



July 22, 2020

Mr. Paulo Abrão
Executive-Secretary
Inter-American Commission on Human Rights
Washington D.C.

Re: Request for Hearing on Structural Racism and Police Violence in the United States at the 177th Period of Sessions (September 27 to October 6, 2020)

Dear Secretary Abrão,

Pursuant to articles 61, 62 and 66 of the Regulations of the Inter-American Commission on Human Rights (“IACHR” or the “Commission”), the undersigned organizations respectfully request a hearing during the 177th Period of Sessions (September 27 to October 6, 2020) to address **structural racism and police violence in the United States** and specifically the urgent issue of accountability, redress, and reparations for the extrajudicial killings of Black Americans by State agents in the country.

The Proposed Hearing

As the Commission has documented on numerous occasions,¹ police acts of violence, including extrajudicial killings of Black Americans by law enforcement officers in the United States, are routinely met with impunity. The IACHR has identified multiple interrelated factors that contribute to the prevailing culture of impunity, including the lack of independent investigation mechanisms to hold law enforcement officers accountable for police-involved deaths; the existence of multiple legal and practical obstacles in criminal, civil and administrative accountability mechanisms for State agents who commit extrajudicial killings; and the structural racism of policing institutions.²

In November 2018, the IACHR completed its thematic report on how policing as practiced in the United States violates the core human rights of Black communities.³ The groundbreaking report recommended urgent reforms to address the historical and structural roots of police violence that disproportionately harm Black communities, as well as other communities of color.

¹ IACHR, *African Americans, Police Use of Force, and Human Rights in the United States*, OEA/Ser.L/V/II.Doc.156/18 (Nov. 26, 2018) [hereinafter “*Report on Police Use of Force*”]. This Report was released to the public in March 2019. *See also*, IACHR, 150th Period of Sessions, *Stand your ground laws and their impact on minorities in the United States*, Hearing, May 14, 2014; IACHR, 156th Period of Sessions, *Reports of Excessive Use of Force by the Police against People of African Descent in the United States*, Hearing, Oct. 23, 2015; IACHR, 166th Period of Sessions, *Impunity and the Lack of Accountability for Extrajudicial Killings by Law Enforcement in the United States*, Hearing, (Dec. 7, 2017).

² *See generally* IACHR, *Report on Police Use of Force*.

³ IACHR, *Report on Police Use of Force*.

Since the IACHR *Report on Police Use of Force* was published, however, little has changed in the practices and policies of the United States. The extrajudicial killings of Black people by police continue with alarming regularity, and with a persistent lack of accountability. The May 25, 2020 killing of George Floyd, an unarmed Black man, by a police officer who knelt on his neck for eight minutes and 46 seconds until he died, was captured on video.⁴ This horrific event sparked massive protests across the United States and around the world, repudiating it and countless similar killings by police. The protests in the United States – which have been met with extraordinary brutality and violence by State agents – continue to this day. In response, the Commission stated its “strongest condemnation for the murder of George Floyd at the hands of police, the systemic violence against Afro-Americans, and the impunity and disproportionate use of police force against protesters in the United States.”⁵

This proposed hearing intends to provide the Commission with updated information about the continuing pattern of extrajudicial killings of Black people committed by police in the United States. It also proposes to situate current demands from civil society and impacted communities within the IACHR’s recommendations in its *Report on Police Use of Force*. The presenters hope to assist the Commission in continuing to monitor and address systemic racism and policing in the United States. In this crucial moment of mobilization and focused debate on structural racism and police violence in the United States, the Commission can play a critical role in ensuring that policymakers and civil society alike are equipped with a clear understanding of the State’s international human rights obligations when considering the institutional reforms and reparations required to meaningfully address the United States’ history of impunity for extrajudicial killings of Black Americans.

