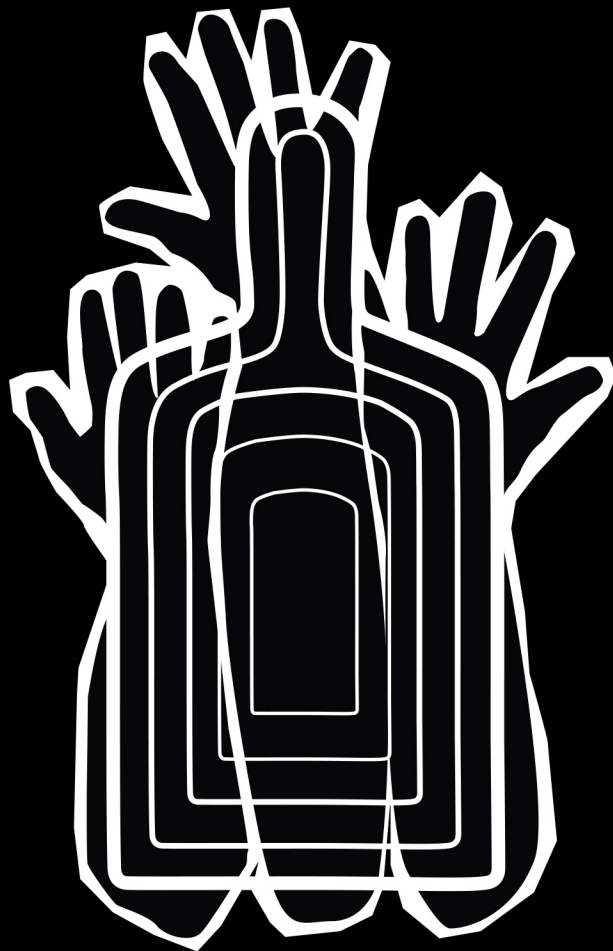


Police Violence Against Afro-descendants in the United States



OAS

More rights for more people

Cover Art Concept

This IACHR report concludes that the United States has systematically failed to adopt preventive measures and to train its police forces to perform their duties in an appropriate fashion. This has led to the frequent use of force based on racial bias and prejudice and tends to result in unjustified killings of African Americans. This systematic failure is represented on the cover of the report by a tombstone in the bullseye of a shooting range target, which evokes the path of police violence from training through to these tragic outcomes. The target is surrounded by hands: hands in the air trying to stop the bullet, hands asking for help because of the danger that police officers represent in certain situations, and hands expressing suffering and pain over the unjustified loss of human lives.

OEA/Ser.L/V/II.

Doc. 156

26 November 2018

Original: English

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

African Americans, Police Use of Force, and Human Rights in the United States

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

African Americans, police use of force, and human rights in the United States : Approved by the Inter-American Commission on Human Rights on November 26, 2018.

p. ; cm. (OAS. Official records ; OEA/Ser.L)

ISBN 978-0-8270-6823-0

1. Human rights. 2. Police misconduct--United States. 3. Race discrimination--United States. 4. African Americans--Civil rights. 5. Racism--United States.

I. Title. II. Series.

OEA/Ser.L/V/II. Doc.156/18

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This report examines the persistent situation of structural discrimination against African Americans in the United States and, in particular, deep-seated racial disparities in policing and the criminal justice system. The Inter-American Commission on Human Rights (the “Commission,” “Inter-American Commission,” or “IACHR”) has previously considered that racial bias forms the backbone of many problems of police abuse, overrepresentation of African Americans in arrests and in the prison system, and unequal access to justice, as well as wider issues of racialized poverty and unequal access to economic, social, cultural, and environmental rights in the U.S. Since the 2012 shooting death of Trayvon Martin, a series of high-profile deaths of African Americans at the hands of police or in police custody—including Michael Brown, Eric Garner, Tamir Rice, Alton Sterling, Philando Castile, and Terence Crutcher, among many others—as well as public pressure from civil society groups and movements like Black Lives Matter, have made issues of racial bias in policing and the criminal justice system topics of increasing public discussion. In light of extensive information of concern received in recent years regarding this issue, the Commission undertook to write this report examining the situation.
2. While problems of racism in policing and criminal justice are addressed as pressing civil rights issues nationally, the Commission highlights that they also raise concerns regarding the United States’ international human rights obligations. Under its mandate to monitor and promote human rights in the Member States of the Organization of American States (OAS), the Commission has drafted this report on the basis of information gathered from the State, civil society organizations, and victims of police violence in several public hearings held since 2014 on issues related to racism in policing and criminal justice in the U.S.; during a 2015 visit to the states of Florida, Louisiana, and Missouri; through the publication of press releases; as well as information gathered via its petitions and cases mechanism, and other public sources of information, including from government agencies, reports produced by United Nations mechanisms, and by civil society and the media.
3. This report evaluates the current panorama of policing and criminal justice issues in light of the historic situation of racism and discrimination in the

United States (“U.S.” or “State”), highlighting the structural nature of discrimination and the corresponding need for systemic reforms to fully address past abuses and ensure non-repetition. The Commission considers that the historical legacy of subjugation, enslavement, terror, marginalization, segregation, and exclusion from enjoying the rights of citizens in the U.S., both *de jure* and *de facto*, has continuing repercussions for African Americans’ full enjoyment of human rights today in virtually every sphere. In this regard, a reckoning with the legacy of racism and discrimination in the U.S. is necessary to effectively transform the situation in the future.

4. In this light, the Commission analyzes information received regarding issues of over-policing and racial profiling; the militarization of police forces; police use of excessive force; impunity in cases of police killings; police responses to protests; racial disparities in criminal arrests, convictions, and sentencing; and the lifelong consequences of prior incarceration and felony convictions. The Commission further considers that issues of discrimination in policing and criminal justice in the U.S. are inseparable from social stigma and hate speech; violence by private citizens; an enduring situation of racialized poverty; and intersectional discrimination; as all of these are also governed by a structural situation of discrimination and racism. These issues are reviewed in the report from a human rights perspective considering the obligations of the United States under international law.
5. The Commission highlights that the issues of police brutality and excessive use of force, racially biased policing practices, and racial disparities that permeate virtually every part of the criminal justice system, are widespread and represent a clear threat to the human rights of African Americans, including the rights to life, personal integrity, non-discrimination, and due process, among others. In this report, the Commission considers these issues in light of the United States’ international obligations regarding non-discrimination, use of force, and access to justice.
6. Throughout this report, the Commission underscores a series of key international human rights principles that apply to the situation: First, all government and police actions should be executed in accordance with the obligations of non-discrimination and the principle of equality. Second, police use of force in the United States, as in all other States of the Americas, should be guided by the principles of legality, absolute necessity, and proportionality, and used only when other methods have been exhausted and failed. Third, the protection against arbitrary deprivations of life applies to the entire State structure—including federal, state, and local government entities—and to all actions of police officers, both in situations

of normality and unrest. Fourth, the government—federal, state, and local—is responsible for establishing adequate and effective legal remedies, and a justice system that is independent and impartial in its investigations of police abuses, and that achieves convictions when appropriate. The Commission recalls that impunity fosters an environment in which police violence and abuses are tolerated, and serves to sustain disparate treatment towards groups subject to historic discrimination. Fifth, the Commission underscores the need to safeguard the basic human rights of protesters, including their rights to life and physical and psychological integrity.

7. Regarding non-discrimination and equality, the Commission recalls that both direct and indirect racial discrimination are prohibited under international and inter-American law. In this report, it underscores as an issue of particular concern that laws and practices that have a discriminatory effect—often described as “disparate impact” in domestic law—are prohibited under international law, even if they are not facially discriminatory. It is urgent that the U.S. brings its domestic law in line with international standards in order to effectively prevent and sanction cases of disparate impact. The Commission further highlights that racial profiling practices may amount to inhuman or degrading treatment under international law. In addition to the obligation to refrain from violating rights, the Commission emphasizes the State’s positive obligation to adopt measures to build an inclusive society free from all forms of racial discrimination, and calls for steps to modify the culture of policing and dynamics between the police and African Americans in order to build trust and confidence.
8. Regarding the use of force, the Commission reiterates in this report that the protection against arbitrary deprivations of life applies to the entire State structure—including federal, state, and local government entities—and to all actions of police officers. Therefore, police use of force must be guided by the principles of absolute necessity, proportionality, and legality; lethal force may be permissible only when strictly necessary to protect life. The Commission calls on the United States to bring its domestic law in line with international standards in this area. The Commission further highlights that excessive use of force by police may amount to cruel, inhuman, or degrading treatment (CIDT) or torture under certain circumstances, particularly where it is committed for any reason based on arbitrary discrimination of any kind. The Commission also underscores the need to safeguard the basic human rights of protesters, as well as considerations related to the regulation of the use of lethal force and less lethal weapons in general and in protest situations.

9. Regarding access to justice, the Commission emphasizes in this report that the government—federal, state, and local—is responsible for ensuring access to justice, including exercising due diligence to ensure independent and impartial investigation and prosecution of police abuses, and accountability and punishment for all those responsible for a violation; establishing adequate, effective, and accessible legal remedies for police violence against African Americans; and ensuring reparations for victims. Impunity fosters an environment in which police violence, abuses, and disparate treatment towards historically marginalized groups are tolerated. The Commission is particularly concerned by the significant number of incidents of police violence against African-Americans that end without convictions; including cases in which the person affected was unarmed. The Commission additionally notes the State’s duty to take measures to prevent and respond to violence on the part of State and non-State actors explicitly or implicitly motivated by racial bias.
10. Finally, the Commission emphasizes that due diligence in preventing police violence against African Americans must take a transformative approach. That is, actions to prevent police violence or remedies or reparations for police violence that have the effect of maintaining or reestablishing the same structural context of violence and discrimination are not acceptable. Rather, reparations must aim to address and redress the underlying situation of inequality and the ongoing context of racial discrimination. With these principles in mind, key recommendations to the United States include:
 - Undertake and ensure proper funding for official studies on racial discrimination in the U.S.—at the federal, state, and local level—with the goal of contributing to the establishment of the full and public truth about violations, as well as forward-looking public policies to contribute to effective reparations for the victims, including satisfaction and guarantees of non-repetition (Recommendation 1).
 - Ensure that all federal, state, and local government entities fully comply with relevant domestic laws mandating the monitoring, oversight, and investigation of possible human and civil rights violations by State actors, such as police departments, as well as private individuals (Rec. 5).
 - Create independent ombudsperson offices at the state and local levels to receive and take action regarding complaints about discriminatory treatment (Rec. 12).
 - Take the necessary steps to reform domestic law—both federal and state—to bring it in line with international law as regards the use of

force and use of deadly force, respecting the principles of legality, absolute necessity, and proportionality (Rec. 13).

- Create a federal database to track incidents involving police use of force by all law enforcement agencies in a transparent, uniform, and public manner, including disaggregated data on demographics of all victims and officers involved (Rec. 20).
 - Ensure the prompt, thorough, independent, impartial, and effective investigation of incidents of excessive use of force and police killings, ensuring the investigation of all potentially responsible parties and, as relevant, their appropriate prosecution and punishment (Rec. 21).
 - Remove all de facto and legal obstacles in internal investigations, criminal proceedings, civil proceedings, and federal investigations that maintain impunity for cases of police killings (Rec. 22), and ensure the effective and proportional punishment of police officers who commit crimes or misconduct (Rec. 22).
 - Take effective measures to prevent and combat the stigmatization and criminalization of protesters, in particular where such stigmatization or criminalization may be racially discriminatory in nature, and fully guarantee the right to freedom of expression (Rec. 19).
 - Take the necessary steps to reform domestic law—both federal and state—to bring it in line with international law as regards the obligation to prohibit and sanction both facial discrimination and the disparate impact of facially neutral laws and policies (Rec. 7).
 - Take steps to reverse the effect of policies with racially disparate impacts (Rec. 11).
11. The IACHR expresses its thanks to the State for its engagement with the Commission on this issue and for facilitating its visit to the U.S., as well as to members of civil society, the academic sector, victims of police violence and racial discrimination, and their family members for their willingness to share information and collaborate in the search for solutions to this entrenched human rights issue.

CHAPTER 1
INTRODUCTION

INTRODUCTION

12. Information received by the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission,” or “IACHR”) reveals an alarming historical scenario in the United States of discriminatory policing practices and racial disparities in the criminal justice system. African Americans¹ are consistently targeted on the basis of race² for searches and arrests (racial profiling), and are often the victims of excessive force by police, resulting in death in many cases. Significant racial disparities in the criminal justice system’s treatment of African Americans result in unequal access to justice and their overrepresentation in the prison system. These amount to a pattern of structural discrimination that permeates the actions of law enforcement and the criminal justice system, as well as many other aspects of political, social, and economic life in the U.S.³ This report reviews social, political, and legal elements that have fueled this context historically and in recent years.
13. All of these issues are well-recognized as civil rights and social justice issues in the United States. They also, however, have international human rights implications for the U.S. under the American Declaration on the Rights and Duties of Man (“American Declaration”) and the universal human rights treaties ratified by the U.S., including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading

¹ For ease of reading and accessibility, the Commission uses “African American,” “Black,” and “Afro-descendant” in this report virtually interchangeably, favoring the term “African American.” However, the Commission recognizes that whereas “African American” denotes nationality, “Black” (the preferred domestic term) and “Afro-descendant” (the preferred term in the Inter-American Human Rights System) refer more broadly to those individuals racialized as black in the United States and of African descent, respectively, irrespective of national origin. In this regard, the Commission recognizes that all individuals racialized as black in the U.S. may be targets of police violence in the U.S., regardless of nationality or country of origin (*see, e.g.*, considerations in this report related to Tesfaie Mokuria and Amadou Diallo (*infra* para. 93), immigrants from Ethiopia and Guinea, respectively), and the report should be read in this sense.

²The Commission uses the term “race” throughout this report to refer to the justification for different kinds of violence and discrimination that affect disproportionately afro-descendent persons in the United States, in line with Article 1.1 of the American Convention on Human Rights.

³ The Commission recognizes that African Americans are not the only group in the United States disproportionately affected by police excessive use of force, or the only group in the U.S. affected by structural racial discrimination. This report focuses specifically on African Americans and the discrimination they face; however, reference is made as relevant to other groups affected by the excessive use of force, including Native Americans, Hispanics, and others.

Treatment or Punishment (CAT). This report focuses on the international human rights law dimension of this civil rights history and outlines constructive steps that federal, state, and local governments can adopt to respond to racial discrimination in policing and legal responses to police violence. The Commission notes that under international human rights law, all levels of government—federal, state, and local—are obligated to intervene to protect and guarantee human rights, and this duty extends to policing.

14. This report focuses on the international human rights law implications of racial discrimination in the policing of African Americans, in light of a concerning pattern of police excessive use of force, as well as the State's international obligations in the area of non-discrimination. Furthermore, it explores the State's obligations regarding access to justice and the fight against impunity in cases of police excessive use of force.
15. This report is divided into four chapters. The first chapter introduces the report's context and sources, as well as the Commission's mandate to monitor human rights in the United States. The second chapter uses the framework of structural discrimination to explore the history of discrimination and racism against African Americans in the U.S., key contemporary issues identified via the Commission's monitoring work, and information on State measures to address these issues. The third chapter reviews international legal standards applicable in the areas of non-discrimination, the use of force, and access to justice. The Commission considers that these standards should guide the actions of the police at the federal, state, and local levels in the U.S., as well as the entire government structure. The final chapter advances a number of conclusions and recommendations designed to improve police practices towards African Americans in the United States.
16. The objectives of this report are twofold: to serve as an important guideline regarding key international human rights standards that the U.S. must consider at the federal, state, and local levels when addressing racial discrimination in policing of African Americans, and to serve as a key advocacy instrument for U.S. civil society organizations to use with federal, state, and local governments to better address racial discrimination in the actions of law enforcement authorities and throughout the criminal justice system.

A. Sources of Information

17. The information analyzed in this report comes from a number of sources, including hearings held between 2014 and 2017; an on-site visit to Florida,

Louisiana, and Missouri; issues monitored via press releases; and additional documents, reports, and statements issued by State and non-State actors.

1. Hearings during Periods of Sessions

18. The Inter-American Commission has convened a number of thematic hearings on issues of systemic racism, policing and use of force, and racism in the criminal justice system in the U.S. over the past five years, through which it has gathered substantial information about existing challenges. These hearings have been convened on the Commission's own motion (*ex officio*), at the request of the government of the United States, and at the request of civil society and academic organizations.
19. On March 25, 2014, the Commission held a hearing on "Stand Your Ground Laws and their impact on groups historically subjected to discrimination and exclusion in the United States" at its headquarters in Washington, D.C.,⁴ where it received information on the human rights implications of "Stand Your Ground" laws currently in force in several states, and received testimony from the parents of Travyon Martin and Jordan Davis, two black teenagers shot and killed by civilians who invoked Florida's "Stand Your Ground" law as a legal defense to the crime of homicide.
20. On October 27, 2014, the Commission held a hearing on "Reports of Racism in the Justice System of the United States."⁵ The hearing was convened *ex officio* by the Commission. At the hearing, the Commission received information from attendees regarding issues of racial discrimination in the areas of: policing (racial profiling, over-policing of historically marginalized groups, excessive use of force), voting rights (felony disenfranchisement), mass incarceration, juvenile justice, and government initiatives to reduce the racially disparate impact of mass incarceration and racial profiling.

⁴ IACHR, 150th Period of Sessions, Thematic Hearing: Self-defense laws (Stand Your Ground) and their impact on minorities in the United States, Oct. 27, 2014. Video of hearing available at: <https://www.youtube.com/watch?v=XOEV8Rbpg2s> [hereinafter "'Stand Your Ground' Laws Hearing"]. The hearing was requested by the Community Justice Project, Florida Legal Services, The Dream Defenders, University of Miami School of Law Human Rights Clinic, National Association for the Advancement of Colored People (NAACP), and the Free Marissa Now Mobilization Campaign. The State was represented by U.S. Mission to the OAS and the Department of State.

⁵ IACHR, 153d Period of Sessions, Thematic Hearing: Racism in the Justice System in the United States, Oct. 27, 2014. Video of hearing available at: <https://www.youtube.com/watch?v=ieG0tPqIHLM&feature=youtu.be> [hereinafter "Racism in the Justice System Hearing"]. Representatives from the Lawyers' Committee for Civil Rights Under Law, the NAACP Washington Bureau, Brennan Center for Justice, American Bar Association, and ACLU of Michigan attended the hearing. For the State, the U.S. Mission to the OAS, the Assistant U.S. Attorney for the Southern District of Ohio (Department of Justice), the Office of the Legal Advisor for Western Hemisphere Affairs (Department of State), and the Office of the Legal Advisor for Human Rights and Refugees (Department of State) attended.

21. On March 16, 2015, the Commission held a hearing on “Criminal Justice and Race in the United States.”⁶ The hearing was requested by the State. At the hearing, the Commission received extensive information from the State about diverse initiatives including compliance with recommendations from the President Obama’s Task Force on 21st Century Policing; investigations of municipal police departments by the Department of Justice; Department of Labor and EEOC anti-discrimination programs and policy changes; and regional cooperation initiatives, among others. The Commission additionally received information on discriminatory policing practices (including New York City’s “Stop and Frisk” program, surveillance of Muslim communities, and police practices in Ferguson, Missouri), the lifelong impact of felony convictions on access to political, economic and social rights, and the militarization of police departments.
22. On October 23, 2015, the Commission held a hearing on “Reports of Excessive Use of Force by the Police against People of African Descent in the United States.”⁷ At the hearing, the Commission received information about racial disparities in the criminal justice system and in police use of force, and received testimony from family members of Rekia Boyd, Clinton Allen, and Tesfaie Mokuria, Afro-descendants killed by police, about the impact of those killings on their families. The Commission additionally received updates on the status of several State reform initiatives first addressed at the October 27, 2014 hearing.
23. On December 7, 2017, the Commission held a hearing on “Reports of impunity for extrajudicial killings in the United States.”⁸ At the hearing, the Commission received testimony from the families of Dontré Hamilton, a mentally ill African American man killed by police in Milwaukee,

⁶ IACHR, 154th Period of Sessions, Thematic Hearing: Criminal Justice and Race in the United States, Mar. 16, 2015. Video of hearing available at: https://www.youtube.com/watch?v=j_OlkzDAaxA [hereinafter “Criminal Justice and Race Hearing”]. See also IACHR, Press Release No. 035/2015, [IACHR Wraps Up its 154th Session](#), Mar. 27, 2015. The hearing was attended by the Lawyers’ Committee for Civil Rights Under Law, the Center for Constitutional Rights, and the ACLU. For the State, the U.S. Mission to the OAS, Department of State, Department of Justice, Department of Labor, and U.S. Equal Employment Opportunity Commission (EEOC) attended.

⁷ IACHR, 156th Period of Sessions, Thematic Hearing: Reports of Excessive Use of Force by the Police against People of African Descent in the United States, Oct. 23, 2015. Video of hearing available at: https://www.youtube.com/watch?v=c_ZLnaWeXck [hereinafter “Police Killings Hearing”]. See also IACHR, Press Release No. 120/15, [IACHR Wraps Up its 156th Session](#), Oct. 28, 2015. The hearing was requested by the Robert F. Kennedy Center for Justice & Human Rights (RFK Human Rights), Rekia’s Haven, Mothers Against Police Brutality, and Saint Louis University School of Law. For the State, the U.S. Mission to the OAS, Department of State, and DOJ attended.

⁸ IACHR, 166th Period of Sessions, Thematic Hearing: Reports of Impunity for Extrajudicial Killings in the United States, Dec. 7, 2017. Video of hearing available at: <https://www.youtube.com/watch?v=U5SvLoYX71M>. [hereinafter “Impunity for Police Killings Hearing”]. The hearing was requested by the Santa Clara University School of Law International Human Rights Clinic, RFK Human Rights, and the ACLU. For the State, the U.S. Mission to the OAS and the Department of State attended.

Wisconsin, and Luis Góngora Pat, an indigenous (Maya) Mexican migrant worker experiencing homelessness killed by police in San Francisco, California, as well as from the journalist Shaun King, about the problem of police killings.

2. On-Site Visit

24. The Inter-American Commission conducted a visit to the United States from September 21-25, 2015, to receive information on racial discrimination, policing in the U.S., and human rights issues related to poverty.⁹ The Commission traveled to the cities of Ferguson and St. Louis, Missouri; New Orleans, Louisiana; and Sanford, Orlando, and Miami, Florida. The visit was led by former Commissioner Rose Marie Belle-Antoine, consultant Nicole Lee, and staff from the Executive Secretariat.
25. On September 21, 2015, the Commission held meetings in Miami, Florida with Mayor Tomas Regalado, Chief of Police Rodolfo Llanes and several high-level police officers, and Carlos Martinez, Public Defender for Miami-Dade County. The Commission also held a general forum with civil society organizations, activists, victims of police violence, and their family members at the St. Thomas University School of Law.
26. On September 22, the Commission traveled to the City of Orlando where it held meetings with Chief of Police John Mina, Chief Administrative Officer Byron Brooks, and Lieutenant Vincent Ogburn. The Commission also held a general forum with civil society organizations, activists, victims, and academics in Florida A&M College of Law. The delegation also traveled that day to the City of Sanford and met with Mayor Jeff Triplett, Chief of Police Cecil Smith, Senior Project Manager Andrew Thomas, and Norton N. Bonaparte Jr., Sanford City Manager. The delegation was informed by Sanford public officials about steps taken to respond to the aftermath of the death of Trayvon Martin on February 26, 2012, and the acquittal of George Zimmerman.
27. On September 23, the delegation met with several officials in the City of New Orleans, including Ursula Price of the Office of the Inspector General; Daniel Cazevana, Chief of Staff of the New Orleans Police Department; Arlinda Westbrook, Deputy Chief of the Public Integrity Bureau; Zach Butterworth, Director of Federal Relations from the Office of Mayor Mitchell J. Landrieu; Sharonda Williams, City Attorney; and Suchitra

⁹ See generally IACHR, Press Release No. 118/15, [IACHR Concludes Visit to Florida, Louisiana and Missouri, United States](#), Oct. 16, 2015 [hereinafter “On-Site Visit Press Release”]. See also IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), 2016.

Satpahi, Director of State and International Relations. The Commission also met with victims and civil society organizations at the Gillis Long Poverty Law Center at Loyola University New Orleans College of Law.

28. On September 24-25, the delegation visited Ferguson and St. Louis, Missouri. Before its visit, as its consistent practice, the Commission requested meetings with several government authorities in Ferguson including Mayor James Knowles III; the Ferguson City Council; Chief of Police John Belmar; and Prosecutor Robert McCullough. Regrettably, these meetings were not granted. The delegation did meet with several of the members of the Ferguson Commission, an independent committee created by Executive Order to study underlying social and economic causes underscored by the unrest in the wake of the death of Michael Brown, including Reverend Starky Wilson, Co-Chair, Felicia Puliam and Brittany Packnett; Senator Maria Nicole Chappelle-Nadal; and Professors Brendan Roediger, Roger Goldman, and Anders Walker. The Commission also held a general forum and individual meetings with civil society organizations, activists, students, and academics at St. Louis University School of Law. The delegation also visited the memorial created for Michael Brown in Canfield, Ferguson.

3. Press Releases

29. The Commission has consistently monitored and highlighted concerns related to the situation of discrimination against African Americans in the United States in press releases from 2014 to the present.
30. On August 22, 2014, the Commission expressed its concern over separate incidents that led to the deaths of Eric Garner and Michael Brown at the hands of police in New York City and Ferguson, Missouri, respectively. At that time, the Commission “consider[ed] that the killings of Garner and Brown represent the continuation of a disturbing pattern of excessive force on the part of police officers towards African Americans and other persons of color,” and “urge[d] the State to give renewed attention to the possible links between these cases and past cases that demonstrated a pattern of use of excessive force against persons of color.”¹⁰
31. On March 20, 2015, the Commission called on all OAS Member States to bring an end to racial discrimination in the Americas, highlighting that

¹⁰ IACHR, Press Release No. 90/14, [IACHR Expresses Concern over Police Killings of African-American Persons in the United States](#), Aug. 22, 2014 [hereinafter “Eric Garner and Michael Brown Press Release”].

structural discrimination impacts the enjoyment of all human rights.¹¹ On March 27, 2015, following its 154th Period of Sessions, the Commission highlighted information from across the region on racism permeating the actions of judicial systems and the use of force by the police, disproportionately impacting young people of African descent.¹²

32. On April 17, 2015, in light of the killing of Walter Lamar Scott at the hands of a police officer in South Carolina, the Commission reaffirmed the State's duty to fully investigate this killing and to adopt coordinated legislative, policy, and institutional measures designed to eliminate racial discrimination, including measures to protect and guarantee the right to non-discrimination.¹³
33. On August 23, 2016, the Commission again manifested its concern over deficiencies in the investigation in the killings of Alton Sterling and Philando Castile by police officers in Louisiana and Minnesota, respectively, as well as the lack of institutional responsibility for these deaths.¹⁴
34. On August 18, 2017, the Commission repudiated the expressions of hate and bigotry expressed by "Unite the Right" protesters gathered in Charlottesville, Virginia. At that time, the Commission "urge[d] public officials [. . .] to unequivocally condemn bigotry and racial hatred and recognize the role such discrimination plays in contributing to violence against African Americans, immigrants, indigenous peoples, and minority communities around the country."¹⁵

4. Additional Sources

35. In addition to the information described above, this report relies on official public information obtained from government sources; reports and studies by United Nations bodies and academic institutions; and information published by non-governmental organizations and media outlets. The Commission notes the importance of considering the perspectives of multiple actors on the complex and multifaceted issue of racial

¹¹ IACHR, Press Release No. 31/15, [IACHR Calls on OAS Member States to Bring an End to Racial Discrimination in the Americas](#), Mar. 20, 2015.

¹² IACHR, Press Release No. 37/15, [IACHR Wraps Up its 154th Session](#), Mar. 27, 2015.

¹³ IACHR, Press Release No. 40/15, [IACHR Condemns the Killing of an African-American Man in the United States](#), Apr. 17, 2015 [hereinafter "Walter Scott Press Release"].

¹⁴ IACHR, Press Release No. 120/16, [IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro-descendants by the Police in the United States](#), Aug. 23, 2016 [hereinafter "Investigation of Police Killings Press Release"].

¹⁵ IACHR, Press Release No. 124/17, [IACHR Repudiates Hate Speech and Violence in Charlottesville, Virginia, United States](#), Aug. 18, 2017 [hereinafter "Charlottesville Press Release"].

discrimination, and further notes the lack of complete, reliable, and up-to-date official statistical data on many of the issues discussed in this report, including incidents of police excessive use of force and police killings.

B. *The Inter-American Commission’s Jurisdiction with regard to the United States*

36. The American Declaration on the Rights and Duties of Man (“American Declaration,” 1948), along with the Charter of the Organization of American States (“OAS Charter”); the Statute of the Inter-American Commission on Human Rights; and the Rules of Procedure of the IACHR form the basis of the Inter-American Commission’s jurisdiction over States that have yet to ratify the American Convention on Human Rights (“American Convention” or ACHR).¹⁶ In particular, it is well-established that the content of the general principles of the OAS Charter—to which all State Parties to the Charter are bound—are contained in and defined by the American Declaration.¹⁷ The Declaration recognizes a range of fundamental human rights—many of which, like the prohibition of torture, additionally enjoy customary legal status—including a number that are highly relevant to the issues of use of force, discrimination, and access to justice addressed in this report.
37. The United States has thus been subject to the jurisdiction of the Inter-American Commission since it deposited its instrument of ratification of the OAS Charter on June 19, 1951.¹⁸ The IACHR, pursuant to its mandate,

¹⁶ See OAS, *General Assembly Resolution 314*, AG/RES. 314 (VII-O/77), June 22, 1977 (entrusting the Inter-American Commission with the preparation of a study to “set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man”); IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser. L/V/II. Doc. 30/14 (2014); OAS, *General Assembly Resolution 371*, AG/RES (VIII-O/78), July 1, 1978. (reaffirming its commitment to “promote the observance of the American Declaration of the Rights and Duties of Man”); OAS, *General Assembly Resolution 370*, AG/RES. 370 (VIII-O/78), July 1, 1978 (referring to the “international commitments” of OAS member states to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

¹⁷ See I/A Court H.R., *Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Ser. A No.10 July 14, 1989, paras. 35-45; IACHR, Res. 3/87, Case 9647, *James Terry Roach and Jay Pinkerton v.* (United States), Sept. 22, 1998; IACHR, *Annual Report 1986-87*, OEA/Ser.L/V/II.71 Doc.9 rev.1, Sept. 22, 1987, paras. 46-49; IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011; Report No. 21/16 Petition 419-08, *Khaled El-Masri.*, (United States), Apr. 15, 2016; Report No. 17/17 Petition P-1105-06, *Pedro Rosello et al.* (United States), Jan. 27, 2017; Report No. 24/15 Petition 1752-09, *Bernardo Aban Tercero* (United States), June 24, 2015; OAS, *American Declaration Of The Rights And Duties Of Man*, adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

¹⁸ OAS, *Charter of the Organization of American States*, as amended by the “Protocol of Buenos Aires”, Feb. 27, 1967, the “Protocol of Cartagena de Indias”, Dec. 5, 1985, the “Protocol of Washington”, Dec. 14, 1992, the “Protocol of Managua”, June 10, 1993, Arts. 53 (defining the status of the IACHR within the OAS) and 106

has monitored the human rights situation in the U.S. via the adoption of case decisions, precautionary measures, and thematic and country-based reports.¹⁹

38. As the Commission has repeatedly stated, universal ratification of inter-American human rights instruments is essential to achieving full protection of the human rights of all persons in the hemisphere.²⁰ In particular, the Commission considers that the ratification of these instruments is highly relevant to combat racial discrimination, to promote the use of force by law enforcement authorities only when absolutely necessary, and to facilitate access to justice and combat impunity in the countries of the region, including the U.S.²¹ Accordingly, the Commission encourages the United States to ratify all relevant regional treaties, including the American Convention on Human Rights; the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”); among others.
39. The Commission has consistently interpreted the American Declaration as requiring States to adopt measures to give legal effect to the rights contained in the American Declaration.²² The Commission has not only required States to refrain from committing human rights violations contrary to the provisions of the American Declaration,²³ but also to adopt affirmative measures to guarantee that the individuals subject to their

(setting forth the IACHR’s mandate). To date, the United States has not ratified the American Convention, and has not accepted the jurisdiction of the Inter-American Court of Human Rights.

¹⁹ See, e.g., IACHR, Toward the Closure of Guantánamo, OAS/Ser.L/V/II., Doc. 20/15 (2015); IACHR, Refugees and Migrants in the United States: Families and Unaccompanied Children, OAS/Ser.L/V/II.155, Doc. 16 (2015); IACHR, Report on Immigration in the United States: Detention and Due Process, OEA/Ser.L/V/II., Doc. 78/10 (2010).

²⁰ IACHR, Considerations related to the universal ratification of the American Convention and other Inter-American Human Rights Treaties, OEA/Ser.L/V/II.152 Doc. 21 (2015); IACHR, Press Release No. 117/16, IACHR Hails Costa Rica’s Ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, Aug. 18, 2016; Press Release No. 81/16, The IACHR celebrates the adoption of the American Declaration on the Rights of Indigenous Peoples, June 22, 2016; Press Release No. 187/16, IACHR Hails the Entry into Force of the Inter-American Convention on the Rights of Older Persons, Dec. 16, 2016; Press Release No. 117/12, IACHR Regrets Decision of Venezuela to Denounce the American Convention on Human Rights, Sept. 12, 2012.

²¹ IACHR, Press Release No. 31/15, IACHR Calls on OAS Member States to Bring an End to Racial Discrimination in the Americas, Mar. 20, 2015.

²² See, IACHR, Report No. 40/04, Case 12.053, Merits, Maya Indigenous Community (Belize), Oct. 12, 2004, para. 162 [hereinafter “Report 40/04, Maya Indigenous Community (2004)”]; Report No. 67/06, Case 12.476, Merits, Oscar Elías Bicet et al. (Cuba), Oct. 21, 2006, paras. 227-231 [hereinafter “Report No. 67/06, Oscar Elías Bicet et al. (2006)”].

²³ See, IACHR, Report No. 63/08, Case 12.534, Admissibility and Merits, Andrea Mortlock (United States), July 25, 2008, paras. 75-95; Report No. 62/02, Case 12.285, Merits, Michael Dominques (United States), Oct. 22, 2002, paras. 84-87.

jurisdiction can exercise and enjoy the rights contained in the American Declaration.²⁴ Under international law the United States is required to harmonize, interpret, and apply its Constitution, domestic legislation, and policies in line with its international obligations at the federal, state, and local levels.

40. The Commission recalls that under international law, the federal government, which commits to international obligations, has a duty to take measures in accordance with internal law to ensure that the entities within the federation are in compliance with the State's overall duties. In this regard, the federal government is responsible to ensure that entities within it observe required standards.
41. The American Declaration recognizes a number of fundamental human rights relevant in the contexts of non-discrimination, the use of force, and access to justice guarantees. Provisions that are pertinent to the right to non-discrimination include the right to equality before law (Article II) and the right to special protections for mothers and children (Article VII). Regarding the use of force, the American Declaration recognizes the right to life, liberty and personal security (Article I) and the right of protection from arbitrary arrest (Article XXV). Regarding the right to access to justice, the Declaration includes the right to a fair trial (Article XXIII), the right of petition (Article XXIV), and the right to due process of law (Article XXVI). Other rights pertinent to issues of excessive use of force against African Americans include the right to recognition of juridical personality and civil rights (Article XVII), and the right to freedom of assembly (Article XXI).
42. The Commission has stated that implementing these provisions of the American Declaration includes the obligation to act with due diligence to prevent, investigate, and punish human rights violations, and the obligation to organize the entire State administrative and legal structure to enable the full exercise of human rights. Such actions may include reforms and reparations intended to transform the existing situation, as well as the adoption of special measures and affirmative actions aimed at effectively promoting rights.²⁵
43. The Commission has traditionally interpreted the scope of the obligations established by the American Declaration in the context of the broader jurisprudence of the universal and inter-American human rights systems,

²⁴ See, IACHR, Report No. 81/10, Case 12.562, Merits, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010, paras. 61-65; Report 40/04, *Maya Indigenous Community* (2004), paras. 122-135, 162, and 193-196; Report No. 75/02, Case 11.140, Merits, *Mary and Carrie Dann* (United States), Dec. 27, 2002, paras. 124-145.

²⁵ IACHR, Considerations related to the universal ratification of the American Convention and other Inter-American Human Rights Treaties, OEA/Ser.L/V/II.152, Doc.21 (2015), para. 11.

in light of developments in the field of international human rights law since the Declaration was first adopted, and with due regard to other rules of international law applicable to Member States.²⁶ In its legal analysis, the IACHR takes into consideration the United States' obligations as a party to certain UN human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

44. The IACHR considered and approved the draft version of this report on July 24, 2018. Pursuant to Article 60(a) of its Rules of Procedure, the Commission forwarded the draft report to the Government of the United States on July 30, 2018, and requested it to present its observations within 30 days. On August 30, 2018, the term granted to the State was exhausted without any manifestation on its part. The Commission approved the final version on November 26, 2018

²⁶ See generally, IACHR, Report No. 81/10, Case 12.562, Merits, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010; Report No. 63/08, Case 12.534, Admissibility and Merits, *Andrea Mortlock* (United States), July 25, 2008; Report 40/04, *Maya Indigenous Community* (2004); Report No. 75/02, Case 11.140, Merits, *Mary and Carrie Dann* (United States), Dec. 27, 2002; Report No. 62/02, Case 12.285, Merits, *Michael Dominques* (United States), Oct. 22, 2002.

CHAPTER 2
STRUCTURAL DISCRIMINATION
AND EXCESSIVE USE OF FORCE
IN THE U.S.

STRUCTURAL DISCRIMINATION AND EXCESSIVE USE OF FORCE IN THE U.S.

45. In this section, the Commission analyzes the historical and contemporary situation of discrimination against Afro-descendants in the U.S., highlighting the structural and pervasive nature of the discrimination against this group, as well as links between historical forms of discrimination and current discriminatory situations and practices in the areas of policing and criminal justice. The Commission considers that a reckoning with the legacy of enslavement, segregation, and discrimination in the U.S. is necessary to effectively transform the situation in the future.²⁷ While special emphasis is placed on discrimination in policing, the Commission notes that this issue is indivisible from the larger structural situation of discrimination against African Americans in the U.S.
46. Most obviously, discrimination in policing is closely linked to discrimination in the criminal justice system as a whole (including racial disparities in arrests and incarceration rates), as well as to other disparities in access to and the full enjoyment of other civil and political rights (including access to justice for victims of police violence and families, and lasting consequences of incarceration, including enjoyment of the right to vote). Indeed, disparities in the nature and intensity of policing of Afro-descendant communities and other historically marginalized groups (racial profiling), including Native Americans and Hispanics, among others, has profoundly influenced what kinds of behavior and which individuals are considered criminal, which necessarily influences rates of criminalization and treatment by the criminal justice system.²⁸ But discrimination in policing is also encouraged by structural discrimination in access to and the full enjoyment of social, economic, cultural, and environmental rights.²⁹ In this sense, the Commission considers that a fuller consideration of the history of racial discrimination against Afro-descendants in the United States is necessary to fully address discrimination in the policing and criminal justice systems today.

²⁷ See IACHR, *Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II, Doc. 45/15 (2015), para. 93 [hereinafter “Human Rights in the Dominican Republic”]. See also *infra* paras. 254-255, 294.

²⁸ See, e.g., Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 Yale L.J. Forum, Jan. 20, 2018.

²⁹ See *infra* para. 48.

A. *Initial Considerations on Structural Discrimination*

47. The Inter-American Commission has previously found that Afro-descendants in the Americas suffer from a situation of structural discrimination, evidenced in indicators relating to poverty, political participation, contact with the criminal justice system, and access to quality housing, health care, and education, among others. Structural discrimination is also reflected in the continued stereotyping of and prejudice against persons of African descent.³⁰ Similarly, the Committee on the Elimination of Racial Discrimination (CERD) has recognized that “[r]acism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them.”³¹
48. The Commission has previously stated that structural or systemic discrimination refers to the set of norms, rules, routines, patterns, attitudes, and standards of behavior, de jure and de facto, that give rise to a situation of inferiority and exclusion of a group of persons in a generalized sense; these traits are perpetuated over time and even generations. Thus, structural discrimination is not isolated, sporadic, or episodic; rather, it emerges from a historical, socioeconomic, and cultural context.³² It is generalized in that it is a large-scale problem, and systemic in that it encompasses the way decisions, practices, policies, and the culture of a society are adopted. From this viewpoint, structural discrimination is not strictly or narrowly defined. Thus, the Commission considers that issues involving structural patterns or practices demand an overall assessment of the historical, material, temporal, and spatial circumstances surrounding the situation.³³
49. The Commission considers that the historical legacy of subjugation, enslavement, terror, marginalization, segregation, and exclusion from enjoying the rights of citizens in the U.S., de jure and de facto, has continuing repercussions for African Americans’ full enjoyment of human

³⁰ IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II., Doc. 62 (2011) [hereinafter “People of African Descent in the Americas”], paras. 42, 46.

