practices, fostering prevention and accountability and a forward-looking new approach to policing, with an emphasis on the necessary features of a human rights-based approach to policing capable of closing trust deficits, preventing violations and ending impunity for human rights violations by law enforcement officers; (b) to collect promising initiatives and positive or good practices on alternative methods of policing, with a view to strengthening institutional oversight and closing trust deficits, which could be further disseminated; and (c) to raise awareness and further advocate for the implementation of a human rights-based approach to policing, with a view to advancing racial justice and racial equality for Africans and people of African descent in their respective contexts. The consultations, and a related call for inputs, also informed the drafting of the present report.

E. Global developments around the human rights of people of African descent

12. The Mechanism commends the operationalization, in 2021, of the Permanent Forum on People of African Descent and the convening of its first two sessions. It followed closely the work of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action to advance the elaboration of a draft United Nations declaration on the promotion and full respect of the human rights of people of African descent. The Mechanism calls upon States to support the Permanent Forum on People of African Descent and participate in standard-setting exercises aimed at eliminating racism and racial discrimination.

13. On the occasion of the International Day for the Elimination of Racial Discrimination, commemorated on 21 March, the Mechanism, among other expert bodies, stressed that the promise to live in a world free of racism and discrimination, as envisaged in the Universal Declaration of Human Rights, remained an unfulfilled agenda of the international community and called for strong political will to advance the global anti-racial discrimination agenda, in particular through the full and effective implementation of the Durban Declaration and Programme of Action and the International Convention on the Elimination of All Forms of Racial Discrimination, and strengthening of legislation and sound implementation aiming at combating racism, racial discrimination, xenophobia and related intolerance.[6]

III. Reimagining policing

A. Introduction: persisting global challenges to accountability and redress

14. In the present report, the Mechanism seeks to take stock of existing challenges caused by racist policing and explore initiatives around alternative methods of policing that can contribute to closing trust deficits, highlighting promising initiatives. The Mechanism acknowledges the difficult mission of law enforcement officers, who often operate in difficult contexts and tense and dangerous operations. The Mechanism nonetheless is of the view that racial discrimination, including racial profiling is neither an acceptable, nor an efficient, means of achieving more security. Not only do they violate human rights, but they also fuel prejudice, and racial profiling contributes to the normalization and legitimization of racial discrimination.

15. Law enforcement fatalities among persons of African descent are only the tip of the iceberg, as there are many more insidious interactions between Africans and persons of

[6] See https://www.ohchr.org/en/statements/2023/03/systemic-racism-racial-discrimination-and-xenophobia-have-undermined-human.

African descent and representatives of the criminal justice system, including by way of discriminatory application of bail, pretrial detention or parole, and the prevailing racial bias in interrogation practices, excessive sentencing and over-incarceration, as well as discriminatory disciplinary sanctions in correctional facilities. Such phenomena are compounded by intersecting factors, which include religion, gender, sexual orientation and gender identity, disability, age, immigration status and other conditions. In the present report, the Mechanism specifically focuses on policing and will use the term "law enforcement officials" to refer to all officers who exercise police powers under law to prevent and detect crime, including the power to use force in order to maintain law and order in society and powers of arrest and detention. The Mechanism adopts a broad acceptance of the term, which should be given the widest possible interpretation, and includes military, intelligence and security personnel, including in detention settings, as well as immigration officials.

16. In March and April 2023, the Mechanism held a series of virtual consultations with United Nations agencies, civil society organizations and law enforcement representatives. It also issued a specific call for input,[7] in response to which it received around 40 written submissions, which have informed the present report.

B. Human rights-based approach to policing

17. The 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. The human rights-based approach promotes analysing policies and actions through the tripartite obligations to respect, protect and fulfil human rights. It also encourages law enforcement officers to consider their work as duty bearers towards rights holders, i.e. the individuals and community they serve. In this context, law enforcement agencies must ensure that policies and the actions of individual law enforcement officers reflect international human rights norms and standards without being influenced by such considerations as personal or political preferences. Law enforcement officers must be fully aware of all their human rights responsibilities.

18. Human rights laws and principles provide a framework for law enforcement institutions to build public trust and ensure confidence in the commitment of public officials to respect and protect the communities that they serve. A sound legal framework on the use of force establishes in clear and predictable terms the modalities of oversight and the basis for accountability. Participants in consultations held by the Mechanism pointed to the fact that training courses for law enforcement officials will have limited impact if there are severe gaps in legislation and that, in contrast, sound laws, policies, guidelines and procedures play a fundamental role in achieving early police reform gains.[8]

19. International standards, which include the Code of Conduct for Law Enforcement Officials (1979), the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (2015), prescribe fundamental principles to ensure a human rights approach to policing and criminal justice. An overarching guarantee is also the principle of equal protection of the law and non-discrimination (Code of Conduct, arts. 1, 2 and 5).

20. Discrimination of any kind is listed as a prohibited ground of torture in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 1), and the Committee Against Torture has determined that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.[9] In addition, the Committee notes that the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation

[7] See https://www.ohchr.org/en/calls-for-input/2023/reimagining-policing-report-international-independent-expert-mechanism-advance.

[8] See submission from the United Nations police.

[9] Committee against Torture, general comment No. 2 (2007) on the implementation of article 2, para. 20.

to prevent torture or ill-treatment.[10] The Mechanism notes that a disturbing congruence between incidents of excessive use of force and acts of torture has also been highlighted.[11]

C. Systemic approach to addressing systemic racism

21. Proponents of the "bad apple" theory suggest that racial discrimination in policing is the result of the isolated actions of a small number of rogue police officers. The attraction of this theory is that, on the basis of this theory only simple corrective measures are needed. However, in many contexts, there is strong evidence that the abusive behaviour of some individual police officers is part of a broader and insidious pattern, interwoven into larger social, historical, cultural and structural contexts within which policing is undertaken. It is inevitable that law enforcement officers will share and reproduce the values, attitudes and stereotypes of the society and institutions in which they live and work. To break this insidious circle requires unpacking the laws, policies, practices and institutional cultures within which abusive practices are unfolding and which continue to influence and determine modern law enforcement practices. A systemic approach would require two main components:

(a) Addressing the legacy of the discriminatory factors of law enforcement institutions through a historical and transitional justice perspective, which unpacks the historical roots of racism, including colonialism and the transatlantic slave trade in enslaved Africans, and their impact on key State institutions, including law enforcement and the criminal justice system and how they permeate present policing; this may require transitional truth and reparation commissions to analyse the root causes and propose reparatory schemes;

(b) Initiated in parallel with the first component, applying a critical lens to law enforcement activities and institutions, with a view to applying corrective measures from a racial justice perspective, starting from racism-motivated incidents, such as arrests and detention, stop and search, excessive use of force and policing assemblies, as well as diversity in law enforcement personnel, including recruitment and promotion.

22. The United Nations High Commissioner for Human Rights defined systemic racism as 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.[12] In a law enforcement agency contaminated with systemic racism, agents will themselves internalize, reproduce and implement racist behaviour and practices, regardless of their personal beliefs and values or their own ethnicity or origin.[13]

23. The brutal killing of Tyre Nichols[14] has brought to the forefront the fact that beyond individual cases of brutality and racism lies structural and institutional racial discrimination,[15] and that there is an urgent need to question and reform police culture through alternative approaches to maintaining public safety.

[10] Ibid., para. 21.

[11] Association for the Prevention of Torture on the case of George Floyd; see https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/association-for-the-prevention-of-torture.pdf.

[12] A/HRC/47/53, para. 9.