Continued Relevance for the IACHR

Although the Commission and other international human rights bodies⁶ have called on the United States to address the crisis of structural racism and state violence against Black communities, little has changed in the policies and practices of local, state and federal authorities. Since the Commission’s last report on police use of force in the United States, at least 1,500 Americans have been killed by police in shooting deaths alone.⁷ In the wake of these persistent killings, civil society demands have coalesced around three calls to action: (1) ending impunity for

⁴ Press Release, ACLU, [ACLU Responds to Minneapolis Police Killing George Floyd](#) (May 26, 2020); Evan Hill, et al., [How George Floyd Was Killed in Police Custody](#), New York Times (May 31, 2020).

⁵ Press Release, IACHR, [The IACHR expresses strong condemnation for George Floyd’s murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States](#) (June 8, 2020).

⁶ For example, the Committee on the Elimination of Racial Discrimination (“CERD”) noted systemic racism in the U.S. in its concluding observations in May 2008 (CERD/C/USA/CO/6) and August 2014 (CERD/C/USA/CO/7-9) and most recently issued a [Decision](#) pursuant to its early warning/urgent action mandate on June 12, 2020 following the death of George Floyd calling for accountability for excessive use of force by law enforcement personnel. On June 5, 2020, many UN Special Procedures and the Chair of CERD issued two statements, one on [the Protests against Systemic Racism in the United States](#) and one condemning “modern-day racial terror lynchings in US and call[ing] for systemic reform and justice.” In 2016, the Working Group of Experts on People of African Descent conducted a mission to the United States, and it noted that “[k]illings of unarmed African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system.” HRC, [Report of the Working Group of Experts on People of African Descent on its Mission to the United States of America](#), A/HRC/33/61/Add.2, ¶ 24 (Aug. 18, 2016).

⁷ [Fatal Force](#), Washington Post (updated July 13, 2020). As the Washington Post notes in the introduction to its database, its independent data collection reflects more than twice as many fatal shootings by police as the official tally recorded by the FBI and the Centers for Disease Control and Prevention. See also John Sullivan, et al., [Four years in a row, police nationwide fatally shoot nearly 1,000 people](#), Washington Post (Feb. 12, 2019); [Mapping Police Violence](#) (last visited July 15, 2020) (a research collaborative mapping all police-involved deaths); [Fatal Encounters](#) (last visited July 15, 2020) (a journalist-led data collection and aggregation project).

state violence against Black Americans, (2) ensuring reparations for current and past human rights violations committed against Black communities, and (3) reallocating public funds from the police to reinvest in Black communities.⁸

Ongoing impunity for extrajudicial killings. In its 2018 report, the Commission identified barriers to effective accountability for police killings, “including bias among grand juries and prosecutors, lack of independent investigations and prosecutions, lack of federal resources and will to investigate and prosecute, and procedural and evidentiary barriers to beginning and successfully completing legal proceedings to obtain remedies.”⁹ Accordingly, IACHR called on the United States to “take effective action to correct and eliminate” structural inequalities which hinder access to justice for Black communities in cases of police violence.¹⁰ To date, the United States has made little progress on the Commission’s recommendations. Rather, the situation has worsened. The administration of President Donald Trump has effectively dismantled mechanisms for federal police oversight and rescinded limits placed on the militarization of police forces implemented following the 2014 killing of Michael Brown.¹¹

Protests demanding accountability, which the Commission recognized “show[] a vibrant civil society supportive of non-discrimination in the United States, [have been] branded by the United States government as ‘terrorist’ and ‘subversive’.”¹² The lack of state and federal independent investigations that meet international standards and continued impunity for the police killings of many Black Americans, including Breonna Taylor, Elijah McClain, Clinton Allen and others whose killings have not captured headlines,¹³ underscores the continued need to address the multiple legal and practical barriers that prevent impartial and independent investigations of excessive use of force against Black communities, as recommended by the Commission in 2018.