³¹ U.N., Comm. Elimination of Racial Discrimination, *General recommendation No. 34: Racial discrimination against people of African descent*, 79th session, CERD/C/GC/34, Oct. 3, 2011, para. 6.

³² IACHR, *Human Rights in the Dominican Republic* (2015), para. 368 (citation omitted).

³³ *Id.* (citing, *inter alia*, IACHR, Report No. 64/12, Case 12.271, Merits, *Benito Tide Méndez et al.* (Dominican Republic), Mar. 29, 2012, para. 53); *see also* I/A Ct. H.R., *Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of Oct. 20, 2016. Series C No. 318, paras. 334-341 (discussing structural discrimination against poor and Afro-descendant workers who performed forced slave labor at a plantation in Brazil for years with the knowledge and tacit consent of the State).

rights today in virtually every sphere.³⁴ The Commission points to continuing disparities in access to employment³⁵ and equal pay,³⁶ housing (both home ownership³⁷ and access to affordable housing³⁸), food,³⁹ potable water,⁴⁰ a clean and healthy environment,⁴¹ health care⁴² (including maternity and reproductive care,⁴³ and racial discrimination in the provision of health care⁴⁴), primary education⁴⁵ and higher education,⁴⁶

³⁴ See also IACHR, People of African Descent in the Americas (2011), para. 46; Human Rights Committee, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up Mission to the United States of America, A/HRC/35/28/Add.2, June 12, 2017, para. 13; U.N., Comm. Elimination of Racial Discrimination, Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, U.N. Doc. CERD/C/USA/CO/7-9, Sept. 25, 2014 [hereinafter “CERD, Concluding Observations 2014”]; U.N., Working Group of Experts on People of African Descent, 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, Aug. 18, 2016 [hereinafter “Working Group on People of African Descent, Report on mission to the U.S.”].

³⁵ The Atlantic, Education Gaps Don't Fully Explain Why Black Unemployment Is So High, Dec. 21, 2015. See also IACHR, People of African Descent in the Americas (2011), paras. 47-48.

³⁶ CNN Money, Wage gap between blacks and whites is worst in nearly 40 years, Sept. 20, 2016 (“the hourly pay gap between blacks and whites widened to 26.7% [...] [R]esearchers found discrimination...and growing earnings inequality in general, to be the primary factors.”). Black women are particularly adversely affected by the wage gap, by virtue of double discrimination against them. National Partnership for Women & Families, Black Women and the Wage Gap, Mar. 2017 (“Black women [in the U.S.] are typically paid just 63 cents for every dollar paid to white, non-Hispanic men. Overall, women [...] are typically paid 80 cents for every dollar paid to men.”).

³⁷ See *infra* para. 61. See also CERD, Concluding Observations 2014, Sept. 25, 2014, para. 13.

³⁸ The CERD has emphasized the persistence of discrimination in access to housing and the high degree of racial segregation and concentrated poverty in neighborhoods characterized by sub-standard conditions and services. See CERD, Concluding Observations 2014, Sept. 25, 2014, para. 13. See also ProPublica, Living Apart: How the Government Betrayed a Landmark Civil Rights Law, June 25, 2015.

³⁹ Feeding America, African American Hunger Facts, June 21, 2017.

⁴⁰ The emblematic case is Flint, Michigan (a city whose population is 57 percent African American, with 40 percent of residents living under the poverty line). The high-profile environmental and public health disaster of extreme lead contamination of the city’s drinking water was first reported in 2014, and remained unremediated until late 2017.. U.S. News & World Report, Expert Declares Qualified End to Water Crisis in Flint, Sept. 15, 2017; Detroit News, Flint: ‘All clear’ for drinking water years away, Mar. 7, 2017; CNN, Flint, Michigan: Did race and poverty factor into water crisis?, Jan. 28, 2016. See also National Resources Defense Council, REPORT: Nearly One in Four Americans’ Drinking Water Comes from Untested or Contaminated Systems, May 2, 2017. NPR,

⁴¹ See CERD, Concluding Observations 2014, Sept. 25, 2014, para. 10 (“[...] racial and ethnic minorities, as well as indigenous peoples, continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries.”). In this regard, see also Washington Post, Freddie Gray’s life a study on the effects of lead paint on poor blacks, Apr. 29, 2015; IACHR, Indigenous Peoples, Communities of African Descent, and Extractive Industries, OEA/Ser.L/V/II., Doc. 47/15 (2015).

⁴² Allan S. Noonan, et al., Improving the health of African Americans in the USA: an overdue opportunity for social justice, 2016; see also IACHR, People of African Descent in the Americas (2011), para. 52; CERD, Concluding Observations 2014, para. 15.

⁴³ LA Times, The quiet crisis among African Americans: Pregnancy and childbirth are killing women at inexplicable rates, Oct. 26, 2017; In Our Own Voice, Our Bodies, Our Lives, Our Voices: The State of Black Women and Reproductive Justice, June 2017; CERD, Concluding Observations 2014, Sept. 25, 2014, para. 15; IACHR, People of African Descent in the Americas (2011), para. 68.

⁴⁴ CNN, Racism in medicine: An ‘open secret’, Oct. 26, 2016; U.S. News & World Report, Racial Bias in Medicine Leads to Worse Care for Minorities, Feb. 11, 2016.

access to voting rights⁴⁷ and overall political participation,⁴⁸ de facto (re)segregation of neighborhoods⁴⁹ and schools,⁵⁰ in addition to racial disparities in policing and criminal justice, addressed in the following sections.

50. The Commission recognizes that, in addition to discrimination on the basis of race, Afro-descendants may face multiple other kinds of discrimination on the basis of other aspects of their identity. This concept, known as “intersectionality,”⁵¹ highlights that discrimination on the basis of race is inextricably linked with other factors including sex, ethnicity, national origin, religion or belief, gender identity and expression, sexual orientation, health, age, disability, and class, among others.⁵² In this sense, the Commission has reaffirmed that “intersectionality is a basic concept for understanding the scope of the general obligations of State parties.”⁵³
51. Given this panorama, the Commission briefly reviews here the history of racial discrimination in the U.S., with the goal of highlighting the dimensions of structural discrimination relevant to current issues of discrimination, particularly in the areas of policing and criminal justice.

⁴⁵ Handbook of Research in Education Finance and Policy, Patterns and Trends in Racial/Ethnic and Socioeconomic Academic Achievement Gaps; Brookings Institution, 7 findings that illustrate racial disparities in education, June 6, 2016; see also IACHR, People of African Descent in the Americas (2011), paras. 53-54; CERD, Concluding Observations 2014, Sept. 25, 2014, para. 14.

⁴⁶ USA Today, Report: The race gap in higher education is very real, Mar. 7, 2017; The Chronicle of Higher Education, Racial Disparities in Higher Education: an Overview, Nov. 10, 2015.

⁴⁷ See, e.g., Washington Post, Do voter identification laws suppress minority voting? Yes. We did the research., Feb. 15, 2017; POLITICO Magazine, The Real Voting Problem in the 2016 Election, Oct. 24, 2016.

⁴⁸ U.N., Human Rights Comm., Concluding observations on the fourth periodic report of the United States of America, U.N. Doc CCPR/C/USA/CO/4, Apr. 23, 2014; see also IACHR, People of African Descent in the Americas (2011), para. 55-56.

⁴⁹ Slate, The Invisible Segregation of Diverse Neighborhoods, July 24, 2017; New York Times, Affluent and Black, but Still Trapped by Segregation, Aug. 20, 2016.

⁵⁰ Seattle Times, Segregation worse in schools 60 years after Brown v. Board of Education, Sept. 14, 2017; The Atlantic, Segregation Now . . ., May 2014; ProPublica, Segregation Now: The Resegregation of America’s Schools, Apr. 16, 2014; Washington Post, The most segregated schools may not be in the states you’d expect, May 15, 2014.

⁵¹ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, *U. Chicago Legal Forum* (1989); see also, e.g., Columbia Law School, Kimberlé Crenshaw on Intersectionality, More than Two Decades Later, June 8, 2017.

⁵² See IACHR, People of African Descent in the Americas (2011), paras. 59-61.

⁵³ See IACHR, Indigenous Women, OEA/Ser.L/V/II., Doc. 44/17, (2017), para. 38 (citing IACHR, People of African Descent in the Americas (2011), para. 60. See also U.N., Comm. Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the Obligations of States Parties under Section 2 of the CEDAW, Oct. 19, 2010, para. 18).

B. Historical Overview of Discrimination and Racism in the United States

52. The Commission recalls that one of the principal consequences of the history of colonialism and enslavement is the multiple forms of discrimination and racism to which Afro-descendants have been subjected across the length and breadth of the American hemisphere.⁵⁴ In this respect, the Commission has previously observed that:

Despite the deep historical roots of discrimination and racism against Afro-descendants and indigenous people in the Americas, these problems and their consequences and causes have been largely ignored, buried, and even denied in the majority of the States of the Americas. A number of factors have conspired to make discrimination and racism an invisible phenomenon in the Americas, one being the way in which racism became engrained, both historically and culturally, from the time of slavery and colonialism up to the present day. In the Commission's view, while many of the manifestations of discrimination and racism that Afro-descendants and indigenous peoples still encounter in the American hemisphere can be traced to [...] historical facts, they are also attributable to the fact that they have not been fully recognized or addressed by [...] States [...] and have to a large extent been rendered invisible until recent years. As the Commission has observed, the Afro-descendant population in the Americas has endured a history of neglect, exclusion, and social and economic disadvantage that impairs the enjoyment of their fundamental rights.⁵⁵

53. The history of racism against Afro-descendants in the United States, as in the Americas generally, is deeply linked to the history of chattel slavery beginning in the colonial period. The origins of slavery in the United States date to the early 1600s, when Africans were first brought to the present-day U.S. both directly from Africa and from Caribbean islands like Barbados, to work on farms and plantations in the colonies.⁵⁶ Over the course of that century, the incipient racial hierarchy transformed into a permanent, hereditary condition of slavery on the basis of skin color.⁵⁷ As

⁵⁴ IACHR, [Human Rights in the Dominican Republic](#) (2015), para. 92.

⁵⁵ *Id.* at para. 93.

⁵⁶ Slate, [The Birth of Race-Based Slavery](#), May 19, 2015 (reprinted from Peter H. Wood, *Strange New Land: Africans in Colonial America*, New York: Oxford University Press, 2003).

⁵⁷ *See id.*

the institution of slavery became more entrenched, so did the need to maintain this economic order by assisting plantation owners in recovering and punishing slaves who attempted to escape; in 1704, the colony of South Carolina developed the nation's first slave patrol to catch and return escaped slaves, deter slave revolts, and carry out beatings and whippings, seeking to thwart any activity that might threaten the continued existence of the institution of slavery.⁵⁸ Slave patrols were thus “the first uniquely American form of policing.”⁵⁹

54. The transatlantic slave trade continued to grow over the following centuries, and by the time of the Revolutionary War (1775-83) and subsequent drafting of the U.S. Constitution (1787), the system of race-based slavery was well entrenched in many of the colonies. While the economies of southern colonies like Virginia, Maryland, and the Carolinas largely depended on the exploitation of slave labor on agricultural plantations, the industrialists, banks, and financiers of northern New England and Mid-Atlantic colonies profited enormously from their investments in and trade relationships with slaveholding colonies, both in the south and in the Caribbean.⁶⁰ While the word “slavery” was consciously excluded from the Constitution, it is widely seen as being tacitly recognized in the infamous “Three-Fifths Compromise.”⁶¹ In this way, racialized hierarchy was included as a part of the founding legal and economic order of the U.S.
55. During the early 19th century, debates over the continued existence of slavery between northern and southern states intensified as conflicts

⁵⁸ Victor E. Kappeler (Eastern Kentucky University), [A Brief History of Slavery and the Origins of American Policing](#), 2014. See also Katheryn Russell-Brown, “Making Implicit Bias Explicit,” in Angela J. Davis (ed.), *Policing the Black Man* (New York: Pantheon, 2017) [hereinafter “*Policing the Black Man*”]; Southern Poverty Law Center, [Ku Klux Klan: A History of Racism and Violence](#), 2011 (“The mounted patrols, or regulators [...] prowled Southern roads, enforcing the curfew for slaves, looking for runaways, and guarding rural areas against the threat of black uprisings. They were authorized by law to give a specific number of lashes to any violators they caught.”)

⁵⁹ Katheryn Russell-Brown, “Making Implicit Bias Explicit,” in *Policing the Black Man* (2017), p. 140.

⁶⁰ New York Times, [How the Slave Trade Built America](#), Apr. 3, 2015 (“Slave owners in the Upper South profited because they received cash for the people they sold. Slave owners in the Lower South profited because the people they purchased were forced to labor in the immensely productive cotton and sugar fields. The merchants who supplied clothing and food to the slave traders profited, as did steamboat, railroad and shipowners who carried enslaved people. Capitalists in the North profited by investing in banks that handled the exchange of money for people, or in insurance companies that provided insurance for the owners’ investments in enslaved people. So did foreign investors in Southern securities, some of which were issued on mortgaged slaves. The hotbed of American abolitionism — New England — was also the home of America’s cotton textile industry, which grew rich on the backs of the enslaved people forced to pick cotton.”) See also Boston Globe, [Slave trade helped build early New England economy](#), June 23, 2016.

⁶¹ This clause (Art. I, Sec. 2, para. 3) provided that enslaved (Afro-descendant) persons would be counted for census purposes as “three-fifths” of a (free, white) person, an intentional agreement to increase the political representation of the Southern states vis a vis the North in the House of Representatives, where representation is determined by state population. As a result, slaves were counted to determine the number of state House delegates, but could not vote, thus increasing the relative political power of Southern whites.

developed on a number of fronts: key flash points included the continuing debate over the expansion of slavery westward into the territories,⁶² legal challenges to the enforcement of fugitive slave laws, including the Fugitive Slave Act of 1850,⁶³ and the Supreme Court’s infamous Dred Scott decision of 1857—widely seen as a failed attempt to placate slave states to avoid civil war—which held that any descendant of slaves in the U.S. “are not included, and were not intended to be included, under the word ‘citizens’ in the Constitution,” and had “no rights which the white man was bound to respect.”⁶⁴ The failure of these compromises and other legal and political measures to resolve the continuing conflict between northern and southern states over slavery led the country closer and closer to Civil War.

56. By the eve of the Civil War, slavery was fully institutionalized in the U.S. economic and legal order, with an extensive system of state Slave Codes that criminalized most aspects of Black existence, as well as federal enforcement mechanisms.⁶⁵ Slavery as a social and economic system depended on the total and brutal control of black bodies and black lives.⁶⁶ Virginia, for example, enacted more than 130 slave statutes between 1689

⁶² At issue was whether, as additional territories in the west were settled and admitted to the union as states, the relative number of slave states versus free states would shift. Any shift would affect the balance of power in the Senate, where each state has two representatives regardless of population, and thus the ability to end slavery or continue it in perpetuity. These debates played out multiple times in the early 1800s, including in the passage of the Northwest Ordinance (1807), the Missouri Compromise of 1820 (which prohibited slavery north of the 36°30’ parallel), the Kansas-Nebraska Act (1854), and the Compromise of 1850, among others.

⁶³ The Fugitive Slave Act of 1850 was an essential element of the Compromise of 1850 (see previous footnote), and replaced the Fugitive Slave Act of 1793. The new Act made it easier to arrest Blacks accused of being escaped slaves, and created financial incentives for federal officials to the arrest and return of alleged “fugitive slaves” (and imposed fines and penalties on those who refused to cooperate), implicating Northern states in the physical and legal enforcement of slavery in the Southern states. See, e.g., The Atlantic, [The Old Jim Crow](#), Oct. 15, 2014. This Act became a flashpoint in the growing anti-slavery unrest in the years leading up to the Civil War. See also Stanley Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850–1860* (Chapel Hill: University of North Carolina Press, 1970).

⁶⁴ Dred Scott v. Sandford, 60 U.S. 393, 404, 407 (1857).

⁶⁵ “Prior to the Civil War, many jurisdictions made slaves into “criminals” by [...] enact[ing] criminal statutes barring slaves from learning to read, leaving their masters’ property without a proper pass, engaging in “unbecoming” conduct in the presence of a white female, assembling to worship outside the supervisory presence of a white person, neglecting to step out of the way when a white person approached on a walkway, smoking in public, walking with a cane, making loud noises, or defending themselves from assaults. Governed by a separate law of crimes, slaves were also subjected to a separate brand of punishment. Slaves [...] were subjected to capital punishment for a wider range of crimes than any other sector of the population. Virginia, for instance, defined seventy-three capital crimes applicable to slaves but only one—first degree murder—applicable to whites.” The Atlantic, [The Old Jim Crow](#), Oct. 15, 2014.

⁶⁶ See, e.g., Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (Boston: The Anti-Slavery Society, 1845; reprint New York: Dover, 1995); Harriet Jacobs, *Incidents in the Life of a Slave Girl* (Boston, 1861; reprint New York: Dover, 2001); Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (New York: Cambridge, 2008); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage, 1998); Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

and 1865.⁶⁷ This architecture amounted to “a legally sanctioned law enforcement system [...] for the express purpose of controlling the slave population and protecting the interests of slave owners.”⁶⁸ The existence of such an extensive system is explained by the fact that that slavery was central to U.S. prosperity; by 1860, the four million slaves in the U.S. were worth some US \$3.5 billion, “making them the largest single financial asset in the entire U.S. economy, worth more than all manufacturing and railroads combined.”⁶⁹

57. The Civil War (1861-1865) claimed at least 600,000 lives and resulted in the end of the legal institution of slavery in the U.S.⁷⁰ At the conclusion of the Civil War, the U.S. took steps to affirm and expand the Emancipation Proclamation of 1863, which had declared the emancipation of slaves in the Confederate states, by ending slavery throughout the U.S. and extending formal legal equality to African Americans through the passage and ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution (the “Reconstruction amendments”).⁷¹ The Thirteenth Amendment prohibits slavery and involuntary servitude, except for those duly convicted of a crime. The Fourteenth Amendment granted citizenship to all persons born or naturalized in the U.S., proclaims the right of all citizens to equal protection and due process of law, and gives the federal government certain enforcement powers vis a vis the states in this area.⁷² The Fifteenth Amendment prohibits denial of the right to vote on the basis of race or former condition of servitude.
58. These amendments, along with early civil rights legislation during the Reconstruction period (1865-1877), including the Civil Rights Act of 1866 and the Freedmen’s Bureau Act, promised citizenship, liberty, and formal legal equality to African Americans, and the early Reconstruction period in

⁶⁷ Victor E. Kappeler (Eastern Kentucky University), [A Brief History of Slavery and the Origins of American Policing](#), 2014.

⁶⁸ Id. (citing Turner et al. (2006), Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts, *Journal of Criminal Justice Education*, 17:(1), 186).

⁶⁹ Figure estimated in today’s dollars. The Atlantic, [Slavery Made America](#), June 24, 2014 (citing David Blight (Yale University), *The Civil War and Reconstruction Era, 1845-1877*, 2008); see also Roger L. Ransom (U. California-Riverside), *The Economics of the Civil War*, 2004 (estimating the value of all slaves in the U.S. in 1860 at \$3 billion); Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

⁷⁰ See, e.g., James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988).

⁷¹ See, e.g., Equal Justice Initiative, [Lynching in America](#) (3d edition), 2017, p. 7; U.N., Working group on People of African Descent. [Report on mission to the U.S.](#), Aug. 18, 2016, para. 6.

⁷² See Amdt. XIV, sec. 5. Section 2 also effectively overturns the “Three-Fifths Compromise” by mandating that representatives be apportioned proportionately, counting all persons in each state as whole persons (“excluding Indians not taxed”).

fact saw significant advances in African American political participation.⁷³ In the South, Black men for the first time enjoyed the right to vote and hold office.⁷⁴ The Reconstruction governments of the South made important state-level changes, repealing discriminatory laws, rewriting vagrancy statutes, outlawing corporal punishment, and reducing the number of capital offenses.⁷⁵ However, these sea changes quickly provoked white supremacist backlash, with a “wave of counter-revolutionary terror that swept over large parts of the South between 1868 and 1871 lack[ing] a counterpart either in the American experience or in that of the other Western Hemisphere societies that abolished slavery in the nineteenth century.”⁷⁶ The political will to continue Reconstruction and defend the civil and political rights of African Americans faltered in the face of continuing violence and resistance to Republican governments in the South, exemplified by the Colfax Massacre of 1873.⁷⁷

59. Reconstruction ended in 1877 with a political compromise to ensure a Republican presidency in exchange for the withdrawal of federal troops from the South. During this period and soon thereafter, a series of Supreme Court decisions effectively undid or left toothless key guarantees contained in the Reconstruction amendments. These included *Plessy v. Ferguson*⁷⁸ (which blessed the “separate but equal” doctrine and permitted states to mandate the racial segregation of public spaces), *Giles v. Harris*⁷⁹ (which led to the mass disenfranchisement of Black voters across the south), and

⁷³ During the Reconstruction period, at least 2,000 African American men held public office, from local office to U.S. Senate seats. History.com, [Black Leadership During Reconstruction](#), 2010. As Thomas Miller, a Black lawyer and legislator in South Carolina, would recall in 1895 about the Reconstruction years: “We were eight years in power. We had built schoolhouses, established charitable institutions, built and maintained the penitentiary system, provided for the education of the deaf and dumb, rebuilt the ferries. In short, we had reconstructed the State and placed it upon the road to prosperity.” Quoted in Ta-Nehisi Coates, *We Were Eight Years in Power: An American Tragedy* (New York: Random House, 2017).

⁷⁴ W.E.B. DuBois, *Black Reconstruction in America, 1868-1880* (New York: Oxford University Press, 1935). Black women, of course, would wait until the passage of the Nineteenth Amendment in 1920 to enjoy the legal right to vote.

⁷⁵ Equal Justice Initiative, [Lynching in America](#) (3d edition), 2017, p. 11.

⁷⁶ *Id.* at p. 12 (citing Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: HarperCollins, 1988).

⁷⁷ Smithsonian Magazine, [The 1873 Colfax Massacre Crippled the Reconstruction Era](#), Apr. 13, 2016. This event would further have legal repercussions, as the white defendants charged in the massacre were later acquitted in *U.S. v. Cruikshank* (see *supra* para. 58).

⁷⁸ 63 U.S. 537 (1896).

⁷⁹ 189 U.S. 475 (1903). In *Giles*, the Supreme Court declined to review an Alabama law that required that registered voters be of “good character,” a requirement that was enforced in a racially biased manner to disenfranchise virtually all Black voters. This decision effectively sanctioned the disenfranchisement of Black voters in the South, signaling that the federal government would not intervene to enforce the 15th Amendment. This situation persisted at least until the passage of the Voting Rights Act of 1965. See *infra* para. 63.

the Slaughter-house Cases, *U.S. v. Cruikshank*, and the Civil Rights Cases⁸⁰ (which together gave an extremely restrictive reading to the “Privileges and Immunities” clause of the Fourteenth Amendment and established the “state action” doctrine, which holds that the federal government cannot intervene to redress violations of rights by private actors).⁸¹ Thus stripped of federal protections of their civil rights, Mississippi Governor Adelbert Ames predicted, “[Blacks] are to be returned to a condition of serfdom [...] An era of second slavery.”⁸²

60. As early as 1866, Southern states began passing discriminatory criminal laws or “black codes,” which created new, vague, and unequally applied criminal offenses like “vagrancy” and “loitering.” These laws enabled the mass arrest and incarceration of African Americans; then, relying on the language of the Thirteenth Amendment that prohibits slavery and involuntary servitude “except for those duly convicted of a crime,” legislators created systems of “convict leasing” to “lease” prisoners to private companies to labor for them, or required prisoners to work on state-owned farms.⁸³ Thus, “[w]hile a Black prisoner was a rarity during the slavery era [...] the solution to the free black population had become criminalization. In turn, the most common fate facing black convicts was to be sold into forced labor for the profit of the state.”⁸⁴
61. Following the end of Reconstruction, states and municipalities acted to reinstate or reinforce legal racial hierarchy by passing “Jim Crow” laws,

⁸⁰ Slaughter-House Cases, 83 U.S. 36 (1873); *U.S. v. Cruikshank*, 92 U.S. 542 (1875); Civil Rights Cases, 109 U.S. 3 (1883). The Civil Rights Cases cases ruled unconstitutional the Civil Rights Act of 1875, which banned race discrimination in access to services offered to the public. The decision was effectively reversed in jurisprudence of the Supreme Court from 1937, and finally by legislation in the Civil Rights Act of 1964. On the three cases mentioned, see also Equal Justice Initiative, *Lynching in America* (3d edition), 2017, p. 16-18.

⁸¹ The “state action” doctrine has had widespread and long-lasting effects on the development of constitutional jurisprudence and the justiciability of human rights violations in the United States, as it effectively placed a wide range of private violations of rights beyond the reach of federal power to provide a remedy. In this regard, consider the landmark Supreme Court cases which outlawed racial discrimination by private businesses (see para. 63), finding the Constitutional authority to do so under the Commerce Clause (Art. I, Sec. 8, Clause 3) rather than the Fourteenth Amendment.

⁸² Quoted in Equal Justice Initiative, *Lynching in America* (3d edition), 2017, p. 21.

⁸³ Equal Justice Initiative, *Lynching in America* (3d edition), 2017, p. 23; see also David Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1997); Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Random House, 2008); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), p. 156-57.

⁸⁴ Equal Justice Initiative, *Lynching in America* (3d edition), 2017, p. 23 (citing Jennifer Rae Taylor, Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights, 47 *Gonzaga Law Review* 365, 374 (2012)); see also David Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1997); Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Random House, 2008) (excerpted in Wall Street Journal, *A Different Kind of Slavery*, Mar. 29, 2008; see also Wall Street Journal, *From Alabama's Past, Capitalism Teamed With Racism to Create Cruel Partnership*, July 16, 2001).

which enforced “racial segregation and persecution [...] political disenfranchisement, social and economic exploitation, violence and the overall subjugation of people of African descent until the 1960s.”⁸⁵ During this time, states introduced new voting restrictions, including poll taxes and literacy tests, effectively undoing in practice the promise of the Fifteenth Amendment;⁸⁶ the modern Ku Klux Klan (KKK) came to prominence;⁸⁷ and lynchings and other forms of violent racial terrorism,⁸⁸ as well as theft of land and other property from Black landowners, became increasingly common.⁸⁹ This system reigned until the Civil Rights Movement of the 1950s and 1960s.

62. In the early and mid-20th century, de facto and government-sponsored housing segregation also reigned throughout the country, undergirded by a regime of government-backed low-interest home loans, mortgages, and housing insurance, and programs to construct segregated housing projects and neighborhoods. These government programs explicitly or de facto (through practices like “red-lining”) excluded black families from benefitting.⁹⁰ As home equity makes up the majority of household wealth for the median family in the U.S., these practices prevented a generation or more of African American families from building household wealth; this

⁸⁵ U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, para. 7.

⁸⁶ From 1885 to 1908, all eleven former Confederate states rewrote their constitutions to include provisions restricting voting rights with poll taxes, literacy tests, and felon disenfranchisement; poll taxes and literacy tests remained legal until the passage of the Voting Rights Act in 1965. Equal Justice Initiative, [Lynching in America](#) (3d edition), 2017, p. 23. *See supra* para. 58.

⁸⁷ Ex-Confederate soldiers in the south formed the Klan in the months after the end of the Civil War in 1865, and became more organized and violent over the subsequent years. Southern Poverty Law Center, [Ku Klux Klan: A History of Racism and Violence](#), 2011.

⁸⁸ Lynchings were violent, public acts of torture that traumatized Blacks throughout the country and were largely tolerated by state and federal officials. A recent report documented 4,084 racial terror lynchings in twelve southern states between 1877 and 1950, at least 800 more lynchings in these states than previously reported. The report also documented more than 300 racial terror lynchings in other states during this period. Equal Justice Initiative, [Lynching in America](#) (3d edition), 2017. *See also* U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, para. 7.

The EJI found that the decline of lynching “relied heavily on the increased use of capital punishment imposed by court order following an often accelerated trial. That the death penalty’s roots are sunk deep in the legacy of lynching is evidenced by the fact that public executions to mollify the mob continued after the practice was legally banned.” EJI, [Lynching in America](#) (3d edition), 2017.

⁸⁹ *See, e.g.*, William A. Darity, Jr. & Dania Frank (2005), “The Economics of Reparations,” in Conrad et al., eds., *African Americans in the US Economy* (2005), p. 335. The authors argue that the grotesque violence of public lynchings was closely linked to the theft of Black property, citing hundreds of documented cases of land theft as well as the race riots in Wilmington, NC (1898), Tulsa, Oklahoma (1921), and Rosewood, Florida (1923), which burned prosperous Black communities in those cities to the ground.

⁹⁰ *See* The Atlantic Magazine, [The Case for Reparations](#), June 2014; Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright, 2017).

wealth gap remains evident today and has not been remedied to date by the federal government.⁹¹

63. As organized resistance to Jim Crow racial apartheid began to swell in the early 1950s, black demonstrators were met with violent opposition by white police officers and community members. Black activist groups like the Southern Christian Leadership Conference (SCLC), the Student Nonviolent Coordinating Committee (SNCC), and other coalitions protested racial segregation and disenfranchisement through boycotts, sit-ins, voter registration drives, and mass marches like the March on Washington and the Selma to Montgomery March (“Bloody Sunday”), consistently facing physical attacks, riots, and bombings from whites.⁹²
64. This activism led to a series of judicial and legislative victories in the 1950s and 1960s, including the passage of the Civil Rights Act of 1964, which ended legal segregation in public places and banned employment discrimination on the basis of race, color, religion, sex, or national origin; the Voting Rights Act of 1965, which seeks to overcome barriers to African Americans’ exercise of voting rights; and the Fair Housing Act of 1968, which prohibits discrimination in the purchase or rental of property. Concurrently, several key Supreme Court decisions reversed de jure systems of racial segregation and discrimination. In particular, *Brown v. Board of Education* and *Brown II*⁹³ mandated and then enforced school desegregation; and *Heart of Atlanta Motel v. U.S.* and *Katzenbach v. McClung*⁹⁴ prohibited racial discrimination by private businesses.
65. In the context of fears of rising criminality and social disorder in the United States that followed the massive protest movements of the 1960s,⁹⁵ new policing theories and policies were developed that frame important aspects of the problem of police violence today. First, increased policing within the framework of the “War on Drugs” worked to disrupt black protesters and

⁹¹ See New Yorker, [The Widening Racial Wealth Divide](#), Oct. 10, 2016; Forbes, [The Racial Wealth Gap: Why A Typical White Household Has 16 Times The Wealth Of A Black One](#), Mar. 26, 2015. Since the 2008 financial crisis, there has been increasing scrutiny of predatory lending practices against Black and other minority communities. Chicago Tribune, [Why black homeownership rates lag even as the housing market recovers](#), June 21, 2017; New York Times, [How Homeownership Became the Engine of American Inequality](#), May 9, 2017.

⁹² Equal Justice Initiative, [Lynching in America](#) (3d edition), 2017, p. 58.

⁹³ *Brown I*, 347 U.S. 483 (1954); *Brown II*, 349 U.S. 294 (1955). Prior public university desegregation cases included *Sweatt v. Painter*, 339 U.S. 629 (1950) (regarding desegregation of the University of Texas School of Law), and *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (regarding desegregation of the University of Oklahoma School of Law).

⁹⁴ *Heart of Atlanta Motel v. U.S.*, 379 U.S. 241 (1964); *Katzenbach v. McClung* (“Ollie’s Barbeque”), 379 U.S. 294 (1964).

⁹⁵ These include not only Civil Rights and Black Power movements but also, among others, the American Indian Movement, the Red Power and Chicano Movements, the United Farm Workers Movement, the rise of the New Left and the anti-Vietnam War movement, and the women’s liberation and gay liberation movements.

communities,⁹⁶ and has resulted in rising incarceration. The “War on Drugs” consists of laws, policies, and international cooperation initiatives intended to discourage the production, distribution, and use of drugs, and has resulted in a “notable increase in the number of persons deprived of liberty for drug-related criminal acts.”⁹⁷ In the U.S., the “War on Drugs” has led to the heavy criminalization of drug possession and consumption, including the creation of “mandatory minimum” prison terms and increased policing efforts directed toward drug arrests. These policies have been applied in a racially discriminatory way, “result[ing] in a situation where 1 in every 15 black men is currently in jail and 1 in every 13 African Americans has lost their right to vote owing to a felony conviction.”⁹⁸ Between 1970 and 2016, the number of people incarcerated in state and federal prisons in the U.S. grew from 196,429 to 1,505,400;⁹⁹ within this number, black inmates are grossly overrepresented.¹⁰⁰

66. Additionally, the “Broken Windows” theory of policing was introduced in the 1980s by two criminologists who suggested that crime flourishes in environments of lax law enforcement.¹⁰¹ To remedy this, they proposed increasing policing of small “quality of life” offenses like loitering, vandalism, trespassing, and public consumption of alcohol, considering them “gateways” to the commission of more serious crimes.¹⁰² The theory calls for an aggressive, arrest-based approach to policing and the heavy criminalization of petty offenses.¹⁰³ This theory was piloted as policy in

⁹⁶ John Erlichman, a Watergate co-conspirator and former domestic policy adviser to President Richard Nixon (1969-74), was quoted in a 1994 interview recently published by Harper’s saying, “[The Nixon Administration] had two enemies: the antiwar left and black people [...] We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.” Harper’s Magazine, Legalize It All: How to win the war on drugs, Apr. 2016.

Activists associated with many of the movements listed above were also actively pursued and harassed by the federal government, most prominently the FBI under the Counterintelligence Program (“COINTELPRO”), during the 1960s as well.

⁹⁷ IACHR, Measures to Reduce Pretrial Detention, OEA/Ser.L/V/II.163, (2017), para. 9; see also IACHR, 150th Period of Sessions, “Drug Policies and Human Rights in the Americas,” Mar. 25, 2014. Video available at: <https://www.youtube.com/watch?v=YqsAddPVcMl>.

⁹⁸ Human Rights Committee, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up Mission to the United States of America, A/HRC/35/28/Add.2, June 12, 2017, para. 13 (citations omitted); see also U.N., Working Group on People of African Descent, Report on mission to the U.S., Aug. 18, 2016, para. 31.

⁹⁹ Bureau of Justice Statistics (BJS), Bulletin: Prisoners 1925-81, Dec. 1982; BJS, Prisoners in 2016, Jan. 9, 2018.

¹⁰⁰ See *infra* paras. 129-134.

¹⁰¹ The Atlantic Magazine, Broken Windows: The police and neighborhood safety, Mar. 1982 (“[I]f a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. [...] one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.”).

¹⁰² *Id.*

¹⁰³ “This wish to “decriminalize” disreputable behavior that “harms no one” [...] is, we think, a mistake. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is.

New York City in the 1990s, and later in other major urban areas like Los Angeles, Chicago, Boston, and Denver.¹⁰⁴ Studies have found little impact of “Broken Windows”-type programs on overall crime rates, but the policy has had a clear discriminatory impact on Blacks.¹⁰⁵

67. Finally, the Commission notes that at least since the 1990s, local police departments have been increasingly militarized as a result of federal programs that use equipment transfers and funding to encourage state and local police agencies to fight the “War on Drugs.” These programs include the Department of Defense (DOD) 1033 Program, enacted in 1989 and expanded in 1996, which transfers equipment for “counterdrug and counterterrorism activities.”¹⁰⁶ The Department of Justice (DOJ) and Department of Homeland Security (DHS) also provide funds for local police departments to acquire military-grade equipment. Since the declaration of the “War on Terror” in the early 2000s, DHS grants for anti-terrorism work have led to even greater stockpiling of specialized military equipment by local police departments in the name of anti-terror readiness.¹⁰⁷

C. Key issues Identified through IACHR Monitoring Mechanisms

68. In recent years, the Commission has monitored and received information about persistent problems of structural discrimination and racial disparities that permeate law enforcement practices and the criminal justice system in the United States. This section details information about particularly concerning practices in these and related areas, before turning to the applicable international legal standards and the obligations of government—federal, state, and local—in this area.

But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community. [...] Of course, agencies other than the police could attend to the problems posed by drunks or the mentally ill, but in most communities especially where the “deinstitutionalization” movement has been strong—they do not.” The Atlantic Magazine, *Broken Windows: The police and neighborhood safety*, Mar. 1982.

¹⁰⁴ Los Angeles Times, *Bratton's ‘broken windows’*, Apr. 20, 2006.

¹⁰⁵ See *infra* para. 80.

¹⁰⁶ ACLU, *War Comes Home: The Excessive Militarization of American Policing*, June 2014, p. 16.

¹⁰⁷ *Id.* at p. 17.

1. Aspects of Racial Discrimination in Policing Practices and Outcomes

69. The Commission is particularly concerned by persistent problems of racial bias in policing, use of excessive force, and a pattern of impunity for the officers and law enforcement departments involved.¹⁰⁸ While cases like those of Rodney King, beaten by Los Angeles police in 1992,¹⁰⁹ or Amadou Diallo, killed by New York police in 2009,¹¹⁰ sparked widespread public outrage, these issues came to particular prominence in the U.S. following the killing of Trayvon Martin, a Black teenager who was shot and killed by a private individual acting as part of a “neighborhood watch” in Sanford, Florida, on February 26, 2012.¹¹¹ The subsequent high-profile shootings and deaths at the hands of police of Rekia Boyd in Chicago, Illinois; Eric Garner in Long Island, New York; Michael Brown in Ferguson, Missouri; Laquan McDonald in Chicago, Illinois; Akai Gurley in Brooklyn, New York; Walter Scott in North Charleston, South Carolina; Tamir Rice in Cleveland, Ohio; Freddie Gray in Baltimore, Maryland; Sandra Bland in Waller County, Texas; Philando Castile in Minneapolis, Minnesota; Alton Sterling in New Orleans, Louisiana; Terence Crutcher in Tulsa, Oklahoma; and Stephon Clark in Sacramento, California—among hundreds of others who remain uncounted to date by the federal government—have fueled public discussion, activism by grassroots groups like Black Lives Matter,¹¹² federal investigations of police departments, repeated public protests across the country, and ongoing institutional reform efforts. The IACHR has reiterated since 2014 that these killings represent “a disturbing pattern of excessive force on the part of police officers towards African Americans and other persons of color,” and has urged the State to evaluate an apparent pattern of use of excessive force against persons of color.¹¹³

¹⁰⁸ IACHR, Walter Scott Press Release, Apr. 17, 2015; *see also* IACHR, Hearing on Reports of Excessive Use of Force by the Police against People of African Descent in the United States, 156th regular session, Oct. 23, 2015. In its 2016 Press Release, the IACHR expressed its concern over the deaths of Freddie Gray, Michael Brown, Tamir Rice, Eric Garner, Philando Castile, and Alton Sterling, as well as continued impunity in these cases (e.g. dismissal of charges prior to trial; failure to fire officers involved).

¹⁰⁹ NPR, When LA Erupted In Anger: A Look Back At The Rodney King Riots, Apr. 26, 2017.

¹¹⁰ New York Times, Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed, Feb. 5, 1999.

¹¹¹ *See* IACHR, 150th Period of Sessions, “‘Stand Your Ground’ Laws” Hearing, Oct. 27, 2014. Although Martin was killed by a private individual and his killing raises different legal issues related to Florida’s “Stand Your Ground” law under which George Zimmerman successfully argued he was not guilty of murder (*see infra* paras. 152-157), his death was a key moment for raising public consciousness of the problem of excessive use of force against African Americans and the emergence of social movements like Black Lives Matter.

¹¹² *See* Black Lives Matter website: <http://blacklivesmatter.com/>, last visited Jan. 30, 2018. BLM is “a call to action and a response to the virulent anti-Black racism that permeates [...] society” and addresses “extrajudicial killings of Black people by police and vigilantes.”

¹¹³ IACHR, Eric Garner and Michael Brown Press Release, Aug. 22, 2014; IACHR, Walter Scott Press Release, Apr. 17, 2015.

70. This section explores police excessive use of force against African Americans and other historically marginalized groups, as well as related issues of police bias and discrimination in policing, suppression of protests, and a continuing pattern of impunity in cases of excessive use of force by police. The Commission has previously noted that "[...] the main concerns related to excessive or arbitrary use of force are focused on militarization of [] police [equipment], the type of training they receive, the action protocols they use, and the difficulty with which police officers who are guilty of abuse or excessive use of force are held criminally liable and prosecuted."¹¹⁴

a. Over-Policing and Racial Profiling of African Americans

71. The Inter-American Commission has received substantial information on policies implemented by police departments in municipalities across the U.S. that encourage over-policing of African Americans and other historically marginalized groups, and enable or encourage racial profiling against these communities. In this section, the Commission considers the impact of “Broken Windows”-type policies,¹¹⁵ including New York City’s notorious “Stop and Frisk” program, as well as police practices that encourage the over-criminalization of poor African American communities and other historically marginalized groups, like the pattern of policing for profit established in the federal review of policing practices in Ferguson, Missouri.