[13] See https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/association-for-the-prevention-of-torture.pdf. See also Committee on the Elimination of Racial Discrimination, general comment No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, para. 26.

[14] See https://edition.cnn.com/2023/01/26/us/what-we-know-tyre-nichols-death/index.html.

[15] See https://www.ohchr.org/en/press-releases/2023/02/un-experts-call-new-approaches-policing-united-states-following-deaths.

1. Limits to a strictly regulatory approach to the use of force

24. While sound preventive legal regimes governing the use of force are necessary, a strictly regulatory approach is insufficient to address the breadth of challenges and the historical discrimination faced by communities of Africans and people of African descent.

25. In Argentina, like in many other contexts, while the legal apparatus on the use of force is qualified as generally complying with international law standards,[16] it does not prevent entrenched discrimination manifesting in law enforcement. In the case of *José Delfín Acosta Martínez*, Argentina acknowledged that the case was not an isolated event, but rather paradigmatic of the persecution and stigmatization of the persons of African descent in our country.[17]

2. "Safety" used as a basis for over-policing

26. For the use of force to be lawful, it must serve a legitimate aim, as established by law. Crime prevention and community safety are considered prime legitimate aims, Yet the Mechanism considers that safety, which is one of the most fundamental human needs, encompasses more than physical safety. According to Maslow's hierarchy of human needs model,[18] safety includes not only physical safety and physiological needs, but also health, financial, employment and emotional security. In addition, the notions of crime and safety are not neutral concepts, but rather are loaded with considerations of politics, race and class.[19] Consequently, what actually constitutes legitimate crime prevention is influenced by significant subjective political considerations, priorities and interests. During its mission to Sweden,[20] several Swedes of African descent described the police presence as oppressive and excessive,[21] resulting in reduced trust.[22]

27. The Mechanism submits that the concepts of safety and legitimacy should be assessed against overarching State policies and their impact on specific groups, to see whether the actual policing practices achieve their stated aims and take into account communities' own understanding and definitions of crime prevention and public safety. In many submissions received, contributors stressed the imperative need to redefine safety by moving away from the very common paradigm whereby law enforcement is the default response to public health and social problems, including with regard to housing, education, employment, addiction and mental health care.[23]

3. Abusive policing practices

28. Violent interactions with law enforcement officials and the criminal justice system continue to be reported in many countries. Spain reported an increase in hate crimes, including acts of violence, intimidation and harassment on the grounds of racial or ethnic origin. In 2022, the European Commission against Racism and Intolerance found that little progress had been made in France to effectively prevent or take action against certain types of misconduct by law enforcement officers that disproportionately affected people perceived

[16] See https://www.policinglaw.info/country/argentina.

[17] See https://www.corteidh.or.cr/docs/casos/articulos/seriec_410_ing.pdf, para. 31. The Mechanism takes note of the verdict of life imprisonment handed down by an Argentinian court on 11 July 2023 for aggravated homicide, in the case of three police officers for the racially motivated killing of a 17 year old boy.

[18] See https://dictionary.apa.org/maslows-motivational-hierarchy.

[19] Submission from Liberty, para. 14.

[20] See https://www.ohchr.org/en/documents/country-reports/ahrc54crp1-international-independent-expert-mechanism-advance-racial.

[21] Ibid., para. 34.

[22] Ibid., para. 37.

[23] In New York City, the Government reportedly spends more than $5.4 billion on policing, which is more than the budget for the departments for health, homeless services, housing preservation and development and youth and community development combined (see https://www.nyc.gov/assets/omb/downloads/pdf/tech1-23.pdf, cited in submission from the American Civil Liberties Union).

as having an immigrant background or belonging to minority groups.[24] In 2021, 84.1 per cent of victims of police lethality were Black, mostly young men and boys.[25]

(a) Racial profiling

29. Racial profiling is a common manifestation of systemic racism in law enforcement.[26] In the context of immigration, particular individuals or groups are targeted because of the interrelatedness of immigration status with nationality, race or ethnicity.[27] The European Commission against Racism and Intolerance recommended that States exercise legal powers relating to control, surveillance or investigation activities only if they meet a reasonable suspicion standard.[28]

30. During the Mechanism's consultations, Kingdom of the Netherlands informed the Mechanism about a recent case of racial profiling, in which the Court of Appeals of The Hague, in a decision of 14 February 2023, held that the Royal Netherlands Marechaussee, the police branch of the Dutch armed forces, had discriminated on the basis of race when performing border checks.[29] In 2019 in Canada, the Ontario Human Rights Commission issued a policy on eliminating racial profiling in law enforcement, which provides practical guidance for law enforcement, broadly defined to also include transit officers and inspectors, private security organizations, college and university campus law enforcement and risk assessment personnel, and the government on how to identify and prevent racial profiling.[30]

(b) Policing outside the realm of crime prevention

31. In the United States and several other contexts, the majority of people killed by the police are killed in response to mental health calls, traffic infractions[31] and other low-level offences.[32] Out of the 10.3 million arrests made per year by the police, only 5 per cent are for the most serious offences.[33] Evidence also shows that police use force against people of African descent at much higher rates than against white people, including through use of less-lethal weapons.[34]

(c) Stop and search

32. According to figures from the Home Office of the United Kingdom of Great Britain and Northern Ireland from 2022, people identifying as Black or Black British were searched at a rate 4.9 times that of those from a white ethnic group, across England and Wales.[35] Following its mission to the United Kingdom, the Working Group of Experts on People of African Descent described a use of discretion by public officials towards people of African descent, in particular young people, qualified as the systematic stripping of dignity, invasion of their right to bodily integrity and a disregard of their right to be free from degrading and

[24] See https://rm.coe.int/ecri-sixth-report-on-france-adopted-28-june-2022-published-21-septembe/1680a81883.

[25] Brazilian Forum for Public Security, *Public Safety Yearbook 2022*, 2021. Available at https://forumseguranca.org.br/wp-content/uploads/2021/07/anuario-2021-completo-v6-bx.pdf (in Portuguese).

[26] Committee on the Elimination of Racial Discrimination, general comment No. 36 (2020).

[27] See A/HRC/29/46.

[28] European Commission against Racism and Intolerance, general policy recommendation No. 11 (2007) on combating racism and racial discrimination in policing, para. 3.

[29] See https://www.loc.gov/item/global-legal-monitor/2023-03-06/netherlands-appeals-court-finds-police-branch-of-dutch-armed-forces-guilty-of-racial-profiling/.

[30] See https://www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement#_Toc17977347.

[31] See https://mappingpoliceviolence.us/; and https://www.theguardian.com/us-news/2022/apr/21/us-police-violence-traffic-stop-data.

[32] Submission from American Civil Liberties Union, p. 2.

[33] Ibid., p. 1.

[34] See https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

[35] See https://www.gov.uk/government/statistics/update-to-stop-and-search-and-arrests-statistics-using-2021-census-estimates/update-to-stop-and-search-and-arrests-statistics-using-2021-census-estimates#how-does-the-change-in-population-affect-published-stop-and-search-disparity-figures.

inhuman treatment,[36] yet research indicates a lack of evidence showing that the practice of stop and search reduces crime and that most such procedures do not lead to further action.[37] Some research goes as far as to suggest that, when stop and searches decrease, serious violence decreases.[38]

(d) Drug law enforcement and militarization of policing

33. In the United Kingdom, over 60 per cent of instances of stop and search are for drugs.[39] Of the 25 children strip-searched in the borough of Hackney in the period 2020–2021, only two were white. While the official rationale for drug prohibition is a universal and neutral concern for the "health and welfare of mankind",[40] in practice, it disproportionately affects racial minorities and other vulnerable groups.[41] In several countries, police militarization and drug law enforcement are increasingly interconnected.[42] In the United States, in 2016, Americans were arrested 2.18 million times for alcohol misuse, liquor law violations and drug-related charges – more than four times the total number of arrests for all serious violent crimes combined.[43] In Latin America, indigenous populations and people of African descent are the most affected by the securitization of drugs and police militarization. In 2021, Brazilian police reportedly killed 6,145 individuals, 5,168 of whom were people of African descent.[44] Military raids, which are sometimes qualified as massacres,[45] create a climate of terror among the population and affect not only the safety of residents, but also their access to education, health, housing and work.