Failure to provide effective reparations. The right to remedy for human rights violations requires not just an end to impunity and guarantees of non-repetition but also effective reparations. In the United States, the continued existence of qualified immunity for police misconduct presents a barrier to victims of state violence and their families from obtaining reparations for the harm they have suffered.¹⁴ Moreover, despite the Commission’s recommendation that the United States “undertake studies with the goal of creating guidelines for the reparation of historic and structural discrimination” and “provide appropriate reparation to those affected by the racially disparate impact of federal, state, and local laws and policies,”¹⁵ to date little progress has been made to compensate Black Americans for more than 200 years of enslavement and the systemic racism that

⁸ See e.g., Colette Flanagan, [Dallas Police Killed My Unarmed Son their Brutality is a Global Problem](#), ACLU (July 13, 2020).

⁹ IACHR, *Report on Police Use of Force* at 141.

¹⁰ IACHR, *Report on Police Use of Force* at 142-43, Recommendations 20-25.

¹¹ See, e.g., Jeremy Stahl, [How the Trump Administration Undid Obama’s Response to Ferguson](#), Slate (June 2, 2020).

¹² Press Release, IACHR, [The IACHR expresses strong condemnation for George Floyd’s murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States](#) (June 8, 2020).

¹³ See, e.g., Maria Cramer, [3 Officers Fired Over Photos Taken Near Elijah McClain Memorial](#), New York Times, (July 4, 2020) (noting that though police officers were fired for taking photographs mocking McClain’s death the officers responsible for his death have faced no judicial accountability); Colette Flanagan, [Dallas Police Killed My Unarmed Son. Their Brutality is a Global Problem](#), ACLU, (July 13, 2020).

¹⁴ On June 15, 2020, the Supreme Court of the United States determined that it would not reexamine the court created doctrine that effectively shields police officers from liability. See *Baxter v. Bracey*, 590 U.S. ___ (June 15, 2020) (denial of certiorari); see also Andrew Chung, et al., [Shielded](#), Reuters, (May 8, 2020) (describing how the U.S. Supreme Court’s continued refinement of qualified immunity has made it harder to hold police accountable for excessive use of force, and noting a worrying trend that accountability has become more difficult since 2017).

¹⁵ IACHR, *Report on Police Use of Force*, Recommendations 32 & 33. These recommendations echoes calls made in 2016 by the United Nations Working Group of Experts on People of African Descent. See [Statement to the media by the UN Working Grp. of Experts on People of African Descent, on the conclusion of its official visit to USA](#), Working Grp. Of Experts on People of African Descent (Jan. 29, 2016).

has persisted since.¹⁶ Though a bill to establish a commission to study reparations was re-introduced in the House of Representatives in January 2019, it has yet to gain the necessary support to pass.¹⁷ In the wake of George Floyd’s killing and the subsequent protests, civil society has now renewed its call for a comprehensive national effort for reparations to those affected by historic and systemic racism in the United States.¹⁸

The need for transformative divestment. Entwined with reparations for systemic racism is the Black community’s call to divest from police departments and reinvest in communities of color. This comes in response to continued and escalating police violence against Black communities despite decades-long appeals for meaningful institutional reform to bring an end to racial disparities in the criminal legal system and the excessive use of force by law enforcement.¹⁹ As recognized by the Commission in its 2018 report,²⁰ the criminal legal system in the United States is built on centuries of systemic racism.²¹ Transformative divestment is necessary to ensure that State approaches to public safety do not perpetuate systems of harm and discrimination; indeed, divestment from police is consistent with the Commission’s recommended reparations to “transform the underlying situation of inequality” and structural discrimination faced by Black Americans.²² In calling for divesting from the police, civil society is asking state and federal lawmakers to move funds away from incarceration, corrections, and policing toward services that are needed in Black communities, such as education, healthcare, and housing.²³ These are essential elements for community safety, combatting the effects of centuries of systemic racism, and securing basic economic, social and cultural rights with equality and dignity.