72. The Commission has previously defined racial profiling as:

a tactic adopted for supposed reasons of public safety and protection [...] motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions, [which] tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes.¹¹⁶

73. This definition does not require an explicit expression of bias against a particular group, but may be manifested in a discriminatory pattern of enforcement.¹¹⁷ The Commission has previously affirmed that Afro-

¹¹⁴ IACHR, [Violence, Children and Organized Crime](#), OAS/ Ser.L/V/II.Doc.40/15 (2015), para. 191.

¹¹⁵ See also *supra* para. 65.

¹¹⁶ IACHR, [People of African Descent in the Americas](#) (2011), para. 143.

¹¹⁷ See *infra* paras. 191-196.

descendants in the Americas are disproportionately likely to be suspected of committing crimes, pursued by police, prosecuted, and convicted, as compared with the general population.¹¹⁸

74. This pattern holds true in the United States as a matter of explicit historical policy and current implicit and explicit practice. Racial profiling has been a historic feature of policing in the U.S., from the establishment of slave patrols to the selective criminalization and enforcement of “vagrancy” laws and similar crimes. In 1968, the National Advisory Commission on Civil Disorder (“Kerner Commission”) established by President Johnson found that the national “atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a ‘double standard’ of justice and protection—one for Negroes and one for whites.”¹¹⁹ In recent decades, racial profiling has been a feature of law enforcement policy within the framework of the “War on Drugs” and counter-terrorism/“homeland security” initiatives.¹²⁰
75. Information received by the Commission indicates that African Americans and other historically marginalized groups in the U.S. are also disproportionately subjected to policies of over-policing and law enforcement surveillance, including under “Broken Windows”-type policing, and under increased national security surveillance, particularly since 2001. “Broken Windows” policies that prioritize the policing of low-level “quality of life” crimes have been deployed predominantly against communities of color, resulting in the systematic criminalization of those communities.¹²¹

¹¹⁸ IACHR, [People of African Descent in the Americas](#) (2011), para. 148.

¹¹⁹ National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (Washington, D.C.: U.S. Government Printing Office, 1968), p. 5; see also Steven Gillon, *Separate and Unequal: The Kerner Commission and the Unraveling of American Liberalism* (New York: Basic Books, 2018); Smithsonian, [Study Shows Little Change Since Kerner Commission Reported on Racism 50 Years Ago](#), Mar. 2, 2018.

¹²⁰ The Commission received information that following the September 2001 terrorist attacks, a shift in federal policing priorities influenced the culture of local policing toward “homeland security” and greater militarization. This led to the adoption of a “warrior mentality” rather than a “guardian mentality” by police toward the communities they serve. Interview with Mayor Regalado, IACHR visit to the United States, Sept. 21, 2015. *Accord*. ACLU, [War Comes Home: The Excessive Militarization of American Policing](#), June 2014.

Available information indicates that surveillance and racial profiling have been reinforced since the introduction of the Patriot Act in October 2001, which “affects not only [U.S.] citizens but also has a disparate impact on the detention, treatment and deportation of undocumented migrants, including people of African descent, who enter the [U.S.],” and particularly impacts Muslims and people of Middle Eastern descent. U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, para. 24; IACHR, 154th Period of Sessions, [“Criminal Justice and Race” Hearing](#), Mar. 16, 2015; CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 8.

¹²¹ IACHR, 153d Period of Sessions, [“Racism in the Justice System” Hearing](#), Oct. 27, 2014; NYCLU, [Testimony Before City Council Public Safety & Courts and Legal Services Committees On Summons Court Operations and Impact](#), Dec. 15, 2014.

76. The Commission notes the apparent historical link between the heavy criminalization of smaller offenses and a focus on aggressive policing of certain neighborhoods in the present day, and historic practices of criminalizing “vagrancy” and similar petty crimes, which in practice lend themselves to inconsistent and racially biased enforcement.¹²² Indeed, George Kelling, one of the academics who originated the “Broken Windows” theory, has since commented on its troubling potential to encourage racial profiling and other expressions of bias in policing:

You’re just asking for a whole lot of trouble [...] Any officer who really wants to do order maintenance has to be able to answer satisfactorily [...], ‘Why do you decide to arrest one person who’s urinating in public and not [another]?’ [...] if you can’t answer that question, if you just say ‘Well, it’s common sense,’ you get very, very worried. So yeah, [...] There’s been a lot of things done in the name of Broken Windows that I regret.¹²³

77. The Commission notes that the United States’ legal framework for conducting police stops may allow or encourage expressions of bias in policing. In particular, police are empowered to briefly stop individuals if they have a “reasonable suspicion,” formed on an “objective basis,” that an individual is engaged in or about to be engaged in criminal activity (known as a *Terry* stop).¹²⁴ “Reasonable suspicion” is a lower threshold than the “probable cause” required for searches or seizures required under the Fourth Amendment, and is shaped by social context. For example, the Supreme Court has found that the fact of a black man running in a “high-crime” area may be sufficient to give rise to a “reasonable suspicion” for a police officer to decide to stop him.¹²⁵ In this regard, “pretextual” traffic stops (i.e. stops for minor traffic violations that are subjectively motivated by an officer’s interest in something other than enforcing traffic laws) are also permitted by law.¹²⁶
78. Through regular monitoring and public hearings, the IACHR has received information on patterns of police stops and similar programs in cities across the U.S. that, while facially race-neutral, are applied in a discriminatory way that disproportionately harms African Americans, Hispanics, and other historically marginalized groups, and may even reward discriminatory behavior on the part of law enforcement officers.

¹²² Frontline (PBS), *The Problem with “Broken Windows” Policing*, June 28, 2016.

¹²³ Id.

¹²⁴ *Terry v. Ohio*, 392 U.S. 1 (1968); see also *Adams v. Williams*, 407 U.S. 143 (1972).

¹²⁵ *Illinois v. Wardlow*, 528 U.S. 119, 121-24 (2000).

¹²⁶ *Whren v. U.S.*, 517 U.S. 806 (1996).

Available information from a number of states and municipalities indicates that police stops are carried out in a racially discriminatory manner.¹²⁷ For example, the authors of one study of stops by the Los Angeles Police Department (LAPD) found that not only were black and Hispanic individuals more likely to be stopped, but that once stopped they were also substantially more likely to be frisked or searched. They concluded:

It is implausible that higher frisk and search rates are justified by higher minority criminality, when these frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband. We also find that the black arrest disparity was 9 percentage points lower when the stopping officer was black than when the stopping officer was not black. Similarly, the Hispanic arrest disparity was 7 percentage points lower when the stopping officer was Hispanic than when the stopping officer was a non-Hispanic white. Taken as a whole, these results justify further investigation and corrective action.¹²⁸

79. This empirical evidence accords with evidence and testimony about racial profiling and over-policing, particularly of poor communities, received by the Commission during its 2015 on-site visit and during public hearings. For example, in Miami, the delegation received the testimony of an African American law student who stated that he had been stopped by the police about thirty times in his lifetime based on his race and his appearance. Other speakers affirmed that many of those subjected to arbitrary stops are afraid to report them to authorities, particularly if they have committed offenses in the past.¹²⁹ It is important to note that racial profiling can also be aggravated by profiling on the basis of other intersectional factors, such as age and situation of poverty. For example, the Commission also heard from civil society in Florida about how children from low-income neighborhoods are particularly affected by the high number of bicycle stops and the increased number of traffic tickets issued to African Americans by police.¹³⁰ Individuals may also be profiled on the basis of national origin or perceived national origin and mother tongue. The Commission received information that Haitian and Hispanic immigrants may be profiled on the basis of their appearance, skin color, and/or

¹²⁷ The Leadership Conference on Civil and Human Rights, Restoring a National Consensus: The Need to End Racial Profiling in America, Mar. 2011, 9-12. This report aggregates studies on racial profiling and incidents from Texas, California, West Virginia, Minnesota, Illinois, New York, Arizona, New Jersey, Mississippi, Tennessee, and New Mexico, among other states.

¹²⁸ Cited in *id.* at 11.

¹²⁹ IACHR, On-Site Visit Press Release, Oct. 16, 2015.

¹³⁰ *Id.*

language spoken, and often lack identity documents, both of which make them more vulnerable to police abuses.¹³¹

80. The Commission notes information indicating an urgent need for further studies of the impact of racial profiling on its victims. For example, some existing studies indicate that police stops induce individuals to subsequently avoid using public services for fear of additional police contact, and may even decrease voter turnout in entire neighborhoods.¹³² Another found that adolescent boys who were stopped by police without having broken the law were more likely to engage in illegal behavior later in life.¹³³ Given these indicia that the impact of racial profiling on communities is extensive and profound, the Commission considers that it is necessary for the State to further these studies in order to appropriately formulate policy that prevents racial discrimination and remedies its impacts.
81. The Commission has received information via public hearings and monitoring mechanisms¹³⁴ about the New York Police Department's (NYPD) "Stop, Question, and Frisk" policy, first introduced in the 1990s, which involves temporarily detaining, questioning, and at times searching civilians on the street for weapons and other contraband.¹³⁵ Available information indicates that this policy has been ineffective in reducing criminality,¹³⁶ and has had a clear discriminatory impact on historically marginalized groups, including African Americans. The program is

¹³¹ Id.

¹³² New York Times, On Stop-and-Frisk, We Can't Celebrate Just Yet, Jan. 7, 2018 (citing Amy E. Lerman & Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014).

¹³³ Id. (citing the presentation "Crime is Insufficient: Explaining Racial Disparities in Use of Force," available at: https://convention2.allacademic.com/one/asc/asc17/index.php?program_focus=view_paper&selected_paper_id=1276548&cmd=online_program_direct_link&sub_action=online_program).

¹³⁴ See, e.g., IACHR, 154th Period of Sessions, "Criminal Justice and Race" Hearing, Mar. 16, 2015.

¹³⁵ Civil Rights Bureau of the New York State Attorney General's Office, Stop and Frisk Report of November 2013, Nov. 2013. "Stop and Frisk" is a policing tactic comprised of two separate acts that involve two different levels of justification. To stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit an unlawful act. To frisk a person, the officer must have a reason to believe that the person stopped has a weapon that poses a threat to the officer's safety. See *Terry v. Ohio*, 392 U.S. 1 (1968).

¹³⁶ For example, in New York, police issued 1.8 million quality of life summonses for offenses like disorderly conduct, public urination, and drinking or marijuana possession between 2010 and 2015, but the NYPD's Office of the Inspector General found "no evidence" of any link between these summonses and a decrease in felony crime rates during that time. New York City Department of Investigation Office of the Inspector General for the NYPD (OIG-NYPD), An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015, June 22, 2016; see also Bernard E. Harcourt & Jens Ludwig, Broken Windows: New Evidence from New York City and a Five-City Social Experiment. *University of Chicago Law Review*, Vol. 73 (2006); Bernard E. Harcourt & Jens Ludwig, Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York, *University of Chicago Public Law & Legal Theory Working Paper*, No. 142 (2006).

furthermore characterized by heavy over-policing of certain neighborhoods and groups. For example, one study found that nearly 85 percent of a sample of summonses issued in New York City between 2002 and 2012 were issued to African Americans or Latinos.¹³⁷ In 2013, a federal judge found the program unconstitutional and placed it under the supervision of an independent monitor to oversee a series of reforms.¹³⁸ At its peak in 2011, the NYPD made 685,724 stops under the policy; this has since fallen to 12,404 stops under the policy in 2016, the most recent calendar year for which data are available.¹³⁹ It is notable that even as the total number of stops has fallen dramatically in the past six years, disproportionate stops of African Americans and Latinos have not. In 2011, 53 percent of those stopped were African American and 34 percent were Latino. These numbers have remained virtually the same over the years; in 2016, 52 percent of New Yorkers stopped by police were African Americans,¹⁴⁰ despite representing only 25 percent of the city's population,¹⁴¹ and during the first quarter of 2017, 57 percent of those stopped were African American and 32 percent were Latino.¹⁴²

82. Information received by the Commission indicates that the racial disparities in the NYPD's practices are not unique. For example, during its on-site visit to New Orleans, Louisiana, the Commission was informed that 90 percent of those arrested by the police are African American men under the age of 30,¹⁴³ though only about 60 percent of the population is African American. Another analysis showed that in summer 2014, African American residents were the subjects of approximately three-quarters of all "Stop and Frisk" approaches in Chicago, despite making up just 32 percent of the population.¹⁴⁴ In August 2015, the ACLU of Illinois reached an agreement with the Chicago Police Department to reform its "Stop and Frisk" policy; detailed information on the results of the program since that time is not available.¹⁴⁵ Studies have found similar patterns of racial bias in policing in Minneapolis, Minnesota;¹⁴⁶ Washington, DC;¹⁴⁷ Los Angeles,

¹³⁷ New York Civil Liberties Union (NYCLU), [NYC Must Reform Aggressive Policing of Low-Level Offenses and Summons Court Operations](#), Dec. 15, 2014.

¹³⁸ *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (finding that the NYPD's Stop and Frisk program violates the Fourteenth Amendment's non-discrimination protection and Fourth Amendment's protection from unreasonable searches and seizures).

¹³⁹ NYCLU, [Stop-and-Frisk Data](#), May 23, 2017.

¹⁴⁰ NYCLU, [Stop and Frisks Report](#), July 13, 2017.

¹⁴¹ United States Census Bureau, [State and County Quickfacts: New York \(city\)](#), 2016.

¹⁴² NYCLU, [Stop-and-Frisk Data](#), May 23, 2017.

¹⁴³ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

¹⁴⁴ ACLU of Illinois, [Stop and Frisk](#), last visited Nov. 20, 2017.

¹⁴⁵ *Id.*

¹⁴⁶ ACLU of Minnesota, [ACLU Finds Severe Racial Disparities in Low-Level Arrests by Minneapolis Police](#), May 28, 2015 ("Patterns of racial bias and over-criminalization show blacks and Native Americans disproportionately affected").

California;¹⁴⁸ Jacksonville, Florida;¹⁴⁹ Baltimore, Maryland; Cleveland, Ohio; Albuquerque, New Mexico; and Portland, Oregon;¹⁵⁰ among other cities.

83. The over-policing of historically marginalized communities is not limited to major cities, and sometimes appears to be driven by a logic of policing for profit. The Commission observes with concern that policies exist across the country that treat the policing of petty crime and associated court fees as a revenue stream for the municipality. This is both out of step with the State’s obligations regarding citizen security, and tends to have a disproportionate effect on poor and historically marginalized communities. For example, the Commission was informed during a public hearing and during its on-site visit about the results of the Department of Justice (DOJ) Civil Rights Division review of the Ferguson, Missouri police department.¹⁵¹ This review found systematic unconstitutional departmental practices regarding stops, arrests, and use of force, which disproportionately impact African Americans. The DOJ further found that the city’s municipal court system systematically prioritizes revenue over public safety, leading to court practices that violate the Fourteenth Amendment, and that these court practices particularly impact Ferguson’s most vulnerable residents, especially upon those living in or near poverty. In Ferguson, fines may be imposed:

for offenses as minor as rolling through a stop sign or failing to enroll in the right trash collection service. In Ferguson, residents who fall behind on fines and don’t appear in court after a warrant is issued for their arrest (or arrive in court after the courtroom doors close, which often happens just five minutes after the session is set to start for the day) are charged an additional \$120 to \$130 fine, along with a \$50 fee for a new arrest warrant and 56 cents for each mile that police drive to serve it. Once arrested, everyone who can’t pay their fines or post bail (which is usually set to equal the amount of their total debt) is imprisoned until the next court session (which happens three days a month). Anyone who is imprisoned is charged \$30 to \$60 a night by the jail. If an arrestee owes fines in more than one of St. Louis County’s

¹⁴⁷ Washington Lawyers’ Committee for Civil Rights & Urban Affairs, [Racial Disparities in Arrests in the District of Columbia, 2009-2011](#), July 2013.

¹⁴⁸ NPR, [LAPD Report Finds Racial Disparity In Approval And Trust Of Police](#), Nov. 15, 2016.

¹⁴⁹ ProPublica, [Walking While Black: Jacksonville’s enforcement of pedestrian violations raises concerns that it’s another example of racial profiling](#), Nov. 16, 2017.

¹⁵⁰ Vox, [Cities across the country have been riddled with accusations of police abuse](#), last updated May 6, 2017.

¹⁵¹ U.S. DOJ, [Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri](#), Mar. 4, 2015; *see also* U.S. DOJ Civil Rights Division, [Investigation of the Ferguson Police Department](#), Mar. 4, 2015; IACHR, 154th Period of Sessions, [“Criminal Justice and Race” Hearing](#), Mar. 16, 2015.

eighty-one municipal courts, they are passed from one jail to another to await hearings in each town.¹⁵²

84. In this way, minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver's license, employment, or housing; in the aggregate, these may be an important element to consider in the analysis of racialized poverty.
85. Furthermore, the DOJ found that these harms are borne disproportionately by African Americans due, at least in part, to intentional discrimination, as demonstrated by direct evidence of racial bias and stereotyping about African Americans by certain Ferguson police and municipal court officials.¹⁵³ In particular, African Americans make up about 67 percent of the Ferguson population, but accounted for 93 percent those arrested from 2012 to 2014. The DOJ found that African Americans accounted for 85 percent of all vehicle stops, 90 percent of citations, and 93 percent of arrests in between 2012 and 2014.¹⁵⁴ The DOJ also found that black drivers are twice as likely to be stopped by Ferguson police than are white drivers, are more likely to be cited and arrested following a stop, and are more likely to receive multiple citations during a single incident.¹⁵⁵ The DOJ considered that these patterns amounted to a systematic violation of the Fourth and Fourteenth Amendment rights of Ferguson residents, and that they disproportionately harmed African Americans.¹⁵⁶ Available information indicates that this practice of using municipal police and court systems as revenue generators is not limited to Ferguson, but may be a more generalized practice.¹⁵⁷
86. In light of information about particular municipal practices, the Commission considers that policies of heavy criminalization of minor offenses may disproportionately affect African Americans and other communities of color. In this scenario, race often serves as a proxy for and is deeply linked with poverty. This results in the increase of fines and arrests in these communities, creating a vicious circle of poverty and criminalization.¹⁵⁸ The Commission considers that proven practices of

¹⁵² [Policing and Profit](#), 128 *Harvard Law Review* 1723 (2015).

¹⁵³ U.S. DOJ, [Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri](#), Mar. 4, 2015; *see also* U.S. DOJ Civil Rights Division, [Investigation of the Ferguson Police Department](#), Mar. 4, 2015; IACHR, 154th Period of Sessions, “Criminal Justice and Race” Hearing, Mar. 16, 2015.

¹⁵⁴ U.S. DOJ Civil Rights Division, [Investigation of the Ferguson Police Department](#), Mar. 4, 2015, p. 4.
¹⁵⁵ *Id.* at 4-11.

¹⁵⁶ U.S. DOJ, [Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri](#), Mar. 4, 2015; *see also* U.S. DOJ Civil Rights Division, [Investigation of the Ferguson Police Department](#), Mar. 4, 2015.

¹⁵⁷ *See generally* [Policing and Profit](#), 128 *Harvard Law Review* 1723 (2015).

¹⁵⁸ Office of the High Commissioner for Human Rights, [Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights](#), Dec. 15, 2017.

treating policing as an exercise in revenue-raising rather than public safety and citizen security would present clear threats to the rights to life, personal liberty and security, due process, privacy, respect for one’s honor and dignity, peaceful assembly and association, and peaceful use and enjoyment of property, among others, as well as non-discrimination.¹⁵⁹

87. The Commission notes that multiple international bodies have expressed concern about racial profiling practices in the U.S. For example, the U.N. Human Rights Committee has urged the State to eliminate racial profiling by law enforcement officials, which it considers remains a common practice by many law enforcement bodies. Similarly, the Committee on the Elimination of Racial Discrimination (CERD) has called for an end to profiling of racial and ethnic historically discriminated groups by law enforcement officials.¹⁶⁰ The Commission echoes this call for the State to fully examine and eliminate practices and policies that, whether explicitly or implicitly, result in racial profiling and unequal treatment by law enforcement on the basis of race.

b. Militarization of Police Forces

88. Information provided to the Commission indicates that many local police departments in the U.S. have become heavily militarized in recent decades,¹⁶¹ and that the use of military-type equipment in SWAT (“Special Weapons and Tactics”) raids and similar operations is disproportionately targeted against historically marginalized groups.¹⁶² A recent study by the ACLU found that 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino; of deployments in which all individuals impacted were minorities, 68 percent were drug cases, and 61 percent of all individuals impacted by SWAT raids in drug cases were members of historically discriminated groups.¹⁶³ Additionally, 79 percent of incidents the ACLU studied involved the use of a SWAT team to search a person’s home, and more than 60 percent of the cases involved searches for drugs.¹⁶⁴ According to the ACLU, U.S. policing has become unnecessarily and dangerously militarized, and in

¹⁵⁹ See also generally IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57 (2009) [hereinafter “Citizen Security and Human Rights”].

¹⁶⁰ These bodies refer not only to practices like “Stop and Frisk” but also to practices of surveillance of Muslim and Middle Eastern communities by the FBI and TSA, and the Secure Communities and INA § 287(g) immigration enforcement programs, among others. Human Rights Comm., *Concluding Observations 2014*, Apr. 23, 2014, para. 7; CERD, *Concluding Observations 2014*, Sept. 25, 2014, para. 8.

¹⁶¹ See *supra* para. 66.

¹⁶² ACLU, *War Comes Home: The Excessive Militarization of American Policing*, June 2014, p. 2.

¹⁶³ *Id.* at 5.

¹⁶⁴ *Id.* at 3.

municipalities with greater amounts of military equipment, police officers acted more aggressively and adopted a “warrior” mindset, rather than seeing themselves as protectors of a community.¹⁶⁵

89. On May 18, 2015, President Barack Obama announced new restrictions on the transfer of military equipment to local police departments, in light of concerns about the policing of protests in Ferguson, Missouri and Baltimore, Maryland, among others.¹⁶⁶ This Executive Order (EO 13688) created a federal agency working group to oversee and implement protocols around military weapons provided to police by the federal government.¹⁶⁷ At that time, the move was greeted with optimism.¹⁶⁸ On August 28, 2017, President Donald Trump rescinded EO 13688, removing those restrictions on the transfer and oversight of military equipment.¹⁶⁹
90. In 2015, the Commission noted that a principal concern regarding the excessive or arbitrary use of force by law enforcement in the U.S. is the “militarization” of police in terms of the equipment, training, protocols used, and the difficulty of prosecuting and establishing criminal responsibility for police officers guilty of abuse or excessive use of force.¹⁷⁰ The Commission notes with concern reports that with the revocation of EO 13688, police departments will once again receive armed vehicles, high-caliber weapons and ammunition, grenades, camouflage uniforms, and other military equipment,¹⁷¹ raising concerns about a possible increase in the excessive use of force and policing of protest situations that does not comply with international law.¹⁷² This is particularly concerning in light of information received by the Commission that the Government Accountability Office (GAO) recently concluded that the Pentagon does not verify the quantity of military weapons transferred through the 1033 program, and that the DOD “lacks reasonable assurance that it has the ability to prevent, detect, and respond to potential fraud and minimize associated security risks.”¹⁷³ The Commission calls on the State to take the

¹⁶⁵ Id. at 2. *Accord*. Testimony during on-site visit.

¹⁶⁶ Reuters, [Obama sets new limits on police use of military equipment](#), May 18, 2015.

¹⁶⁷ Law Enforcement Equipment Working Group, [Recommendations Pursuant to EXECUTIVE ORDER 13688, Federal Support for Local Law Enforcement Equipment Acquisition](#), May 2015.

¹⁶⁸ Washington Post, [Obama moves to demilitarize America’s police](#), May 18, 2015.

¹⁶⁹ White House, [Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources](#), Aug. 28, 2017.

¹⁷⁰ IACHR, Annual Report 2016. [Report of the Special Rapporteur for Freedom of Expression. Chapter VI \(Recommendations on Social Protest\)](#). OEA/Ser.L/V/II. Doc. 22/17. Mar. 9, 2015.

¹⁷¹ ACLU, [Trump Just Gave Thousands of Bayonets And Hundreds of Grenade Launchers Back To Police](#), Aug. 28, 2017.

¹⁷² See *infra*. International Framework regarding the Use of Force Legality, Absolute Necessity and Proportionality.

¹⁷³ GAO, [DOD EXCESS PROPERTY: Enhanced Controls Needed for Access to Excess Controlled Property](#), July 2017.

necessary steps to halt and reverse the militarization of police departments, as well as to further study and take corrective action in light of the racially disproportionate effect of militarized policing on African Americans and other historically marginalized groups.

c. Police Use of Excessive Force

91. In recent years, the Commission,¹⁷⁴ like other human rights bodies,¹⁷⁵ has consistently registered its alarm at police brutality and excessive use of force by law enforcement officials against African Americans in the U.S., and has called on the State to ensure that these events are prevented, investigated, prosecuted, and punished.¹⁷⁶ The use of excessive force, in particular against unarmed civilians, raises issues of racial discrimination, and takes place in a permissive legal environment that enables excessive force and prevents accountability. This section explores several key issues related to the use of excessive force.
92. As a threshold issue, the Commission notes that there is no mandatory federal database to track police violence and killings;¹⁷⁷ the lack of official data raises concerns related to the State's duty to exercise due diligence.¹⁷⁸ Nonetheless, according to public information, the U.S. consistently registers high levels of police violence: reports indicate that police officers kill about 1,000 people and wound more than 50,000 each year on average.¹⁷⁹ In 2017, at least 987 people were shot and killed by law enforcement officers, including more than 300 who were fleeing from officers when they were shot.¹⁸⁰ The number of annual police killings registered yearly in the United States is much higher both in per capita and in absolute terms than in other developed countries. For example, one study indicated that whereas the U.S. registers an average of 3.11 killings per million persons, Australia, the

¹⁷⁴ See, e.g., IACHR, 156th Period of Sessions, "[Police Killings](#)" Hearing, Oct. 23, 2015; Press Release No. 120/2015, [IACHR Wraps Up its 156th Session](#), Oct. 28, 2015; [Walter Scott Press Release](#), Apr. 17, 2015.

¹⁷⁵ CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 17; U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, para. 20.

¹⁷⁶ IACHR, [Eric Garner and Michael Brown Press Release](#), Aug. 22, 2014; [Walter Scott Press Release](#), Apr. 17, 2015; [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

¹⁷⁷ See, e.g., Washington Post, [FBI director calls lack of data on police shootings 'ridiculous,' 'embarrassing'](#), Oct. 7, 2015. In light of the lack of a mandatory federal database, four principal non-governmental databases have been established to track killings by police officers. Two are maintained by newspapers—The Guardian's "[The Counted](#)" and The Washington Post's "[Fatal Force](#)"—and two are maintained by citizen activist groups—"Fatal Encounters" and "[Killed by Police](#)."

¹⁷⁸ See *infra* International Framework regarding Access to Justice: Due Diligence, Accountability, Institutional Independence.

¹⁷⁹ New York Times, [Why Are Police Officers More Dangerous Than Airplanes?](#), Aug. 2017.

¹⁸⁰ [Fatal Force: 2017](#); Washington Post, [Nationwide, police shot and killed nearly 1,000 people in 2017](#), Jan. 6, 2018.

developed country with the next highest number of police killings, registers only 0.21 killings per million persons.¹⁸¹

93. Within this panorama, the persistent disproportionate use of excessive force by law enforcement officials against African Americans is particularly concerning; while Blacks made up 23 percent of victims of police killings in 2017, they make up only 13 percent of the U.S. population.¹⁸² African Americans were the victims in 24 percent of all police killings in 2016, and 26 percent of all police killings in 2015.¹⁸³ When killings of unarmed civilians are considered, the statistics are even starker; for example, statistics from civil society indicate that in 2015, more than 34 percent of unarmed civilians killed by police officers were black.¹⁸⁴ Other studies indicate that Black males are almost three times as likely, and Hispanic males are almost twice as likely, to be killed by police use of force as are white males.¹⁸⁵ These disparities are not anomalies, and are not the product of different crime rates; one study found that, controlling for differences in crime rates by race, the probability that an unarmed African American person will be shot by the police is 3.49 times greater than the probability that an unarmed white person will be shot by the police.¹⁸⁶
94. Police excessive use of force against African Americans is a longstanding issue in the United States, though little systematic information is available about the scope of the problem. In the Antebellum period, slave patrols were empowered to enact physical violence against black individuals suspected of being escaped slaves. In more recent times, images and newscasts of police officers beating black protesters with clubs helped galvanize public opinion in favor of the Civil Rights Movement during the 1960s. In 1992, the beating of Rodney King by Los Angeles police sparked widespread unrest (the “LA Riots”) among protesters appalled by the beating and acquittal of the officers responsible. The Commission received information about the killing of Tesfaye Mokuria by Dallas police officers in the presence of his children in his home in 1992.¹⁸⁷ In 1999, Amadou Diallo was shot 41 times by New York police while taking his wallet out of his

¹⁸¹ PRI, [When it comes to police shootings, the US doesn't look like a developed nation](#), July 12, 2016.

¹⁸² The Washington Post database registered 223 African Americans among the 987 total killings by police registered in the United States during 2017 (23 percent of total killings). Washington Post, [Fatal Force: 2017](#), last visited Nov. 8, 2017.

¹⁸³ See Washington Post, [Fatal Force: 2016](#), last visited Oct. 23, 2017; [Fatal Force: 2015](#), last visited Oct. 23, 2017.

¹⁸⁴ IACHR, 156th Period of Sessions, [“Police Killings” Hearing](#), Oct. 23, 2015.

¹⁸⁵ James Buehler, [“Racial/Ethnic Disparities in the Use of Lethal Force by US Police, 2010–2014,”](#) *American Journal of Public Health*, Jan. 11, 2017.

¹⁸⁶ Cody Ross, [A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014](#), Plos Journals, Nov. 5, 2015.

¹⁸⁷ IACHR, 156th Period of Sessions, [“Police Killings” Hearing](#), Oct. 23, 2015.

jacket, in a case that prompted public outcry.¹⁸⁸ The Commission notes information suggesting that one important reason for the public visibility and salience of the problem of police violence today is the widespread availability and use of cell phone cameras and police body cameras to record incidents of police violence, and the existence of at least some statistics on the prevalence of the problem.¹⁸⁹ The Commission again highlights the importance of gathering data about the scope of the problem and incentivizing public attention to it.

95. The Commission considers pertinent to note that African Americans are not the only group disproportionately targeted by police violence, and that intersectional identities can increase the risk that a black person is exposed to this problem. Information received by the Commission at public hearings indicates that groups like Native Americans, Hispanics, migrant workers, individuals experiencing homelessness, and persons with disabilities suffer police violence disproportionately.¹⁹⁰ The Commission has previously noted the generalized absence of efficient and effective policing policies to address violence against groups that have traditionally experienced discrimination and marginalization, such as women, children and adolescents, Afro-descendants, indigenous populations, and migrant workers and their families, among others.¹⁹¹
96. This issue has been the subject of substantial international attention in recent years. Among others, the U.N. Human Rights Committee has signaled its concerns about the excessive use of force in the city of Chicago and called for reform;¹⁹² the CERD has expressed concern about police brutality and excessive use of force against African Americans and against undocumented immigrants at and near the U.S.-Mexico border;¹⁹³ and the U.N. Working Group of Experts on People of African Descent has expressed concerns at “alarming” levels of police brutality and excessive use of force by law enforcement officials.¹⁹⁴ In this respect, the U.N. Special Rapporteur on extrajudicial, summary and arbitrary executions has noted that “at times, the police exercise higher levels of violence against certain groups of

¹⁸⁸ New York Times, [Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed](#), Feb. 5, 1999.

¹⁸⁹ See, e.g., LA Times, [Cops shoot and kill someone about 1,000 times a year. Few are prosecuted. What can be done?](#), Dec. 15, 2016.

¹⁹⁰ See, e.g., IACHR, 166th Period of Sessions, “[Impunity for Police Killings](#)” Hearing, Dec. 7, 2017.

¹⁹¹ IACHR, [Citizen Security and Human Rights](#) (2009), para. 31.

¹⁹² Human Rights Comm., [Concluding Observations 2014](#), Apr. 23, 2014, para. 11.

¹⁹³ CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 17. On border violence and cross-border use of force, see also Slate, [A Supreme Court Conundrum: A federal agent standing on U.S. soil shot and killed someone across the border in Mexico. Was the shooting unconstitutional?](#) Feb. 20, 2017; NPR, [Supreme Court Sends Cross-Border Shooting Case Back To Lower Court](#), June 26, 2017.

¹⁹⁴ U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, paras. 20-26.

people, based on institutional racism. Discrimination [...] also impacts on patterns of accountability.”¹⁹⁵

97. Available information indicates that excessive force is enabled by a legal framework that is inadequate to ensure that the use of force by law enforcement in the U.S. complies with international law. The Commission notes with concern civil society analyses that indicate that no state’s laws currently comply with the U.S.’ international obligations regarding the use of force.¹⁹⁶ Furthermore, no state laws passed on use of force since the publication of the above-referenced report brought states into compliance with international law.¹⁹⁷ At the federal level, the Supreme Court case *Tennessee v. Garner* and subsequent jurisprudence permits use of lethal force by law enforcement in circumstances other than those permitted under international law.¹⁹⁸ Indeed, one recent case of a white officer fired for not firing his weapon at a “visibly distraught” black man, but rather de-escalating the situation, highlighted the extent to which U.S. law and practice can favor the use of force even when unnecessary.¹⁹⁹
98. In recent years, the Commission has received extensive information about police killings in the U.S. Following the killings of Eric Garner in Long Island and of Michael Brown in Ferguson, Missouri in the summer of 2014, the Commission considered that those cases “represent the continuation of a disturbing pattern of excessive force on the part of police officers towards African-Americans and other persons of color,” and “urge[d] the State to give renewed attention to the possible links between these cases and past cases that demonstrated a pattern of use of excessive force against persons of color.”²⁰⁰ Subsequently, the Commission expressed concern about the killing of Walter Lamar Scott by a police officer in South Carolina,²⁰¹ and at the killings of Alton Sterling in Baton Rouge, Louisiana, and Philando Castile near St. Paul, Minnesota.²⁰² The Commission has also received testimony about cases of police killings at public hearings, including the cases of Rekia Boyd, Clinton Allen, Tesfaie Mokuria, Milton Hall, Luis Góngora Pat, and Dontre Hamilton.²⁰³ High-profile police killings continue

¹⁹⁵ U.N., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, *Study on police oversight mechanisms*, A/HRC/14/2/Ad. 8, May 28, 2010, para. 10.

¹⁹⁶ Amnesty International (AI), *Deadly Force: Police Use of Lethal Force In The United States*, June, 2015, p. 22.

¹⁹⁷ Vera Institute of Justice, *To Protect and Serve: New Trends in State-Level Policing Reform, 2015-2016*, Apr. 2017.

¹⁹⁸ 471 U.S. 1 (1985).

¹⁹⁹ Washington Post, [‘Just shoot me,’ an armed man told a cop. The officer didn’t — and was fired, his lawsuit claimed](#), Feb. 12, 2018.

²⁰⁰ IACHR, [Eric Garner and Michael Brown Press Release](#), Aug. 22, 2014.

²⁰¹ IACHR, [Walter Scott Press Release](#), Apr. 17, 2015.

²⁰² IACHR, [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

²⁰³ IACHR, 156th Period of Sessions, [“Police Killings” Hearing](#), Oct. 23, 2015; 166th Period of Sessions, [“Impunity for Police Killings” Hearing](#), Dec. 7, 2017.

to occur as of the writing of this report; for example, in March 2018, the killing of Stephon Clark, a 22-year-old father of two while talking on his cell phone in his backyard, by police in Sacramento, California, sparked widespread public condemnation and protests.²⁰⁴

99. The Commission also received information about police violence during its on-site visit in 2015. For example, the delegation was informed in New Orleans of the need to change the culture of the use of excessive police force to strengthen accountability mechanisms and transparency in investigations.²⁰⁵ Likewise, during its meeting with the administration and police authorities of the City of Orlando, the delegation was informed about several policies adopted to prevent excessive use of police force, including a comprehensive policy to prevent racial profiling, efforts to build police trust and relationships with the communities they police, measures to increase access to information on the cases that are being investigated, alternatives to arrests, and steps to follow up on the recommendations issued by the President Obama’s Task Force on 21st Century Policing.
100. At an October 2015 hearing on excessive use of force against African Americans, the Commission received testimony from Martinez Sutton, brother of Rekia Boyd:

On March 21, 2012, my sister Rekia Boyd was enjoying herself on the west side of Chicago in Douglas Park. She called me and let me know she wasn’t coming home that night. I didn’t know she meant she was going to be gone forever.

Rekia and three other friends left the park and walked to a store. En route, they came across [...] off-duty officer Dante Servin, [who] exchanged words with the group [and began firing his gun]. Antonio Cross was shot in the hand and my sister was shot in the head. The reason why she is dead is because [the officer] didn’t like the noise that was coming out of the park which is near where he lived.

It was deemed a justified shooting, but they had nothing to justify it with. There was [...] no weapon on any person in the group, nor was anyone in the group being confrontational, so where is the justification? I met Dante face-to-face a few months later [...] I told him that I wanted him to go down for killing my sister. He told me the best thing for me to do was to sue the city, take money and take care of my family, and leave well enough alone.

²⁰⁴ New York Times, [Stephon Clark Was Shot 8 Times Primarily in His Back, Family-Ordered Autopsy Finds](#), Mar. 30, 2018.

²⁰⁵ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

When I let him know I thought otherwise, he said “Okay, if this is what you want,” like he knew he would get off.

On April 20, 2015, [the officer was] ruled not guilty. They [had] charged him with involuntary manslaughter. Judge Porter declared the charges shouldn’t have been anything but murder. He said that the prosecutors had failed to provide the right charges.

The pain I feel in my heart will never be healed because of the psychological trauma that plays in my head on a constant basis. There was no help offered to help soothe the pain that me and my family feel, no mental health services offered, not even an apology for taking my sister off this earth. The constant harassment I receive from police officers for speaking out about the loss hasn’t died down yet. At times I feel like I am the next to die, and it can happen at any given moment. The pain in my mother’s eyes along with the constant flow of tears, is never ending. How can I dry up a river of tears with Kleenex? It is hard to explain to my children and my nieces and nephews that their aunt is never coming home. It’s tough, especially the youngest ones that always expect for her to walk through the door. In the search for answers, I have just been presented with more problems that seem to have no solutions.

I’m still trying to find justice, but what is justice? To me, it’s just ice to numb the situation. I’m still trying to find answers, and I’m hoping that you all can help me.²⁰⁶

101. At the same hearing, the Commission received testimony from Collette Flanagan, mother of Clinton Allen and co-founder of Mothers Against Police Brutality:

My only son Clinton Allen was murdered by Dallas policemen on March 10, 2013. He was unarmed, and shot 7 times. Once under his left arm consistent with his hands being raised, five times in the chest, and once at close range in the back. The policeman who killed my son did exactly what his past behavior indicated that he would do. He had a record of falsifying police records, running over a fleeing suspect with his police car, and using excessive force on mostly black men. And finally on that fateful day he graduated to killing and killed my son.

²⁰⁶ IACHR, 156th Period of Sessions, “Police Killings” Hearing, Oct. 23, 2015.

The policeman that killed my son was not fit to be a policeman. He had such a troubled history with the Dallas Police Department. We insisted, and prevailed, that he not be allowed to go back on patrol with a gun, but he has received no other punishment: no charges, no indictment, no trial, and no loss of pay.

My own sorrow turned to anger at the pervasive injustice, and finally to determination to win justice for my son. The homicidal brutality of police officers is an ongoing national disgrace. I am determined to win justice for my son and others whose lives and futures have been stolen by the very officials who have sworn to protect and serve us, but I need this Commission to hold my country to their commitment to respect human rights. Mothers against Police Brutality needs your help to restore the social contract that police violence has ripped to shreds in the streets of our cities. I pray that we will reweave the social contract before more lives are lost. Thank you.²⁰⁷

102. The Commission has previously considered information indicating that the use of body cameras by police officers has a deterrent effect; for example, California registered a 59 percent drop in use of force and a nearly 90 percent drop in complaints concerning excessive force after introducing body cameras.²⁰⁸ Nonetheless, the Commission has also noted concerns that body cameras could cause violations of the right to privacy of the official or victims, controversies about whether cameras could be manipulated by officials, and concerns about secure storage of footage.²⁰⁹ The Commission has heard similar concerns from civil society organizations, which argue that the use of police body cameras may increase already high rates of arrests of Afro-descendants and other members of historically marginalized groups following irregularities including failures to turn the camera on or to make footage available when it contradicts officials' version of events; they argued that police do offer body camera footage when it provides proof of commission of petty crimes.²¹⁰
103. In light of this information, the Commission reiterates its grave concern at the existence of a disturbing pattern of excessive force on the part of police

²⁰⁷ Id.

²⁰⁸ IACHR, *Annual Report 2015: Chapter IV The Use of Force*, para. 224 (citing U.N., Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. 24 Apr. 2015, para. 57).

²⁰⁹ Id.