(e) Mental health

34. Public safety has traditionally been associated with policing, and law enforcement strategies have been prioritized to address perceived social problems.[46] Looking at the root causes, it appears that reductions in mental health services budgets and resources have often led to increasing numbers of people with mental illness and substance use disorders coming into contact with the police and often ending up incarcerated. Because of their vulnerabilities, such categories of people reportedly tend to have longer periods of incarceration, compared with people without mental health conditions facing similar charges.[47]

35. Reports submitted to the Mechanism point to a pattern whereby law enforcement services are the primary responders to health and other social services calls, including those relating to health care. In the United States, 240 million 911 (emergency helpline) calls are made each year, and police officers are the default responders dispatched to respond to crises, many of which would be better addressed by health and social service professionals.[48] The presence of police on the scene of a mental health crisis has been reported to worsen situations, sometimes with tragic outcomes. In the United States, of the 8,470 people who

[36] See https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/statements/2023-01-27/eom-statement-UK-WGEPAD-2023-01-27.pdf, para. 18.

[37] Submission from Liberty, para. 28; and see https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Does%20stop%20and%20search%20reduce%20crime.pdf. See also https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf.

[38] Submission from Liberty, para. 28.

[39] Submission from Liberty, para. 30.

[40] See https://www.unodc.org/pdf/convention_1961_en.pdf.

[41] Joint submission from the Open Society Foundations and the Global Drug Policy Program.

[42] Ibid.

[43] Submission from the Drug Policy Alliance. Note that the number of arrests for the sale, manufacture or possession of illegal substances in the United States between 2019 and 2020 reportedly dropped by more than 400,000 (see https://drugabusestatistics.org/drug-related-crime-statistics/).

[44] Submission from Coalizão Negra por Direitos, p. 2.

[45] Such as the "Crimes of May" 2006, in which 564 persons died.

[46] Submission from the Drug Policy Alliance.

[47] See https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-in-jails-and-prisons.pdf.

[48] Submission from American Civil Liberties Union; see https://www.vera.org/downloads/publications/alternatives-to-policing-civilian-crisis-response-fact-sheet.pdf.

were fatally shot by the police between 2015 and 2022, 21 per cent were identified as experiencing a mental health crisis.[49] Studies point to the fact that the mere presence of armed, uniformed officers with police vehicles can exacerbate a person's feelings of distress and escalate mental health-related situations.

(f) Migration

36. In July 2022, the Mechanism[50] expressed grave concern over the death of at least 23 Africans attempting to cross the Spain-Moroccan border in Melilla.[51] Since then, there has been no accountability for the victims. In many countries, the polarization around illegal immigration prompts coercive interventions, and the treatment faced by African migrants in host countries appears cynically closely related to that enjoyed by local communities of people of African descent, including in their intersectional ramifications. In Chile, the case of 27-year-old Haitian migrant Joane Florvil[52] is emblematic of racial prejudice against one of the most vulnerable categories, women migrants of African descent. In Greece, the national mechanism mandated by the Ombudsman to monitor incidents with a racist motivation reported an increasing number of cases and a general tendency of police officers to apprehend individuals without any apparent reason. Police ill-treatment of foreign migrants constituted the most common cases.[53]

37. In the United States, dozens of African migrants have been deported and have reportedly faced arbitrary arrest and detention in their country of return. Many reported experiencing excessive force and medical neglect at the hands of immigration and customs agencies.[54]

(g) Homelessness, cash bail and the circle of poverty

38. In the United States, people who identify as Black, African American or African, as well as indigenous people continue to be overrepresented among those experiencing homelessness.[55] The Mechanism is of the view that the criminalization of homelessness is ineffective and harmful. Arrests, fines and corollary criminal convictions result in incarceration, where persons may remain for prolonged periods, because of their inability to pay bail, with a vast array of social consequences, including losing their jobs, custody of their children, property and employment. Incarceration deeply affects the health and stability of the families and communities that are left behind. Once released, a criminal record makes it even more difficult to find new employment and housing, leading to more risks of homelessness and more arrests and incarceration.[56]

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[49] See https://www.washingtonpost.com/graphics/investigations/police-shootings-database, cited in submissions from the American Civil Liberties Union, p. 3, and Mothers Against Police Brutality, p. 3.

[50] See https://www.ohchr.org/en/press-releases/2022/07/un-experts-call-accountability-melilla-tragedy.

[51] See https://www.hrw.org/news/2022/06/29/morocco/spain-horrific-migrant-deaths-melilla-border.

[52] Joane Florvil was detained and charged on 30 August 2017 in Chile on allegations of child abandonment, after she left her two month old daughter in her stroller in the care of the local guard of the Lo Prado Municipality for a few minutes while she went to search for someone to translate for her, since she did not speak Spanish. Municipal officials reported the case to the police for what they considered to be child abandonment. The baby was placed within the national children's service, and Joanne Florvil was detained and allegedly severely beaten. That same night, she was admitted to hospital in a coma, where she died a month later. See also https://www.youtube.com/watch?v=F3lXyPigQy8.

[53] See https://rm.coe.int/ecri-first-report-on-greece-adopted-on-28-june-2022-published-on-22-se/1680a818bf.

[54] See https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon; and https://www.amnesty.org/en/documents/amr36/5973/2022/en/.

[55] See https://www.hud.gov/press/press_releases_media_advisories/hud_no_22_253; and CERD/C/USA/CO/10-12, para. 39.

[56] See https://www.prisonpolicy.org/reports/housing.html.

(h) Policing youth

39. Ceará is the state in Brazil with the second highest number of violent deaths of children and adolescents.[57] Although the Secretariat of Public Security and Social Defense of Ceará does not disclose the race of victims, studies by the Brazilian Public Safety Forum have shown that people of African descent remain the principal victims of violent intentional deaths (84 per cent of the victims of deaths resulting from police interventions). In Puerto Rico, in 2022, the number of minors reportedly killed by police has doubled; 92 per cent of the minors killed by police between 2014 and 2022 came from racially segregated neighbourhoods.[58] Following its recent mission to the United Kingdom, the Working Group of Experts on People of African Descent reported the policing of schools as a practice that intimidated, stigmatized and criminalized Black children and young people.[59]

40. In the United States, school security measures were implemented throughout the country, including the use of "school resource officers", who are in reality police officers. At least 72 per cent of public high school students in the United States attend a school with an armed police officer.[60] With an increased police presence, the number of school-related arrests and referrals to law enforcement agencies have unsurprisingly increased.[61] School policing may lead to a substantial increase in school-based arrests,[62] with a disproportionate impact on students of African descent and other minority ethnicities entering the "school-to-prison pipeline".[63]