The Inter-American System’s transformative reparations framework can provide an important international human rights context to civil society’s demands for reparations and divesting from the police. In the *Cotton Field* case, the Inter-American Court held that in the context of structural discrimination “reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable.”²⁴ Reparations systems recommended by the Commission in other circumstances have expressly emphasized restitution, rehabilitation and compensation, with the aim of improving the circumstances of affected communities.²⁵ The proposed hearing would give the Commission an opportunity to add its comparative expertise and experience to the renewed conversations in the United States around reparations and reinvesting in communities of color.

¹⁶ Nellie Peyton & Christine Murray, [Calls for reparations gain steam as U.S. reckons with racial injustice](#), Reuters (June 24, 2020).

¹⁷ Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R. 40 - 116th Cong. (2019); see also Bill Summary for H.R. 40 <https://www.congress.gov/bill/116th-congress/house-bill/40> (last visited July 14, 2020).

¹⁸ See e.g., Rashawn Ray & Andre M. Perry, [Why we need reparations for Black Americans](#), Brookings (Apr. 15, 2020); Janice Gassam, [Thank You for The Symbolic Gestures But Black People Need Reparations](#), Forbes (July 9, 2020).

¹⁹ [What Defunding the Police Really Means](#), Black Lives Matter (July 6, 2020); Philip V. McHarris & Thenjiwe McHarris, [No More Money for the Police](#), New York Times (May 30, 2020).

²⁰ IACHR, [Report on Police Use of Force](#), at 37 et seq. (tracing the historic roots of racist policing in the United States to the slave patrols instituted to catch and return escaped enslaved persons).

²¹ See e.g., Ctr. for Popular Democracy, et al., [Freedom to Thrive: Reimagining Safety & Security in Our Communities](#) at 1 (2017).

²² IACHR, [Report on Police Use of Force](#) at 145.

²³ [What Defunding the Police Really Means](#), Black Lives Matter (July 6, 2020); Philip V. McHarris & Thenjiwe McHarris, [No More Money for the Police](#), New York Times (May 30, 2020); Andre M. Perry, et al., [To add value to Black communities, we must defund the police and prison systems](#), Brookings (June 11, 2020).

²⁴ *Gonzalez et al. (“Cotton Field”) v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009). This case addressed the systematic failure of Mexico to investigate and prosecute the disappearances, torture, sexual abuse and murders of young working-class women.

²⁵ Justin Hansford, [International Human Rights Bodies Provide a Case for Reparations](#), ACLU (Sept. 24, 2019).

Conclusion and Request

At this historic juncture, specific recommendations from the Commission regarding accountability for extrajudicial killings committed by State agents, guarantees of non-repetition, and transformative reparations will provide important international legal context to current efforts at reform in the United States and build on the Commission's hearing during its 173rd Period of Sessions on reparations for slavery and other structural racial discrimination in the United States.

The applicants will present an updated analysis of the problem to complement and further develop the analysis of the IACHR in its 2018 Report. In addition, concrete recommendations will be presented on how the United States could develop effective accountability and policy frameworks to meaningfully protect the human rights of Black communities and other communities of color. The hearing will also provide an important and unique opportunity for local, state, and federal government representatives with the authority to implement structural changes to address the Commission and civil society directly, and to respond to the recommendations made by the Commission in its 2018 Report. This will all be important input for the continuing work of the Inter-American Commission as it monitors the human rights situation in the United States, and as it continues to put a spotlight on the rights of Black individuals and communities in the context of structural racism.

Based on the aforementioned, the undersigned organizations respectfully request a hearing on "Structural Racism and Police Violence in the United States" for the 177th Period of Sessions, which will take place from September 27 to October 6, 2020.

Respectfully,

American Civil Liberties Union
Center for Justice and Accountability
Mothers Against Police Brutality
US Human Rights Network
RFK Human Rights
Santa Clara University School of Law International Human Rights Clinic
Thurgood Marshall Civil Rights Center, Howard University School of Law