²¹⁰ IACHR, 156th Period of Sessions, "Police Killings" Hearing, Oct. 23, 2015.

officers towards African Americans and other members of historically marginalized groups in the U.S.²¹¹ The Commission considers that this issue is a structural problem, and urges the State to investigate connections between cases of police violence in order to adopt coordinated legislative, policy, and institutional measures designed to eliminate racial discrimination, including measures to protect and guarantee the right to non-discrimination.²¹²

d. Impunity in Cases of Police Killings

104. The Commission has received information indicating that the injustice perpetuated by a pattern of racial discrimination in police killings is exacerbated by a pattern of impunity in cases of police killings of African Americans. In this regard, the Commission echoes concerns expressed by the U.N. Working Group of Experts on People of African Descent “at the alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent in the United States.”²¹³ Civil society, too, indicates that “in the present system, it continues to be a near impossible task to hold police officers and departments accountable for their excessive use of force, particularly against marginalized communities of color, [...] and there remain severe lacunae in the regulatory and reporting systems for use of force by police officers.”²¹⁴ The Commission considers that impunity in these cases fosters an environment in which police violence and abuses are tolerated, and serves to sustain disparate treatment on the basis of race.
105. The Commission highlights the low number of cases in which police officers have been held accountable for killings of African Americans in the U.S. One study found that in thousands of police-involved killings between 2005 and 2015, just 54 police officers were ever charged with a crime, and most eventually cleared or acquitted.²¹⁵ The study pointed out that in order to bring charges against an officer, the facts must be exceptional: “a victim shot in the back, a video recording of the incident, incriminating testimony from other officers or allegations of a cover-up”—though even in these cases, convictions are rare. When police are convicted of excessive use of force against civilians, they tend to receive much lighter sentences: an

²¹¹ IACHR, [Eric Garner and Michael Brown Press Release](#), Aug. 22, 2014.

²¹² IACHR, [Walter Scott Press Release](#), Apr. 17, 2015.

²¹³ U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, para. 20.

²¹⁴ Mothers against Police Brutality, Community Justice Project and Dream Defenders, *Submission to the United Nations Committee Against Torture on the List of Issues Prior to Reporting for the United States of America (6th Periodic Report)*, Aug. 2017.

²¹⁵ Washington Post, [Thousands Dead, Few Prosecuted](#), Apr. 11, 2015.

average of four years in prison, but sometimes as little as weeks.²¹⁶ One paper's databases indicate that officers involved in one in every six deaths recorded during the first quarter of 2015 had been cleared of wrongdoing and returned to work within a year, and in most cases the public was not notified either via official statements or via local media.²¹⁷ Another 2015 report found that more officers were charged in police killings that year than ever before, but none were found guilty of murder or manslaughter.²¹⁸ And another study tracked the outcomes of thirteen cases of police killings that were captured on video and provoked public outcry between 2014 and 2016, and found that criminal charges have been brought against officers in fewer than half of the cases.²¹⁹

106. The Commission has previously denounced a “reiterated pattern of impunity in the killings of Afro-descendants by police in the United States,” in light of the failure to bring police officers involved in the killings of Michael Brown, Eric Garner, Tamir Rice, and Freddie Gray, among others, to justice. At that time, the Commission called for the prompt, exhaustive, independent and impartial investigation of these cases, guaranteeing access to justice to the victims,²²⁰ and considered that an ineffective State response gives rise to high levels of impunity, resulting in the chronic repetition of incidents of excessive use of force by police and leaving victims and their families defenseless.²²¹
107. The Commission has continued to receive information demonstrating a pattern of impunity for officers in police killings in the U.S. since its 2015 on-site visit, including in the recent cases of Philando Castile, Terence Crutcher, Alton Sterling, and Anthony Lamar Smith. All of these cases ended either without indictment of the officer responsible, or with the officer's acquittal at trial.²²²

²¹⁶ *Id.*

²¹⁷ The Guardian, [Dozens of killings by US police ruled justified without public being notified](#), Apr. 13, 2016.

²¹⁸ Washington Post, [More Police Go to Trial in Killings, but Convictions Remain Rare](#), Sept. 23, 2015. See also Mapping Police Violence: Police Violence Map, <https://mappingpoliceviolence.org> (finding that 99% of cases in 2015 have not resulted in any officer(s) being convicted of a crime); See also L.A. Times, [Cops shoot and kill someone about 1,000 times a year. Few are prosecuted. What can be done?](#) Dec. 15, 2016.

²¹⁹ New York Times, [Looking for Accountability in Police-Involved Deaths of Blacks](#), May 3, 2017.

²²⁰ IACHR, [Eric Garner and Michael Brown Press Release](#), Aug. 22, 2014; [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

²²¹ IACHR, [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

²²² New York Times, [Why N.F.L. Players Started Taking a Knee During the Anthem](#), Sept. 25, 2017. New York Times, [Minnesota Officer Acquitted in Killing of Philando Castile](#), June. 6, 2017. ABC News, [Tulsa police officer acquitted in death of unarmed African-American man](#), May 18, 2017. CNN News, [No federal charges against officers in Alton Sterling death](#), June 27, 2017; CNN, [St. Louis ex-officer acquitted in fatal shooting of black driver](#), Sept. 16, 2017; CBS News, [Terence Crutcher shooting ignites debate](#), Apr. 4, 2017; see also New York Times, [Looking for Accountability in Police-Involved Deaths of Blacks](#), May 3, 2017; Guardian, [Cleveland police handcuff Tamir Rice's sister after shooting 12-year-old – video](#), Jan. 8, 2015.

108. The Commission notes that impunity in cases of police killings has a deep impact on the families of victims, contributes to mistrust between communities and police departments, and ultimately works to undermine the rule of law. The Commission has received extensive testimony from family members of victims of police violence about the lasting impact of the killings on them and their families and communities. For example, Collette Flanagan, mother of Clinton Allen (killed by a Dallas police officer on March 10, 2013) and co-founder of Mothers Against Police Brutality, testified at a public hearing:

When you lose a child, it is the most devastating event that could occur in your lifetime. But when you lose a child to police violence it breaks the social contract, destroying your everyday understanding and belief in your country. The level of betrayal is so awful that it literally changes your DNA. Losing a child this way renders you helpless and hopeless. You lose your will to live and fight everyday just to exist [. . .] I share this with you because I want you to understand that when our children are unjustly killed by police because of the color of their skin, the turmoil that our

families endure [. . .] is like a powerful tsunami that blows your family to bits. Clinton's death has reduced Clinton's father to half the man he once was. His grandmother literally died of a broken heart at 69 years old.

Can you imagine being told that you will just have to live with the fact that your child is gone and no one is going to help to obtain justice because his murderer is a police officer?²²³

109. At the same hearing, Sara Mokuria, daughter of Tesfaye Mokuria (killed by Dallas police officers in his home in 1993) and co-founder of Mothers Against Police Brutality, stated:

My father didn't pass away. He was killed by Dallas police officers who are still on the Dallas police force in front of our entire family. I was ten years old as I watched his body collapse, riddled with bullets. I was standing behind him. I watched as the blood bubbled from his mouth, as my mom, who was holding my one-year-old sister in one hand, gripped my father's foot with her other hand and wailed and cried. I, in my childhood innocence, asked the officer to call 911 to help him. I was instructed by the officer to change out of my pajamas into clothes,

²²³ IACHR, 156th Period of Sessions, "Police Killings" Hearing, Oct. 23, 2015.

and I was put into an officer's car and was told that I wouldn't be able to see my mother until I made a statement. I wasn't reunited with my mother and my sister for hours. My mother fought for two years to get me and my sister considered eligible for counseling services through Crime Victims Compensation. My mother's friends cleaned up my father's blood and repaired the carpets in our homes, because most people don't know that grief-stricken families are the ones not only left to identify lifeless bodies of their loved ones, but also to clean up the blood splattered throughout the crimes scenes of our homes.

I can't begin to explain how this trauma has impacted my family and my life. It literally shaped me the woman that I am. I jump at loud noises when people walk up on me too fast. It scares me. Most people think it is entertaining but it is a symptom of post-traumatic stress disorder. This type of trauma has affected everything from my memory to physical health. The physical, emotional, financial, and social impact on families are immeasurable. The trauma ripples throughout the entire community.²²⁴

110. The Commission additionally notes information regarding the death of Erica Garner, daughter of Eric Garner, on December 30, 2017 due to causes potentially related to her father's death. Ms. Garner was 27 years old and reportedly died one week after being placed in a medically induced coma following an episode that precipitated a major heart attack.²²⁵ The Commission noted that she had publicly referred earlier that month to the stress she experienced in pursuing her struggle for racial justice; she stated: "This thing, it beats you down. The system beats you down to where you can't win."²²⁶
111. The Commission has received information indicating that the role of grand juries and prosecutors in the criminal justice system may aggravate problems of police impunity. Although evidence about the role of grand juries is mixed, studies have found that the secretive nature of grand juries and deliberations, a lack of transparent selection processes, a lack of diversity in jury pools, and the role of prosecutors in guiding the grand jury process and instructing on the law are factors that may impact the likelihood that a grand jury will elect not to approve criminal charges

²²⁴ Id.

²²⁵ New York Times, [Erica Garner, Activist and Daughter of Eric Garner, Dies at 27](#), Dec. 30, 2017.

²²⁶ Id.

against police officers in cases of killings.²²⁷ While national data and systematic studies of these phenomena do not exist, one study found, for example, that grand juries in Dallas, Texas declined to indict 174 of the 175 police officers who faced investigation over a four-year period.²²⁸

112. Regarding the role of prosecutors, the Commission has received information from civil society indicating that “prosecutors who rely on good relations with the police to effectively perform their jobs are reluctant to bring charges and employ a number of tactics—such as the use of flawed grand jury processes, advantageous plea deals, and disproportionately low sentencing recommendations—to shield police from full accountability.”²²⁹ Available information indicates that because the initiation of a criminal investigation relies upon prosecutorial discretion, “which is often marred by resource constraints, pressure from police unions, and bias in favor of the police due to the working relationship between prosecutors and officers,” prosecutors may be less likely to file charges against police officers than civilians.²³⁰ Furthermore, available information indicates that the difficulty of proving criminal charges against police officers and the generally short sentences handed down in the event of a conviction also fail to deter police violence.²³¹
113. The Commission affirms that internal affairs units of police departments represent important control mechanisms and contribute to the collection of official statistics about disciplinary complaints; however, it has received information indicating that internal investigations into police killings tend to be ineffective remedies in practice as they are expensive, time-consuming, and not transparent.²³² Internal investigations in particular rarely result in positive outcomes for victims. For example, information from the Bureau of Justice Statistics indicates that 92 percent of use of force complaints filed with large state and local law enforcement agencies were dismissed.²³³ Many municipal police departments in the U.S. do not

²²⁷ Roger A. Fairfax, Jr., “The Grand Jury and Police Violence Against Black Men,” in *Policing the Black Man* (2017), pp. 220-228.

²²⁸ Houston Chronicle, [Hard to Charge](#), last visited Jan. 29, 2018; see also New York Times, [Grand Jury System, With Exceptions, Favors the Police in Fatalities](#), Dec. 7, 2014.

²²⁹ Request for hearing received from Robert F. Kennedy Human Rights for 156th Period of Sessions, Oct. 23, 2015, p. 2 [hereinafter “RFK Request for hearing, 156th Period of Sessions, Oct. 23, 2015”].

²³⁰ Information received from RFK Human Rights during 166th Period of Sessions, Dec. 7, 2017, p. 1 (citing MSNBC, [Prosecutors and Police: The Inherent Conflict in our Courts](#), Dec. 5, 2014, FiveThirtyEight, [Allegations of Police Misconduct Rarely Result in Charges](#), Nov. 25, 2014; Washington Post, [Thousands Dead, Few Prosecuted](#), Apr. 11, 2015; Houston Chronicle, [Hard to Charge](#), last visited Oct. 5, 2015; [Federal Justice Statistics 2010 – Statistical Tables](#), Dec. 2013) [hereinafter “RFK Submission, 166th Period of Sessions, Dec. 7, 2017”].

²³¹ RFK Request for hearing, 156th Period of Sessions, Oct. 23, 2015, p. 2.

²³² RFK Submission, 166th Period of Sessions, Dec. 7, 2017, p. 2.

²³³ Bureau of Justice Statistics, [Citizen Complaints About Police Use of Force](#), June 2006.

even have an independent internal affairs department.²³⁴ At the state level, statutes limit the time, place, and manner for filing complaints, and police agencies discourage such reports.²³⁵ Internal investigations may also be hindered by problems with witnesses and departmental cultures of secrecy.²³⁶ And in some states, police officers are afforded special protections in misconduct investigations.²³⁷ These issues are further examined in Chapter 3.

114. The Commission has received information about the role and functioning of civilian oversight mechanisms to monitor police, which can involve the community in police accountability and ensure greater independence from internal affairs departments in reviewing complaints against police officers.²³⁸ One study indicated that “some form of civilian oversight is probably the best way to achieve legitimacy with the community, regardless of whether internal systems for dealing with police complaints might also be effective.”²³⁹ Nonetheless, civilian boards may be limited by the fairness and talent of their members, as well as the formal influence and authority of the board *vis a vis* the police department, among other factors.²⁴⁰
115. The Commission has received information indicating barriers to the effective adjudication of civil suits against police officers, as well as information indicating that civil suits may not in general be effective remedies. In general, victims may sue individual police officers in their personal capacities, police departments, or municipalities to obtain monetary damages for the excessive use of force. Plaintiffs may face a

²³⁴ Id. at 5. However, it is not clear that there is a direct relationship between the mere existence of an internal affairs unit and a higher rate of police accountability. “Among all agencies having an internal affairs unit, the overall rate of citizen force complaints was higher than those not having a unit (54 per agency versus 5 per agency), as were the rates of complaint per 100 officers [...] Overall, force complaints received by agencies having an internal affairs unit were more than twice as likely to be found not sustained than in agencies not having an internal affairs unit (37% versus 16%). Force complaints in agencies not having an internal affairs unit were more likely to result in officers being exonerated (47% versus 20%). The sustain rate was roughly equivalent in both types of agencies.”

²³⁵ ACLU of New Jersey, [The Crisis Continues Inside Police and Internal Affairs](#), Feb. 2013.

²³⁶ See, e.g., LA Times, [LAPD found no bias in all 1,356 complaints filed against officers](#), Dec. 15, 2015; New Yorker, [Bad Cops, Good Cops](#), Dec. 21, 2015. See also RFK Submission, 166th Period of Sessions, Dec. 7, 2017.

²³⁷ The Marshall Project, [Blue Shield](#), Apr. 27, 2015; New York Times, [The Police Officers’ Bill of Rights Creates a Double Standard](#), June 27, 2015; Human Rights Committee, [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up Mission to the United States of America](#), A/HRC/35/28/Add.2, June 12, 2017, para. 41.

²³⁸ Information received from Robert F. Kennedy (RFK) Human Rights during 156th Period of Sessions, updated Feb. 12, 2016, p. 82 (also available at: http://rfkhumanrights.org/media/filer_public/7d/84/7d8409c1-588f-4163-b552-1f6428e685db/iachr_thematic_hearing_submission_-_excessive_use_of_force_by_police_against_black_americans.pdf) [hereinafter “Excessive Use of Force”].

²³⁹ Vera Institute of Justice, [Civilian Oversight of Policing: Lessons from the Literature](#), May 5-8, 2002.

²⁴⁰ RFK Human Rights, [Excessive Use of Force](#), updated Feb. 12, 2016, p. 83.

number of procedural barriers to filing suit, including statutes of limitations, strict standing and pleading requirements, inability to pay to hire a lawyer, and fears of reprisal from police departments.²⁴¹ However, evidence suggests that police officers are rarely found liable in civil suits.²⁴² Furthermore, many police misconduct cases end in out-of-court settlements, which mean that defendant officers or police departments do not have to acknowledge misconduct, limiting full accountability.²⁴³

116. One key issue identified in information received by the Commission about the effectiveness of civil suits is the question of who pays for police misconduct.²⁴⁴ In brief, when a plaintiff obtains a judgment against a police officer or department, the municipality generally indemnifies the officer and pays the damages award out of taxpayer money. Indeed, most police departments do not even know how much a city has paid for police misconduct, or whose conduct resulted in a settlement.²⁴⁵ Meanwhile, the cost is high: the ten U.S. cities with the largest police departments paid out \$1.02 billion between 2010 and 2015 for beatings, shootings, and wrongful imprisonment alone.²⁴⁶
117. Furthermore, the federal government’s ability to prosecute cases of police violence when state and local criminal prosecutions fail is limited. While the federal government is empowered to initiate federal criminal civil rights prosecutions under 18 U.S.C. § 242 (“Deprivation of rights under color of law”),²⁴⁷ very few cases are prosecuted. This seems to be due to an extremely high evidentiary bar, namely that in order to prove willful conduct, the government must prove the defendant’s specific intent (*dolo*) to commit the wrongful act. Historically, this has meant that prosecutors “could rarely prove to a jury that even a [Ku Klux] Klansman had lynched his victim for the purpose of depriving his victim of rights.”²⁴⁸ Former Attorney General Eric Holder, who oversaw the investigation in Ferguson, among others, has stated that the federal civil rights laws require a

²⁴¹ Id. at p. 80.

²⁴² Cato Institute: Policemisconduct.net, [The Truth About Police Misconduct Litigation](#), Feb. 22, 2010.

²⁴³ Id.

²⁴⁴ RFK Human Rights, [Excessive Use of Force](#), updated Feb. 12, 2016, p. 80.

²⁴⁵ Free Speech Radio News, [Civil Suits Against Police Cost Taxpayers Millions But Rarely Result in Reforms](#), June 23, 2015.

²⁴⁶ Wall Street Journal, [Cost of Police-Misconduct Cases Soars in Big U.S. Cities](#), July 15, 2015. The ten cities are New York City, Chicago, Los Angeles, Philadelphia, Houston, Washington, D.C., Dallas, Phoenix, Baltimore, and Miami-Dade.

²⁴⁷ The statute requires the State to prove 1) that the defendant acted under color of law; 2) that the defendant acted willfully; 3) that the defendant deprived the victim of a federally protected right OR subjected the victim to different punishment on the basis of alienage, color, or race, and 4) any aggravating circumstances, such as having caused bodily injury or death. See 18 U.S.C. § 242, available at: <https://www.law.cornell.edu/uscode/text/18/242>.

²⁴⁸ Slate, [Will Justice Department Charge Darren Wilson?](#), Mar. 14, 2015.

standard of proof that is too high, and has stated that a change in the law is necessary.²⁴⁹ Additionally, limited resources may constrain the DOJ's ability to investigate and enforce federal anti-discrimination laws.²⁵⁰

118. Information received by the Commission indicates that a lack of police accountability not only fails to deter police violence, but also seriously harms police-community relations. During public hearings in 2015, representatives of Mothers Against Police Brutality, based in Dallas, Texas, cited a survey they carried out that found that only 12 percent of black respondents in Dallas felt a great deal of respect for police, while one-third said they have hardly any respect for the police and do not feel comfortable calling the police when they have a problem.²⁵¹
119. Likewise, during its visit to Ferguson, Missouri, the Commission was informed about the high level of community mistrust in police and other government authorities, exemplified by continuing disputes about the Michael Brown case. For example, the Commission heard about defacement of the memorial to Michael Brown in Canfield, Missouri, including allegations of theft of teddy bears and other memorabilia from the memorial. This situation has led community members to describe what they see as a lack of effort by the police to reach out and develop constructive relationships with African American and low-income communities, and a “culture of protecting the police department, no matter what they do.”²⁵²

e. Police Responses to Protests

120. The Commission has received information about disproportionate police responses to protests and about the excessive policing of African American protesters.²⁵³ In particular, events during protests in Ferguson, Missouri highlight a number of cross-cutting issues in this report, including issues of non-discrimination, excessive force, and police militarization. The Commission notes information indicating that many of the concerns expressed below in the context of Ferguson are generalized in the U.S.;²⁵⁴ in

²⁴⁹ POLITICO, [Holder's parting shot: It's too hard to bring civil rights cases](#), Feb. 27, 2015.

²⁵⁰ RFK Human Rights, [Excessive Use of Force](#), updated Feb. 12, 2016, p. 84-85.

²⁵¹ IACHR, 156th Period of Sessions, [“Police Killings” Hearing](#), Oct. 23, 2015.

²⁵² IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

²⁵³ See, e.g., Justin Hansford, [The First Amendment Freedom of Assembly as a Racial Project](#), 127 Yale L.J. Forum, Jan. 20, 2018.

²⁵⁴ See, e.g., IACHR, 166th Period of Sessions, Thematic Hearing: Rights to association, peaceful assembly and freedom of expression in the United States, Oct. 27, 2014. Video of hearing available at: <https://www.youtube.com/watch?v=yft7VCzxXUg>.

this respect, it notes the observation of the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association on complaints of police use of excessive force to arbitrarily arrest protesters for minor acts, such as stepping off crowded sidewalks, overwhelming police presence at protests and other acts of intimidation, and targeting for arrest and abuse on the basis of race or ethnicity.²⁵⁵

121. During its on-site visit in Ferguson, the Commission received information about protests after the killing of Michael Brown in August 2014 and the announcement of the decision not to indict Darren Wilson, the white officer responsible for his death, on November 24, 2014, and strong public criticism of the police response to these protests.²⁵⁶ At least 212 individuals were reportedly arrested during the protests, the majority on charges of “refusal to disperse.”²⁵⁷ The IACHR received reports of excessive use of tear gas and violence against African Americans as a mechanism of control and/or dispersal, even during peaceful protests, arbitrary detention of protesters, and disrespect of places identified as safe-houses, including places of worship, during protests. The delegation was concerned by allegations that Ferguson police deliberately ignored white protesters and focused on the arrest and use of force against black protesters during protests.²⁵⁸
122. The imposition of restrictions on the right to protest, including curfews and designated protest areas, as well as restrictions on the presence and range of action of the media and legal and human rights observers at protests may also have a chilling effect on freedom of expression.²⁵⁹ Indeed, a federal court later found that the enforcement of a “keep walking/five-second rule” during protests in Ferguson, under which demonstrators constantly had to keep moving during the protests or face arrest, was unconstitutional.²⁶⁰

²⁵⁵ Human Rights Committee, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up Mission to the United States of America*, A/HRC/35/28/Add.2, June 12, 2017, para. 36.

²⁵⁶ IACHR, *On-Site Visit Press Release*, Oct. 16, 2015.

²⁵⁷ CNN, *Who was arrested in Ferguson?*, Aug. 22, 2014; *Ferguson Crisis: Arrest Data 8/10-8/22*, available at: <http://i2.cdn.turner.com/cnn/2014/images/08/22/arrest.data.from.8-10.to.8-22.pdf>.

²⁵⁸ IACHR, *On-Site Visit Press Release*, Oct. 16, 2015.

²⁵⁹ Amnesty International, *On the Streets of America: Human Rights Abuses in Ferguson*, 2014.

²⁶⁰ *Mustafa Abdullah vs. County of St. Louis, et al.* (E.D. MO, 2014), available at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/1310115/5-second-rule-injunction.pdf>; Washington Post, *Federal Judges Tossed 5 second rule being used by Police in Ferguson Protests*, Oct. 6, 2014; See also IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 124.

123. At a public hearing on racism in the U.S. criminal justice system, a participant from the Lawyers' Committee for Civil Rights Under Law stated:

Instead of having their complaints and concerns heard, lawful protestors [in Ferguson, Missouri] have been met with a harsh militarized response by local and state police forces. They have been jailed without cause, beaten unconscious, blinded by tear gas and pepper spray, and had their human and constitutional rights violated every day with all kinds of pronouncements on new policies and curfews. Sadly, this is not the first time and will not be the last time that police abuse targeting communities of color, unlawfully killing unarmed black men, or suppressing lawful protest will occur. This experience has become the new normal throughout the United States.²⁶¹

124. In November 2014, new protests broke out across the country at the decision of a grand jury not to indict the police officer responsible for Michael Brown's death. In California, at least 180 people were reportedly arrested in protests.²⁶² In December, New York police reportedly arrested at least 200 people during protests against the decision of a grand jury not to indict the officer responsible for the death of Eric Garner. Most of the arrests of the demonstrators were made on charges of disorderly conduct and refusal to disperse.²⁶³
125. Protests in Ferguson after the killing of Michael Brown also highlighted the concerning level of militarization of municipal police, leading to a federal review of programs that supply military equipment to police departments.²⁶⁴ During those protests, reports indicated that police used armored vehicles, noise-based crowd control devices, shotguns, M-4 rifles, rubber bullets, and tear gas.²⁶⁵ The use of riot gear and military-grade weapons in peaceful demonstrations may also be a form of intimidation of protesters who are practicing their right to peaceful assembly, and can cause the escalation, rather than de-escalation, of violence.²⁶⁶

²⁶¹ IACHR, 153d Period of Sessions, "Racism in the Justice System" Hearing, Oct. 27, 2014.

²⁶² LA Times, [California unrest: Dozens arrested after Michael Brown decision](#), Nov. 25, 2014.

²⁶³ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 125.

²⁶⁴ Washington Post, [Obama orders review of military equipment supplied to police](#), Aug. 23, 2014; Washington Post, [The Pentagon gave nearly half a billion dollars of military gear to local law enforcement last year](#), Aug. 14, 2014. See *supra* paras. 66, 87-89.

²⁶⁵ ACLU, [365 Days and 605 Armored Military Vehicles Later: Police Militarization a Year After Ferguson](#), Aug. 2015.

²⁶⁶ Amnesty International, [On the Streets of America: Human Rights Abuses in Ferguson](#), 2014.

126. In April 2015, protests in Baltimore and around the country occurred after the death of 25-year-old Freddie Gray due to a spinal cord injury while in police custody. At least 486 people were reportedly detained in the protests.²⁶⁷ On April 27, 2015, the governor of Maryland declared a state of emergency and ordered the National Guard to be deployed. At least 100 people were arrested in New York in protests there.²⁶⁸ According to reports, assaults and arrests of journalists by the police were recorded during the protests. The Mayor of Baltimore also ordered a curfew that was in effect from April 28 until May 3. The curfew, which was enforced citywide, did not apply to journalists, military personnel, and police, who were able to move about freely in the city between 10:00 p.m. and 5:00 a.m., while movement for all other citizens was restricted.²⁶⁹
127. The Commission notes reports that police responses to protests, as well as the relationship between the community and police, appear not to have improved in Ferguson since the 2014 protests and subsequent DOJ investigation. In September 2017, thousands in Ferguson protested the acquittal of a police officer in the 2011 killing of Anthony Lamar Smith, an unarmed black man.²⁷⁰ Media reports indicated that police officers mocked protesters while conducting mass arrests by using the common protest chant “Whose streets? Our streets!” and displayed an overwhelming and militarized presence in response to the protests, provoking a former DOJ investigator to observe, “You can’t legislate goodwill.”²⁷¹ The Commission notes recent reports that the DOJ has opened an investigation into St. Louis Police conduct during these protests.²⁷²
128. Finally, the Commission highlights with concern information received related to the increased surveillance of racial justice activists by domestic law enforcement agencies like the FBI,²⁷³ as well as the denomination of these groups as “Black Identity Extremists.”²⁷⁴ The Commission notes that the stigmatization of anti-racism activists is not a new phenomenon in the U.S.; during the civil rights movement of the 1960s, activists like the Rev.

²⁶⁷ The Washington Post, [Accurately Charging People Arrested in Baltimore Proves to be Legal Challenge](#), May 4, 2015.

²⁶⁸ NBC News, [Freddie Gray Protests Spread Beyond Baltimore, 100 Arrested in New York](#), Apr. 30, 2015. IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 126.

²⁶⁹ See IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 175.

²⁷⁰ The Guardian, [‘Militaristic and intimidating’: St Louis police criticized as protests stretch on](#), Sept. 18, 2017.

²⁷¹ The Guardian, [St Louis protests: three years since Ferguson, why hasn't anything changed?](#), Sept. 22, 2017.

²⁷² Chicago Tribune, [FBI, Justice Department investigating St. Louis police conduct during protests](#), Nov. 20, 2017.

²⁷³ OSCE, “The Responsibility of States”: Protection of Human Rights Defenders in the OSCE Region (2014–2016), para. 323; The Intercept, [Exclusive: Feds Regularly Monitored Black Lives Matter Since Ferguson](#), July 24, 2015.

²⁷⁴ Foreign Policy, [The FBI’s New U.S. Terrorist Threat: ‘Black Identity Extremists’](#), Oct. 6, 2017; New York Times, [The F.B.I.’s Black Phantom Menace](#), Oct. 9, 2017.

Dr. Martin Luther King, Jr. and members of the Black Panther Party were similarly targeted by the FBI's "Cointelpro" ("counterintelligence program").²⁷⁵ The Commission notes that, among other deleterious effects of increased surveillance of racial justice movements, this surveillance also has the effect of increasing the likelihood that its targets will be stigmatized and criminalized, exposing its targets to the increased risk of violence (e.g. in the context of raids), and chilling free speech and freedom of assembly.

129. In light of the foregoing, the Commission calls on the State to guarantee the rights to freedom of speech and freedom of assembly, and in particular to ensure their enforcement without discrimination on the basis of race or other prohibited grounds.

2. Aspects of Racial Discrimination in the Criminal Justice System

130. The Commission continues to be concerned by racial discrimination in the criminal justice system, from the moment of arrest to criminal trials to sentencing, as well as sentencing disparities and the overrepresentation of African Americans and other historically marginalized groups in prisons and jails.²⁷⁶ The Commission notes that racism at every stage of the criminal justice process tends to create a vicious circle, where disparities in policing, arrests, and pretrial detention lead to disparities in charges and convictions, and ultimately in incarceration and reincarceration rates. In light of this concerning panorama, the Commission highlights the obligation of the State to address this structural issue in a comprehensive manner, in compliance with its international obligations in the areas of non-discrimination, due process, and judicial guarantees, and calls for comprehensive actions, in line with the considerations in Chapters 3 and 4, to address these issues.

a. Racial Disparities in Arrests

131. The Commission remains seriously concerned by reports of racial disparities in the number and kind of arrests in the U.S. It notes that this is closely linked to racial discrimination in policing, which facilitates disparities in criminal justice outcomes for African Americans. The Commission reiterates the need for more research on alternative approaches to over-criminalization and arrests, especially for

²⁷⁵ See, e.g., New York Times, [The F.B.I.'s Dangerous Crackdown on 'Black Identity Extremists'](#), Nov. 15, 2017. See also *supra* note 96.

²⁷⁶ Human Rights Committee, [Concluding Observations 2014](#), Apr. 23, 2014, para. 6.

misdemeanors, considering the negative impact of a criminal record in the life plan of the individuals affected.²⁷⁷

132. The Commission notes with concern the role of implicit or explicit bias against African Americans in differential arrest rates. The power of police to make stops, searches, and arrests is discretionary, and there is strong evidence that this power is used disproportionately against black men.²⁷⁸ Racial disparity in arrests is apparent both overall, and in arrests made incident to stops and searches. For example, one study of FBI statistics found that Blacks are more likely than others to be arrested in almost every city for every type of crime, from murder and assault to loitering and marijuana possession. Only 173 of the 3,538 police departments examined (4.9%) arrested black people at a rate equal to or lower than other racial groups.²⁷⁹ Regarding arrests incident to stops, a study of traffic stop outcomes by the Bureau of Justice Statistics showed that black drivers (4.5%) were twice as likely as white drivers (2.1%) to be arrested during a traffic stop; conversely, Whites (18.6%) were more likely than Blacks (13.7%) to be let go with a verbal warning from police,²⁸⁰ evidencing a differential treatment, whether implicit or explicit, by police toward black drivers.
133. The Commission has previously considered that the war on drugs exacerbates racial disparities in arrests. Police target poor black neighborhoods to make low-level drug arrests, funneling a disproportionate number of African Americans and other people of color into the criminal justice system. One study found that between 1980 and 2007, Blacks were arrested nationwide on drug charges at rates relative to the population that were 2.8 to 5.5 times higher than white arrest rates.²⁸¹ Once in court, evidence indicates that judges are tougher on black drug offenders every step of the way.²⁸² In this regard, the Commission recalls its concerns “over the adoption of State measures that seek to punish drug-related conduct—specifically minor drug-related offenses, such as consumption and possession for personal use—and finds worrisome [an apparent] notable increase in the number of persons deprived of liberty for drug-related criminal acts,” as well as the treatment of drug users “based

²⁷⁷ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

²⁷⁸ Angela J. Davis, “The Prosecution of Black Men,” in *Policing the Black Man* (2017), p. 178; The Leadership Conference on Civil and Human Rights, [Restoring a National Consensus: The Need to End Racial Profiling in America](#), Mar. 2011; see also *supra* paras. 76-77.

²⁷⁹ USA Today, [Racial gap in U.S. arrest rates: 'Staggering disparity'](#), Nov. 18, 2014; app.com (USA Today), [Do cops target blacks? FBI stats show arrest disparity](#), Nov. 18, 2014.

²⁸⁰ Cited in The Leadership Conference on Civil and Human Rights, [Restoring a National Consensus: The Need to End Racial Profiling in America](#), Mar. 2011, 9. See also similar studies cited at *id.*, pages 10-12.

²⁸¹ Human Rights Watch, [Decades of Disparity: Drug Arrests and Race in the United States](#), Mar. 2009.

²⁸² Sarasota Herald-Tribune, [Bias on the Bench: Florida's Broken Sentencing System](#), Dec. 2016.

on a logic of repression and criminalization instead of [...] from a public health approach.”²⁸³ The Commission recalls that these policies of criminalization of drug possession and consumption as felonies has had a disproportionate negative impact on women as well.²⁸⁴ The Commission stresses that the State should study less restrictive approaches such as decriminalizing drug use and possession for personal use.²⁸⁵

134. The disproportionate impact of arrests on African Americans is compounded by the effects of pretrial detention, which disproportionately impacts those who are unable to pay bail. Information indicates that nationally, approximately 62 percent of all people in jail at any given time are pretrial detainees charged with nonviolent offenses, and the majority of those are in jail because they are unable to pay bail, not because they are a danger to the community.²⁸⁶ Because African Americans and Hispanics are overrepresented among the indigent, they are overrepresented in pretrial detention: they comprise 30 percent of the population nationwide, but represent 50 percent of all pretrial detainees.²⁸⁷ Evidence also indicates that racial bias impacts judges’ decisions in setting money bail, disproportionately impacting Blacks.²⁸⁸ Racial disparity in pretrial detention, compounded by poverty, continues a vicious cycle leading to disparities in incarceration: research indicates that even a weekend stay in pretrial detention increases the likelihood that a low-risk defendant will commit a crime upon release or miss a future court date; this likelihood increases the longer the defendant is detained.²⁸⁹
135. The Commission further expresses concern over the use of extended pretrial detention for individuals who are unable to pay bail and reports of use of solitary confinement in pretrial detention, including of adolescents.²⁹⁰ These practices tend to disproportionately impact the poor, youth, and persons with mental disabilities.²⁹¹ In this respect, the case of Kalief Browder is emblematic. Browder, an African American boy from The

²⁸³ IACHR, [Measures to Reduce Pretrial Detention](#), OEA/Ser.L/V/II.163, Doc. 105 (2017), para. 9.

²⁸⁴ Id. at para. 90.

²⁸⁵ Id.

²⁸⁶ Huffington Post, [Decision Points: Disproportionate Pretrial Detention of Blacks and Latinos Drives Mass Incarceration](#), Nov. 11, 2016.

²⁸⁷ Equal Justice Initiative, [Disproportionate Pretrial Detention of People of Color Drives Mass Incarceration](#), Dec. 17, 2015; Huffington Post, [Decision Points: Disproportionate Pretrial Detention of Blacks and Latinos Drives Mass Incarceration](#), Nov. 11, 2016.

²⁸⁸ Cynthia Jones, [“Give Us Free”: Addressing Racial Disparities in Bail Determinations](#), 16 *Legislation and Pub. Pol’y* 919 (2013).

²⁸⁹ Laura and John Arnold Foundation (LJAF), [Pretrial Criminal Justice Research](#), Mar. 2013; Huffington Post, [Decision Points: Disproportionate Pretrial Detention of Blacks and Latinos Drives Mass Incarceration](#), Nov. 11, 2016.

²⁹⁰ See also Human Rights Committee, [Concluding Observations 2014](#), Apr. 23, 2014, para. 20.

²⁹¹ Id.

Bronx, was arrested at age 16 for a crime he maintained he did not commit. He was held in pretrial detention on Rikers Island in New York for more than three years—about two years of that time in solitary confinement—while he refused to plead guilty to the charges without a trial, and perpetual delays in the courts prevented a trial. He was eventually released from detention after prosecutors dismissed the charges. He suffered severe mental health problems while incarcerated and after release, which he attributed to the violence he experienced on Rikers and the time in solitary confinement, and committed suicide in 2015 at the age of 22.²⁹² In this regard, the Commission reiterates that international standards establish that solitary confinement should be absolutely prohibited for children under the age of 18, and that in every case, beyond a period of 15 days, the harmful psychological effects of isolation can become irreversible.²⁹³

b. Racial Disparities in Access to Counsel, Pleas, Sentencing, Incarceration, and Re-Incarceration

136. The Commission remains concerned that racial disparities permeate the entire apparatus of the criminal justice system.²⁹⁴ The Commission has received information indicating racial disparities in access to counsel in criminal proceedings; negotiation of and terms associated with plea bargain agreements; incarceration rates and sentencing; and rates of re-incarceration, including on the basis of probation violations. The Commission echoes the concerns of the CERD that African Americans continue to be disproportionately arrested, incarcerated, and subjected to harsher sentences, including life imprisonment without parole and the death penalty, and that this situation is exacerbated by the exercise of prosecutorial discretion, and the application of mandatory minimum drug-offense sentencing policies and repeat offender laws.²⁹⁵
137. The Commission has received information about disparities in access to counsel in criminal proceedings.²⁹⁶ These issues are closely related to

²⁹² New Yorker, [Before the Law](#), Oct. 6, 2014; New Yorker, [Kalief Browder, 1993-2015](#), June 6, 2015; CityLab, [How New York City Killed Kalief Browder](#), Mar. 7, 2017 (interviewing Kalief’s surviving family members). On conditions at Rikers Island, see also IACHR, Press Release No. 104/14, [IACHR Expresses Concern over Detention Conditions at Rikers Island Prison, United States, a year after the tragic death of an inmate](#), Sept. 18, 2014.

²⁹³ IACHR, Press Release No. 51/13, [IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States](#), July 18, 2013.

²⁹⁴ See also Human Rights Committee, [Concluding Observations 2014](#), Apr. 23, 2014, para. 6; CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 20; U.N., Working Group on People of African Descent, [Report on mission to the U.S.](#), Aug. 18, 2016, paras. 20-42.

²⁹⁵ CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 20.

²⁹⁶ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015; see also CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 23.

poverty and issues in access to and quality of counsel for indigent defendants; nonetheless, even among indigent defendants, African Americans are disproportionately impacted by lack of access to counsel.²⁹⁷ Lack of access to counsel both endangers the right to due process in general²⁹⁸ and impacts defendants' ability to negotiate on equal terms in a plea bargaining process.

138. The effect of lack of access to and quality of counsel is compounded by the power of prosecutors to decide whether and how they will charge defendants with crimes. Information indicates that this power, which is not subject to review, can be exercised in a racially discriminatory manner. For example, one study showed that prosecutors charge black men with offenses carrying mandatory penalties twice as often as they did comparable white men.²⁹⁹ Prosecutors likewise control the plea bargaining process, which means that they make discretionary and largely unreviewable choices about what penalties to seek against which defendants.³⁰⁰ This power over criminal charges and penalties is magnified by the fact that 97 percent of federal convictions and 94 percent of state convictions are the result of guilty pleas, without going to trial.³⁰¹
139. Information received by the Commission indicates significant racial disparities in sentencing decisions in the U.S.³⁰² Sentences imposed on black males in the federal criminal system are nearly 20 percent longer

²⁹⁷ See, e.g., Gabriel F. Chin, *Race and the Disappointing Right to Counsel*, 122 *Yale Law Journal* 2236, 2238 (2013) (citing, *inter alia*, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010); David Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (New York: New Press, 1999); Stephen B. Bright, Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer, 103 *Yale Law Journal* 1835 (1994); additional citations omitted).

²⁹⁸ American Declaration, Arts. XVIII, XXVI; International Covenant on Civil and Political Rights, Art. 15(3)(b), (d),

²⁹⁹ Sonja B. Starr and M. Marit Rehavi, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*," 123 *Yale Law Journal* 2 (2013).

³⁰⁰ See, e.g., *Oyler v. Boyles*, 368 U.S. 448 (1962); *McCleskey v. Kemp*, 481 U.S. 279 (1987). These and other cases held that selective prosecution (e.g. selectively charging different crimes, seeking different penalties, or charging in federal versus state court) violates the Equal Protection Clause only if a prosecutor intentionally or purposefully discriminates on the basis of race. Thus, a showing of disparate impact of prosecutorial decisions (which would tend to establish the existence of implicit prosecutorial bias) is not sufficient to establish discrimination; rather, explicit invidious discrimination must be proved in order to establish an Equal Protection violation in this context.