(i) Protests

41. The Mechanism recalls that limitations to the right of peaceful assembly require that restrictions be lawful, necessary and proportionate, to achieve one of the permissible grounds set out in article 21 of the International Covenant on Civil and Political Rights.[64] In a recent report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association pointed to a trend towards the militarization of law enforcement personnel deployed to police protests and the targeting of vulnerable groups, including persons of African descent taking part in protests.[65] In Cali, Colombia,[66] at least 28 people were reportedly killed in two months as a result of the use of unlawful and excessive force employed during the national strike in 2021.[67] In the context of protests sparked by the killing of George Floyd and others in 2020 in the United States, the use of physical force, chemical irritants and kinetic impact projectiles[68] was of particular concern, including the extent to which it disproportionately was targeted, and affected, persons of African descent and was used in many cases against persons protesting peacefully.[69] Demonstrations following the

[57] Submission from Centro de Defesa da Criança e do Adolescente do Ceará (in Spanish).
[58] Submission from Kilómetro Cero.
[59] See https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/statements/2023-01-27/eom-statement-UK-WGEPAD-2023-01-27.pdf.
[60] Submission from the American Civil Liberties Union; and see https://nces.ed.gov/programs/digest/d19/tables/dt19_233.70.asp.
[61] Five per cent increase for arrests and 12 per cent increase for referrals, over a two-year period. (submission from American Civil Liberties Union, citing https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf). In the period 2017–2018, there were 54,231 student arrests and 220,470 referrals to law enforcement (submission from American Civil Liberties Union, p. 5, citing United States Department of Education Office for Civil Rights, see https://ocrdata.ed.gov/assets/downloads/Referrals_and_Arrests_Part5.pdf).
[62] See https://www.sciencedirect.com/science/article/abs/pii/S0047235209000464.
[63] Submission from the American Civil Liberties Union.
[64] See also Human Rights Committee, general comment No. 37 (2020).
[65] A/HRC/50/42, paras. 35 and 39.
[66] The city with the second largest black/Afro-descendant population in Latin America (see https://www.cali.gov.co/bienestar/publicaciones/51642/cali_segunda_ciudad_con_mayor_poblacin_afrodescendiente_en_el_pas/).
[67] See https://www.amnesty.org/en/documents/amr23/4405/2021/en/.
[68] See https://phr.org/wp-content/uploads/2023/03/REPORT-Lethal-in-Disguise-2-PHR-INCLO-March-2023.pdf.
[69] See https://www.amnesty.org/en/documents/amr51/2807/2020/en/.

killing of Jayland Walker,[70] in June 2022, were met with tear gas and stun grenades, and more than 75 protesters were reportedly arrested, many of whom are still facing charges.[71]

42. The Mechanism also notes with concern the growing attacks against environmental human rights defenders. The Inter-American Commission on Human Rights reported the killing of 126 rights defenders in 2022, stressing that many of them were indigenous persons or persons of African descent or were active in the defence of territorial or environmental rights.[72] In the United States, protests around the building of a new police and fire department training centre (referred to as "Cop City") in Atlanta, Georgia, have led to the arrest of more than 40 protesters on charges of domestic terrorism.[73] The Mechanism notes the officials' rhetoric often used to qualify protesters as "outside agitators", a term used in the 1950s and 1960s to discredit the Civil Rights Movement.[74] In Brazil, 1,171 cases of violence against human rights defenders were mapped between 2019 and 2022, of which 153 (13 per cent) were perpetrated against people of African descent. Among the total number of human rights defenders killed (1,171), 140 were fighting for the right to land, territory and an ecologically balanced environment.[75]

IV. Way forward: towards cultural and institutional transformation

43. Excessive and arbitrary use of police powers vis-à-vis Africans and persons of African descent is a primary cause of distrust among those communities vis-à-vis law enforcement. The Mechanism is of the view that only comprehensive reform could close trust deficits. Such reform should be based upon: (a) an acknowledgement of historic discrimination and its impact on present abusive law enforcement practices; (b) operating shifts in policing culture, including diversity and training; (c) developing community-oriented policing; and (d) strengthening oversight and accountability.

A. Police culture and practices

1. Culture

44. In the Rotterdam Charter, the police are enjoined to be gatekeepers of equality, integration and cohesion, indicating that they must therefore be active and reliable guardians of anti-discrimination legislation. To be effective, the police need operational independence from the government. However, independence also implies strict accountability.

45. The Mechanism is of the view that resolute action is needed to reshape the role of law enforcement agencies, to instil a new organizational culture emphasizing the role of the police as a service to the community, as opposed to a force, with a mission to protect.[76] It has been reported that police brutality may reproduce a culture of violence permeating law enforcement institutions. In Brazil, more than half of police officers were allegedly victims of abuse from hierarchical superiors, and almost 70 per cent of them experienced social

[70] The Mechanism has addressed the case bilaterally with the Government of the United States, see annex.

[71] See https://www.amnesty.org/en/wp-content/uploads/2023/02/IOR4064892023ENGLISH.pdf.

[72] See https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/026.asp.

[73] See https://www.nbcnews.com/news/us-news/23-protesters-charged-domestic-terrorism-clash-atlanta-police-cop-city-rcna73604. A writ of habeas corpus was filed in DeKalb County Superior Court to challenge the constitutionality of the domestic terrorism statute of 2017 used against activists and their supporters (see https://www.theguardian.com/us-news/2023/jun/02/atlanta-cop-city-protest-domestic-terrorism-statute).

[74] See https://www.nytimes.com/2020/06/08/us/outside-agitators-history-civil-rights.html.

[75] See https://terradedireitos.org.br/uploads/arquivos/Data-synthesis-%28EN%29.pdf.

[76] See https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/association-for-the-prevention-of-torture.pdf, para. 26.

discrimination.[77] Expecting law enforcement officers to respect and protect human rights also presupposes respecting and upholding their own rights and well-being.

46. Law enforcement agencies tend to share the values, attitudes and stereotypes of their society, formed and reinforced, in part, by a lack of interaction and contact with different ethnic groups. Positive intergroup contact between the police and minority community members is a strategy that can reduce bias and build empathy between groups.[78] The European Commission against Racism and Intolerance[79] recommends the establishment of frameworks for dialogue and cooperation between the police and members of minority groups.

47. The United Nations police has been promoting the adoption of codes of ethics setting out general deontological principles upon which professional policing is based, reflecting an agency's commitment to such behaviour and values and reminding officers and their leaders about expectations around their mission.[80] In their submissions to the Mechanism, Luxembourg and Spain reported the existence of codes of police deontology within their legal frameworks.[81]

2. Demilitarization

48. Police militarization, a trend observed in several contexts, gears police officers with equipment that is not adapted to policing or that is excessive and may potentially escalate situations.[82] The trend is based on a presumption of the citizen, usually those from racialized and marginalized communities, as a threat. In Brazil, the demilitarization of the police is qualified as an urgent demand from society.[83] The national police of Colombia is under the jurisdiction of the Ministry of Defence. In 2018, in an effort to reduce crime in Cali, plagued with one of the highest rates of violent crime in Colombia, the Government developed Plan Fortaleza, involving intensive military patrols targeting high-crime areas in the city. Research showed that, contrary to what city leaders had expected, there was scant evidence that the Plan had meaningfully reduced the prevalence of crime.[84]

3. De-escalation

49. Law enforcement officers should consider, in all situations, whether it is possible not to use force at all, and, when use of force is necessary, whether and how de-escalation is possible. Differentiated levels of force should be privileged.[85] All law enforcement officers should be trained in alternatives to the use of force[86] to minimize the need for the use of force. Police forces should be equipped appropriately. It has been suggested that the lack of appropriate defensive equipment may suggest a violation of the duty of precaution, in cases where this may lead inevitably or predictably to use of excessive force.[87]

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[77] Study conducted in 2014, cited in the submission from Pontifícia Universidade Católica de Minas Gerais; see https://portal.fgv.br/noticias/pesquisa-fgv-direito-sp-aponta-nivel-satisfacao-policiais-brasileiros (in Portuguese).

[78] Ibid.

[79] European Commission against Racism and Intolerance, general policy recommendation No. 11(2007), paras. 18 and 82.

[80] See submission from the United Nations police.

[81] Submissions from Spain (in Spanish) and Luxembourg. See also https://police.public.lu/dam-assets/fr/publications/2019/code-deontologie.pdf.

[82] See https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing.

[83] Submission from Coalizão Negra por Direitos. See also https://www.ohchr.org/en/press-releases/2022/07/brazil-un-experts-decry-acts-racialised-police-brutality.

[84] See https://www.brown.edu/news/2023-06-15/policing.

[85] Submission from the United Nations police.

[86] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, arts. 19 and 20.

[87] See Police Executive Research Forum, "Use of force: taking policing to a higher standard – 30 guiding principles", Critical Issues in Policing Series, 29 January 2016, guiding principle 28: "Personal protection shields may support de-escalation efforts during critical incidents, including situations involving persons with knives, baseball bats, or other improvised weapons that are not firearms"; available at https://www.policeforum.org/assets/30guidingprinciples.pdf.

50. The Mechanism is particularly concerned about the growing use of less-lethal weapons, for which there is insufficient regulation, based on the misconception that they are non-lethal,[88] and which are sometimes misused as tools of punishment and repression.[89] In addition, efforts for international regulation towards torture-free trade should be pursued.[90] In Austin, Texas, United States, an initiative from the city council successfully reduced the use and type of weapons, technology and equipment to minimize, and in some cases prohibit, the policies and practices considered as deadly force.[91] Minnesota, United States, lawmakers passed a broad police accountability package, following the death of Mr. Floyd in 2020, which includes bans on the use of neck restraints and chokeholds.[92]

B. Community-oriented policing

51. The Mechanism is of the view that community policing strategies, with community needs at the centre, and carried out in collaboration with community members, should be privileged, in order to identify their needs and local safety issues. In Brazil, although a brief test was reportedly undertaken from 2009 to 2013 to include more civilians in discussions on national security and public safety, the process was interrupted, and there is currently no space for civilian and military collaboration on these issues.[93] In Loíza, Puerto Rico, the organization Taller Salud has developed an initiative aimed at reducing violence by not involving the police, which succeeded in reducing violent deaths by 80 per cent.[94]

1. Mental health

52. In order to break the insidious circle of the criminal justice approach to mental health, community policing appears to offer vital and urgent alternative responses. Further to an executive order issued in 2020, many localities in the state of New York developed alternative responses to non-violent incidents, and some jurisdictions elected to deploy mental health and social work professionals, where appropriate, while others implemented models that pair such professionals with police officers when responding to certain calls for service.[95] Some jurisdictions started to incorporate trained civilian crisis responders and behavioural health professionals into their emergency response teams.[96] In practice, calls are routed away from the police,[97] which can reduce the use of force and violence against persons with disabilities,[98] de-escalate situations and lead to immediate stabilization by mental health professionals,[99] preventing unnecessary arrests that would otherwise push many such persons into the criminal justice system. Some of the programmes have led to a reduction in the use of force, arrests and racial disparities in outcomes, as well as an increased utilization of social services.[100] By contrast, training officers on responding to mental health crises has not proved as effective.[101]

[88] See https://lethalindisguise.org/wp-content/uploads/2022/12/LID2-Main-Report-Pages-Final.pdf.
[89] A/HRC/50/42, para. 41.
[90] See https://www.torturefreetrade.org/.
[91] See https://services.austintexas.gov/edims/document.cfm?id=342177; and https://www.austintexas.gov/page/resolution-95.
[92] See https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/21/893444295/minnesota-lawmakers-ban-police-chokeholds-warrior-style-training.
[93] Submission from Mulheres Negras Decidem.
[94] Submission from Kilómetro Cero.
[95] As of 2021, 482 local jurisdictions in the state of New York have created such plans (see https://policereform.ny.gov/system/files/documents/2021/05/policereform_innovativecommunityinitiatives.pdf); see also submission from the American Civil Liberties Union, in particular appendix A.
[96] See submission from the American Civil Liberties Union, p. 3.
[97] See https://www.vera.org/downloads/publications/911-analysis-civilian-crisis-responders.pdf.
[98] See https://bmcpsychiatry.biomedcentral.com/articles/10.1186/s12888-021-03510-w.
[99] See https://www.vera.org/behavioral-health-crisis-alternatives.
[100] See https://www.brookings.edu/articles/new-jersey-arrive-together-program-could-reform-policing-as-we-know-it.
[101] See submission from Northeastern University School of Law, p. 7.

2. Traffic enforcement

53. Drivers of African descent are more likely to be stopped, searched and arrested for petty violations,[102] compared with white drivers, are more likely to experience use of force and incur greater fines and fees.[103] To address this racially biased harm, it has been suggested that traffic safety be dissociated from criminal law enforcement, by removing the authority of the police to stop cars for minor traffic violations and establishing non-police first responder teams with the authority to stop cars but not to use force.[104] Among other jurisdictions,[105] the City of Berkeley, California, United States, announced in 2020 that it would task unarmed civil servants with handling traffic enforcement and issuing citations.[106] Other suggestions include the use of technology, such as automated speed monitors and traffic cameras, which would significantly reduce interactions with police for minor traffic violations.[107]

3. Children

54. The Mechanism received information pointing to an increasingly direct relationship between schools and the juvenile justice system, in various contexts, leading to school expulsions, school-based arrests[108] and sometimes detention, with a disproportionate impact on students of African descent.[109] The Mechanism is of the view that it is crucial to remove police officers from schools and to adopt alternative solutions based on pedagogical and psychosocial support and interventions. Policing and surveillance in schools has not shown results in crime reduction.[110] In contrast, schools which employ more school-based mental health providers reportedly see fewer disciplinary incidents and improved academic achievement levels[111] and overall school safety.[112]

C. Representation and diversity in personnel

1. Representation

55. The idea of policing by consent is compromised if the police force fails to reflect the ethnic diversity of the population. The Committee against Torture has long advocated for the need to ensure representation and diversity in hiring policies, as a key element to preventing violations and building a culture of respect.[113] The European Commission against Racism and Intolerance similarly stressed the need not only to hire, but to set the conditions necessary for equal opportunity at entry on duty, and for career progression and retention, of members

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[102] Daunte Wright, at 20 years of age, was killed by police after being pulled over due to an expired vehicle registration; Walter Scott and Philando Castile were fatally shot by police after being pulled over for a broken vehicle brake lamp; Sandra Bland died in jail after she was pulled over for failing to signal a lane change (see submission from the American Civil Liberties Union).

[103] Ibid. See also https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces.

[104] See https://www.vera.org/downloads/publications/alternatives-to-policing-traffic-enforcement-fact-sheet.pdf.

[105] See submission from American Civil Liberties Union, appendix B.

[106] See https://www.berkeleyside.org/2021/05/25/berkeley-department-of-transportation-civilian-traffic-enforcement.

[107] Northeastern University School of Law, p. 5.

[108] See https://www.sciencedirect.com/science/article/abs/pii/S0047235209000464.

[109] Submissions from Liberty, para. 22; and the American Civil Liberties Union.

[110] Ibid.; see https://www.ojp.gov/pdffiles1/nij/grants/305094.pdf. See also https://www.endzerotolerance.org/impact-of-school-policing; and https://www.aclu.org/report/cops-and-no-counselors.