³⁰¹ See The Marshall Project (US District Judge John Kane), *Plea Bargaining and the Innocent*, Dec. 26, 2014; New York Review of Books (US District Judge Jed Rakoff), *Why Innocent People Plead Guilty*, Nov. 20, 2014.

³⁰² ACLU, Submission on Racial Disparities in Sentencing for Hearing on Reports of Racism in the Justice System of the United States (IACHR, 153d Session), Oct. 27, 2014 [hereinafter ACLU Submission, 153d Session] (citing Sonja B. Starr & M. Marit Rehavi, "Racial Disparity in Federal Criminal Charging and its Sentencing Consequences," U. Michigan Law & Economics, Empirical Legal Studies Center Paper No. 12-002 (2012); Marc Mauer, "Addressing Racial Disparities in Incarceration," 91 *Prison Journal* (2011); The Sentencing Project, *Racial Disparity in Sentencing: A Review of the Literature*, 2005).

than those imposed on white males convicted of similar crimes.³⁰³ Black and Hispanic defendants are significantly more likely to be incarcerated than comparable white defendants, and receive longer sentences than their white counterparts in some jurisdictions.³⁰⁴ One recent study found that nearly half the counties in Florida sentence Blacks convicted of felony drug possession to more than twice the time of Whites, even when their backgrounds (tallied via a “points” system) are the same. Across Florida, when a white and black defendant score the same points for the same offense, judges give the black defendant a longer prison sentence in 60 percent of felony cases.³⁰⁵ Throughout the federal system, black male federal defendants receive longer sentences than white defendants arrested for the same offenses and with comparable criminal histories.³⁰⁶ Race further plays a significant role in the determination of which homicide cases result in death sentences.³⁰⁷

140. The Commission recalls that the United States has the highest incarceration rate in the world, at about 719 prisoners per 100,000 residents,³⁰⁸ more than five times higher than most of the countries in the world.³⁰⁹ In addition to the 1.3 million people incarcerated in state prisons, about 1 million more are deprived of liberty at any given time in federal prisons, local jails, immigration detention, and other detention centers.³¹⁰ The Commission notes, however, that the overall incarceration rate has been falling since 2007—from about 1 in 100 adults to 1 in 115—largely due to state-level reform initiatives.³¹¹ Within the incarcerated population, Blacks, Hispanics, and Native Americans are grossly overrepresented relative to their percentage of the total population.³¹² While African Americans comprise 13 percent of the U.S. population, they represent 38 percent of

³⁰³ ACLU Submission, 153d Session (citing U.S. Sentencing Commission, Report on the Continuing Impact of United States v. Booker on Federal Sentencing, Jan. 30, 2013).

³⁰⁴ Id. (citing Cassia C. Spohn, Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process, in 3 *Criminal Justice* 427 (2000)).

³⁰⁵ Sarasota Herald-Tribune, Bias on the Bench: Florida’s Broken Sentencing System, Dec. 2016.

³⁰⁶ ACLU Submission, 153d Session (citing Sonja B. Starr & M. Marit Rehani, “Racial Disparity in Federal Criminal Charging and its Sentencing Consequences,” University of Michigan Law & Economics, Empirical Legal Studies Center Paper No. 12-002 (2012)).

³⁰⁷ ACLU Submission, 153d Session (citing D.C. Baldus & C. Woodworth, Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception, 53 *DePaul Law Review* 1411 (2004)); see also *supra* footnotes 88, 65.

³⁰⁸ Prison Policy, States of Incarceration: The Global Context, Aug. 2017.

³⁰⁹ Prison Policy Initiative, States of Incarceration: The Global Context 2016, June 16, 2016.

³¹⁰ Prison Policy Initiative, Mass Incarceration: The Whole Pie 2017, Mar. 14, 2017.

³¹¹ Pew Charitable Trusts, State Reforms Reverse Decades of Incarceration Growth, Mar. 21, 2017. This report notes that the number of adults subject to any kind of correctional control, such as probation or parole, is much higher than the incarceration rate, but has also been falling since 2007, from a peak of 1 in 31 adults in the U.S. subject to correctional control to the current rate of 1 in 37.

³¹² The Sentencing Project, The Color of Justice: Racial and Ethnic Disparity in State Prisons, June 14, 2016.

the incarcerated population.³¹³ This grave inequality extends to death row as well: African Americans comprise 41.65 percent of the population on death row and 34.5 percent of the defendants executed in the U.S. since 1976.³¹⁴ In contrast, Whites make up 64 percent of the national population and just 39 percent of the incarcerated population; Hispanics make up 16 percent of the national population and 19 percent of the incarcerated population. Thus, while the overall incarceration rate for Whites is 450 per 100,000, the incarceration rate for Blacks is 2,306 per 100,000.³¹⁵ In state prisons, African Americans are incarcerated across the country at more than five times the rate of whites, and at least ten times the rate in five states.³¹⁶

141. The Commission reiterates its concern about the U.S.' high incarceration rate for non-violent drug crimes. It calls on the State to establish a comprehensive drug policy with an approach focused on social reinsertion, ensuring treatment for persons who have been arrested for drug use or possession, or who have committed minor offenses related to drug use or dependence, from a public health approach, rather than a logic of repression, or criminalization. The State should prevent individuals in cases of drug use or possession for personal use from being subjected to custodial measures or entering the criminal justice system.³¹⁷
142. The Commission reiterates its concern regarding detention conditions in the United States.³¹⁸ During its visit to New Orleans, the delegation received testimonies from mothers of black men incarcerated in dire conditions, including facing barriers to access needed medical services.³¹⁹ Other human rights bodies have indicated serious barriers to accessing medical services, including mental health treatment, in detention.³²⁰ Likewise, available information indicates that African Americans are disproportionately subjected to solitary confinement.³²¹ In this regard, the Commission reiterates that the prohibition of torture and cruel, inhuman, and degrading treatment may not be abrogated and is universal, and

³¹³ Id.

³¹⁴ Death Penalty Information Center, [National Statistics on the Death Penalty and Race](#), Aug. 2017.

³¹⁵ Prison Policy Initiative, [Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity](#), May 28, 2014.

³¹⁶ Sentencing Project, [The Color of Justice: Racial and Ethnic Disparity in State Prisons](#), June 14, 2016.

³¹⁷ IACHR, [Measures to Reduce Pretrial Detention](#), OEA/Ser.L/V/II.163, Doc. 105 (2017), para. 153.

³¹⁸ See, e.g., IACHR, Press Release No. 120/12, [IACHR Expresses Concern on Acts of Violence in Prison in the United States](#), Sept. 26, 2012; Press Release No. 104/14, [IACHR Expresses Concern over Detention Conditions at Rikers Island Prison, United States, a year after the tragic death of an inmate](#), Sept. 18, 2014.

³¹⁹ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

³²⁰ U.N., Working Group on People of African Descent. [Report on mission to the U.S.](#), Aug. 18, 2016, para. 35.

³²¹ Solitary Watch, [Prison Segregation and Racial Disparities](#), Nov. 2, 2013; U.N., Working Group on People of African Descent. [Report on mission to the U.S.](#), Aug. 18, 2016, para. 35.

accordingly, States must develop strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances.³²²

143. Available information indicates that African Americans are also disproportionately often re-incarcerated for probation violations and similar infractions. As of 2015, one-third of the 4.65 million individuals in the U.S. who were on some form of parole or probation were Black, while Blacks make up only 13 percent of the U.S. population. African Americans are furthermore sent or returned to prison for probation and parole violations at much higher rates than Whites.³²³

c. Consequences of Contact with the Criminal Justice System

144. The Commission has received information on the long-term consequences of contact with the criminal justice system, in particular the lasting impact of felony convictions on access to civil and political rights like voting, as well as on access to housing, employment, and public benefits.³²⁴ This limitation on access to rights as a consequence of a prior criminal record has been described as a kind of second-class citizenship.³²⁵
145. Regarding political rights, the Commission received information about the problem of felony disenfranchisement at public hearings and during its on-site visit. According to information received, an estimated 5.8 million people in the U.S. are denied the right to vote due to felony convictions; of these, 2.2 million are Black. This means that approximately 7.7 percent of voting-age African Americans are legally prohibited from voting, in contrast with 2.5 percent of the overall population.³²⁶ Likewise, during its visit to Sanford and Miami, Florida in 2015, the Commission was informed about problems of mass incarceration and felony voter disenfranchisement affecting African Americans, which limits the full exercise of the democratic and citizenship rights of these communities. At that time, the Commission indicated that the underlying “convictions themselves are suspect because

³²² IACHR, Press Release No. 51/13, [IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States](#), July 18, 2013.

³²³ New York Times, [Jay-Z: The Criminal Justice System Stalks Black People Like Meek Mill](#), Nov. 17, 2017.

³²⁴ See also generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), pp. 157-165.

³²⁵ IACHR, 154th Period of Sessions, [“Criminal Justice and Race” Hearing](#), Mar. 16, 2015. See also Press Release No. 035/2015, [IACHR Wraps Up its 154th Session](#), Mar. 27, 2015.

³²⁶ IACHR, 153d Period of Sessions, [“Racism in the Justice System” Hearing](#), Oct. 27, 2014.

of structural racism.”³²⁷ These problems must further be viewed within the larger context of discrimination in access to voting rights.³²⁸

146. The Commission has further received information about a lack of clarity in state laws on felony disenfranchisement, and proposed federal legislation to correct this situation and restore voting rights to persons convicted of felonies, including the draft Democracy Restoration Act.³²⁹ In this regard, it notes good state-level practices; for example, in 2016, Virginia restored voting rights to an estimated 206,000 citizens, disproportionately African American, via gubernatorial Executive Order.³³⁰ At that time, the Commission observed that “when conviction [...] is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offen[s]e and the sentence,” and recommended adopting “appropriate measures in other states to [restore] voting rights to citizens who have fully served their sentences and those who have been release on parole” particularly in light of the racially discriminatory impact of the policy.³³¹ Given the disproportionate impact of felony disenfranchisement on African American communities, and the fundamental importance of the right to vote in a democratic system, the Commission reiterates the need for reform.³³²
147. Felony convictions may also limit individuals’ access to work and other economic, social, and cultural rights over the course of their lives. The Commission received information from the State at a public hearing about “a long history of complaints” to the Equal Opportunity Employment Commission (EEOC) of discrimination against formerly incarcerated persons with felony convictions and steps taken by the EEOC to investigate and provide policy guidance on the issue.³³³ Some information indicates

³²⁷ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

³²⁸ See, e.g., OHCHR, [Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights](#), Dec. 15, 2017, para. 18 (“Then there is covert disenfranchisement, which includes the dramatic gerrymandering of electoral districts to privilege particular groups of voters, the imposition of artificial and unnecessary voter ID requirements, the blatant manipulation of polling station locations, the relocating of DMVs to make it more difficult for certain groups to obtain IDs, and the general ramping up of obstacles to voting especially by those without resources. The net result is that people living in poverty, minorities, and other disfavored groups are being systematically deprived of their voting rights.”)

³²⁹ IACHR, 153d Period of Sessions, [“Racism in the Justice System”](#) Hearing, Oct. 27, 2014.

³³⁰ IACHR, Press Release No. 77/16, [IACHR Welcomes the Restoration of Voting Rights for Former Felons in the United States](#), June 14, 2016.

³³¹ Id.

³³² Id. See also Human Rights Comm., [Concluding Observations 2014](#), Apr. 23, 2014, para. 24; CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 11; Brennan Center for Justice, [Judge Sotomayor in Good Company on Restoring Voting Rights](#), June 2, 2009.

³³³ IACHR, 154th Period of Sessions, [“Criminal Justice and Race”](#) Hearing, Mar. 16, 2015. See also Lawyers’ Committee for Civil Rights Under Law, [Best Practice Standards: The Proper Use of Criminal Records in Hiring](#), May 21, 2013.

that discrimination against black individuals with criminal records is likely more severe than against white individuals with criminal records. For example, one study found that white men with a criminal record received more positive responses from employers than black men with no criminal record.³³⁴ Likewise, a variety of laws and policies tend to exclude persons with prior felony convictions for drug crimes from accessing housing³³⁵ and public benefits.³³⁶ These dispositions have an important effect on poverty and access to rights.

3. Related Structural Issues of Racial Discrimination

148. As noted throughout this report, racial discrimination against African Americans in the United States is structural and therefore affects virtually every aspect of life. While a complete consideration of the dimensions of structural discrimination against African Americans in the U.S. is therefore beyond the scope of this report, this section addresses several issues that are closely connected to the issues of policing and use of force, as well as to the impact of the criminal justice system on African Americans.

a. Social Context: Stigma, Hate Speech, and Hate Crimes

149. The Commission is seriously concerned by reports of rising numbers of hate crimes and by alarming increases in hate speech in the U.S. This increase has been particularly marked in 2016 and 2017. The Federal Bureau of Investigation (FBI) recently reported a five-year high in hate crimes, with 6,121 in 2016—a five percent increase over 2015, which saw 5,818 such crimes reported.³³⁷ It is relevant to note, however, that 88 percent of participating law enforcement agencies reported no hate crimes in their jurisdictions, representing an ongoing challenge for data collection efforts. In comparison, the Bureau of Justice Statistics, a government entity that is also part of the DOJ, estimates an annual average of 250,000 hate

³³⁴ Council of State Governments Justice Center, [Researchers Examine Effects of a Criminal Record on Prospects for Employment](#), Aug. 20, 2014.

³³⁵ Indeed, the issue is so well-recognized that in 2016, the Department of Housing and Urban Development (HUD) issued a guidance saying that blanket refusals to rent to individuals with criminal records is de facto discrimination, because of the systemic disparities of the American criminal justice system: “Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African-Americans and Hispanics.” NPR, [Denying Housing Over Criminal Record May Be Discrimination, Feds Say](#), Apr. 4, 2016.

³³⁶ The Sentencing Project, [State Advocacy Update: Efforts to Address Federal Drug Felony Ban on Public Benefits](#), May 1, 2017.

³³⁷ FBI, [2016 Hate Crime Statistics: Incidents and Offenses](#), Nov. 2017.

crime incidents, about 40 times the number reported by the FBI.³³⁸ The FBI found that about 58 percent of reported hate crimes in 2016 were motivated on the basis of race, ethnicity, or national origin.³³⁹ The Commission expresses concern about the reported difficulty of prosecuting and, as appropriate, achieving convictions for hate crimes owing to a variety of factors, including gaps in state laws and lack of federal resources to prosecute, as well as the difficulty of proving the perpetrator's specific intent (*dolo*) to commit a hate crime.³⁴⁰ The Commission considers that this wider social context of increasing expressions of hate and bigotry against African Americans (as well as other historically marginalized groups, including Muslims, immigrants, and Jews), cannot be separated from the other situations of discrimination considered in this report, in particular as they affect State obligations with respect to non-discrimination and equal protection of the law.

150. Within this context of shocking expressions of hate, the massacre perpetrated at the Emanuel African Methodist Episcopal Church (a historically Black church) in Charleston, South Carolina, in April 2015, in which a white supremacist gunman murdered nine Black parishioners during Sunday services, stands out.³⁴¹ The shooter's white supremacist beliefs are well-documented;³⁴² the crime was prosecuted as a federal hate crime, and the shooter was sentenced to death in the federal proceedings and nine life sentences in state proceedings.³⁴³ This tragedy also contributed to a renewed movement to remove the Confederate flag from display in public buildings in states like South Carolina.³⁴⁴
151. The Commission underscores as well the events that took place in Charlottesville, Virginia on August 11-12, 2017, where hundreds of persons belonging to white nationalist groups gathered for a rally entitled "Unite the Right."³⁴⁵ The persons represented a number of white supremacist hate groups, including Neo-Nazis and the Ku Klux Klan, and expressed bigotry and hatred against groups including Blacks, Jews, and immigrants. Violent clashes erupted during the events in Charlottesville on August 12, and one

³³⁸ Bureau of Justice Statistics, [Hate Crime Victimization, 2004-2015](#), June 29, 2017; *see also* Southern Poverty Law Center, [FBI: Hate crimes reach 5-year high in 2016, jumped as Trump rolled toward presidency](#), Nov. 13, 2017; El País, [Aumentan en EE UU los delitos de odio contra musulmanes y latinos](#), Nov. 13, 2017.

³³⁹ FBI, [2016 Hate Crime Statistics: Incidents and Offenses](#), Nov. 2017.

³⁴⁰ *See, e.g.*, Vox, [Why it's so hard to prosecute a hate crime](#), last updated May 23, 2017.

³⁴¹ BBC News, [Charleston church shooting: Nine die in South Carolina 'hate crime'](#), 18 June 2015.

³⁴² Chicago Tribune, [FBI: Dylann Roof displaying racist symbols even during his trial](#), Jan. 6, 2017.

³⁴³ Washington Post, [Charleston church shooter: 'I would like to make it crystal clear, I do not regret what I did'](#), Jan. 4, 2017; CNN, [Dylann Roof jury: Death penalty for Charleston church shooter](#), Jan. 10, 2017; NBC News, [Dylann Roof: Charleston Church Shooter Gets Nine Life Sentences in State Case](#), Apr. 10, 2017.

³⁴⁴ NBC News, [Charleston Church Shooting Renews Confederate Flag Debate](#), June 20, 2015.

³⁴⁵ IACHR, [Charlottesville Press Release](#), Aug. 18, 2017.

“Unite the Right” protester drove a car into a crowd of counter-protesters, killing one counter-protester, Heather Heyer. At least nineteen other counter-protesters were injured, including DeAndre Harris, an African American man who was violently beaten by white supremacists while police apparently looked on.³⁴⁶ Counter-protesters present at the rally and media organizations have since questioned the role of the police at the rally, stating that police stood by while white nationalists beat them, that few were arrested, and that almost none have been convicted to date.³⁴⁷ The Commission notes that criminal charges have been brought against some of the rally participants accused of the killing and wounding, respectively, of Heather Heyer and DeAndre Harris, and reiterates the need to ensure the full investigation, prosecution and, as appropriate, punishment of these events.³⁴⁸

152. The Commission further notes that the “Unite the Right” rally was held to protest the city’s plan to remove a Confederate-era monument from the city’s former courthouse.³⁴⁹ That monument, like many others located across the country,³⁵⁰ pays tribute to political leaders who were advocates of slavery, perhaps the most serious human rights violation ever perpetrated in the U.S. The ongoing disputes over these monuments highlight the State’s incomplete obligation to promote memory, truth and justice for serious human rights violations committed against Afro-descendants in the U.S. Inter-American standards make clear that States must acknowledge serious human rights violations and crimes against humanity, promote the right to truth, and promote proper reparations for victims, including guaranteeing the non-repetition of violations.³⁵¹ This includes removing public tributes to those responsible for serious human rights violations, and promoting the memory of the victims, which is also a type of symbolic reparation.

³⁴⁶ New York Times, [Man Charged After White Nationalist Rally in Charlottesville Ends in Deadly Violence](#), Aug. 12, 2017; Washington Post, [Black man attacked by white supremacists in Charlottesville faces felony charge](#), Oct. 11, 2017; Washington Post, [Black man beaten in Charlottesville found not guilty of assaulting white supremacist](#), Mar. 16, 2018.

³⁴⁷ New York Times, [As White Nationalist in Charlottesville Fired, Police ‘Never Moved’](#), Aug. 25, 2017; TIME, [White Supremacists Assaulted Dozens of Us in Charlottesville. Almost None Have Been Punished](#), Nov. 3, 2017; WRIC (ABC News), [Court Documents: 6 out of 8 arrested in Charlottesville protests from out of state](#), Aug. 14, 2017; ThinkProgress, [Police in Charlottesville arrested almost as many drunk people as violent white supremacists](#), Aug. 18, 2017; CNN, [Man beaten by white supremacists in Charlottesville is arrested](#), Oct. 13, 2017.

³⁴⁸ CNN, [Charlottesville car attack suspect charged with five additional felonies](#), Aug. 18, 2017; Baltimore Sun, [Baltimore man among 3 more charged in Charlottesville, Va., white supremacist rally](#), Aug. 27, 2017.

³⁴⁹ New York Times, [The Statue at the Center of Charlottesville’s Storm](#), Aug. 13, 2017; *see also* NPR, [Shrouds Pulled From Charlottesville Confederate Statues, Following Ruling](#), Feb. 28, 2018.

³⁵⁰ CNN, [Here are the Confederate memorials that will be removed after Charlottesville](#), Aug. 22, 2017; The Atlantic, [Take the Statues Down](#), Aug. 13, 2017.

³⁵¹ *See* IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152, Doc. 2 (2014) [hereinafter “The Right to Truth”].

b. “Stand Your Ground” Laws and Violence by Private Citizens

153. The Commission is concerned by the continued existence of “Stand Your Ground” (SYG) laws, which permit civilians to use deadly force against other civilians in circumstances other than strict self-defense, in at least 29 states of the U.S. Many state laws apply an objective and reasonable standard to the exercise of self-defense, which, under international law, must embrace exceptionality, necessity and proportionality.³⁵² However, states that adopt SYG laws permit an individual to “stand his or her ground” and meet force with force, including deadly force.³⁵³ SYG laws generally state that, under certain circumstances outside one’s own home,³⁵⁴ individuals may use force to defend themselves without first attempting to retreat from the danger. These laws thus authorize individuals to defend themselves using disproportional force that as a result is unjustified, and provide a legal defense to the crime of homicide and to civil liability for homicides.
154. The Commission has received information indicating a link between the introduction of SYG laws and increases in homicide rates across multiple states.³⁵⁵ In this context, the U.S. Commission on Civil Rights, appointed by Congress, found in a study that SYG statutes benefit Whites more than Blacks, are unnecessary, and cause non-white men to live in fear.³⁵⁶ The experts indicated that racially biased application of SYG laws should be attributed to racism and bias already “rampant” in the criminal justice system.³⁵⁷
155. The Commission was informed at a 2014 hearing about inconsistent and discriminatory application of SYG laws, and received firsthand accounts about the impact of these laws. Petitioners argued that these laws negatively and disproportionately affect African Americans and other

³⁵² Dream Defenders, Florida Legal Services Inc., National Association for the Advancement of Colored People (NAACP), United States’ Compliance with the International Covenant on Civil and Political Rights - Written Statement on Stand Your Ground Laws, 109th Session of the United Nations Human Rights Committee, Oct. 13-31, 2013.

³⁵³ ABA, National Task Force on Stand Your Ground Laws: Final Report and Recommendations, Sept. 2015, p. 1.

³⁵⁴ State laws vary, but many states do not require a person to first attempt to retreat before using lethal force in the face of a threat of death or serious bodily injury when in one’s own home. This disposition follows a common law tradition known as the “Castle Doctrine” (also known as a castle law or a defense of habitation law).

³⁵⁵ NPR, ‘Stand Your Ground’ Linked To Increase In Homicides, Jan. 2, 2013 (One study found 500 to 700 more homicides per year across the 23 states that introduced SYG laws as a result of the laws. There are about 14,000 homicides annually in the U.S.).

³⁵⁶ Transcript of U.S. Commission on Civil Rights, Briefing on Stand Your Ground, Oct. 17, 2014, available at: http://www.usccr.gov/calendar/trnscrpt/CommissionBriefingTranscript_Part1_10-17-2014_Final.pdf; FOX News, Experts tell U.S. commission ‘stand your ground’ law is discriminatory, Oct. 18, 2014.

³⁵⁷ Orlando Sentinel, Experts offer testimony in ‘stand your ground’ probe, Oct. 17, 2014.

historically marginalized groups by legitimizing a “shoot first” mindset that is used against black victims, based on biases and prejudices against them.³⁵⁸ In this regard, Ron Davis, the father of Jordan Davis, a black teenager murdered on November 23, 2012 in Jacksonville, Florida,³⁵⁹ stated at the hearing:

These laws take into account the fears of other people and the biases of other people over the life of your unarmed child or loved one. It is what they think you have, you don't have to have a weapon as long as I think you having a weapon then it is reasonable to the shooter and that is all they have to prove [...] We all have certain biases. [...] Maybe you don't have African American friends, Hispanic friends, so you might have a bias in your mind, [when you walk down the street and you see people of color hanging out on the corner] you have a little bias that [says] you know, “maybe I should cross the street.” [...] You don't allow, however, your citizens to take guns out and shoot people and kill people based on these biases, based on these fears.³⁶⁰

156. Sabrina Fulton, mother of Trayvon Martin,³⁶¹ stated at the hearing:

It is very difficult as a parent to relate to a law that gives a person with a gun so much authority [...] When a 17-year-old child is in a gated community simply walking from the store, with no weapon, only a drink and candy, and is in danger, that poses a problem for me as a mother and should pose a problem for other mothers and fathers as well. What this law is saying to us is that there is nothing we can tell our teenagers now. How many of our teenagers walk home from the store, from the park, from the school and have to worry now about someone perceiving them to be a criminal? [...] So I stand and hopefully I am the voice of many of those concerned parents that say this has to stop, this gun violence has to stop,

³⁵⁸ IACHR, 150th Period of Sessions, [“Stand Your Ground’ Laws” Hearing](#), Oct. 27, 2014.

³⁵⁹ The man who killed Jordan Davis was convicted of murder and three attempted murders, and sentenced to life without the possibility of parole plus 90 additional years in prison in October 2014. The Guardian, [Michael Dunn sentenced to life without parole for killing of Florida teenager](#), Oct. 17, 2014.

³⁶⁰ IACHR, 150th Period of Sessions, [“Stand Your Ground’ Laws” Hearing](#), Oct. 27, 2014.

³⁶¹ The man who killed Trayvon Martin, was acquitted of second-degree murder under Florida’s SYG law in 2013. Since his acquittal he has courted public controversy by, among others, putting up for auction the gun that he killed Trayvon Martin with. Washington Post, [George Zimmerman’s many, many controversies since the Trayvon Martin case](#), May 12, 2016.

this method of 'let's shoot first and ask questions later' has to stop [...] There has to be a better way."³⁶²

157. The Commission received concerning information about apparent different application of SYG laws to white men and black women. In particular, Marissa Alexander's case was brought to the Commission's attention. Alexander was convicted for firing a warning shot at her husband, who had threatened her nine days after giving birth to their child, inside their home. After the judge rejected her invocation of the SYG defense, she was initially sentenced to 20 years in prison under a Florida mandatory sentencing law. The rejection of the SYG defense in her case was widely denounced by civil society as discriminatory, as "Black women are often characterized in court proceedings as aggressive, emasculating, and incapable of being victimized."³⁶³ Alexander's initial conviction was ultimately overturned and she was released from supervision in 2017.³⁶⁴
158. The Commission received additional information about the inconsistent and discriminatory application of SYG laws during its 2015 visit to Orlando and Sanford, Florida.³⁶⁵ In light of the information addressed above, the Commission calls for the revision Stand Your Ground laws and elimination of racial bias in legal proceedings.³⁶⁶

c. Intersectional Discrimination: Women, Persons with Disabilities, and LGBTI Persons

159. The Commission recalls that discrimination on the basis of race is inseparable from and may be aggravated by discrimination on the basis of other aspects of identity. In the context of police violence, the Commission has received substantial information indicating that factors including gender, disability (in particular mental illness), situation of homelessness, age, and LGBTI identity, may have a differential impact on a person's interaction with law enforcement and the justice system.
160. As regards gender, the Commission notes that information indicating the differential impact of discrimination in policing and the justice system on

³⁶² IACHR, 150th Period of Sessions, "Stand Your Ground' Laws" Hearing, Oct. 27, 2014.

³⁶³ Id.

³⁶⁴ New York Times, Florida Woman Whose 'Stand Your Ground' Defense Was Rejected Is Released, Feb. 7, 2017.

³⁶⁵ IACHR, On-Site Visit Press Release, Oct. 16, 2015.

³⁶⁶ See Human Rights Comm., Concluding Observations 2014, Apr. 23, 2014, para. 10(b); CERD, Concluding Observations 2014, Sept. 25, 2014, para. 16.

women. In addition to being victims of police brutality and killings, they are also disproportionately affected by sexual violence perpetrated by police officers, and experience harassment and barriers to justice for family members who are victims of police violence.³⁶⁷ During its 2015 visit to New Orleans, Louisiana, the Commission was also informed about serious problems with sexual assault investigations by the police, stemming from the fact that many police officers do not believe in such a thing as non-violent rape. At that time, the Commission considered that the situation evidences the need for better training on the proper receipt and investigation of complaints.³⁶⁸ The Commission notes that black women may also be disproportionately affected in the aftermath of police killings as they seek justice for their loved ones, and in light of the economic impact that killings of family members may have on their households.

161. Available information indicates that mental illness plays a disproportionate role in cases of police brutality and police killings.³⁶⁹ For example, the *Fatal Force* database of police killings found that in one-fourth of reported killings in 2015, 2016, and 2017, the victims displayed signs of or were diagnosed with mental illness.³⁷⁰ Within this high number, media sources and civil society highlight that many of those killed by police were reportedly experiencing mental health crises, causing family members or others to call the police seeking help. For example, Lavall Hall was killed by Miami Gardens police on the night of February 5, 2015 after his mother called police upon finding him outside in the cold almost naked and waving a broomstick. Hall was schizophrenic, and had been taken to a mental hospital less than a week earlier.³⁷¹ Civil society groups have voiced concerns that these kinds of killings are highly preventable, and result from a lack of adequate police training and mental health care services to appropriately respond to mental health crises without violence.³⁷² During a December 2017 hearing, the Commission received information about the

³⁶⁷ African American Policy Forum & Center for Intersectionality and Social Policy Studies, [Say Her Name: Resisting Police Brutality against Black Women](#), July 2015; *see also, e.g.*, Washington Post, [Disgraced ex-cop Daniel Holtzclaw sentenced to 263 years for on-duty rapes, sexual assaults](#), Jan. 22, 2016 (“In a racially charged case that attracted national attention, Holtzclaw was accused of committing sex crimes against 13 different African American women while patrolling a low-income neighborhood.”).

³⁶⁸ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

³⁶⁹ *See, e.g.*, [The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability: a Media Study \(2013-2015\) and Overview](#), Mar. 2016; Treatment Advocacy Center, [Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters](#), Dec. 2015.

³⁷⁰ Washington Post, [Fatal Force: 2017](#), last visited Dec. 8, 2017; [Fatal Force: 2016](#), last visited Dec. 8, 2017; [Fatal Force: 2015](#), last visited Dec. 8, 2017. These estimates are conservative, including only those identified by family or police officers as being mentally ill.

³⁷¹ Miami Herald, [Family: Video shows Miami Gardens police didn’t need to shoot mentally ill man](#), Apr. 8, 2015.

³⁷² *See, e.g.*, NPR, [Of All U.S. Police Shootings, One-Quarter Reportedly Involve The Mentally Ill](#), July 4, 2015; *see also supra* note 103.

police killing of Dontre Hamilton, a 23-year-old black man with a history of mental illness, in Milwaukee, Wisconsin in 2014.³⁷³

162. The Commission has also received information that individuals experiencing homelessness are disproportionately impacted by police violence. During an October 2015 hearing on racism in the U.S. justice system, Mark Fancher of the ACLU of Michigan brought to the attention the case of Milton Hall, a mentally ill man experiencing homelessness killed by police in Milwaukee, Michigan:

A little more than two years ago, Milton Hall, a 49-year-old homeless man who suffered from a mental illness got into an argument with a store clerk. He left the building, and while standing in the parking lot, he was surrounded by eight police officers. [...] Officers shot 46 bullets at Mr. Hall, and continued to shoot at his body even after it fell. In the face of such graphic evidence, neither local prosecutors nor the [DOJ] attempted to prosecute the officers involved. The Justice Department claimed “there was not sufficient evidence of misconduct to give rise to a federal criminal prosecution.” [...] In this case, a firing squad-type shooting was not only reckless, but was clearly unjustified and grossly violated Mr. Hall’s basic human rights. [...] The communities that continue to be victimized by these acts of police violence need answers to the question of why the federal government is failing to hold officers accountable for fatal police shootings.³⁷⁴

163. The Commission notes that police killings tend to disproportionately impact young African Americans, including adolescents, who are frequently portrayed by officers and by the media as appearing “like adults” as a way to justify the use of lethal force against them. For example, Cleveland police killed twelve-year-old Tamir Rice while responding to a 911 call reporting that someone at the park had a gun, though the caller expressed that they might be a “juvenile” and the gun might be “fake.”³⁷⁵ Similarly, the officer who shot Michael Brown later defended his actions by saying that he perceived the 18-year-old Brown as looking “like a demon,” and that compared with Brown, he “felt like a five-year-old holding onto Hulk Hogan.”³⁷⁶ Similarly, during its visit to New Orleans, the Commission received reports of several cases of police excessive use of force against Black children, and information about their treatment as adults in the

³⁷³ IACHR, 166th Period of Sessions, “Impunity for Police Killings” Hearing, Dec. 7, 2017.

³⁷⁴ IACHR, 153d Period of Sessions, “Racism in the Justice System” Hearing, Oct. 27, 2014.

³⁷⁵ NBC News, [Tamir Rice Shooting: Newly Released Interview Reveals Cop’s Shifting Story](#), Apr. 26, 2017.

³⁷⁶ Washington Post, [Darren Wilson explains why he killed Michael Brown](#), Nov. 25, 2014.

justice system.³⁷⁷ The Commission has previously highlighted “the stigmatization and discriminatory treatment meted out by State agents to certain social groups blamed for the lack of security, including male adolescents, persons pertaining to traditionally excluded and poor groups, and Afro-descendants” as a worrying trend.³⁷⁸

164. The Commission has also received information about police violence against transgender individuals. According to an 2011 national survey, 60% of all black transgender individuals who interacted with police reported experiencing harassment or physical or sexual assault, compared to 24% of white transgender individuals.³⁷⁹ Another study showed that more than one-fifth (22%) of transgender people who had interacted with police reported police harassment, and 6% of transgender individuals reported that they experienced bias-motivated assault by officers. These numbers were much higher for black transgender people, who reported much higher rates of biased harassment and assault (38% and 15%), respectively.³⁸⁰
165. Given the disproportionate impact of police violence on persons with mental illnesses and disabilities, youth, LGBTI individuals, and women, the Commission calls for additional research and investigation to evaluate the scope, nature, and differential effects of police violence against these groups and formulate effective public policy to prevent violence and mitigate its effects.

d. Poverty and Access to Health, Education, Housing, Work, and other Rights

166. Pervasive racial discrimination in policing and the criminal justice system exists in a context of structural discrimination that affects virtually every aspect of life.³⁸¹ As the Commission has previously noted, historic discrimination and the structural situation of poverty in which many African Americans live is central to many of the problems addressed in this report, including overrepresentation in arrests and in the prison system, and unequal access to justice.³⁸² The Commission has considered that the

³⁷⁷ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015. See also Press Release No. 134/14, [IACHR Conducts Visit to Colorado, United States](#), Nov. 14, 2014; Press Release No. 44/14, [IACHR Conducted a Visit to New York, United States](#), Apr. 24, 2014.

³⁷⁸ IACHR, [Violence, Children and Organized Crime](#), OAS/ Ser.L/V/II.Doc.40/15 (2015), para. 81.

³⁷⁹ National Center for Transgender Equality & National Gay and Lesbian Task Force, [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#) (2011), 5.

³⁸⁰ National Center for Trans Equality, [Blueprint for Equality: A Transgender Federal Agenda](#) (2015), p. 28.

³⁸¹ See also *supra* para. 48.

³⁸² IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

enduring situation of poverty of many black communities exacerbates their disproportionate abuse and mistreatment at the hands of the criminal justice system and the police, which in turn aborts efforts to overcome such poverty.³⁸³ Thus, while African Americans in general are disproportionately affected by police violence and discrimination in the justice system,³⁸⁴ it is poor African American communities that are most impacted.

167. Information indicates that while African Americans make up 13 percent of the U.S. population, they make up 23 percent of those officially in poverty and 39 percent of those experiencing homelessness.³⁸⁵ Evidence indicates that poor black communities (and other historically marginalized communities) are disproportionately targeted by over-policing practices—both “Broken Window”-type policing and policing for profit. This makes them more likely both to be the victims of police brutality, and to be arrested. Once arrested, they are less likely to be able to make bail, and thus more likely to have their family and work lives disrupted by pretrial detention and more likely to re-offend prior to their court dates. Because they are less likely to be able to afford a lawyer, they are more likely to be represented by public defender offices that provide a lower level of service due to limited resources. They are statistically more likely to take plea deals, including pleading guilty to be able to leave pretrial detention, and more likely to serve longer prison sentences.³⁸⁶ As a result, mass incarceration can be described as a “racially, spatially and socioeconomically targeted phenomenon that disproportionately afflicts lower-class African American and Hispanic residents of degraded urban spaces.”³⁸⁷
168. The Commission notes that these issues may be aggravated in the context of drug use and dependence. It has previously stated that to avoid the criminalization of addiction and avoid recidivism, “States should have a social and community support network that includes education, employment, housing, and health programs [...] [T]hese models should have the assistance of various institutions and a multidisciplinary team

³⁸³ Id.

³⁸⁴ For example, the widely reported arrest of Henry Louis Gates, Jr., a Harvard professor, at his home in Cambridge, Massachusetts, in 2009, highlighted that racial profiling by police cuts across class lines. See Washington Post, *Arrest of Harvard's Henry Louis Gates Jr. was avoidable, report says*, June 30, 2010.

³⁸⁵ The Guardian, *A journey through a land of extreme poverty: welcome to America*, Dec. 15, 2017.

³⁸⁶ See *infra* Police Use of Excessive Force, Racial Disparities in Arrests, and Racial Disparities in Access to Counsel, Pleas, Sentencing, Incarceration, and Re-Incarceration.

³⁸⁷ The Lawyers’ Committee for Civil Rights under Law, *Statement before the Inter-American Commission on Human Rights, Criminal Justice and Race in the United States*, Mar. 16, 2015, page 2; see also generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

with an integral view of the beneficiaries’ psychosocial health.”³⁸⁸ The Commission notes with concern that the U.S.’ current legal framework not only extensively criminalizes drug possession but also, through a variety of laws and policies, tends to exclude persons with prior felony convictions from accessing housing and public benefits and does not effectively prevent employment discrimination against such individuals,³⁸⁹ making following this recommendation difficult if not impossible in many cases. The Commission calls on the State to reform these laws and policies to enable it to address problems of drug addiction from a public health perspective and ensure access to and effective enjoyment of economic, social, cultural, and environmental rights to all individuals subject to its jurisdiction, without discrimination.

D. Information about Federal Initiatives

169. The IACHR has received information in recent years from the State and other sources about policing practices and reform initiatives. While information about State actions is contained throughout the report,³⁹⁰ the Commission finds it useful to consider here the federal actions and initiatives that it sees as most relevant to the issue of police violence, including prominently the President Obama’s Task Force on 21st Century Policing (concluded in 2015) and investigations of local police departments by the DOJ Civil Rights Division.

1. Actions and Initiatives by the Department of Justice

170. The Commission has received information about Department of Justice (DOJ) investigations of police departments for possible violations of federal law. The DOJ Civil Rights Division is competent to conduct both criminal investigations against law enforcement officers for possible violations of the law, as well as civil “pattern or practice” investigations of state and local law enforcement agencies. These investigations may be initiated where there is evidence of a pattern or practice by the law enforcement agency that systemically violates federally protected rights. The division investigates law enforcement agencies across the country for problems including use of excessive force; unlawful stops, searches, or arrests; and discriminatory policing on the basis of race, ethnicity, national origin, gender, and sexual orientation. Since 2009, the DOJ has opened 25

³⁸⁸ IACHR, [Measures to Reduce Pretrial Detention](#), OEA/Ser.L/V/II.163, Doc. 105 (2017), para. 155.

³⁸⁹ See *supra* para. 146.

³⁹⁰ Regarding actions of the federal government see *supra* paras. 21, 82, 84, 88, 98, 116, 127, 146, and 148.

investigations into law enforcement agencies and has been enforcing 14 consent decrees.³⁹¹

171. The DOJ also issues guidance on federal law to law enforcement agencies. The Commission notes the recent publication of updated “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity.”³⁹²

2. President Obama’s Task Force on 21st Century Policing

172. The Commission has received information about the results of President Obama’s Task Force on 21st Century Policing,³⁹³ which concluded in 2015. The Task Force issued a number of recommendations to law enforcement agencies in the U.S. aimed at building community trust in the police and fostering legitimacy. The Commission notes that the Task Force recognized the need for law enforcement agencies to “acknowledge the role of policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust,”³⁹⁴ and calls on agencies to “adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.”³⁹⁵

173. The Commission has received information that in line with the recommendations of the Task Force and other reform initiatives, several new state laws have been passed in recent years with the aim of addressing excessive use of force, including the creation of joint legislative task forces on the use of deadly force (Washington state),³⁹⁶ statewide legal and practical training (Utah),³⁹⁷ and a ban on chokeholds and other forms of potentially lethal violence (Colorado and Connecticut), among others.³⁹⁸ The Commission notes that none of these reported laws effectively bring

³⁹¹ U.S. DOJ, *Justice Department Releases Report on Civil Rights Division’s Pattern and Practice Police Reform Work*, Jan. 4, 2017.

³⁹² U.S. DOJ, *Guidance For Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, Dec. 2014.

³⁹³ Office of Community Oriented Policing Services (COPS), *Final Report of the President’s Task Force on 21st Century Policing*, May 2015.

³⁹⁴ *Id.* at Recommendation 1.2.

³⁹⁵ *Id.* at p. 28.

³⁹⁶ State of Washington, *HOUSE BILL 2908*, Mar. 10, 2016.

³⁹⁷ State of Utah, *HOUSE BILL 355*, Mar. 30, 2016.

³⁹⁸ State of Colorado, *HOUSE BILL 16-1264*, June 10, 2016; State of Connecticut, *HOUSE BILL 7103*, June 2015; State of Illinois, *SENATE BILL 1304*, Aug. 12, 2015.

states into compliance with international standards; nonetheless, the Commission considers that they represent progress in the right direction.

3. Community Policing and other Initiatives

174. The State additionally informed the Commission during public hearings in 2014 about various initiatives to promote diversity in police recruiting and hiring, based on the belief that a more diverse police force will increase police legitimacy and decrease bias in policing.³⁹⁹ This, in line with a finding of the President’s Task Force that “people are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do [...] The public confers legitimacy only on those they believe are acting in procedurally just ways.”⁴⁰⁰
175. The Commission has also received information about the initiatives of the Office of Community Oriented Policing Services, among others, to promote community policing and other police reform.⁴⁰¹ The Commission additionally received information that in September 2017, Attorney General Jeff Sessions announced significant changes to its Collaborative Reform Initiative for Technical Assistance program, citing the “adversarial relationship between DOJ and the participating law enforcement agencies” created by DOJ investigations and civil suits.⁴⁰² This program previously provided resources to law enforcement agencies to address issues of excessive force, biased policing, and poor police-community relations; under the announced changes, the program will now focus on “best practices, crime reduction, and the needs of the field as specifically requested by law enforcement agencies.”⁴⁰³

E. Considerations of the Commission

176. While State initiatives in recent years, including the work of the President’s Task Force on 21st Century Policing and DOJ Civil Rights Division investigations of police departments, among others, have signaled positive

³⁹⁹ IACHR, 154th Period of Sessions, “[Criminal Justice and Race](#)” Hearing, Mar. 16, 2015; *see also* COPS, [Final Report of the President’s Task Force on 21st Century Policing](#), May 2015.

⁴⁰⁰ COPS, [Final Report of the President’s Task Force on 21st Century Policing](#), May 2015, p. 9.

⁴⁰¹ *See, e.g.*, IACHR, 153d Period of Sessions, “[Racism in the Justice System](#)” Hearing, Oct. 27, 2014.

⁴⁰² DOJ, [Department of Justice Announces Changes to the Collaborative Reform Initiative](#), Sept. 15, 2017; St. Louis Post-Dispatch, [DOJ shifts from 'collaborative reform' doctrine toward Trump's law-and-order mandate](#), Sept. 15, 2017.

⁴⁰³ DOJ, [Department of Justice Announces Changes to the Collaborative Reform Initiative](#), Sept. 15, 2017.

political will to address the problems described in this report, the Commission notes with concern recent policy developments in the area of policing that it considers may endanger the full enjoyment of human rights of African Americans and other historically marginalized groups in the United States.

177. First, the Commission is concerned by the stated position of the Executive branch to decrease federal oversight of police. On January 20, 2017, the day that President Trump entered office, the White House released a statement considering that “[t]he dangerous anti-police atmosphere in America is wrong” and a promise to “end it.”⁴⁰⁴ In April, Attorney General Jeff Sessions announced a policy to “pull back” on civil rights lawsuits and investigations against police despite evidence of pervasive, systemic bias,⁴⁰⁵ calling for “proactive policing” and an end to “harmful federal intrusion in the daily work of local police.”⁴⁰⁶
178. Information received by the Commission during its 166th Period of Sessions in December 2017 indicates that the DOJ may be effectively “pulling back” from enforcement of the laws it is required to enforce.⁴⁰⁷ The Commission received information that the DOJ has been reviewing its procedures for addressing police misconduct to permit high-level review of agreements between the DOJ Civil Rights Division and police departments by deputies of the Attorney General,⁴⁰⁸ provoking concern from civil society groups that the current administration is seeking to modify or undo existing consent decrees previously negotiated with municipalities to address constitutional violations found by the DOJ.⁴⁰⁹ Following the announcement of this policy change, the DOJ attempted to postpone the implementation of a consent decree in Baltimore, despite the city’s own support for the measure,⁴¹⁰ and accepted Chicago’s decision to abandon the consent decree process,⁴¹¹ in spite of evidence gathered by the DOJ that those police

⁴⁰⁴ The White House, [Standing Up For Our Law Enforcement Community](#), Jan. 20, 2017.

⁴⁰⁵ Vox, [What Jeff Sessions has done so far is toward one goal: unleashing the police](#), May 4, 2017; NPR, [Justice Department To Review All Civil Rights Agreements On Police Conduct](#), Apr. 3, 2017; New York Times, [Police Chiefs Say Trump’s Law Enforcement Priorities Are Out of Step](#), Feb. 12, 2017; New York Times, [Police Criticize Trump for Urging Officers Not to Be ‘Too Nice’ With Suspects](#), July 29, 2017; Slate, [Trump and Sessions Support Local Cops, Except When Local Cops Support Federal Intervention](#), Apr. 6, 2017.

⁴⁰⁶ USA Today (Attorney General Jeff Sessions), [Avoid harmful federal intrusion](#), Apr. 17, 2017.

⁴⁰⁷ IACHR, 166th Period of Sessions, “[Impunity for Police Killings](#)” Hearing, Dec. 7, 2017. *See, e.g.*, New York Times, [How Trump’s Hands-Off Approach to Policing is Frustrating Some Chiefs](#), Nov. 21, 2017.

⁴⁰⁸ Office of the Attorney General, [Memorandum for Heads of Department Components and United States Attorneys](#), Mar. 31, 2017; The Guardian, [Jeff Sessions orders review of police reforms prompted by high-profile shootings](#), Apr. 3, 2017.

⁴⁰⁹ See Information received from American Civil Liberties Union during 166th Period of Sessions, Thematic Hearing: Reports of Impunity for Extrajudicial Killings in the United States, Dec. 7, 2017, p. 2-3.

⁴¹⁰ U.S. News & World Report, [Sessions slams Baltimore consent decree](#), Apr. 7, 2017.

⁴¹¹ Chicago Tribune, [Emanuel backs off from commitment to court oversight of Chicago police reform](#), June 2, 2017.

departments had engaged in a pattern of discrimination that harmed the safety and civil rights of their residents.⁴¹² In general, the Commission has received reports of broad concern that the DOJ may be dismantling critical structures and abandoning tools that it has used for decades to protect people from police brutality and discrimination.⁴¹³

179. Second, the Commission considers the President's decision to revoke, via Executive Order, the previous measure that banned the sale of military surplus equipment to local police departments, due to considering this to be negative and pose risks to basic rights.⁴¹⁴
180. As noted above, the DOJ issued new guidance on racial profiling in 2014,⁴¹⁵ a move that human rights groups had long called for to correct the loosely-drafted 2003 guidance to provide guidance and improve oversight of local police departments.⁴¹⁶ Among other things, this new guidance expanded protection from profiling on the basis of religion and national origin, as the U.N. Human Rights Committee, among others, had called for.⁴¹⁷ However, the Commission notes that this new guidance received substantial criticism from civil society groups for providing substantial carve-outs to permit racial profiling by the Transportation Security Administration (TSA) and Customs and Border Protection (CBP), contradicting the stated goals of the new guidance.⁴¹⁸

⁴¹² DOJ, [Investigation of the Chicago Police Department](#), Jan. 13, 2017; DOJ, [Investigation of the Baltimore City Police Department](#), Aug. 10, 2016.

⁴¹³ See Information received from American Civil Liberties Union during 166th Period of Sessions, Thematic Hearing: Reports of Impunity for Extrajudicial Killings in the United States, Dec. 7, 2017, p. 2-3.

⁴¹⁴ See *supra* para. 88. White House, Office of the Press Secretary, [Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources](#), Aug. 28, 2017; New York Times, [Trump Reverses Restrictions on Military Hardware for Police](#), Aug. 28, 2017.

⁴¹⁵ See *supra* para. 170; U.S. DOJ, [Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity](#), December 2014; Washington Post, [Justice Dept. announces new rules to curb racial profiling by federal law enforcement](#), Dec. 8, 2014.

⁴¹⁶ IACHR, 153d Period of Sessions, ["Racism in the Justice System" Hearing](#), Oct. 27, 2014; CERD, [Concluding Observations 2014](#), Sept. 25, 2014, para. 8.

⁴¹⁷ Human Rights Comm., [Concluding Observations 2014](#), Apr. 23, 2014, para. 7.

⁴¹⁸ Washington Post, [Justice Dept. announces new rules to curb racial profiling by federal law enforcement](#), Dec. 8, 2014.

CHAPTER 3
INTER-AMERICAN AND
INTERNATIONAL OBLIGATIONS
OF THE UNITED STATES
REGARDING NON-
DISCRIMINATION, USE OF FORCE,
AND ACCESS TO JUSTICE

INTER-AMERICAN AND INTERNATIONAL OBLIGATIONS OF THE UNITED STATES REGARDING NON-DISCRIMINATION, USE OF FORCE, AND ACCESS TO JUSTICE

181. This section examines the situation of Afro-descendants in the United States in light of key international human rights principles regarding non-discrimination, use of force, and access to justice.
182. On non-discrimination, the Commission considers that all government and police actions must be guided by and executed in harmony with the obligations of non-discrimination and equal protection of and before the law. The Commission highlights that laws and practices that have a discriminatory effect (disparate impact) are prohibited under international law, even if they are not facially discriminatory. Furthermore, it notes that racial profiling practices may amount to inhumane or degrading treatment under international law.
183. On use of force, the Commission reiterates that the protection against arbitrary deprivations of life applies to the entire State structure—including federal, state, and local government entities—and to all actions of police officers, both in situations of normality and unrest. To this end, police use of force in the U.S. must be guided by the principle of necessity and used only when other methods have been exhausted and failed. The Commission calls on the United States to bring its domestic law in line with international standards in this area. The Commission further highlights that excessive use of force by police may amount to cruel, inhuman, or degrading treatment or torture under certain circumstances. Finally, the Commission underscores the need to safeguard the basic human rights of protesters, including their rights to life and physical and psychological integrity.
184. On access to justice, the Commission recalls that the government—federal, state, and local—is responsible for ensuring access to justice, including exercising due diligence in the independent and impartial investigation and prosecution of police abuses, and ensuring accountability and punishment of all those responsible for a violation; establishing adequate, effective, and accessible legal remedies for police violence; and ensuring reparations for

victims. The Commission recalls that impunity fosters an environment in which police violence and abuses are tolerated and expected, and serves to perpetuate and even promote disparate treatment towards people and groups historically subjected to discrimination and exclusion based on race.

185. In order to comply with the principles laid out here, the State—at the federal, state, and local levels—has the obligation to enact laws that comply with international law. State agents must know and follow both the spirit and letter of these rules.⁴¹⁹
186. Finally, the Commission reiterates that discrimination against African Americans and historically marginalized groups in policing and the larger criminal justice system is one facet of a larger context of historical, structural discrimination. As such, measures adopted at any level of government to address discriminatory policing and excessive use of force should also be paired with effective measures to redress historical and structural discrimination in all areas of public life, in order to ensure the full enjoyment of human rights of all persons subject to U.S. jurisdiction without discrimination on the basis of race, color, ethnicity, national origin, or any other prohibited ground.

A. *International Framework regarding Equality and Non-Discrimination*

187. The right to equality and non-discrimination contained in Article II of the American Declaration is a fundamental principle of the inter-American system of human rights,⁴²⁰ as in the universal and other regional human rights systems.⁴²¹ This principle provides that “all persons are equal before the law and have the rights and duties established in [the American] Declaration, without distinction as to race, sex, language, creed or any other factor.” This right is further contained in a number of other inter-American instruments, including the American Convention on Human Rights, the Inter-American Convention against Racism, Racial Discrimination and

⁴¹⁹ IACHR, *Citizen Security and Human Rights* (2009), para. 97.

⁴²⁰ See IACHR, Report No. 50/16, Case 12.834, Merits, *Undocumented Workers* (United States), Nov. 30, 2016, para. 72 [hereinafter “Report No. 50/16, *Undocumented Workers* (2016)”]; Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 107 [hereinafter “Report No. 80/11, *Jessica Lenahan* (2011)”]; Report 40/04, *Maya Indigenous Community* (Belize) (2004), para. 163; Report No. 67/06, *Oscar Elías Bicer et al.* (Cuba) (2006), para. 228; *Report on Terrorism and Human Rights*, OEA/Ser.L./V/II.116, Doc. 5, rev. 1 corr., 22 (2002), para. 335.

⁴²¹ See *International Covenant on Civil and Political Rights* (Arts. 2, 26); *International Covenant on Economic, Social and Cultural Rights* (Arts. 2.2, 3); *European Convention on Human Rights* (Art. 14); *African Charter on Human and People’s Rights* (Art. 2).

Related Forms of Intolerance, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (“Convention of Belém do Para”), the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, and the Inter-American Convention on Protecting the Human Rights of Older Persons, among others.

188. Article 3.1 of the OAS Charter reaffirms “the fundamental rights of the individual without distinction as to race, nationality, creed or sex.” Likewise, Article 9 of the Inter-American Democratic Charter establishes that:

The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

189. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which the United States is Party, defines discrimination as:

any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁴²²

190. Article 2.2 of the UNESCO Declaration on Race and Racial Prejudice establishes that:

[r]acism includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and

⁴²² U.N., *International Convention on the Elimination of Racial Discrimination*, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, Entry in force 4 Jan. 1969, in accordance with Article 19. Article 1.

discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

191. In light of the fundamental nature of these rights and their extensive consolidation in law, the Inter-American Court has considered that the principles of equality before the law, equal protection of the law, and non-discrimination constitute *jus cogens* norms:

because the whole legal structure of national and international public order rests on it [...] Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.⁴²³

192. The Commission considers there are complementary ways of understanding the obligations that the rights to equality and non-discrimination entail for States.⁴²⁴ States are obligated to prohibit arbitrary treatment—including distinction, exclusion, restriction, or preference—and must also ensure conditions of true equality for groups that have historically suffered marginalization and discrimination.⁴²⁵ States have the obligation to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either on their face or in practice; and to combat discriminatory practices.⁴²⁶

⁴²³ See I/A Ct. H. R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18, Sept. 17, 2003. Series A No. 18, para. 101.

⁴²⁴ IACHR, *People of African Descent in the Americas* (2011), para. 89 (citation omitted).

⁴²⁵ *Id.* (citation omitted).

⁴²⁶ IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 109; Report No. 67/06, *Oscar Elias Bicet et al.* (2006), paras. 228-231; Report 40/04, *Maya Indigenous Community* (2004), paras. 162, 166.

193. In this regard, a State's breach of the right to equal protection of the law does not need to be intentional.⁴²⁷ The Commission has underscored that laws and policies should be examined to ensure that they comply with the principles of equality and non-discrimination; this analysis should assess their potential discriminatory effect, even when their formulation or wording appears neutral, or they apply without textual distinctions.⁴²⁸
194. The Commission has previously recognized that while Article II does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, it does require that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, "regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought."⁴²⁹ The Commission also takes into account evolving standards in the area of discrimination, and considers that what has been expressed by the Human Rights Committee under the ICCPR is equally applicable in the inter-American system:

[T]he term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction, or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁴³⁰

195. Based on these principles, arbitrary treatment and distinctions on the basis of race are prohibited under international human rights law, and should be prevented. Race-based restrictions must be based on very compelling reasons; on this issue, there is a "presumption of invalidity" and the burden of proof rests with the State.⁴³¹ The Commission has underscored that laws and policies should be examined to ensure that they comply with the principles of equality and non-discrimination; this analysis should assess

⁴²⁷ IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 134 (citing European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 191).

⁴²⁸ *Id.* at para. 109 (citation omitted).

⁴²⁹ IACHR, Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al.*, United States, Apr. 4, 2001, para. 238 (citing as support of its position Eur. Ct. H.R., *Belgian Linguistics Case*, July 23, 1968, Series A No 6, 1 E.H.R.R. 252, p. 35, para. 10).

⁴³⁰ U.N. Human Rights Committee, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.1 (1994), General Comment 18, Non-discrimination, p. 26.

⁴³¹ IACHR, *People of African Descent in the Americas* (2011), para. 91; Report No. 50/16, *Undocumented Workers* (2016), paras. 71-92.

the potential discriminatory effect of even facially neutral provisions.⁴³² This, in light of the fact that States are not only obligated to provide for equal protection of the law, but must also adopt the legislative, policy and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration.⁴³³

196. The Commission observes that while the United States' legal framework effectively prohibits facial discrimination in law, it largely does not prohibit the disparate impact of facially neutral policies except in very limited legal circumstances. In general, measures to prevent, protect against, and remedy the effects of indirect discrimination exist only where provided for by statute, including for claims of employment, housing, and age discrimination.⁴³⁴
197. The Commission expresses its deep concern that U.S. law does not prohibit disparate impact in the criminal justice system. Here, the case *McCleskey v. Kemp* is illustrative.⁴³⁵ In *McCleskey*, the Supreme Court held that the "racially disproportionate impact" of the application of the death penalty in Georgia, which the Court accepted as proven by a comprehensive scientific study, was not sufficient to overturn a death sentence without additionally proving a "discriminatory purpose"—that is, evidence of conscious, intentional bias.⁴³⁶ This holding, which moreover involves the fundamental right to life subject to the imposition of the death penalty, directly contradicts the international standard, which does not require discrimination to be purposive, conscious or intentional to violate human rights. In light of the state of federal law on this issue, the Commission notes as a positive approach the example of North Carolina's Racial Justice Act (introduced in 2011 and subsequently repealed in 2013), which permitted capital defendants to challenge their sentences on grounds of racial bias.⁴³⁷ The Commission recalls that the obligation to guarantee

⁴³² IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), OEA/Ser. L/V/II. Doc.68 (2007), para. 90; Report No. 17/17 Petition P-1105-06, [Pedro Rosello et al.](#) (United States), Jan. 27, 2017.

⁴³³ IACHR, Report No. 50/16, [Undocumented Workers](#) (2016), para. 72; Report No. 80/11, [Jessica Lenahan](#) (2011), para. 108; Report 40/04, [Maya Indigenous Community](#) (2004), para. 162.

⁴³⁴ For example, Title VII of the Civil Rights Act of 1964 (regarding employment discrimination), the Fair Housing Act of 1968, and the Age Discrimination in Employment Act of 1967, among others, permit causes of action for disparate impact.

See *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 575 U.S. ____ (2015) (holding that parties can raise disparate impact claims where authorized by statute, to challenge practices that are "otherwise unjustified by a legitimate rationale"); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁴³⁵ 481 U.S. 279 (1987). See also *supra* footnote 300.

⁴³⁶ *Id.* at 279-80.

⁴³⁷ ACLU, [North Carolina Racial Justice Act](#), last visited Jan. 26, 2018; CNN, ['Racial Justice Act' repealed in North Carolina](#), June 21, 2013.

equality and non-discrimination, as with all human rights norms, applies to all levels of government—federal, state, and local.

198. In this sense, the Commission notes and echoes concerns by the CERD about the limited scope and applicability of the disparate impact doctrine in the U.S.; in particular, that it is out of line with the State's duty to "prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect."⁴³⁸ The Commission reiterates the United States' obligation to adopt all legal and administrative measures necessary, including legal reform, in order to recognize and guarantee the effective equality of all persons before the law.⁴³⁹ The Commission additionally reiterates the obligation of the State to take special measures to ensure conditions of true equality for African Americans and other historically marginalized groups.
199. Likewise, the Commission highlights that institutionalized discriminatory law enforcement practices that result in differential treatment on the basis of race, ethnicity, national origin, or other suspect category, including "Stop and Frisk" programs and patterns of policing and police use of force that have a disproportionate impact on historically marginalized groups, are presumptively incompatible with the American Declaration as a form of racial discrimination, and under certain circumstances may additionally constitute a violation of the prohibition on inhuman and degrading treatment. The CERD has previously found that "States Parties must take all necessary steps to prevent interrogations, arrests and searches that are in reality based solely on physical appearance, color, characteristics, race or ethnicity, or some other profile that makes an individual subject to a higher degree of suspicion"⁴⁴⁰ In this respect, the U.S. is obligated to take positive steps to eradicate policies that have a discriminatory impact.
200. In light of the complementary obligations to prohibit racial discrimination and guarantee equality, the Commission reiterates the need for States to recognize and address the existence of police profiling and practices which are harmful to historically marginalized groups.⁴⁴¹ This entails the adoption of effective prevention policies and steps, and implementation of appropriate and independent accountability mechanisms for police officers

⁴³⁸ CERD, *Concluding Observations 2014*, Sept. 25, 2014, paras. 5, 20.

⁴³⁹ IACHR, Report No. 50/16, *Undocumented Workers* (2016), para. 73; IACHR, Report No. 67/06, *Oscar Elías Bicet et al.* (2006), paras. 228-231; IACHR, Report 40/04, *Maya Indigenous Community* (2004), paras. 162, 166.

⁴⁴⁰ CERD, General Recommendation XXXI, *Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, 2005.

⁴⁴¹ IACHR, *People of African Descent in the Americas* (2011), paras. 162-163.

who engage in these practices. Additionally, the Commission highlights the importance of police officer training guided by the principles of legality, absolute necessity, and proportionality in the use of force, and the design of protocols which are consonant with US human rights obligations.

B. International Framework regarding the Use of Force: Legality, Absolute Necessity, and Proportionality

201. Every State in the Americas has the obligation to guarantee security and to safeguard public order,⁴⁴² and therefore the power to use force in order to guarantee these ends; however, this power is limited by the observance of human rights.⁴⁴³ The fundamental rights to life and personal security,⁴⁴⁴ equality before the law,⁴⁴⁵ due process of law,⁴⁴⁶ and the right to be free from torture and ill-treatment,⁴⁴⁷ among others, require not only the State's obligation to refrain from infringing those rights, but also demand the protection and preservation of those rights. Thus, the State's actions in discharging its duties of security and law and order must safeguard that any risk to basic rights is minimized by ensuring in strict compliance with the international principles and standards set out below.⁴⁴⁸
202. The use of force must be guided by the principles of legality, absolute necessity, and proportionality.⁴⁴⁹ In conjunction, these principles lead to the conclusion that "use of force is a last resort that is to be limited both qualitatively and quantitatively, employed solely to prevent a more serious occurrence than the one that prompted the State to intervene."⁴⁵⁰

⁴⁴² IACHR, 2006 Annual Report, Chapter IV, Human Rights Developments in the Region, Venezuela, para. 208.

⁴⁴³ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 6.

⁴⁴⁴ American Declaration, Art. I. The ICERD, to which the United States is Party, further establishes the obligation to eliminate racial discrimination in all forms in the enjoyment of "The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group, or institution." Article 5.b.

⁴⁴⁵ American Declaration, Art. II.

⁴⁴⁶ American Declaration, Art. XXVI.

⁴⁴⁷ Convention Against Torture, Art. I.

⁴⁴⁸ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 6 (citing IACHR, Report No. 26/09, Case 12.440, Admissibility and Merits, Wallace de Almeida (Brazil), Mar. 20, 2009, paras. 102-103, 105; Report No. 43/08, Merits, Leydi Dayán Sánchez (Colombia), July 23, 2008, paras. 51, 54-56; Report No. 92/05, Merits, Michael Gayle (Jamaica), Oct. 24, 2005, paras. 61-64).

⁴⁴⁹ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 7-9; Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc.5, Oct. 2, 2002, para. 87; Citizen Security and Human Rights (2009), para. 114; IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II. Doc. 48/15, Dec. 31, 2015, para. 621.

⁴⁵⁰ IACHR, People of African Descent in the Americas (2011), paras. 163-164.

203. According to the U.N. Code of Conduct for Law Enforcement Officials (“U.N. Code of Conduct”), adopted by the U.N. General Assembly in 1979, and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“U.N. Basic Principles”) of 1990, law enforcement officials may use force only when strictly necessary.⁴⁵¹ According to the Basic Principles:

Law enforcement officials shall not use firearms against persons except in self-defen[s]e or defen[s]e of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.⁴⁵²

204. As a threshold matter, the principle of *legality* requires that the exceptional use of lethal force by State agents be regulated by law in a sufficiently clear manner, and interpreted narrowly so as to minimize its use in every circumstance.⁴⁵³ Domestic regulation is of particular importance in this context; as the Special Rapporteur on Extrajudicial Executions has stated, “[t]he specific relevance of domestic law stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defen[s]e for the protection of the right to life,” because the content of internal law frames and determines legal liability and available remedies for the excessive use of force.⁴⁵⁴ In this regard, the Inter-American Court has established the State obligation to adapt domestic legislation and “to ensure that its security forces, which are entitled to use legitimate force, respect the right to life of those who are under its jurisdiction.”⁴⁵⁵ Likewise, “the State must be clear when defining domestic policies on the use of force

⁴⁵¹ U.N. Code of Conduct for Law Enforcement Officials [hereinafter “UN Code of Conduct”], adopted by General Assembly resolution 34/169 of 17 December 1979; U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [hereinafter “UN Basic Principles on the Use of Force”], adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁴⁵² U.N. Basic Principles on the Use of Force, No. 9 (cited in IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 7).

⁴⁵³ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 9 (citing United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, No. 20). See also IACHR, People of African Descent in the Americas (2011), para. 178.

⁴⁵⁴ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 9 (citing Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, Apr. 1, 2014, para. 29).

⁴⁵⁵ I/A Ct. H.R., Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations, and Costs. Judgment of Oct. 24, 2012, Ser. C No. 251, para. 80 (citation omitted).

and pursue strategies to implement the Principles on the Use of Force and the Code of Conduct.”⁴⁵⁶

205. The principle of legality also requires the regulation of the types of firearms and ammunition permitted. The United Nations *Principles on the Use of Force* state that these regulations should:
- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
 - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
 - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
 - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
 - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.⁴⁵⁷
206. The principle of *absolute necessity* requires that officers apply nonviolent means before resorting to the use of force and firearms in carrying out their duty, and use force only if other means are ineffective or lack any promise of achieving the intended result.⁴⁵⁸ Thus, it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or persons whom the officer seeks to protect under the circumstances of each case.⁴⁵⁹ This requirement cannot be met where the person does not represent a direct danger, “even when the failure to use force results in the loss of the opportunity to capture them.”⁴⁶⁰
207. The principle of proportionality requires that law enforcement officers “apply a standard of differentiated use of force, determining the level of cooperation, resistance, or aggressiveness of the person involved and, on

⁴⁵⁶ Id.

⁴⁵⁷ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 9 (citing U.N. Basic Principles on the Use of Force).

⁴⁵⁸ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 10 (citing U.N. Basic Principles on the Use of Force, no. 4); see also IACHR, Citizen Security and Human Rights (2009), para. 116.

⁴⁵⁹ IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 10 (citation omitted)

⁴⁶⁰ Id. (citation omitted).

this basis, use tactics of negotiation, control or use of force, as appropriate.”⁴⁶¹ Thus, law enforcement officials should exercise moderation in their actions in an effort to minimize the harm and injuries that may result from their intervention, guarantee immediate assistance to the persons negatively impacted, and endeavor to inform next-of-kin or loved ones of the situation as soon as possible.⁴⁶² Circumstances including “the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area; and the means available to the agent to deal with the specific situation” are relevant to evaluating the proportionality of interventions by the law enforcement agents.⁴⁶³

208. The use of lethal force (i.e. force that has the capacity to cause death) by law enforcement officers is legitimate only to save the life of a person or to protect a person from serious injury.⁴⁶⁴ This means that if lethal force is used in furtherance of any objective other than saving life or limb, it will be considered excessive.⁴⁶⁵ Similarly, Christof Heyns, former U.N. Special Rapporteur on extrajudicial executions, has stated before the Commission that the use of lethal force is legitimate, proportional, and necessary only if it is the means of last resort available to protect another life. Therefore, the use of lethal force will not be justified when seeking, for example, to protect property, avoid non-serious injury, or re-establish public order.⁴⁶⁶
209. Regarding potential State responsibility for human rights violations, such as in cases of police violence or killings, the Commission recalls that under international law, any violation of human rights that is attributable to actions or omissions by any State agent constitutes an act attributable to the State, irrespective of that agent’s hierarchy and whether the agent is acting outside the scope of his/her authority.⁴⁶⁷ To establish whether a human rights violation has been committed, it is not necessary to determine, as it is in domestic criminal law, the guilt of the perpetrators or their intent, or to individually identify the agents. It is sufficient that a State

⁴⁶¹ Id. at para. 12 (citation omitted).

⁴⁶² Id. (citing IACHR, Citizen Security and Human Rights (2009), para. 119).

⁴⁶³ Id. (citing U.N. Basic Principles on the Use of Force, No. 9).

⁴⁶⁴ U.N. Basic Principles on the Use of Force, No. 9. See also United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on police oversight mechanisms, A/HRC/14/2/Ad 6, May 28, 2010.

⁴⁶⁵ United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on police oversight mechanisms, A/HRC/14/2/Ad 6, May 28, 2010.

IACHR, Hearing on Social protest and human rights in the Americas, 154th regular period of sessions, Mar. 16, 2015; see also IACHR, Annual Report 2015, Chapter IV The Use of Force, para. 19.

⁴⁶⁷ IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, OEA/Ser.L/V/II, Doc. 48/13 (2013), para. 333 (citing I/A Court H. R., “*Mapiripán Massacre*” v. Colombia. Judgment of Sept. 15, 2005. Series C No. 134, para. 108; I/A Court H. R., “*Massacre of Pueblo Bello*” v. Colombia. Judgment of Jan. 31, 2006. Series C No. 140, para. 111).

obligation exists and that the State failed to comply with it.⁴⁶⁸ By the same token, States are obligated to organize their governments—federal, state, and local—and, in general, all the structures through which public power is exercised, to ensure the full enjoyment of human rights of all persons subject to their jurisdiction.⁴⁶⁹

1. Domestic Legal Framework Governing Use of Force

210. International bodies have repeatedly noted that the United States’ legal framework for use of force does not comply with international law, and have called for compliance with the U.N. Basic Principles.⁴⁷⁰ The Inter-American Commission reiterates this call to bring the U.S.’ domestic law in line with international law governing the use of force.

211. The U.S. Supreme Court has established in a series of cases that the Constitutional standard for use of force is one of “reasonableness,” without distinguishing between the use of lethal and non-lethal force, and without clearly establishing absolute necessity, and proportionality as guiding principles.⁴⁷¹ Among other things, this precludes the application of the strict proportionality test to the use of lethal force, as required by the U.N. Basic Principles.⁴⁷² In particular, the Supreme Court case *Tennessee v. Garner* addressed the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. The court concluded that deadly force “may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses

⁴⁶⁸ Id. (citing IACHR, *Citizen Security and Human Rights* (2009), para. 39).

⁴⁶⁹ IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 125, 128. See also U.N., *Durban Declaration and Programme of Action* (adopted at the 2001 World Conference Against Racism), para. 104; *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of Dec. 21, 1965. See also as reference, I/A Ct. H.R. *Velásquez Rodríguez v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 166 [hereinafter “I/A Ct. H.R., *Velásquez Rodríguez*, Ser. C No. 7 (1989)”]; I/A Ct. H.R. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of Nov. 16, 2009. Series C No. 205, para. 236 [hereinafter “I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009)”]; IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), Mar. 9, 2007, paras. 160-255 [hereinafter “Report No. 28/07, *Gonzalez et al.* (2007)”];

⁴⁷⁰ See, e.g., Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/79/Add.50, A/50/40, Oct. 3, 1995, para. 297; Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3, Dec. 18, 2006, para. 30; Human Rights Comm., *Concluding Observations 2014*, Apr. 23, 2014, para. 11(a); CERD, *Concluding Observations 2014*, Sept. 25, 2014, para. 17 (b).

⁴⁷¹ See, e.g., U.S. Constitution, amendment IV; *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989); Tim Longo, *Defining Instrumentalities of Deadly Force*, 27 *Touro Law Review* 261 (2011); The Nation, *Why It’s Impossible to Indict a Cop*, Dec. 25, 2014.

⁴⁷² *U.N. Basic Principles on the Use of Force*, No. 9 (“... In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”).

a significant threat of death or serious physical injury to the officer or others.”⁴⁷³ Subsequently, the Supreme Court held in *Graham v. Connor* that the “reasonableness” inquiry required under *Garner* looks to the objective reasonableness of use of force under the circumstances, without regard to the officer’s subjective motives or intention.⁴⁷⁴ It “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or of others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”⁴⁷⁵ Significantly, this analysis does not require differentiation between the use of lethal and non-lethal force, and does not identify the elements of necessity and proportionality. The Court subsequently clarified in *Scott v. Harris* that “*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer’s actions constitute ‘deadly force.’”⁴⁷⁶ The failure to apply different standards to the use of lethal versus non-lethal force clearly runs contrary to the U.N. Basic Principles and the standards of the inter-American human rights system.⁴⁷⁷

212. Information received by the Commission indicates that U.S. state laws fail to meet international standards as well. For example, U.S. laws do not include provisions requiring the use of non-violent means prior to resorting to the use of force, requiring that lethal force be used as a last resort, or requiring that a warning be given prior to the use of lethal force.⁴⁷⁸ The Commission notes with concern that, in general, state laws do not clearly and objectively define the situations in which the use of lethal force is authorized, and leave a large margin of discretion to the understanding of police officers.⁴⁷⁹
213. The Commission observes with concern that the failure of domestic use of force laws to comply with international standards fundamentally limits the possibility of effectively investigating, prosecuting, and punishing the excessive use of force by law enforcement agents.⁴⁸⁰ Where the law does not effectively prohibit the violation of internationally-recognized rights, it is similarly unable to later declare the existence of and punish such

⁴⁷³ 471 U.S. 1, 3 (1985).

⁴⁷⁴ *Graham v. Connor*, 490 U.S. 386 (1989).

⁴⁷⁵ *Id.* at 396.

⁴⁷⁶ *Scott v. Harris*, 550 U.S. 372, 382 (2007).

⁴⁷⁷ See [U.N. Basic Principles on the Use of Force](#), No. 9.

⁴⁷⁸ Amnesty International, [Deadly Force: Police Use of Lethal Force In The United States](#), June 2015, p. 18.

⁴⁷⁹ Vera Institute of Justice, [To Protect and Serve: New Trends in State-Level Policing Reform, 2015-2016](#), Apr. 2017.

⁴⁸⁰ IACHR, [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

violations.⁴⁸¹ This may create a situation where there is no domestic remedy available for a human rights violation. Given its fundamental importance for prevention, investigation, prosecution, and punishment of excessive use of force, the Commission calls on the federal and state governments to urgently undertake to reform their laws governing the use of force to bring them in line with international standards, in order to comply with the principle of legality and in line with the U.N. Basic Principles and the State's obligations under the American Declaration.

2. Institutional Reform and Guidelines for Policing

214. The Commission notes that many issues relating to the excessive use of force by police may be framed as a failure of the State to prevent violations.⁴⁸² In this section, the Commission details some pertinent guidelines regarding the training and internal regulation of police forces intended to prevent the excessive use of force and thus protect individuals from cruel, inhuman, or degrading treatment or torture as well as arbitrary deprivations of the right to life.

a. Hiring and Training of Police

215. The Inter-American Commission has previously observed the importance of proper police training and departmental policies for preventing the excessive use of force, indicating that States must “educate and train the members of their armed forces and security agencies pursuant to the principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject.”⁴⁸³

216. As a preliminary issue, it is important to have rigorous and transparent processes for selecting personnel, together with the offer of fair and competitive salaries and labor and social benefits that make it possible to

⁴⁸¹ On the relevance of domestic legislation that effectively prohibits the violation of internationally recognized rights, see, e.g., I/A Ct. H.R., *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of Dec. 9, 1994, paras. 37-39; U.N., Working Group on Enforced and Involuntary Disappearances, *Best practices on enforced disappearances in domestic criminal legislation*, A/HRC/16/48/Add.3, Dec. 28, 2010, para. 10.

⁴⁸² See also *supra* para. 208.

⁴⁸³ IACHR, *Annual Report 2015: Chapter IV The Use of Force*, para. 21 (citing I/A Court HR. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 77; *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 87. See also IACHR, *Citizen Security and Human Rights* (2009), para. 115).

identify and hire officers who “have appropriate moral, psychological and physical qualities for the effective exercise of their functions.”⁴⁸⁴ In this respect, the U.N. Basic Principles additionally require States to “ensure that all law enforcement officials are selected by proper screening procedures [...] and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.”⁴⁸⁵

217. Furthermore, the Basic Principles state that training shall focus special attention on “police ethics and human rights, especially in the investigative process, alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.”⁴⁸⁶ Agency training programs and operational procedures should be periodically reviewed in the light of particular incidents.⁴⁸⁷ The CERD has additionally stated that law enforcement officials should be trained “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, color or national or ethnic origin.”⁴⁸⁸ This training must also address respect for human rights, racial tolerance, and tools for working in multicultural environments, for law enforcement officials, justice operators, and related professions.⁴⁸⁹
218. Additionally, the Basic Principles require that “all law enforcement officials [be] provided with training and [...] tested in accordance with appropriate proficiency standards in the use of force,” and that only those law enforcement officials who complete special training in use of firearms be allowed to carry them.⁴⁹⁰
219. The Commission has previously emphasized the importance of training in the gradual escalation in force when it meets required standards of legality, absolute necessity, and proportionality.⁴⁹¹ The Commission observes that President Obama’s Task Force recommendations regarding the use of force, which include creating agency use of force policies for training that

⁴⁸⁴ Id. at para. 22.

⁴⁸⁵ [U.N. Basic Principles on the Use of Force](#), No. 18.

⁴⁸⁶ [U.N. Basic Principles on the Use of Force](#), No. 20.

⁴⁸⁷ Id.

⁴⁸⁸ CERD, *General Recommendation XIII on the training of law enforcement officials in the protection of human rights*, U.N. Doc A/48/18, 1993, para. 2.

⁴⁸⁹ Id.

⁴⁹⁰ [U.N. Basic Principles on the Use of Force](#), No. 19. See also *supra* para. 204.

⁴⁹¹ IACHR, [Annual Report 2015: Chapter IV The Use of Force](#), para. 23.

emphasizes the use of less lethal technologies, de-escalation, and alternatives to arrest or summons in situations where appropriate,⁴⁹² would represent positive developments in this regard.

220. The Commission observes that the approximately 18,000 law enforcement agencies in the United States are almost all state and local agencies.⁴⁹³ In this context, it reiterates the obligation of all levels of government, including state and local, to observe international human rights standards and bring their laws, policies, and practices in line with international law. In light of this situation, the Commission reiterates the importance of establishing police training programs that include training in: the definition of force, use of force, and permissible use of lethal force; de-escalation tactics, in order to comply with the principle of necessity; alternatives to use of lethal force, including less lethal weapons; instruction in non-discrimination and implicit bias spanning all aspects of policing, from patrols to arrests to use of force. The Commission additionally notes information it has received indicating a lack of publicly available information from many local police departments, including of major cities, about the nature and scope of their police training and policies.⁴⁹⁴ In this regard, the Commission calls for greater active transparency from these bodies in order to facilitate monitoring of compliance with human rights norms regarding police training and use of force policies.

b. Adoption of Protocols regarding the Use of Force

221. The IACHR recalls that under international law, the use of lethal weapons is considered a last resort, when less extreme measures would be insufficient. This obligation takes on a special character in operations and in situations that by their nature endanger the fundamental rights of persons.⁴⁹⁵ These principles should be fully incorporated into departmental use of force policies, in line with the obligation of all levels of government to observe and protect human rights obligations.

222. Given the expansion in the manufacture and sale of less lethal weapons, and their varied characteristics, mechanisms for causing harm, and risks associated with their use, clear and appropriate rules are essential. This is because the lethality of the weapon depends on its use, the context in

⁴⁹² COPS, *Final Report of the President's Task Force on 21st Century Policing*, May 2015, Recommendations 2.2.1, 3.6.

⁴⁹³ Bureau of Justice Statistics, *Census of State and Local Law Enforcement Agencies, 2008*, July 2011.

⁴⁹⁴ RFL Human Rights, *Excessive Use of Force*, updated Feb. 12, 2016, p. 44.