[111] Submission from American Civil Liberties Union, citing https://www.researchgate.net/publication/272911587_Connecticut_Professional_School_Counselors_College_and_Career_Counseling_Services_and_Smaller_Ratios_Benefit_Students; and https://www.researchgate.net/publication/227232882_The_Implementation_and_Evaluation_of_Comprehensive_School_Guidance_Programs_in_the_United_States_Progress_and_Prospects.

[112] Submission from American Civil Liberties Union, citing https://www.childtrends.org/blog/research-to-consider-as-schools-address-community-demands-to-renegotiate-school-police-partnerships; and https://www.jstor.org/stable/90023528.

[113] Committee against Torture, general comment No. 2 (2007), para. 24.

of minority groups.[114] To be effective, such efforts should be paired with measures to confront and remedy racism and discrimination on the job, in order to address negative community perceptions about the police, and to assess the selection and testing procedures for cultural bias.[115] Following its mission to Sweden, the Mechanism recommended that the national police adapt its entry and examination strategy and requirements to effectively and efficiently increase diversity, including with regard to race and gender, within the ranks of the police force.[116] Participants in consultations also stressed the need to engage in conducting assessments, including psychological assessments, of future police officers to ensure that they are fit for the job. Transformation may also require the dismissal of officers whose values do not align with the values of the organization or, sometimes, may require the dismantling of an entire service.[117]

56. A complementary measure is the establishment of national registries, so that the individual records of police officers, including misconduct, are publicly known and available to all agencies.[118] This would avoid a practice which exists today, whereby officers dismissed are simply recruited by other agencies. Another recommendation is to encourage the recruitment of women, since some evidence has shown that having more women reduces police violence and the use of force.[119] This would also require removing the structural barriers faced by women so that they may more readily be promoted to senior positions.

2. Training

57. The Committee on the Elimination of Racial Discrimination has determined that law enforcement officials should receive intensive training to ensure that, in the performance of their duties, they respect, as well as protect, human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.[120] In Spain, the national office to combat hate crimes conducts training for the State security forces at entry on duty and promotion, as well as sending periodic reminders of professional ethics and deontology. For training courses to be effective, it is also important that representatives of racial minority groups be involved in their planning, delivery and evaluation.

58. Although essential, training alone cannot achieve change. Research has shown that positive training effects tend to be weakened or negated due to, inter alia, negative experiences on the job, lack of management commitment and support and embedded racism and xenophobia.[121] It has also been documented that nearly all bias-reducing effects are often gone a few days after training.[122] In Brazil, the National Curricular Matrix, which prescribes a transversal training in human rights in police academies, did not yield changes due to, inter alia, the profile of leaders and the institutional culture.[123]

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[114] European Commission against Racism and Intolerance, general policy recommendation No. 11 (2007), para. 17.

[115] Rotterdam Charter, recommendation 6; and see https://www.osce.org/files/f/documents/5/2/32227.pdf.

[116] See https://www.ohchr.org/en/documents/country-reports/ahrc54crp1-international-independent-expert-mechanism-advance-racial.

[117] See https://www.bbc.com/news/av/world-us-canada-53083559. According to the Association for the Prevention of Torture, in Georgia, a sweeping transformation to address endemic corruption led to the disbanding of the 30,000 strong police force.

[118] In the United States, the George Floyd Justice in Policing Act contemplates such a registry (see https://abcnews.go.com/Politics/george-floyd-justice-policing-act/story?id=96851132).

[119] See https://scholar.utc.edu/cgi/viewcontent.cgi?article=1690&context=theses; and https://edition.cnn.com/2020/06/23/us/protests-police-reform-women-policing-invs/index.html.

[120] Committee on the Elimination of Racial Discrimination, general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, para. 2; see also European Commission against Racism and Intolerance, general policy recommendation No. 11 (2007), para. 6.

[121] See https://www.coe.int/t/dg3/migration/archives/documentation/Series_Community_Relations/Police_training_concerning_migrants_and_ethnic_relations_e%E2%80%A6.pdf.

[122] Calvin K. Lai et al., "Reducing implicit racial preferences: II – intervention effectiveness across time", *Journal of Experimental Psychology: General,* vol. 145, No. 8.

[123] Submission from Pontifícia Universidade Católica de Minas Gerais.

D. Oversight and accountability

59. Accountability in the context of law enforcement presupposes institutional accountability vis-à-vis not only the hierarchy, but also the communities that law enforcement agencies serve. Accountability is also a matter of individual responsibility for specific actions, which may lead to criminal and/or disciplinary responsibility.

1. Trust as a requirement for effective policing

60. Victims of racial discrimination and racially motivated misconduct by the police are in a particularly vulnerable situation, given that the police are in principle the first and natural interlocutor for victims. The consequences of a lack of trust can have pernicious effects. In Minnesota, United States, women and girls of African descent are reportedly afraid to report domestic violence to the police, because they fear that their partner may become a victim of police violence.[124] A survey conducted by the European Union in 2019 revealed that a majority (63 per cent) of victims of racist physical attacks by a police officers did not report the incident, either because they felt that reporting would not change anything (34 per cent) or because they did not trust or were afraid of the police (28 per cent).[125]

2. Transparency

61. A culture conducive to accountability requires policies fostering ostensible transparency, including the display by officers of their names and identification numbers.[126] In Brazil, since the introduction of body-worn cameras for military police officers, police lethality reportedly decreased by 40 per cent in São Paulo, and by 56 per cent in Santa Catarina.[127] Research suggested that the use of cameras has a strong deterrent effect, reduces the use of force by law enforcement officers, results in decreased complaints against officials and may result in increased prosecution rates.[128] The deterrent effect has been reported as so significant that, in cases where law enforcement officers did not wear cameras, some activists reportedly pretended to film events using inoperative smartphones as a strategy against abduction or arrest.[129] In one study in California, the use of force dropped by 59 per cent, upon the introduction of the cameras, and complaints concerning excessive force dropped by nearly 90 per cent.[130] The Mechanism is of the view that body-worn cameras should be mandatory for all police officers wearing uniforms and that sanctions should be imposed against law enforcement officers turning cameras off, subject to limitations prescribed by concern around possible violations of the right to privacy.[131] Other suggestions were that individual officers should not have control over their cameras, so as to reduce opportunities for selective documentation.[132] During the Mechanism's consultations, a participant described the Find Officer application used in Liberia,[133] which allows any citizen interacting

[124] See https://coburnplace.org/stories/a-layered-look-at-domestic-violence-in-the-black-community, cited in the submission from Advocates for Human Rights.

[125] See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-being-black-in-the-eu-summary_en.pdf, pp. 3 and 4.

[126] See https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/association-for-the-prevention-of-torture.pdf.

[127] See https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/infografico-seguranca-publica, cited by Pontifícia Universidade Católica de Minas Gerais.

[128] Barak Ariel et al., "The effect of police body-worn cameras on use of force and citizens' complaints against the police: a randomized controlled trial," *Journal of Quantitative Criminology*, vol. 31, No. 3 (September 2015), pp. 509–535; see also https://www.cam.ac.uk/research/news/first-scientific-report-shows-police-body-worn-cameras-can-prevent-unacceptable-use-of-force.

[129] A/HRC/29/37, para. 56.

[130] Ibid., para. 57.

[131] Which has led to suggestions that they be turned off upon entering a home or when speaking with victims (Ibid., para. 59).

[132] Ibid.

[133] See https://www.cartercenter.org/news/features/p/access_to_information/liberia-find-officer-app.html.

with a police officer to leave feedback on his or her interaction by entering the officer's badge number.