⁴⁹⁵ IACHR, *Annual Report 2015: Chapter IV The Use of Force*, para. 19.

which it is used, and the particular conditions of the person using it.⁴⁹⁶ The IACHR has previously observed that “almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury,” and in many cases, negative impacts on physical integrity or life have been caused by the misuse of such weapons.⁴⁹⁷ For example, rubber munitions shot from a short distance at the upper body, tear gas fired at bodies, irritant gases used against children and the elderly, and Tasers used against persons with heart conditions may all cause serious injury or death.⁴⁹⁸ The IACHR recalls that several cases cited in this report resulted from causes other than shootings, such as the use of prohibited chokeholds or “rough rides.”⁴⁹⁹

223. In addition to the need to bring domestic laws regarding the use of lethal force in line with international law and create appropriate protocols to ensure compliance, the Commission emphasizes the need to develop normative provisions, protocols, and manuals that consider prohibitions on the use of lethal and less lethal weapons in contexts or with persons that may imply greater risk, in view of the consequences that could result from their improper, inappropriate or abusive use.⁵⁰⁰ For example, the Commission has stated that tear gas should not be used in closed spaces or with persons who have no place to move away from the crowd or to evacuate.⁵⁰¹ The use of less lethal weapons should be preceded by formal notices that give individuals the opportunity to evacuate the area without provoking situations of panic or stampedes. Guidelines should further be put in place for regulating their composition⁵⁰² and attributing responsibility for their incorrect use.⁵⁰³
224. The Commission reiterates the importance of implementing ammunition registration and control protocols and systems.⁵⁰⁴ The Basic Principles

⁴⁹⁶ Id. at para. 18 (citing U.N., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, Apr. 1, 2014, paras. 103-106).

⁴⁹⁷ Id. (citing U.N., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary General, A/69/265, Aug. 6, 2014, para. 69).

⁴⁹⁸ IACHR, Annual Report 2015: Chapter IV The Use of Force, para. 18. *See also*, e.g., Physicians for Human Rights et al., Lethal in Disguise: The Health Consequences of Crowd-Control Weapons, 2016.

⁴⁹⁹ In the cases of Eric Garner and Freddie Gray, respectively.

⁵⁰⁰ IACHR, Annual Report 2015: Chapter IV The Use of Force, para. 16. *See also infra* paras. 241-242.

⁵⁰¹ Id. (referring additionally to statements from the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the International Committee of the Red Cross).

⁵⁰² For example, the State should develop standards regulating the composition and concentration of irritant chemical substances and water used in water cannons, the levels of discharge of electrical devices, the volume and frequency of acoustic weapons, and the levels of precision required for projectiles, among others. IACHR, Annual Report 2015: Chapter IV The Use of Force, para. 17.

⁵⁰³ Id. at para. 16.

⁵⁰⁴ IACHR, Annual Report 2015: Chapter IV The Use of Force, para. 227 (citing IACHR, The Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1 (2006), para. 68).

similarly recommend the establishment of guidelines that regulate the control, storage, and issuance of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.⁵⁰⁵ Registration of this type, before and after operations, helps to facilitate judicial and administrative investigations into possible violations of rules and principles on the use of force. Thus, States should have in place effective mechanisms for making inventories of firearms, ammunition, and other control devices, such as chemical weapons, to be used in a security operation.⁵⁰⁶

c. Preventing Violations of the Prohibition against Torture and Cruel, Inhuman, and Degrading Treatment

225. Under international law, all forms of torture and cruel, inhuman or degrading treatment (“CIDT”) are banned without exception,⁵⁰⁷ including under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), both of which the United States has ratified, and the American Convention on Human Rights (ACHR), among many other instruments, including the American Declaration. Indeed, the prohibition against torture is considered a jus cogens norm, from which no derogation is permitted. The U.S. is obligated to prevent torture, including by ensuring that “education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel [. . .],” and by including the prohibition “in the rules or instructions issued in regard to the duties and functions of any such person.”⁵⁰⁸

226. ICCPR Article 7 provides: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵⁰⁹

227. CAT Article 1 defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or

⁵⁰⁵ [U.N. Basic Principles on the Use of Force](#), No. 11(d).

⁵⁰⁶ IACHR, [Annual Report 2015: Chapter IV The Use of Force](#), para. 227

⁵⁰⁷ See, e.g., IACHR, Report No. 92/05, Case 12.418, *Michael Gayle* (Jamaica), Oct. 24, 2005, para. 61 (citing I/A Ct. H.R., *Cantoral Benavides*, Judgment of Aug. 18, 2000, Ser. C No. 69, para. 95).

⁵⁰⁸ Art. 10(1), (2).

⁵⁰⁹ ICCPR, Art. 7.

intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

228. CAT Article 16 additionally obligates States to avoid:

other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

229. The Inter-American Commission has further stated that torture is an aggravated form of inhuman treatment perpetrated with a purpose, namely to obtain information or confessions, as a preventative measure, or to inflict punishment.⁵¹⁰ In this regard, the essential criterion to distinguish between torture and other CIDT "primarily results from the intensity of the suffering inflicted."⁵¹¹

230. The definition of torture explicitly does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions."⁵¹² Thus, force that is not excessive and is used for a lawful purpose will not constitute torture or CIDT. However, excessive and unlawful use of force by police officers may constitute torture or CIDT, particularly where it is intentionally inflicted, causing severe pain or suffering, for the purposes of interrogation, punishment or intimidation. The Commission additionally considers it relevant to note that the intentional infliction of severe pain or suffering on a person by or with the acquiescence of State agents "for any reason based on discrimination of any kind" would constitute torture.⁵¹³

231. For example, in *Michael Gayle v. Jamaica*, the Inter-American Commission held that the brutal beating of Michael Gayle by State security forces amounted to torture. The record showed that during twelve minutes, Mr. Gayle was beaten with gun butts, punched, and kicked with military boots; the assaults were so severe that they caused his stomach to rupture, which

⁵¹⁰ IACHR, Report No. 92/05, Case 12.418, *Michael Gayle* (Jamaica), Oct. 24, 2005, para. 62 (citing Case 10.832, Report N° 35/96, *Luis Lizardo Cabrera* (Dominican Republic), Annual Report of the IACHR 1997, para. 79, citing Eur. Com. H.R., *The Greek Case*, 1969, 12 Y. B. Eur. Conv. on H.R. 12, at 186).

⁵¹¹ Id. (citing *Luis Lizardo Cabrera*, para. 80, citing Eur. Court H. R., *Ireland v. United Kingdom*, judgment of Oct. 9, 1979, Ser. A N° 25, para. 167).

⁵¹² CAT, Art. 1.

⁵¹³ CAT, Art. 1.

resulted in his death two days later. Following the beating, he did not receive prompt medical attention; the autopsy later showed that prompt and proper medical attention could have saved his life. Prior to his death, Mr. Gayle continued to suffer from the injurious effects of his beating.⁵¹⁴

232. The Commission considered, among other factors, the fact that the beating of Michael Gayle was intentional; that it was purported to have been imposed as a measure to prevent him from crossing a curfew barricade; that it was excessive; that it caused severe physical and mental pain and suffering; as well as the nature and intensity of the treatment, including the failure to provide him with prompt medical attention and his resulting protracted suffering. All of these factors led the Commission to consider that Mr. Gayle was a victim of torture by State security forces.⁵¹⁵
233. The Commission recalls that the threshold for establishing CIDT is lower than the threshold for establishing torture, and the issue of CIDT may also be raised by racial profiling practices. In particular, the Commission has previously found that racially discriminatory treatment by State officials can constitute a violation of the prohibition on cruel, inhuman, and degrading treatment (CIDT). In *Benito Tide Méndez v. Dominican Republic*, the Commission found that the discrimination endured by the petitioners of Haitian descent at the hands of Dominican officials on the basis of their race or color constituted inhumane treatment and thus a violation of the prohibition of CIDT, “read in conjunction with the obligation to respect rights without discrimination.”⁵¹⁶
234. The Commission further considered in *Benito Tide Méndez* that the “treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience.”⁵¹⁷ To evaluate whether treatment is inhumane or degrading, one must evaluate “the circumstances in each case, such as the duration of the treatment, its physical and mental effects and, in some cases, [...] race, color, nationality, immigration status, and other factors.”⁵¹⁸ The Commission recalled that “degrading treatment is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his [or her] physical and moral

⁵¹⁴ IACHR, Report No. 92/05, Case 12.418, *Michael Gayle* (Jamaica), Oct. 24, 2005, paras. 59-60.

⁵¹⁵ *Id.* at para. 63.

⁵¹⁶ IACHR, Report No. 64/12, Case 12.271, Merits, *Benito Tide Méndez et al.* (Dominican Republic), Mar. 29, 2012, para. 209.

⁵¹⁷ *Id.* at para. 194 (citing IACHR, Report No. 35/96, Case 10.832, Merits, *Luis Lizardo Cabrera* (Dominican Republic), Feb. 19, 1998, para. 77, citing European Commission on Human Rights, *The Greek Case*, 1969, 12 Y.B. EUR. CONV. ON H.R. 12, 186. See also IACHR, Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), para. 156.)

⁵¹⁸ *Id.*

resistance,” which “is exacerbated by the vulnerability of a person who is unlawfully detained.”⁵¹⁹

235. In this regard, the Commission reiterates the importance of the development of appropriate protocols and training, as well as processes to ensure accountability for failure to follow such requirements, in order to prevent and punish torture and cruel, inhuman, and degrading treatment.
236. The Commission echoes the concern expressed by the Committee Against Torture that “information, education and training provided to [U.S.] law enforcement or military personnel are not adequate and do not focus on all provisions of the Convention, in particular on the non-derogable nature of the prohibition of torture and the prevention of [CIDT].”⁵²⁰ This, in light of “reports of brutality and use of excessive force by the State[’s] law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular racial minorities, migrants and [LGBTI persons],”⁵²¹ and “the frequent and recurrent shootings or fatal pursuits by the police of unarmed black individuals.”⁵²² The Commission calls on the State to fulfill its duty to act with due diligence to prevent torture and cruel, inhuman, and degrading treatment.⁵²³

3. Militarization of Police

237. The Commission is concerned by the level of militarization of local police forces in the United States, as well as by recent information that steps taken to decrease militarization at the federal level are being reversed.⁵²⁴ In particular, the Commission observes that the use of military-grade tools and tactics by local police forces escalates the risk of excessive force and undermines respect for human rights.⁵²⁵ The use of violent tactics and military equipment increases the risk of bodily harm,⁵²⁶ including injury and death.⁵²⁷

⁵¹⁹ Id. (citing I/A Ct. H.R., *Loayza Tamayo v. Peru*, Sept. 19, 1997, Series C Nº 33, para. 57).

⁵²⁰ Committee Against Torture, *Conclusions and recommendations: U.S.*, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), para. 23.

⁵²¹ Id. at para. 37.

⁵²² Committee Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, CAT/C/USA/CO/3-5, Dec. 19, 2014, para. 26.

⁵²³ See generally *infra* paras. 250-256.

⁵²⁴ See *supra* paras. 66, 87-89, 178.

⁵²⁵ ACLU, *The War on Marijuana in Black and White*, June 2013.

⁵²⁶ ACLU, *War Comes Home: The Excessive Militarization of American Policing*, June 2014, p. 3.

⁵²⁷ Id. at 5.

238. The Commission notes that militarized policing is not simply a matter of appearance, nor does the use of military-style tactics and equipment simply undermine community trust. Rather, it may violate the principles of necessity and proportionality under international law.⁵²⁸ When used in the context of peaceful protests, militarized police tactics may undermine the rights to freedom of expression, association and assembly, and the right to take part in the conduct of public affairs. The Commission has stated that the police and armed forces are entrusted with substantively different missions and members of the respective forces are trained for those very different missions; accordingly there should be a clear distinction between internal security and law enforcement as the function of the police and national defense as the function of the armed forces.⁵²⁹

4. Use of Force and Social Protest

239. Of special concern to the Commission is the use of force to contain or repress social protests and public demonstrations that seek to give an outlet to discontent and struggles to vindicate fundamental rights,⁵³⁰ such as demonstrations protesting racial discrimination or impunity for police violence in the US.⁵³¹ In a democracy, State authorities should act under the assumption that protests or public demonstrations do not constitute a threat to public order, with an approach focused on building the highest levels of citizen participation, with the streets and plazas considered privileged places for public expression.⁵³²

240. Whatever the format for demonstrations adopted by protesters, the police should have the principal objective of facilitating demonstrations, guaranteeing the exercise of the right to protest and protecting the protesters and third persons present, and not of containing or confronting the protesters. If a demonstration or protest leads to violence, this should be understood as a failure of State capacity to guarantee the exercise of this right. In this sense, the State's obligation is to ensure the expression and processing of the underlying social and political conflicts.⁵³³

241. The law should clearly define the circumstances that justify the use of force in the context of protests, as well as the acceptable level of force for

⁵²⁸ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 40.

⁵²⁹ *Id.* at para. 49.

⁵³⁰ *Id.* at para. 2.

⁵³¹ *See supra* paras. 119-126.

⁵³² IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 64.

⁵³³ *Id.* at para. 68.

addressing various threats, in line with the principle of legality.⁵³⁴ In this regard, the principles regarding use of force detailed in previous sections require that security operations be carefully planned by persons with experience and specialized training, with clear protocols for action by security forces.⁵³⁵ These instructions should be aimed at ensuring that law enforcement agents act with the certainty that “their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.”⁵³⁶

242. The Commission considers that police who accompany protests should not be assigned firearms or other lethal weapons for that purpose.⁵³⁷ Prohibiting officials who may have contact with protesters from carrying firearms and lead munitions has proven the best method for preventing lethal violence and deaths in contexts of social protest.⁵³⁸ In exceptional cases where there is a situation of actual, serious, and imminent risk to persons that may make the use of firearms and lead munitions warranted, an operation may provide for their presence somewhere outside the radius of action of the demonstration. In such an extreme circumstance, there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be documented.⁵³⁹
243. Likewise, the Commission notes the potential for serious injury of using less lethal weapons in the context of social protests, such as tear gas and devices used to shoot hard rubber, plastic, or soft rubber projectiles. The use of such weapons is ill-advised since it is impossible to control the direction of their impact.⁵⁴⁰
244. The Commission considers that any arrest made in the context of protests must meet all requirements established by domestic law and international standards, including avoiding mass, collective, or indiscriminate arrests. For example, the Inter-American Court has found that the “massive[] arrest [of] people that [] authorit[ies] consider[] may represent a risk or danger to the security of others, without substantiated evidence of the commission

⁵³⁴ Id. at para. 120. See also *supra* paras. 221-222.

⁵³⁵ Id. at para. 79.

⁵³⁶ Id. at para. 79 (citing IACHR, *Citizen Security and Human Rights* (2009), para. 193).

⁵³⁷ See Id. at para. 82 (citing UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, "Use of force during demonstrations,"* A/HRC/17/28, May 23, 2011, Para. 75. See also: Amnesty International, *Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Aug. 2015, p. 148(i)).

⁵³⁸ IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 82 (citing Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, Mar. 7, 2006, para. 68(a)).

⁵³⁹ Id. at para. 82 (citations omitted).

⁵⁴⁰ Id. at para. 84.

of a crime, constitutes an illegal and arbitrary arrest.”⁵⁴¹ In this regard, the Commission highlights its concern about reports of arbitrary arrests at protests for minor acts that do not clearly constitute criminal activity.⁵⁴² The Commission additionally reiterates that the State must take all necessary steps to ensure that detainees and their next of kin are given precise information about the reasons for the detention and where they are being held.⁵⁴³

245. The Commission also reiterates the importance of properly identifying law enforcement officials as key to establish the actors involved in a use of force incident, for the purpose of clarifying the facts and, as appropriate, assigning responsibility. The Commission considers that the police should wear a visible tag either with their name or number on it identifying them personally.⁵⁴⁴ In the case of public protests, police participation in security operations in plainclothes or without proper identification poses problems for the administrative and/or judicial review of possible irregularities and/or violations of rights. The lack of proper identification constitutes an added obstacle to assigning responsibility in contexts where reconstructing the events is often complex. The Commission observes that the value of reconstructions and audiovisual records and testimonies as evidence is severely limited without the possibility of identifying the officers directly involved as State officials with their own personal identity numbers.⁵⁴⁵ Failure to identify law enforcement officers further opens the possibility of infiltration for intelligence purposes, which violates different rights. In this regard, the Commission has previously considered concerns about “the use of embedded undercover police officers in groups that are non-violent and take peaceful direct action by exercising their right to freedom of peaceful assembly.”⁵⁴⁶
246. The IACHR additionally reiterates that the State must ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. This should include assurances that their work materials and tools will not be destroyed or confiscated by the

⁵⁴¹ Id. at para. 121 (citing I/A Ct. H.R., *Servellón García et al. v. Honduras*. Judgment of Sept. 21, 2006. Series C No. 152, para. 134); see also I/A Ct. H.R., *Bulacio v. Argentina*. Judgment of Sept. 18, 2003. Series C No. 100, para. 137.

⁵⁴² See *supra* paras. 119-120.

⁵⁴³ Id. at para. 122.

⁵⁴⁴ IACHR, [Annual Report 2015: Chapter IV The Use of Force](#), para. 225 (citing Amnesty International, [Use of force: Guidelines for implementation of the UN Basic Principles on the use of forcé and firearms by law enforcement officials](#), Aug. 2015).

⁵⁴⁵ Id. at para. 225.

⁵⁴⁶ Id. at para. 226 (citing Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 Jan. 2013) A/HRC/23/39/Add.1, para. 24).

authorities, and that they will not be subjected to arbitrary or excessive use of force.⁵⁴⁷ Additionally, in situations of social unrest, the State remains obligated to respect the right of journalists to keep their sources of information, notes, and personal and professional archives confidential. Furthermore, the “photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny.”⁵⁴⁸

C. International Framework regarding Access to Justice: Due Diligence, Accountability, Institutional Independence, Remedies, and Reparations

247. The Commission has previously observed that the structural discrimination that Afro-descendants in the Americas face must also be analyzed in light of the obstacles that they encounter when trying to access domestic judicial remedies.⁵⁴⁹ While any victim of a crime or act of violence may have difficulty getting justice, those difficulties are compounded for those sectors of the population that have historically been discriminated against or excluded, including children, adolescents, women, indigenous persons, Afro-descendants, and migrant workers and their families.⁵⁵⁰ States must therefore take all measures necessary to ensure that all persons within their territory have equal access to justice. This is particularly important in States with multiethnic populations that represent diverse cultures and languages.⁵⁵¹ The Commission has previously recognized African

⁵⁴⁷ Id. at paras. 168, 170.

In this regard, “in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events [...] it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.” U.N. Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR, Joint declaration on violence against journalists and media workers in the context of protests, Sept. 13, 2013.

⁵⁴⁸ IACHR, Annual Report 2015, Chapter IV: The Use of Force, Mar. 17, 2016, para. 172 (citing Guidelines on Peaceful Freedom of Assembly, OSCE – ODIHR and Venice Commission, para. 169).

⁵⁴⁹ IACHR, People of African Descent in the Americas (2011), para. 15.

⁵⁵⁰ IACHR, Citizen Security and Human Rights (2009), para. 168.

⁵⁵¹ Id.

Americans in the United States as a group whose access to justice in cases of police killings is precarious.⁵⁵²

248. The right to judicial protection is reflected in Articles XVIII and XXIV of the American Declaration. The first establishes the right to a fair trial, that is, that

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

249. The second refers to the right of petition, that is,

Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

250. These rights together stand for a wider guarantee of access to justice. These include the duty of the State to act with due diligence to prevent, investigate, and punish human rights violations; the obligation to provide adequate and accessible remedies; and to ensure appropriate reparations for victims of violations.

1. Due Diligence

251. States are obligated to organize their governments—federal, state, and local—and, in general, all the structures through which public power is exercised, including the State’s legislative framework, public policies, law enforcement machinery, and judicial system, to ensure the full enjoyment of human rights of all persons subject to their jurisdiction.⁵⁵³ Under international human rights law, the State has the non-derogable obligation to respect the right to life and prevent torture.⁵⁵⁴ This obligation gives rise, in turn, to the obligation to act with due diligence to protect human rights. This requirement encompasses four basic obligations: prevention,

⁵⁵² IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 236.

⁵⁵³ IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 125, 128. See also U.N., *Durban Declaration and Programme of Action* (adopted at the 2001 World Conference Against Racism), para. 104; *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of Dec. 21, 1965.

⁵⁵⁴ ICCPR, arts. 6-7; CAT, art. 2; CRC, art. 37; Belem do Pará, art. 4.

investigation, punishment, and reparation and non-repetition of human rights violations.⁵⁵⁵ The failure of the State to carry out this duty, even where the perpetrators are third parties, may amount to State action that gives rise to international responsibility.⁵⁵⁶ The Commission has consistently invoked the due diligence principle as a benchmark to rule on cases and situations of racism and other forms of intolerance.⁵⁵⁷

252. The Commission has addressed the scope of the United States' obligation to guarantee the rights of at-risk persons or groups on various occasions, examining the differential impact that widespread practices of discrimination and violence by State agents or non-State actors have had on certain social groups,⁵⁵⁸ including African Americans.⁵⁵⁹
253. There is a strong link between discrimination, violence, and due diligence. For example, the Commission has found on various occasions that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law.⁵⁶⁰ The State is obligated not only to abstain from violating rights and act with due diligence to prevent particular acts of

⁵⁵⁵ IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, OEA/Ser.L/V/II, Doc. 48/13 (2013), para. 365 (citing I/A Ct. H.R., *Velásquez Rodríguez*, Ser. C No. 7 (1989)). Other instruments of the Inter-American human rights system also establish the State's obligation to act with due diligence to protect human rights. Examples include Art. 6 of the Inter-American Convention against Torture and Art. 7(b) of the Convention of Belém do Pará.

⁵⁵⁶ IACHR, Report No. 80/11, *Jessica Lenahan* (2011), paras. 122, 128 (citing IACHR, Report No. 28/07, *Gonzalez et al.* (2007), paras. 247-255; I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 245); for a more detailed discussion, see generally J. Hessbruegge. 2004. "The Historical development of the doctrines of attribution and due diligence in international law", *NYU Journal of Int'l Law*, vol. 36; Robert P. Barnidge, Jr., *The Due Diligence Principle under International Law*, *Int'l Community Law Review* (2006).

⁵⁵⁷ IACHR, Report No. 50/16, *Undocumented Workers* (2016), para. 99; Report No. 80/11, *Jessica Lenahan* (2011), para. 125; Report 40/04, *Maya Indigenous Community* (2004), para. 162; Report No. 67/06, *Oscar Elías Bicer et al.* (2006), para. 228.

See also, e.g., IACHR, Report No. 28/07, *Gonzalez et al.* (2007), paras. 160-255; IACHR, Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Apr. 16, 2001, paras. 55-58 [hereinafter "Report No. 54/01, *Maria da Penha* (2001)"]; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paras 26-58; See also generally I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009).

⁵⁵⁸ See, e.g., IACHR, Report No. 50/16, *Undocumented Workers* (2016); Report No. 80/11, *Jessica Lenahan* (2011), para. 111); *Refugees and Migrants in the United States: Families and Unaccompanied Children*, OAS/Ser.L/V/II.155, Doc. 16 (2015); *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II., Doc. 78/10 (2010).

⁵⁵⁹ IACHR, *Eric Garner and Michael Brown Press Release*, Aug. 22, 2014; *Walter Scott Press Release*, Apr. 17, 2015; *Investigation of Police Killings Press Release*, Aug. 23, 2016; *Charlottesville Press Release*, Aug. 18, 2017.

⁵⁶⁰ See, e.g., IACHR, Report No. 80/11, *Jessica Lenahan* (2011); Report No. 28/07, *Gonzalez et al.* (2007); I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009); IACHR, Report No. 54/01, *Maria da Penha* (2001).

violence, but also to remedy an underlying situation of discrimination and injustice.⁵⁶¹

254. The Commission has interpreted the duty to act with due diligence toward situations of structural violence, such as gender-based violence against women, broadly, encompassing not only the prompt investigation, prosecution, and punishment of these acts, but also the obligation “to prevent these degrading practices.”⁵⁶² For example, in *Jessica Lenahan v. United States*, the Commission highlighted that “the State’s duty to address violence against women also involves measures to prevent and respond to the discrimination that perpetuates this problem.”⁵⁶³ Thus, “States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.”⁵⁶⁴ Furthermore, the Commission has previously considered that “the existence of a general pattern of State tolerance and judicial inefficiency towards cases of domestic violence [promotes] their repetition, and reaffirm[s] the inextricable link between the problem of violence against women and discrimination in the domestic setting.”⁵⁶⁵
255. In the case of violence and discrimination against African Americans, the Commission has previously considered the need for the federal and state governments to take steps “with due diligence and without delay to address the context which fuels forms of structural discrimination and disparate treatment against African Americans and racial minorities in the United States,” considering that this context is a key contributing factor to police violence against African Americans, and that remedying this underlying discrimination is “vital for the full exercise of citizenship by African Americans and to foster a more inclusive democracy in the United States.”⁵⁶⁶ Indeed, historic, structural discrimination against African Americans is the “backbone” of many of the problems discussed in this report.⁵⁶⁷
256. In light of the foregoing, the Commission considers that a State’s failure to act with due diligence to prevent violence against African Americans constitutes a form of discrimination and a denial of equality before the law.

⁵⁶¹ Id.

⁵⁶² IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 131 (citing Report No. 54/01, *Maria da Penha* (2001), para. 56).

⁵⁶³ Id. at para. 126 (citation omitted).

⁵⁶⁴ Id.

⁵⁶⁵ Id. at para. 121 (citing Report No. 54/01, *Maria da Penha* (2001), para. 55).

⁵⁶⁶ IACHR, *On-Site Visit Press Release*, Oct. 16, 2015.

⁵⁶⁷ Id.

The State has a positive duty to prevent and respond to the underlying discrimination that perpetuates the commission of police violence against African Americans.⁵⁶⁸ The Commission has previously emphasized that it is essential not only to appropriately investigate, prosecute, and punish cases of police violence, but also “to modify [...] institutionalized stereotypes towards Afro-descendant[s]”⁵⁶⁹ in order to fulfill its duties to prevent and eradicate discrimination.

257. There is an important link between the duty of due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.⁵⁷⁰ Finally, it is important to keep in mind the role of intersectional factors (e.g. sexual orientation, gender identity and expression, age, color, ethnicity, national origin, immigration status, religion, disability, situation of poverty, situation of homelessness, and others) that may place certain African Americans and other individuals of color at particular risk of violence or discrimination by State or non-State actors.⁵⁷¹

a. Collection of Statistics and Active Transparency

258. The Commission underscores the fundamental importance of properly collecting official statistics on police violence as a key element of its duty of due diligence, and calls on the State to begin collecting this information in a systematic, rigorous, transparent, and disaggregated manner without delay. In this regard, the Commission has previously signaled that the State is responsible for safeguarding information on the use of force and, therefore, any loss or concealment of the same should be investigated in order to establish administrative or other liability.⁵⁷²
259. The lack of official statistics on police violence hinders understanding and effectively addressing the problem of police violence.⁵⁷³ The Commission considers that accurate statistics and records on police violence are important not only as a matter of transparency, but are also relevant for establishing, evaluating, and understanding the magnitude and principal

⁵⁶⁸ See also *infra* para. 294.

⁵⁶⁹ IACHR, People of African Descent in the Americas (2011), para. 162.

⁵⁷⁰ IACHR, Report No. 80/11, Jessica Lenahan (2011), para. 127 (citation omitted); see also *infra* paras. 279-288.

⁵⁷¹ See *infra* para. 49.

⁵⁷² IACHR, Annual Report 2015, Chapter IV: The Use of Force, Mar. 17, 2016, para. 222 (citing I/A Ct. H.R. *Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of Nov. 24, 2011. Series C No. 237, para. 234).

⁵⁷³ IACHR, Annual Report 2015, Chapter IV: The Use of Force, Mar. 17, 2016, para. 216; see also, e.g., Washington Post, FBI director calls lack of data on police shootings ‘ridiculous,’ ‘embarrassing’, Oct. 7, 2015.

modalities of police violence, patterns and practices of police violence against certain groups, and for ensuring accountability for the officers and agencies responsible.

260. The Commission further highlights that in order to be of the greatest use for human rights monitoring, the official data that is gathered must be disaggregated.⁵⁷⁴ For example, official statistics should distinguish between the context of use of force incidents (e.g., at public demonstrations, in the context of evictions, in the context of raids on homes and on other locations, incidents at detention centers or other State facilities, regular policing activities, and states of emergency, among others), actors involved (both State actors and victims, quantifying and disaggregating them by race, color, gender identity, sexual orientation, age, language, origin, education level, etc.; in the case of State agents, also indicating the security agency to which they belong), weapons used, rights violated (e.g., life, humane treatment, personal liberty, property, etc.), and circumstances of time and place, among others. It is also important to compile data on ongoing investigations and proceedings, including specifying the jurisdiction, and the results thereof.⁵⁷⁵
261. The Commission considers that President Obama’s Task Force’s recommendations to “require agencies to collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or non-fatal, as well as any in-custody death,” and to ensure that “policies on the use of force [...] clearly state what types of information will be released, when, and in what situation, to maintain transparency,”⁵⁷⁶ are positive. The Commission calls on the State to ensure that statistics collected include disaggregated demographic data described in the previous paragraph, in order to best fulfill the duty of due diligence.
262. The Commission additionally highlights the importance of collecting data about a variety of situations of racial discrimination in the U.S., including those related to access to economic, social, cultural, and environmental rights, in order to better understand the dimensions of the problems, their causes and consequences. For example, in this report the Commission has referred to the importance of studying the effects of racial profiling on communities,⁵⁷⁷ and the effects of the use of less lethal weapons.⁵⁷⁸

⁵⁷⁴ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 216.

⁵⁷⁵ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 215.

⁵⁷⁶ COPS, [Final Report of the President’s Task Force on 21st Century Policing](#), May 2015, Recs. 2.2.4, 2.2.5.

⁵⁷⁷ *See supra* para. 79.

⁵⁷⁸ *See supra* para. 242.

b. The Duty to Investigate and Principles for Investigation

263. The Commission has recognized that States hold a “special duty” to investigate and prosecute police misconduct.⁵⁷⁹ The obligation to guarantee the rights to life, liberty, and personal integrity, and the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment all implicate the State’s duty to prevent and investigate possible violations of these rights. The Commission has stated that in light of this obligation, authorities must investigate conduct affecting the enjoyment of rights as soon as they become aware of it.⁵⁸⁰
264. This investigation must be carried out without delay, by all available legal means, and with the aim of determining the truth and ensuring the investigation, prosecution, and punishment of the perpetrators. During the investigation and judicial proceedings, the victims of human rights violations, or their next of kin, should have extensive opportunities to participate and be heard, in the clarification of facts and the punishment of those responsible, and in seeking fair compensation.⁵⁸¹
265. The investigation of human rights violations is an inherent legal obligation of the State.⁵⁸² Thus, the duty to investigate should not be viewed by the State as a mere formality or a proceeding performed merely for private interests that depends on the procedural initiative of the victims or their relatives, or the production of evidence by individuals.⁵⁸³ Effective investigations should thus be capable of producing results and offering a proper response to rights violations.⁵⁸⁴
266. There are a number of relevant international guidelines and protocols that address various aspects of an efficacious investigation of human rights abuses. These include the U.N. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading

⁵⁷⁹ IACHR, *Citizen Security and Human Rights* (2009), para. 46.

⁵⁸⁰ *Id.* at para. 45.

⁵⁸¹ *Id.* (citing I/A Ct. H.R., “*Mapiripán Massacre*” v. *Colombia*. Judgment of Sept. 15, 2005. Series C No. 134, para. 219; *Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 147; *Serrano Cruz Sisters v. El Salvador*. Judgment of Mar. 1, 2005. Series C No. 120, para. 63).

⁵⁸² *Id.*

⁵⁸³ IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 231; *see also* I/A Ct. H.R., The “*Street Children*” Case (Villagrán Morales et al.). Judgment of Nov. 19, 1999. Series C No. 63, para. 22 [hereinafter “I/A Ct. H.R. “*Street Children*,” Ser. C No. 63 (1999)"]; I/A Ct. H.R., *Velásquez Rodríguez*, Ser. C No. 7 (1989), para. 177; IACHR, *Citizen Security and Human Rights* (2009), para. 45.

⁵⁸⁴ IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 231; *see also* I/A Ct. H.R. “*Street Children*,” Ser. C No. 63 (1999), para. 22.

Treatment or Punishment (Istanbul Protocol),⁵⁸⁵ and the U.N. Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol).⁵⁸⁶

267. Citing the Minnesota protocol, the Commission has indicated that when investigating a potentially unlawful killing, that the investigating authorities must, at the very least, a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. The scene of the crime must be examined exhaustively, using autopsies and analysis of human remains by competent professionals and employing rigorous and appropriate procedures. Furthermore, special diligence shall be shown in cases indicating violence against women and children, or torture and other CIDT, in accordance with international law.⁵⁸⁷
268. In particular, the Commission has stated that it is incumbent upon the State to investigate alleged human rights violations *ex officio*. In cases involving the use of force by State agents, the investigation has to meet certain standards. For example, the investigation must be conducted by authorities with real institutional independence, and must take reasonable steps to safeguard the stock of evidence required to ascertain the facts being examined.⁵⁸⁸ Investigations should further conform to the principles of celerity, professionalism, exhaustiveness, and victim participation.
269. The Commission has previously emphasized that conserving the scene where the alleged facts took place is core part of the concept of due

⁵⁸⁵ Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004), available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

⁵⁸⁶ The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (2016), available at: <http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

⁵⁸⁷ IACHR, *Annual Report 2015, Chapter IV: The Use of Force*, Mar. 17, 2016, para. 234.

⁵⁸⁸ *Id.* at para. 229 (citing I/A Court HR. *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 81. When referring to the real independence of the investigative body, the Court also queried the propriety of the assistance lent to the principal investigative organ, in other words the Public Prosecution Service, by the institution involved in the events relating to the allegedly excessive use of force, namely the Judicial Police Technical Corps, a circumstance that might have contributed to the irregularities encountered in the proceeding. I/A Court HR. *Uzcátegui et al. v. Venezuela. Merits and Reparations*. Judgment of Sept. 3, 2012, Series C No. 249, para. 220).

diligence.⁵⁸⁹ It is especially important to preserve the communications between personnel involved in the operation and all records of sounds and images produced by the security institutions present at the time in their original media, both those directly relating to the sequence of events and those relating to the whole operation at its various levels. The authorities responsible for protecting the scene and the evidence must cooperate effectively with those responsible for conducting the investigation.⁵⁹⁰ This obligation includes the obligation to properly preserve and ensure chain of custody over recordings of an incident of police violence, including dashboard and body camera footage.

2. Institutional Design

270. Designing proper oversight and investigatory mechanisms for cases of police violence is of fundamental importance. As the Special Rapporteur on extrajudicial executions has stated, “[i]ndividuals commit violations of the right to life not because they believe it is justifiable, but because they believe they will not be called on to justify themselves.”⁵⁹¹
271. It is critical to have in place preventive controls and procedures to effectively review the legality of the use of force by law enforcement personnel in accordance with the rules of due process, since the absence of meaningful investigations tends to encourage conduct contrary to human rights; this creates a climate of impunity that encourages the repetition of abuses and may potentially engage the international responsibility of the State.⁵⁹² In this regard, the existence of a robust, efficient, independent, and impartial system to which State agents are accountable remains the best deterrent to the arbitrary use of force by law enforcement agents.⁵⁹³ In this vein, the Special Rapporteur on extrajudicial executions stated, “[t]o

⁵⁸⁹ Id. at para. 230 (adding that The Inter-American Court of Human Rights has pointed out that “failure to adequately protect the scene of the crime may affect the investigation because it is a crucial factor for its being conducted properly” (I/A Ct. H.R., *Myrna Mack Chang v. Guatemala*, para. 166) and the United Nations Human Rights Council has urged “States to investigate any cases of deaths or injuries brought about during demonstrations, including those resulting from shots from firearms or the use of nonlethal weapons by law enforcement personnel” (CDH ONU, A/HRC/25/L.20, para. 12)).

⁵⁹⁰ Id. (citation omitted).

⁵⁹¹ Id. at para. 214 (citing U.N., Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. Apr. 24, 2015).

⁵⁹² Id.

⁵⁹³ Id. at para. 222.

function properly, the police need [...] appropriate mechanisms for accountability to be in place.”⁵⁹⁴

272. The Commission notes the need to both create more independent mechanisms to investigate police abuses, and to take measures to strengthen the capacity and effectiveness of existing ones.⁵⁹⁵ Investigation must be independent from police departments and individuals who may be influenced by them, and the accountability system must include provision for administrative, disciplinary, and criminal sanctions of those responsible for any violations.⁵⁹⁶

273. When an investigation of an incident of police violence is initiated, its independence is critical. The U.N. Basic Principles emphasize that institutional connections and relationships that may impact the independence of investigations and future prosecutions must be carefully evaluated.⁵⁹⁷ The Commission recalls the information discussed in previous sections regarding the roles of grand juries and prosecutors in the indictment or non-indictment of police officers,⁵⁹⁸ and in particular the concerns expressed by civil society that because the initiation of a criminal investigation relies upon prosecutorial discretion, “which is often marred by resource constraints, pressure from police unions, and bias in favor of the police due to the working relationship between prosecutors and officers,” prosecutors may be less likely to file charges against police officers than civilian suspects.⁵⁹⁹ In this regard, the Commission regards as positive the recommendation of the President’s Task Force that State “policies should mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.”⁶⁰⁰ The Commission further emphasizes the importance of exploring the use of special prosecutors or investigatory bodies without close institutional connections to the police for the investigation and prosecution of police killings.

⁵⁹⁴ Id. (citing U.N., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, Apr. 1, 2014, para. 23).

⁵⁹⁵ IACHR, On-Site Visit Press Release, Oct. 16, 2015.

⁵⁹⁶ U.N. Basic Principles on the Use of Force, Nos. 22 and 11.

⁵⁹⁷ U.N. Basic Principles on the Use of Force, No. 26.

⁵⁹⁸ See *supra* paras. 110-111.

⁵⁹⁹ Information received from Robert F. Kennedy Human Rights during 166th Period of Sessions, Thematic Hearing: Reports of Impunity for Extrajudicial Killings in the United States, Dec. 7, 2017, p. 1 (citing MSNBC, Prosecutors and police: The inherent conflict in our courts, Dec. 5, 2014; FiveThirtyEight, Allegations Of Police Misconduct Rarely Result In Charges, Nov. 25, 2014; Washington Post, Thousands Dead, Few Prosecuted, Apr. 11, 2015; Houston Chronicle, Hard to Charge, last visited Oct. 5, 2015; Bureau of Justice Statistics, Federal Justice Statistics 2010 – Statistical Tables, Dec. 2013).

⁶⁰⁰ COPS, Final Report of the President’s Task Force on 21st Century Policing, May 2015, Rec. 2.2.2.

274. The Commission considers, in line with the U.N. Basic Principles, that when an investigation into the use of force by law enforcement agents is initiated, it is critical that investigating or prosecuting authorities be independent, specialized in the supervision of police misconduct investigations, permanently appointed, and in a position to exercise jurisdiction in appropriate circumstances.⁶⁰¹ Such authorities should have the necessary expertise to supervise investigations of police misconduct and crimes, and the same authority should be involved from the first case report through the indictment and trial of defendants. The Principles recommend that “in cases of death and serious injury, or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”⁶⁰² The entire process should be marked by transparency and participation of the victims and their next of kin. The Commission additionally highlights the important complementary role that entities like civilian oversight boards may play in the independent supervision of police conduct.⁶⁰³
275. The Commission reiterates that it regards internal disciplinary proceedings as autonomous mechanisms for States to supervise their officials’ discharge of the public duties assigned to them. Other than being an appropriate mechanism for monitoring performance, disciplinary proceedings alone are not a “sufficient means for prosecuting, punishing, and repairing the consequences of violations of human rights.”⁶⁰⁴ In this regard, the Commission reiterates its serious concern at information that internal investigations into police killings tend to be ineffective remedies as they are expensive, time-consuming, and not transparent, and information indicating that more than 90 percent of use of force complaints filed with large state and local law enforcement agencies were dismissed.⁶⁰⁵ The inefficiency or inefficacy of internal investigations in practice likewise highlights the importance of ensuring external investigations with the competence to prosecute and punish, as applicable, those responsible for violations.

3. The Duty to Prosecute and Punish all Responsible Parties

276. Cases of death or injury must be subject to a prompt, thorough, independent and impartial investigation with the goal of carrying out

⁶⁰¹ [U.N. Basic Principles on the Use of Force](#), No. 22.

⁶⁰² [U.N. Basic Principles on the Use of Force](#), No. 22.

⁶⁰³ *See supra* para. 113.

⁶⁰⁴ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 228 (citation omitted).