62. Data collection and reporting procedures should be an integral part of reforms towards accountability. A multi-country project on racial profiling revealed that, when stops and the reasons therefor were systematically recorded, they were less arbitrary, less discriminatory and more effective.[134]

3. Civilian oversight

63. In addition to communities' demand for independent oversight of policing, law enforcement and other government officials themselves increasingly recognize that oversight is not about "bad cops", but about good government.[135] Proper civilian review of law enforcement activities can improve relationships between communities and the police, enhance the safety of law enforcement officers and ensure more effective performance of their duties.[136] Despite the growth of civilian oversight efforts, however, abusive law enforcement practices persist, which point to the need for additional oversight agencies with greater independence and additional resources, legal powers, independence from executive influence[137] and protection by law.[138]

64. Civilian oversight mechanisms can be internal or external and may take the form of audits on administrative processes rather than investigations of incidents. In Northern Ireland, a civilian human rights adviser supports a police board in monitoring the performance of the police against legal requirements specified in the Human Rights Act.[139]

65. External accountability mechanisms, which independently monitor police performance, normally consist of complaint mechanisms acting on formal complaints. The most effective mandate is one wherein such a mechanism can take up complaints on its own initiative.[140] It has been suggested that, while external oversight mechanisms may achieve greater impartiality and be perceived as such by the public, they should be complemented by internal control and oversight, because of structural advantages (e.g. resources, available data and better knowledge of the police environment) and because they inspire more confidence among accused officers about the fairness of the investigation, thereby increasing cooperation.[141]

66. Reporting provides an important level of transparency and increases public confidence. Information on complaint numbers, trends, the types of complaints, policy recommendations and follow-up establish a crucial historical context and baseline.[142] Complaint procedures are often governed by complex and multiple pieces of legislation fragmented across local government units. They should be made accessible, effective and result in recommended disciplinary sanctions or a referral of cases for criminal prosecution.[143] In many cases, complaints are processed by the police[144] and are not acted upon. Data from

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[134] See https://www.justiceinitiative.org/uploads/8cef0d30-2833-40fd-b80b-9efb17c6de41/profiling_20090526.pdf.

[135] Barbara Attard, "Oversight of law enforcement is beneficial and needed – both inside and out", Pace Law Review, vol. 30, No. 5 (2010), p. 1548.

[136] Mir Usman Ali and Sean Nicholson-Crotty, "Examining the accountability-performance link: the case of citizen oversight of police", Public Performance & Management Review, vol. 44, No. 3, pp. 523, 544 and 545, cited by Northeastern University School of Law.

[137] See Council of Europe, European Code of Police Ethics, paras. 15, 60 and 61.

[138] National institutions for the promotion and protection of human rights (General Assembly resolution 48/134, annex).

[139] See https://www.psni.police.uk/about-us/our-policies-and-procedures/human-rights.

[140] See A/HRC/14/24/Add.8.

[141] Organization for Security and Cooperation in Europe, Guidebook on Democratic Policing, 2008, para. 87, available at https://www.osce.org/files/f/documents/5/3/23804.pdf.

[142] Stephen Clarke, "Arrested oversight: a comparative analysis and case study of how civilian oversight of the police should function and how it fails", *Columbia Journal of Law and Social Problems*, vol. 43, No. 1, cited in the submission from the Northeastern University School of Law.

[143] European Commission against Racism and Intolerance, general policy recommendation No. 11 (2007), para. 10.

[144] Submission from Liberty, para. 36.

the Home Office of the United Kingdom reveal that only 1 per cent of complaints about police lead to proceedings.[145] Successful public outreach and increased community engagement reportedly improve relationships with and trust among communities and can lead to more effective crime-solving.[146]

4. Investigations

67. Investigations should be guided by the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death. They should be conducted in an independent, impartial, prompt, thorough and transparent manner and involve the victims and their families.

5. Inspections

68. Police inspection services are essential to evaluating the general quality of police operations and identifying the need for policy change. Oversight of jails and prisons by impartial mechanisms is one of the most fundamental guarantees for preventing torture and other ill-treatment.[147] The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes a preventive architecture that can effectively contribute to changes in law enforcement practices, through the establishment of national preventive mechanisms.[148] Through this preventive approach, national preventive mechanisms may analyse the root causes of abusive practices, documented by monitoring the practices of law enforcement activities inside and outside of places of detention (e.g. in police vehicles and at demonstration sites), and ultimately catalyse and accompany cultural and institutional transformation.[149]

6. Judicial accountability

69. Offences perpetrated on the basis of racial bias should constitute an aggravating circumstance in criminal legislation.[150] In such cases, criminal law should set out punishment for both the abuse of authority and the underlying racist motivation. Under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), police organizations must investigate possible racist motives behind acts of violence.[151] Effective investigations[152] must be undertaken and perpetrators should be adequately punished. In the United States, applicable standards by which a jury is to judge an officer's actions in the use of force are based on the "reasonableness" of a particular use of force,[153] leading a to a wide margin of interpretation and constituting in practice significant and often overwhelming barriers to accountability.

70. In Brazil, impunity is reportedly generalized, with most crimes by the police remaining uninvestigated, with reports of "resistance followed by death" leading to the

[145] See https://www.theguardian.com/uk-news/2022/jun/01/only-1-of-complaints-about-police-lead-to-proceedings-home-office-reveals.

[146] President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (2015), p. 65, cited by Northeastern University School of Law. See also Stephen Clarke, "Arrested oversight", cited in the submission from the Northeastern University School of Law.

[147] Committee against Torture, general comment No. 2 (2007), para. 13.

[148] See https://www.apt.ch/en/resources/publications/optional-protocol-implementation-manual-2010.

[149] See https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/association-for-the-prevention-of-torture.pdf.

[150] Committee on the Elimination of Racial Discrimination, general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 4 (a).

[151] European Court of Human Rights, *Nachova and others v. Bulgaria*, Applications No. 43577/98 and No. 43579/98, Judgment, 6 July 2005.

[152] European Commission against Racism and Intolerance, general policy recommendation No. 11 (2007), para. 9.

[153] Supreme Court, *Graham v. Connor*, Case No. 87-6571, Opinion of 15 May 1989.

closure of complaints.[154] When criminal trials occur, they are conducted under the jurisdiction of military courts, most often leading to impunity. Even where investigations are undertaken, the essential element of race is not taken into account. In addition to its role in determining accountability and assessing reparation, however, the centrality of the role that race may have played is an essential component with an inherent deterring potential to prevent similar acts from occurring.[155]

7. Civil litigation

71. Faced with the perceived and actual ineffectiveness of police complaint procedures, several victims of alleged police misconduct pursue civil court proceedings for damages against the police. In the United States, reports indicate that, owing to courts' general unwillingness to find civil liability for police misconduct under the doctrine of qualified immunity,[156] police departments are rarely found liable for damages to citizens. Even where successful, the Mechanism sees the deterrent effect of such procedures; their potential for change in police practices as equivocal, especially where such damages generally do not come from police budgets.

8. Strategic litigation to effect change

72. Several non-governmental organizations undertake crucial strategic litigation initiatives. After the protests in New York City in 2020,[157] Physicians for Human Rights developed a case study documenting unlawful and excessive force used by the police,[158] which was later used as evidence by the New York City Comptroller and resulted in the establishment of a community reparations fund to address physical and mental harms and community trauma, which the organization alleges could be a model for other jurisdictions. Also in New York City, following the murder of Amadou Diallo by the police in 1999,[159] mass mobilization and strategic litigation[160] resulted in a settlement with the city in 2003 and the disbanding of the New York Police Department's Street Crime Unit; this was followed by a class action lawsuit, leading to a ruling in which the court found the Department's stop and frisk practices to be racially discriminatory and unconstitutional.[161] The Department has since then been under a court-ordered "monitorship".