⁶⁰⁵ *See supra* para. 112.

prosecution proceedings. The general existence of criminal laws is not sufficient to ensure accountability of State officials—special measures are needed in order to ensure that officers are held responsible. These concerns are especially relevant in the context of police killings, given the reported difficulties of achieving convictions of police officers. In this regard, the Committee Against Torture, among others, has expressed concern at “the frequent and recurrent shootings or fatal pursuits by the police of unarmed black individuals” and “the alleged difficulties of holding police officers and their employers accountable for abuses.”⁶⁰⁶

277. Regarding the liability of senior officials incurred by issuing illicit orders regarding the use of force, the Commission underscores the provisions set forth in the U.N. Basic Principles establishing that States must take steps to ensure that senior officials are held responsible when they were “aware of, or should have been aware of, agents under their command resorting to the illicit use of force and of firearms, and failed to adopt all measures at their disposal to prevent, eliminate, or report that use.”⁶⁰⁷ On the other hand, officials responsible for the use of force may not allege that they obeyed orders from superiors if they were aware that an order to use force that resulted in death or serious injury was manifestly illicit, and they had a reasonable chance to refuse to obey it.⁶⁰⁸ The Commission has echoed the Inter-American Court in stating that investigation of the facts must “make it possible to determine the degree and manner of participation of those who intervened, be they perpetrators or instigators, and thereby establish the corresponding liabilities.”⁶⁰⁹

278. The Commission denounces a “reiterated pattern of impunity in the killings of Afro-descendants by police in the United States,” and reiterates that the ineffective State response to this problem fuels the chronic repetition of incidents of excessive use of force by police.⁶¹⁰ The absence of efficient and effective interventions by the organs of justice generates frustration among African Americans and other historically marginalized groups, as well as a sense that the police and other social institutions do not exist to protect them, which seriously affects coexistence in a democratic society.⁶¹¹ In light of the serious impacts that impunity for police violence has both on the repetition of these abuses and on the fabric of democratic society and social inclusion, the Commission considers that structural measures are urgently

⁶⁰⁶ Committee Against Torture, Concluding observations on the combined third to fifth periodic reports of the United States of America, CAT/C/USA/CO/3-5, Dec. 19, 2014, para. 26.

⁶⁰⁷ IACHR, [Annual Report 2015, Chapter IV: The Use of Force](#), Mar. 17, 2016, para. 233 (citing [U.N. Basic Principles on the Use of Force](#), No. 24).

⁶⁰⁸ Id. (citing [U.N. Basic Principles on the Use of Force](#), No. 26).

⁶⁰⁹ Id. at para 232.

⁶¹⁰ See *supra* paras. 103-105.

⁶¹¹ See IACHR, [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

necessary to address the situation and rectify the underlying discrimination and marginalization that contribute to these abuses.

279. The Commission further reiterates the importance of fully investigating and prosecuting all officers who may be responsible; and the importance of reforming domestic law where necessary to ensure that proof of explicit racial bias is not the legal standard for achieving a conviction.⁶¹²

4. The Right to an Effective Remedy

280. The duty to act with due diligence additionally engages the obligation of the State to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence. The Commission has previously called for the U.S. to adopt measures to guarantee access to justice for African Americans and other historically marginalized groups, in light of the fact that impunity for extrajudicial killings by the police disproportionately impacts African Americans and other people of color in the U.S.⁶¹³

281. As this Commission has recognized previously, both Articles XVII and XVIII are predicated upon the recognition and protection by a State of an individual's fundamental civil and constitutional rights.⁶¹⁴ Article XVIII further prescribes a fundamental role for the courts in ensuring and protecting basic rights.⁶¹⁵ For its part, Article XVIII of the American Declaration establishes that all persons are entitled to access judicial remedies when they have suffered human rights violations.⁶¹⁶ This right is similar in scope to the right to judicial protection and guarantees contained in Article 25 of the American Convention, which is understood to encompass: the right of every individual to go to a tribunal when any of his or her rights have been violated; to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that

⁶¹² See *supra* para. 116.

⁶¹³ IACHR, People of African Descent in the Americas (2011), para 141; Eric Garner and Michael Brown Press Release, Aug. 22, 2014; Walter Scott Press Release, Apr. 17, 2015; Investigation of Police Killings Press Release, Aug. 23, 2016.

⁶¹⁴ IACHR, Report No. 50/16, Undocumented Workers (2016), para. 98.

⁶¹⁵ Id. (citing IACHR, Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra et al., United States, Apr. 4, 2001, para. 243).

⁶¹⁶ Id. (citing IACHR, Report No. 80/11, Jessica Lenahan (2011), para. 172; Report No. 54/01, Maria da Penha (2001), para. 37).

establishes whether or not a violation has taken place; and the corresponding right to obtain reparations for the harm suffered.⁶¹⁷

282. The Commission has affirmed for many years that it is not the formal existence of judicial remedies that demonstrates due diligence, but rather that they are adequate and effective.⁶¹⁸ The “effectiveness” of a judicial remedy has two aspects: one is normative and the other is empirical.⁶¹⁹ The normative aspect deals with the remedy’s suitability—that is, its ability to determine whether a violation of human rights occurred, and its capacity to yield positive results or responses, principally measured in terms of its potential ability to provide adequate redress for human rights violations.⁶²⁰
283. The second aspect, the empirical nature of the remedy, refers to the political or institutional conditions that enable a legally recognized remedy to “fulfill its purpose” or “produce the result for which [it] was designed.”⁶²¹ A remedy is not effective when it is “illusory,” excessively onerous for the victim, or when the State has not ensured its proper enforcement by the judicial authorities.⁶²² In this regard, the Commission expresses its concern about information received indicating barriers to the effective adjudication of civil suits against police officers, including both procedural barriers to presenting claims as well as high burdens of proof and fears of reprisals.⁶²³ This is reflected as well in evidence that suggests that police officers are rarely found liable in civil suits.⁶²⁴
284. Thus, when the State’s institutions leave human rights violations unpunished and the victim’s full enjoyment of human rights is not promptly and properly restored, the State fails to comply with its positive duties under international human rights law.⁶²⁵ The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in international human rights law.⁶²⁶ In

⁶¹⁷ Id. (citing IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 172; Report 40/04, *Maya Indigenous Community* (2004), para. 174; Report No. 54/01, *Maria da Penha* (2001), para. 37).

⁶¹⁸ Id. at para. 99 (citing, *inter alia*, IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 173; Report Nº 81/10, Case 12.562, *Wayne Smith, Hugo Armendatriz, et al.*, United States, July 12, 2010, para. 62).

⁶¹⁹ Id. (citing IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.129 Doc.4 (2007) (hereinafter “IACHR Access to Justice Report”), para. 245 (citation omitted)).

⁶²⁰ Id. (citing IACHR Access to Justice Report, paras. 246-47).

⁶²¹ Id. at para. 100 (citing IACHR Access to Justice Report, para. 251).

⁶²² Id. (citing IACHR Access to Justice Report, para. 251).

⁶²³ *See supra* para. 114.

⁶²⁴ Id.

⁶²⁵ IACHR, Report No. 50/16, *Undocumented Workers* (2016), para 101 (citing IACHR, Report No. 80/11, *Jessica Lenahan* (2011), para. 173; IACHR, *The Situation of the Rights of Women in Ciudad Juarez*, OEA/Ser.L/V/II.117 Doc. 44 (2003), para. 51).

⁶²⁶ Id.

this regard, the Commission reiterates its concerns expressed in previous sections about the low number of prosecutions of police officers involved in extrajudicial killings,⁶²⁷ and the reported difficulty of pursuing hate crimes prosecutions, particularly in light of the rapidly rising numbers of hate crimes in recent years.⁶²⁸

285. The Commission additionally considers it relevant to note that by recognizing spaces and circumstances in which individuals are provided with unlimited autonomy over others, “Stand Your Ground” laws may violate fundamental rights such as life and physical integrity. The Commission considers that States have a special obligation of protection vis a vis the acts and practices of third parties that create discriminatory situations, and that the failure of the State to act in this context may produce international responsibility.⁶²⁹
286. The Commission emphasizes that States must ensure that channels exist by which individuals may petition independent tribunals to enforce their rights and receive reparations for declared violations.⁶³⁰ Procedural barriers and other dynamics, including bias of judicial bodies and partiality of prosecutors, which limit individuals’ ability to file grievances or obtain punishment for police misconduct, can amount to denial of an effective remedy.⁶³¹ In this regard, the Commission reiterates its concerns about 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.⁶³²
287. The Commission further maintains that there is a direct connection between the suitability of available judicial remedies, and the real possibility of observance of economic, social, and cultural rights. The IACHR has identified the principle of equality of arms as an integral part of the right to a fair trial, given that inequality between the parties in a dispute often translates into disadvantages in the framework of judicial

⁶²⁷ See *supra* paras. 103-105.

⁶²⁸ See *supra* para. 148.

⁶²⁹ IACHR, Report No. 50/16, *Undocumented Workers* (2016), paras. 71-92; Report No. 80/11, *Jessica Lenahan* (2011), para. 108; Report 40/04, *Maya Indigenous Community* (2004), para. 162; Report No. 67/06, *Oscar Elías Bicer et al.* (2006), para. 228.

⁶³⁰ IACHR, *The Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev.1 (2006), para. 349.

⁶³¹ I/A Ct. H.R., *Velásquez Rodríguez*, Ser. C No. 7 (1989), para. 166.

⁶³² See *supra* paras. 111-116.

proceedings.⁶³³ In this regard, the Commission recalls the information and concerns expressed throughout this report about the historical, structural situation of marginalization and racialized poverty that African Americans as a group face in the U.S. For example, the impact of pretrial detention on guilty pleas provides a clear indicator of the impact of materially unequal positions between the parties on the outcome of judicial proceedings.⁶³⁴ The Commission considers that real inequality between the parties in a proceeding engages the duty of the State to adopt all the necessary measures to remedy any deficiencies that frustrate the effective protection of rights, including recognizing and correcting any real disadvantages that the parties in a proceeding might have, thereby observing the principle of equality before the law and the prohibition of discrimination.⁶³⁵ Thus, the particular circumstances of a case may determine that guarantees additional to those explicitly prescribed in the pertinent human rights instruments are necessary to ensure a fair trial.⁶³⁶

288. The Commission has previously observed that “the impossibility of accessing complaint and reparation mechanisms, [...] administrative or judicial, is a factor contributing to the persistence of racism in the region,” and “the absence of judicial guarantees and the lack of sensitivity of justice system operators with respect to racial discrimination [...] help perpetuate patterns of segregation and exclusion.”⁶³⁷ In light of this situation, the Commission has called on States to “adopt legal measures and policies to enhance their domestic laws and processes and guarantee effective access to justice for [Afro-descendants],” “taking into account material, economic, and juridical obstacles and the systematic exclusion to which persons of African descent are subjected.”⁶³⁸

289. The Commission further recalls the obstacles that it has previously identified that hinder access to justice for Afro-descendants in the Americas generally in cases of police violence, including, among others: the bureaucracy of the judicial system; the lack of an immediate information system; language barriers; poor management and organization of courts; a lack of training of justice operators; the insufficiency of public defenders; the high cost of hiring a lawyer and of the judicial process; lack of knowledge about actions taken, and appellate procedures; and a lack of judicial remedies.⁶³⁹ The Commission calls on the State to take effective

⁶³³ IACHR, Report No. 50/16, *Undocumented Workers* (2016), para. 102 (citing IACHR Access to Justice Report, paras. 19-20).

⁶³⁴ *See supra* paras. 133, 166.

⁶³⁵ *Id.* at para. 103 (citing IACHR Access to Justice Report, para. 20).

⁶³⁶ *Id.*

⁶³⁷ IACHR, *People of African Descent in the Americas* (2011), para. 15.

⁶³⁸ *Id.* at para. 16.

⁶³⁹ IACHR, *People of African Descent in the Americas* (2011), para. 128

action to correct and eliminate such structural inequalities where they exist.

5. Reparations

290. The Commission has stated that any violation of an international obligation that results in harm creates a duty to make adequate reparation.⁶⁴⁰ Reparation is a generic term that covers the various ways a State may make amends for international responsibility it has incurred.⁶⁴¹ The Commission has recognized that States can adopt various means of reparation, involving both judicial and non-judicial mechanisms.⁶⁴² Under international law, remedies for victims of gross violations of international human rights law include equal and effective access to justice; access to relevant information about the violations committed and reparation mechanisms available; and adequate, effective, and prompt reparation for the harm suffered.⁶⁴³
291. In order to ensure that victims of human rights violations have equal access to an effective judicial remedy, States should ensure that these obligations are effectively reflected in the domestic legal framework, and that effective access to these mechanisms, as well as to information about them, is guaranteed.⁶⁴⁴ States should further ensure the dissemination of information about all available and appropriate international processes in which a person may have legal standing, without prejudice to any other domestic remedies.⁶⁴⁵
292. “Integral reparation” (*restitutio in integrum*) entails the re-establishment of the prior situation and the elimination of the effects produced by the violation, as well as the payment of compensation for the damage caused;⁶⁴⁶ reparation should thus be proportional to the gravity of the violations and the harm suffered.⁶⁴⁷ Inter-American case law has

⁶⁴⁰ IACHR, [The Right to Truth](#) (2014), para. 122 (citing I/A Ct. H.R., *Velásquez Rodríguez*, Ser. C No. 7 (1989), para. 25).

⁶⁴¹ IACHR, [The Right to Truth](#) (2014), para. 122 (citation omitted).

⁶⁴² Id. (citing IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131, Doc. 1, (2008)).

⁶⁴³ U.N., [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) [hereinafter “UN Principles on the Right to a Remedy and Reparation”], adopted and proclaimed by General Assembly resolution 60/147 of 16 Dec. 2005, para. 11.

⁶⁴⁴ [UN Principles on the Right to a Remedy and Reparation](#), para. 12.

⁶⁴⁵ [UN Principles on the Right to a Remedy and Reparation](#), para. 14.

⁶⁴⁶ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 450

⁶⁴⁷ [UN Principles on the Right to a Remedy and Reparation](#), para. 15.

established that victims of human rights violations are entitled to adequate compensation for the harm caused, which must materialize in the form of individual measures calculated to constitute restitution, compensation and rehabilitation for the victim, as well as general measures of satisfaction and guarantees of non-repetition.⁶⁴⁸ In all cases, the nature and amount of the reparations ordered depend on the characteristics of the violation and on the pecuniary and non-pecuniary damage caused; one or more measures can repair a specific damage, without this being considered double reparation.⁶⁴⁹

293. A State shall provide reparation to victims for acts or omissions which can be attributed to the State;⁶⁵⁰ States should further endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.⁶⁵¹ The Inter-American Court has held that “in cases of human rights violations, the State has the duty to provide reparations. This duty implies that while the victims or their next of kin should have ample opportunity to seek just compensation under domestic law, the State’s obligation cannot rest exclusively on their procedural initiative or on the submission of probative elements by private individuals.”⁶⁵²
294. Many of the general principles of reparation and restitution already applicable in common law countries apply to the reparation of human rights violations as well. For example, a State shall provide reparation to victims for acts or omissions which can be attributed to the State;⁶⁵³ States should further endeavor to establish national programs for reparation and other assistance to victims where the parties liable for the harm are unable or unwilling to meet their obligations.⁶⁵⁴ Reparation should be proportional to the gravity of the violations and the harm suffered.⁶⁵⁵ In this sense, the nature and amount of the reparations ordered depend on the characteristics of the violation and on the pecuniary and non-pecuniary

⁶⁴⁸ IACHR, [The Right to Truth](#) (2014), para. 123 (citing IACHR, Principal Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, Feb. 19, 2008; I/A Ct. H.R., *Myrna Mack Chang v. Guatemala*. Judgment of Nov. 25, 2003. Series C No. 101, paras. 236-237; *El Caracazo v. Venezuela*. Reparations. Judgment of Aug. 29, 2002. Series C No. 95, paras. 77-78; *Blake v. Guatemala*. Reparations. Judgment of Jan. 22, 1999. Series C No. 48, paras. 31-32).

⁶⁴⁹ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 450.

⁶⁵⁰ [UN Principles on the Right to a Remedy and Reparation](#), para. 15.

⁶⁵¹ [UN Principles on the Right to a Remedy and Reparation](#), para. 16.

⁶⁵² IACHR, [The Right to Truth](#) (2014), para. 123 (citing I/A Ct. H.R., “*Rochela Massacre*” v. Colombia. Merits and Reparations. Judgment of May 11, 2007. Series C No. 163, para. 220.)

⁶⁵³ [UN Principles on the Right to a Remedy and Reparation](#), para. 15.

⁶⁵⁴ [UN Principles on the Right to a Remedy and Reparation](#), para. 16.

⁶⁵⁵ [UN Principles on the Right to a Remedy and Reparation](#), para. 15.

damage caused; one or more measures can repair a specific damage, without this being considered double reparation.⁶⁵⁶ In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.⁶⁵⁷ States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavor to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations.⁶⁵⁸

295. However, in a context of structural discrimination, the Commission has previously endorsed the position that “reparations must be designed to change [a structural] situation, so that their effect is not only of restitution, but also of rectification.”⁶⁵⁹ Thus, “re-establishment of the same structural context of violence and discrimination [that existed previously] is not acceptable.⁶⁶⁰ This obligation can also be articulated as part of the State obligation of due diligence.⁶⁶¹ The Commission has considered that a structural situation of discrimination against Afro-descendants exists in the region, and that this context of structural violence contributes to a situation of impunity and lack of reparations for police killings in the U.S.⁶⁶² Given this situation, the Commission reiterates that the U.S. must take urgent steps to remedy the situation of historic, structural discrimination against African Americans in order to transform the underlying situation of inequality in which the concrete violations discussed in this report take place.
296. *Restitution* should, whenever possible, restore the victim to the original situation before the human rights violations occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment, and return of property.⁶⁶³

⁶⁵⁶ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 450

⁶⁵⁷ [UN Principles on the Right to a Remedy and Reparation](#), para. 15.

⁶⁵⁸ [UN Principles on the Right to a Remedy and Reparation](#), para. 17.

⁶⁵⁹ IACHR, [The Right to Truth](#) (2014), para. 123 (citing I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 450).

⁶⁶⁰ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 450

⁶⁶¹ *See also supra* paras. 253-255.

⁶⁶² *See generally* IACHR, [People of African Descent in the Americas](#) (2011); [Investigation of Police Killings Press Release](#), Aug. 23, 2016.

⁶⁶³ [UN Principles on the Right to a Remedy and Reparation](#), para. 19.

297. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, including:
- a. Pecuniary damages (including consequential damages and loss of earnings);
 - b. Non-pecuniary damages (including moral damages); and
 - c. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.⁶⁶⁴
298. The Inter-American Court has previously considered that non-pecuniary damage includes the pain and suffering caused to the direct victim and the next of kin, the impairment of values that are significant to an individual, and also the non-pecuniary damage caused by alterations in the living conditions of the victim and their next of kin. Since it is not possible to allocate a precise monetary amount to such damage, it can only be compensated by the payment of a sum of money or the delivery of goods or services with a pecuniary value established by the relevant tribunal, in equity, as well as by acts or works of a public scope or impact designed to acknowledge the dignity of the victim and avoid the occurrence of human rights violations.⁶⁶⁵
299. *Rehabilitation* should include appropriate and effective medical, psychological, or psychiatric treatment, by health care institutions with appropriate training and specialization to provide care to the victims and their next of kin.⁶⁶⁶ In general, the Inter-American Court additionally requires that such care be provided immediately, free of charge in public institutions, for the length of time necessary, and include the supply of any needed medication.⁶⁶⁷
300. *Satisfaction* should include, where applicable, any or all of the following:
- a. Effective measures aimed at the cessation of continuing violations;
 - b. Verification of the facts and full and public disclosure of the truth [...];
 - c. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed [...];

⁶⁶⁴ [UN Principles on the Right to a Remedy and Reparation](#), para. 20.

⁶⁶⁵ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), fn. 547 (citing *Anzualdo Castro v. Peru*, para. 218, and *Dacosta Cadogan v. Barbados*, para. 111).

⁶⁶⁶ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 549; [UN Principles on the Right to a Remedy and Reparation](#), para. 21; cf. *Kawas Fernández v. Honduras*, para. 209; *Anzualdo Castro v. Peru*, para. 203.

⁶⁶⁷ I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 549

- d. An official declaration or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim, and publication of the decision;⁶⁶⁸
 - e. Public apology, including acknowledgement of the facts and acceptance of responsibility;
 - f. Judicial and administrative sanctions against persons liable for the violations;
 - g. Commemorations and tributes to the victims;
 - h. Inclusion of an accurate account of the violations that occurred in training and in educational material at all levels.⁶⁶⁹
301. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:
- a. Ensuring effective civilian control of military and security forces;
 - b. Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
 - c. Strengthening the independence of the judiciary;
 - d. Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
 - e. Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
 - f. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
 - g. Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
 - h. Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.⁶⁷⁰

⁶⁶⁸ See, e.g., I/A Ct. H.R., *Cotton Field*, Series C No. 205 (2009), para. 468; *Garibaldi v. Brazil*, para. 157; *Kawas Fernández v. Honduras*, para. 199; *Escher et al. v. Brazil*, para. 239; *Serrano Cruz Sisters v. El Salvador*, para. 195.

⁶⁶⁹ UN Principles on the Right to a Remedy and Reparation, para. 22.

302. Finally, the right to the truth is an important form of reparation, because it constitutes a recognition of the significance and value of persons as individuals, as victims and as holders of rights.⁶⁷¹ Furthermore, knowledge of the circumstances of manner, time and place, motives and the identification of the perpetrators are fundamental to making full reparations to victims of human rights violations. The Commission has previously established that:

The right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations.⁶⁷²

⁶⁷⁰ [UN Principles on the Right to a Remedy and Reparation](#), para. 23.

⁶⁷¹ IACHR, [The Right to Truth](#) (2014), para. 124 (citing UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, Aug. 9, 2012, para. 30).

⁶⁷² IACHR, Report No. 37/00, Case 11.481, *Monsignor Oscar Arnulfo Romero y Galdámez* (El Salvador), Apr. 13, 2000, para. 148.

The Commission has previously defined some measures of reparation designed to guarantee the right to truth ordered by the Inter-American Court, including, *inter alia*:

- (i) “initiate, expedite, re-open, supervise, continue and conclude, as appropriate, the investigations into all the facts with the greatest diligence and within a reasonable time, [...] in order to identify, prosecute and, as appropriate, punish those responsible, and remove all de facto and legal mechanisms and obstacles that maintain impunity”;
- (ii) “take into account the systematic pattern of human rights violations [...] so that the pertinent investigations and proceedings are conducted, bearing in mind the complexity of the events and the context in which they occurred, avoiding omissions in the collection of evidence and in following logical lines of investigation based on a correct assessment of the systematic patterns that gave rise to the events under investigation”;
- (iii) “determine the identity of all the alleged masterminds and perpetrators [...]. Due diligence in the investigation means that all the State authorities are obliged to collaborate in the gathering of evidence; thus they must provide the judge, prosecutor or other judicial authority in the case with all the information that he requests and abstain from acts that obstruct the investigative process”;
- (iv) “ensure that the competent authorities conduct the corresponding investigations ex officio and, to this end, that they have and use all necessary logistical and scientific resources for gathering and processing evidence and, in particular, have the authority to access the pertinent documentation and information to investigate the facts denounced and to conduct promptly all essential actions and inquiries to clarify what happened”;
- (v) “guarantee that the investigations into the events [...] remain, at all times, in the courts of ordinary jurisdiction”;
- (vi) “ensure that the different organs of the justice system involved in the case have the necessary human, financial, logistic, scientific or any other type of resources necessary to perform their tasks adequately, independently and impartially”;
- (vii) “ensure that victims or their next of kin have full access and legal standing at all the stages of the investigation and prosecution”;

303. The Commission considers that the State must take measures to grant reparations to victims and their family members—encompassing measures of restitution (which could include the reduction, redefinition, expunction, pardon, or similar of prior convictions; restoration of liberty; restoration of property; or similar), compensation (commensurate with the circumstances of the case); and rehabilitation (including medical and mental health care for victims and their next of kin, free of cost to them)—in cases of police abuses and killings, as well as initiatives to transform the discriminatory culture and prejudices which give rise to these violations.⁶⁷³
304. Such initiatives, generally encompassing measures of satisfaction and guarantees of non-repetition, may take several forms and be targeted at a wide range of social institutions, from police departments to governments at all levels to society at large. The Commission recommends that measures of satisfaction for individual cases may include principally:
- a. An official declaration or judicial decision restoring the dignity, reputation, and rights of the victim or other persons connected with the case, and publication of the decision;
 - b. Public apology and acknowledgement of responsibility for abuses, including acknowledgment of the facts and acceptance of responsibility;
 - c. The dedication of monuments or other tributes to the victims of police violence, and the removal of monuments that commemorate symbols of racial inequality;
 - d. Inclusion of accurate accounts of violations in training materials, including police and judicial training materials, and in educational materials at all levels of public education.

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- (viii) “guarantee to agents of justice, and also society, public, technical and systematized access to archives that contain relevant and useful information for the ongoing investigations in cases concerning human rights violations”;
 - (ix) “establish coordination mechanisms between the different State bodies and institutions with the authority to investigate, and mechanisms to monitor the cases being processed”;
 - (x) “develop protocols for procedures in the matter with an interdisciplinary approach and train the officials involved in investigation of serious human rights violations”;
 - (xi) “take differentiated impacts into account”;
 - (xii) “execute the pending arrest warrants [...] and issue any that are pertinent in order to prosecute all those responsible”; and
 - (xiii) “initiate disciplinary, administrative, or criminal actions, in conformity with domestic legislation, against the State authorities who may have thwarted or prevented an adequate investigation of the facts, as well as those responsible for the different procedural irregularities.” IACHR, The Right to Truth (2014), para. 126 (citation omitted).

⁶⁷³ IACHR, On-Site Visit Press Release, Oct. 16, 2015.

305. The Commission recommends that guarantees of non-repetition may include principally:

- a. Appropriately identifying, prosecuting and, as applicable, punishing all those responsible for unresolved cases of police homicides, and removing all de facto and legal mechanisms and obstacles in internal investigations, criminal proceedings, civil proceedings, and federal investigations that maintain impunity for cases of police killings;
- b. Taking into account the systematic patterns that characterize police killings both in their investigation and prosecution, and in the design of measures and initiatives to prevent them;
- c. Reviewing and reforming laws that contribute to or permit human rights violations by police, principally relating to international standards for non-discrimination and the use of force;
- d. Providing human rights education to all sectors of society and training for law enforcement officials at all levels, in particular in the areas of non-discrimination and use of force;
- e. Promoting the observance of clearly defined codes of conduct and ethical norms, in line with international standards, by all public servants, in particular law enforcement officials and justice operators (including prosecutors and judges);
- f. Ensuring the independence, impartiality, and efficacy of investigatory and judicial mechanisms in cases of police violence, in order to ensure the prompt and effective investigation, prosecution and, as applicable, punishment of those responsible;
- g. Ensuring that all investigatory and judicial proceedings abide by international standards of due process, fairness, and impartiality.

306. On non-repetition, the Commission considers pertinent to highlight in particular possible structural barriers to the effectiveness of civil lawsuits for police misconduct. As highlighted above,⁶⁷⁴ when a plaintiff obtains a judgment against a police officer or police department for misconduct, it is generally the municipality that indemnifies the officer and pays the damages award out of taxpayer money. Information indicates that most police departments do not know how much a city has paid for police misconduct, or which officers' conduct resulted in a settlement. The Commission considers that this situation, in the municipalities, would present a case of moral hazard and likely contribute to the chronic repetition of police abuses, as it does not appropriately incentivize police

⁶⁷⁴ See *supra* para 115.

departments to take action to fire offending officers and reform protocols and practices to effectively avoid the commission of abuses in the future.

307. The Commission furthermore reiterates the importance of the federal government as a key guarantee against impunity where state and local investigation and prosecution of police violence fails or is ineffective. The Commission recalls the information described above⁶⁷⁵ regarding the difficulty of bringing federal criminal civil rights prosecutions under 18 U.S.C. § 242, and considers that reform of this law may be necessary in order to ensure that the federal government can appropriately serve as this backstop. The Commission additionally reiterates that it is critical that the federal government act to enforce its civil rights laws.⁶⁷⁶

⁶⁷⁵ See *supra* para. 116.

⁶⁷⁶ IACHR, [On-Site Visit Press Release](#), Oct. 16, 2015.

CHAPTER 4
CONCLUSIONS AND
RECOMMENDATIONS

CONCLUSION AND RECOMMENDATIONS

308. This report has highlighted the dimensions of structural and historic discrimination against African Americans in policing, resulting in the disproportionate use of excessive force by police, impunity in such cases, and structural barriers to access to justice for African Americans. The report has taken into account that these issues of structural racism and discrimination are closely linked to other systemic issues whose close analysis is beyond the scope of this report, including discrimination in the wider criminal justice system and in access to and quality of housing, education, healthcare, employment, and other rights. The Commission calls on the State to continue researching, documenting, and analyzing these issues in order to effectively address situations of discrimination and to provide ample opportunities for civil society inputs, participation, and access to information.
309. There is a clear need for federal, state, and local governments to undertake steps with due diligence and without delay to address the context which fuels forms of structural discrimination and disparate treatment against African Americans and other historically marginalized groups in the United States. This is vital to enable the full exercise of rights by African Americans and to foster a more inclusive democracy in the United States.
310. On the basis of information gathered through its monitoring mechanisms, during the on-site visit, and in hearings, the Commission has found a pattern of discriminatory and excessive use of force by police against African Americans. The Commission considers that this pattern places the United States in violation of its obligation under international law to protect the rights to life, personal integrity, and equality before the law. Addressing the international standards on non-discrimination, use of force, and access to justice, the Commission has highlighted its principal concerns about U.S. compliance with these international principles, as well as concrete recommendations for bringing domestic law and practice into line with international law.
311. Regarding non-discrimination, the Commission has highlighted that laws and practices that have a discriminatory effect (disparate impact) are prohibited under international law. It is urgent that the U.S. bring its domestic law in line with international standards in this regard. The

Commission has emphasized that racial profiling practices may amount to inhumane or degrading treatment under international law.

312. Regarding use of force, the Commission has reiterated that the protection against arbitrary deprivations of life applies to the entire State structure—including federal, state, and local government entities—and to all actions of police officers. Police use of force must be guided by the principles of legality, absolute necessity and proportionality, and used only when other methods have been exhausted and failed. The Commission has called on the U.S. to bring its domestic law in line with international standards in this area. It has highlighted that excessive use of force by police may amount to cruel, inhuman, or degrading treatment or torture under certain circumstances, particularly where it is committed for any reason based on discrimination of any kind. And the Commission has underscored the need to safeguard the basic human rights of protesters, including their rights to life and physical and psychological integrity, as well as considerations related to the regulation of the use of lethal force and less lethal weapons in protest situations.
313. Regarding access to justice, the Commission has emphasized that the government—federal, state, and local—is responsible for ensuring access to justice, including exercising due diligence in the independent and impartial investigation and prosecution of police abuses, and ensuring accountability and punishment of all those responsible for a violation; establishing adequate, effective, and accessible legal remedies for police violence; and ensuring reparations for victims. The Commission recalls that impunity fosters an environment in which police violence and abuses are tolerated and even expected, and serves to sustain disparate treatment towards people of color. The Commission has additionally noted the State's duty to take measures to prevent and respond to violence on the part of State and non-State actors explicitly or implicitly motivated by racial bias.
314. The Commission recalls that the guarantee and enjoyment of economic, social, cultural, and environmental rights is indivisible from the guarantee and enjoyment of civil and political rights. In this regard, the Commission has considered that discrimination against African Americans in policing and the criminal justice system is necessarily linked to the structural situation of racialized poverty in which many African Americans live. In this sense, any policy or initiative intended to mitigate police violence against African Americans should be paired with policies designed to remedy the disparity in access to health, housing, education, work, and other rights that has historically been fomented through structural discrimination. The Commission reiterates the need for the State to adopt prompt measures to address obstacles to the exercise, respect for, and guarantee of all human rights of Afro-descendants in the United States.

315. The Commission has previously considered that positive special measures are essential to eradicate racial discrimination in the Hemisphere and effectively guarantee the rights of Afro-descendants. It has recommended the collection of proper and disaggregated information about the nature of racial discrimination, and the devotion of sufficient and specific human and financial resources not only to neutralizing prejudice and racial stereotypes, but also to improving the living conditions of Afro-descendants in the areas of health, housing, education, and work, paying particular attention to the phenomenon of intersectional discrimination.⁶⁷⁷
316. The Commission expresses its hope that this report will contribute to improving and strengthening legislation, policies, and practices at every level of government in order to address institutional discrimination that has been fostered through law enforcement practices and throughout the criminal justice system.
317. The Commission acknowledges the efforts of the State to date to address discriminatory police practices, excessive use of force, and impunity, among other challenges. It encourages the State to continue those efforts. The IACHR reiterates that it is open to dialogue with the State and willing to provide technical assistance to support the process of compliance with the recommendations in this report, in order to move forward in the protection of human rights of the people of the United States.
318. The following recommendations are designed to promote concrete changes to the existing legal and policy framework of the United States to ensure effective compliance with its international obligations in the areas of non-discrimination, use of force, and access to justice:

A. General Recommendations

1. Undertake and ensure proper funding for official studies—whether at the federal, state, or local level—with the goal of contributing to the establishment of the full, complete, and public truth of the past and forward-looking public policy to contribute to the satisfaction of the victims and guarantees of non-repetition, on, *inter alia*:
 - a. The causes and consequences of racial profiling and other racially discriminatory treatment or practices by law

⁶⁷⁷ IACHR, *People of African Descent in the Americas* (2011), para. 22.

- enforcement officials or agencies on African Americans and other communities of color;
- b. The causes and impacts of police use of force and deadly force on African Americans and other historically marginalized groups, and the differential impacts of the same on persons with mental illnesses and disabilities, LGBTI individuals, children and adolescents, and women;
 - c. The causes and impacts of disproportionate arrests, prosecutions, sentencing, incarceration, and re-incarceration of African Americans and other communities of color;
 - d. The causes, impacts, and magnitude of lack of access to social, economic, cultural, and environmental rights on African Americans and other communities of color.
2. Design, implement, and fund governmental systems to collect accurate, disaggregated data and statistical and qualitative information on the human rights situation of African Americans and other communities of color, in order to create and implement appropriate laws and public policies to address the needs of and overcome the specific obstacles faced by these groups. In particular, ensure the collection of disaggregated data about the conditions faced by African American women and LGBTI individuals, incorporating a gender and diversity approach, and design public policies to prevent and eliminate racial discrimination in its various forms.
 3. In order to facilitate processes of bringing domestic law in line with international standards, take steps to ratify not only the American Convention on Human Rights, but all inter-American human rights protection instruments. In particular, the Commission calls on the United States to sign and ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, as an important measure to guarantee the rights of persons of African descent and other historically marginalized groups.
 4. Consider the reform of domestic laws or portions of domestic laws that may hamper the protection or effective enforcement of human rights.

5. Ensure that all federal, state, and local government entities fully comply with the relevant domestic laws mandating the monitoring, oversight, and investigation of possible human or civil rights violations by State actors, such as police departments, as well as private individuals.
6. Create a national human rights mechanism for the protection and promotion of human rights, in line with the “Paris Principles” relating to the Status of National Institutions. The IACHR recommends that this national human rights institution include a division focused exclusively on monitoring and promoting the human rights of African Americans, addressing currently existing racial disparities as well as the historical and structural conditions that create them.

B. Recommendations regarding Non-Discrimination

7. As a matter of urgency, take the necessary steps to reform domestic law—both federal and state—to bring it in line with international law in the area of non-discrimination, in particular the obligation to prohibit and sanction both facial discrimination and the disparate impact of facially neutral laws and policies, in all areas of U.S. law.
 - a. Take all necessary steps to adjust the domestic legal framework to ensure that disparate impact claims regarding policing and the criminal justice system, among other areas, are justiciable under domestic law.
8. Adopt coordinated legislative, policy, and institutional measures designed to eliminate racial discrimination and stereotypes, and devote appropriate human and financial resources to the same.
9. Take the necessary steps to comprehensively review and reform protocols and guidelines for local, state, and federal law enforcement agencies to ensure that they comply with international law in the areas of non-discrimination. In particular, ensure that racial profiling and other explicit or implicit discrimination on the basis of race, ethnicity, color, national origin, and other prohibited grounds is explicitly prohibited and punished.

10. Implement federal legislation to require the appropriate training of local, state, and federal law enforcement agents and agencies in the areas of human rights obligations regarding non-discrimination, avoiding implicit bias, and other anti-discrimination training to ensure that law enforcement officers demonstrate respect for and protect the fundamental rights of all individuals subject to their jurisdiction, without discrimination of any kind.
11. Take steps to reverse the impact of policies with racially disparate impacts.
 - a. Adopt appropriate measures at the federal or state level to ensure the restoration of voting rights to citizens who have fully served their criminal sentences and those who have been released on parole, particularly in light of the racially discriminatory impact of the policy of felony disenfranchisement.
 - b. Take steps to prevent individuals in cases of drug use or possession for personal use from being subjected to custodial measures or entering the criminal justice system.
12. Create independent ombudsperson offices at the state and local levels to receive and take action regarding complaints about discriminatory treatment.

C. Recommendations regarding the Use of Force

13. As a matter of urgency, take the necessary steps to reform domestic law—both federal and state—and bring it in line with international law in the area of use of force and use of deadly force, observing the principles of exceptionality, necessity, proportionality, and legality.
14. Implement federal legislation to require that all law enforcement agents receive human rights training, including regarding the obligation to respect and protect fundamental rights, such as the rights to life and personal integrity, without discrimination.
15. Take the necessary steps to reform protocols and guidelines for local, state, and federal law enforcement agencies to ensure that

they comply with international law in the area of use of force, including international standards regarding:

- a. Permissible use of force and circumstances under which the use of deadly force is permitted;
 - b. De-escalation tactics and the use of less lethal weapons;
 - c. The prohibition of torture and cruel, inhuman, or degrading treatment or punishment;
 - d. In protest situations, respect for and facilitation of the exercise of the right to freedom of expression, including the regulation of less lethal weapons.
16. Ensure the participation of disproportionately impacted communities in the design of strategies for better policing and in police oversight mechanisms.
 17. Take steps to reverse the militarization of police departments, including via:
 - a. The rescission of programs permitting the transfer of military equipment and weapons to domestic law enforcement agencies;
 - b. Verification by the federal government of the quantity of military weapons transferred to local police departments and other measures to control the diffusion of military weaponry; and
 - c. Training police to use departmental equipment in a manner that respects human rights obligations.
 18. Adopt all necessary measures to protect the rights to life and personal integrity in the context of protests.
 19. Take effective measures to prevent and combat the stigmatization and criminalization of protesters, in particular where such stigmatization or criminalization may be racially discriminatory in nature, and fully guarantee the right to freedom of expression.

D. Recommendations regarding Due Diligence and Accountability

20. Create a federal database to track incidents involving police use of force by all law enforcement agencies in a transparent, uniform, and public manner, including disaggregated data on demographics of all victims and officers involved, such as age, gender, race, and disability status, among others; details regarding the circumstances of the use of force; location of incident (municipality and neighborhood); and outcomes of all corresponding internal, civil, and criminal police misconduct proceedings.
21. Ensure the prompt, thorough, independent, impartial, and effective investigation of incidents of excessive use of force and police killings, ensuring the investigation of all potentially responsible parties and, as relevant, their appropriate prosecution and punishment.
22. Remove all de facto and legal mechanisms and obstacles in internal investigations, criminal proceedings, civil proceedings, and federal investigations that maintain impunity for police killings.
23. Establish permanent, independent, and specialized bodies at the local and/or state level with the capacity and expertise to supervise investigations of police misconduct and crimes committed by police. These bodies should be competent to accompany cases from the moment of complaint through the indictment and trial of defendants, prioritizing transparency and victim and next of kin participation.
24. Ensure the effective and proportional punishment of police officers who commit misconduct.
 - a. In light of the fragmentation in the U.S. between local, state, and federal law enforcement entities, and among and between municipalities, consider the creation of a national database to report disciplinary measures against law enforcement officers, including firing for cause, to prevent law enforcement officers who are not fit for service from being re-hired in other jurisdictions.

- b. At both the state and local level, consider reforms to the grand jury process and the role of local prosecutors in the indictment of officers in cases of police excessive use of force, fully ensuring the impartiality of indicting authorities or creating separate, independent, and specialized bodies to carry out these proceedings.
25. In order to ensure the non-repetition of police misconduct, brutality, and/or killings, consider the introduction of reforms at the local, state, and federal levels to ensure that when a criminal or civil judgment is rendered against a law enforcement officer or department, the department is effectively aware of the contents of the judgment and required to indemnify the payor party in any resulting judgment, in order to incentivize structural reforms within law enforcement departments and prevent patterns of abuses.

E. Recommendations regarding Access to Justice and Reparations

26. Ensure effective access to justice for African Americans and other communities of color, taking into account the material, economic, and juridical obstacles and systematic exclusion they face.
27. At the federal, state, and local levels, train justice operators (including judges, prosecutors, public defenders, and other judicial staff, as well as law enforcement officials) in human rights protection principles and norms, including in the areas of non-discrimination and access to justice.
28. Promote the observance of clearly defined codes of conduct and ethical norms, in line with international standards, by all public servants, in particular law enforcement officials and other justice operators, including prosecutors and judges.
29. At the state level, revise or repeal “Stand Your Ground” laws, and take other effective steps to eliminate racial bias in legal proceedings.
30. Ensure appropriate and prompt reparation for all victims of police conduct and their next of kin, in line with the principles laid out in the previous sections.

31. Devote appropriate human and financial resources toward improving access to quality health care, housing, education, and other rights for African Americans and other communities of color.
32. Undertake studies with the goal of creating guidelines for the reparation of historic and structural discrimination against African Americans and other historically marginalized groups.
33. Provide appropriate reparation to those affected by the racially disparate impact of federal, state, and local laws and policies.