73. On 22 June 2023, a district court in California, United States, approved an extraordinary settlement between people incarcerated in Los Angeles jails, represented by the American Civil Liberties Union, and the Los Angeles County Board of Supervisors which, inter alia, requires the creation of at least 1,925 new community beds by the county as alternatives to jailing people with mental illness[162] and an increase of mental health-care staff.[163] In Brazil, as a result of civil society petition, the Federal Supreme Court decided to ban the police from firing guns from armoured helicopters and to restrict police operations

[154] Submission from Coalizão Negra por Direitos.

[155] Conference room paper of the High Commissioner on the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, para. 138.

[156] See https://counciloncj.foleon.com/policing/assessing-the-evidence/xii-qualified-immunity. See also https://www.naacpldf.org/qi-police-misconduct/.

[157] See https://www.hrw.org/news/2020/09/30/us-new-york-police-planned-assault-bronx-protesters.

[158] See https://phr.org/wp-content/uploads/2021/04/PHR-Mott-Haven-Protest-Expert-Statement-April-2021.pdf.

[159] See https://www.nytimes.com/1999/02/05/nyregion/officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html.

[160] Center for Constitutional Rights, "*Daniels, et al. v. the City of New York*", available at https://ccrjustice.org/home/what-we-do/our-cases/daniels-et-al-v-city-new-york.

[161] Center for Constitutional Rights, "*Floyd et al. v. City of New York et al.*", available at https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al.

[162] See https://www.aclu.org/press-releases/aclu-reaches-landmark-settlement-in-l-a-county-jails-case.

[163] See https://www.aclu.org/cases/rutherford-v-luna?document=rutherford-v-villanueva-exhibits-q-support-declaration-melissa-camacho-cheung-doc-319.

around schools and hospitals.[164] Subsequent research indicates, however, that one year after the Supreme Court decision, although lives were saved, the behaviour of the police did not actually change. They were just less active during the period.[165] In the United Kingdom, the Crown Prosecution Service agreed to a pilot scheme to monitor data on the age, race, sex and disability of those prosecuted under the "joint enterprise" doctrine,[166] and the situation was qualified by the Working Group of Experts on People of African descent as a widespread exercise of discretion to target the ordinary conduct of adolescents at the intersection of systemic racism and human rights.[167]

V. Conclusions and recommendations

74. **While recognizing and promoting the importance of sound legal regimes on the use of force, as well as that of adequate training and diversity of law enforcement officers, the Mechanism is of the strong view that the most critical and effective drive for change will come through a change of the unwritten, tacit rules governing the culture of policing. In order to achieve such change, i.e. to overcome individual law enforcement officers' bias and reform the institutions in which they operate, addressing and confronting the past is inevitable. Truth, justice and reparation are essential conditions to change culture and attitudes. States' introspection should focus on the associations of law enforcement agencies with historical wrongdoings and how they continue to permeate law enforcement behaviour and policing culture today, including prejudice and harmful stereotypes, and militarized law enforcement tactics, approaches and equipment, with overarching repercussions on the entire criminal justice system.**

75. **Addressing the past should go hand in hand with measures aiming to prevent violations and foster an internal culture of accountability through monitoring, reporting of violations, training and proper recruitment processes. While doing so, the discriminatory application of criminal law should be rooted out, including practices with discriminatory outcomes or effect. Racial bias, stereotypes and profiling, as well as misconceived definitions of safety, compounded by intersectional factors of discrimination, should also be addressed by unpacking the political, social and economic ramifications and the root causes of inequality and systemic racism. Strengthening public trust, outreach and the relationships between law enforcement and communities should also be a priority.**

76. **At the same time, contemporary police operations should be reformed, and community-based alternatives to law enforcement should be supported and implemented wherever possible, including civilian initiatives that address poverty, housing, education and youth development, psychosocial needs and health. States should invest in community programmes to ensure non-discriminatory food security, affordable and high-quality education and housing and accessible health-care coverage.**

77. **Law enforcement officers should not be the first responders to non-violent mental health situations. Similarly, places of deprivation of liberty should not be the default facility for persons suffering from mental health conditions or psychosocial disabilities. Preventing at-risk people with mental health conditions or psychosocial disabilities from entering the criminal justice system requires long-term systemic change, grounded in intersectional analysis of the impact of racially discriminatory**

[164] See https://www.conectas.org/en/noticias/adpf-favelas-case-wins-another-victory-in-supreme-court/; and https://www.conectas.org/en/noticias/adpf-favelas-case-understand-in-5-points-the-case-in-the-supreme-court-to-reduce-police-lethality-in-rio-de-janeiro/.

[165] See https://www.conectas.org/en/noticias/in-one-year-since-the-adpf-favelas-case-number-of-deaths-and-shootings-falls-in-rio-de-janeiro-but-pattern-of-police-violence-has-not-changed-says-report/.

[166] Submission from Liberty. A controversial doctrine, which has led to people being convicted of murder or manslaughter, even if they did not play a decisive role, on allegations of gang affiliation.

[167] See https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/statements/2023-01-27/eom-statement-UK-WGEPAD-2023-01-27.pdf. See also https://www.libertyhumanrights.org.uk/issue/legal-win-for-campaigners-in-racist-joint-enterprise-dispute/.

policies and systems on Africans and people of African descent. Behaviours arising from and perpetuating poverty and homelessness, including begging, sleeping in public spaces or loitering, should not treated as criminal activity. Instead, holistic responses should be provided, which address the root causes of such behaviours and take into account the well-recognized relationship between poverty, homelessness and mental health.

78. **Robust accountability measures are essential to deliver justice to victims and their families, to prevent repetition, to foster an internal culture of accountability and to restore trust in institutions. States should put in place effective accountability frameworks including for the responsibilities of law enforcement superiors. Independent, impartial, prompt, thorough, effective, credible and transparent investigations and prosecutions should be conducted in a manner that takes into account the centrality of race. Independent civilian monitoring mechanisms should complement internal police investigations and criminal justice processes.**

79. **The Mechanism invites relevant United Nations mechanisms and agencies, including OHCHR, the United Nations Office on Drugs and Crime, the United Nations police and the United Nations Development Programme, to work together with the Mechanism to assist States in adopting effective legal, policy and institutional measures targeting systemic racism through law enforcement reforms, with a view to closing trust deficits, strengthening institutional oversight, adopting alternative and complementary methods to policing and the use of force and encouraging stocktaking of lessons learned.**

Annex

Communications sent by the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

Date	*Country*	*Summary of issues*	*Reply received*
20 June 2022	United Kingdom of Great Britain and Northern Ireland	Permanent removal of restrictions under section 60 of the Criminal Justice and Public Order Act of 1994 on stop and search by police officers	None
12 July 2022	Spain	Events in Melilla leading to the death of 23 African migrants and the injury of law enforcement officials	4 August 2022
12 July 2022	Morocco	Events in Melilla leading to the death of 23 African migrants and the injury of law enforcement officials	None
12 July 2022	Brazil	Killing of 23 people of African descent in favela Vila Cruzeiro	5 September 2022
19 October 2022	United States of America	Killing of Patrick Lyoya and Jayland Walker	None
2 February 2023	United States of America	Killing of Keenan Anderson	None
8 February 2023	United States of America	Killing of Tyre Nichols	13 February 2023
4 August 2023	United States of America	Detention and solitary confinement	
4 August 2023	Germany	Killing of Mouhamed Lamine	

Note: More information on the communications sent by the Mechanism is available on its web page.[1]

[1] See https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-racial-justice-law-enforcement/communications.