Response to Call for Inputs
"Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of people of African Descent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers"
4 December 2020

INTRODUCTION:

Rev. Jesse L. Jackson, Sr. and the Rainbow PUSH Coalition are pleased to provide this submission as part of your call for inputs pertaining to *"Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers."* Our contribution to this discussion highlights the tremendous need for international oversight to ensure compliance with the expectations of ratified treaties and conventions of the United Nations. However, at the outset we note that the difficulties of oversight and enforcement concerning matters in the United States are often due to failure to completely ratify these relevant treaties, and the nuanced manner in which U.S. courts determine "self-executing" and "non-self-executing" treaties. The High Commission rightly noted in its 2016 report on its mission to the United States,

> "The United States has not signed and ratified any of the human rights treaties that would allow United States citizens to present individual complaints to the United Nations human rights treaty bodies or to the Inter-American Court of Human Rights. The United States is subject to the individual complaints procedure in the Inter-American Commission on Human Rights."[1]

Recognizing these challenges, it is imperative that the human rights abuses that appear to be deeply embedded in the U.S. law enforcement community and are grounded in the troublesome history of law enforcement in the U.S. be identified, documented, and remedied with appropriate scrutiny and pressure from the international community. While we recognize that policing is a matter of international concern that transcends State borders, the issues confronting persons of African descent in the United States of America places these concerns in a unique posture that warrants this critical review of policing in the U.S.

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[1] *See "*Report of the Working Group of Experts on People of African Descent on its mission to the United States of America," 18 August 2016. https://digitallibrary.un.org/record/848570?ln=en

STATEMENTS ON THE MATTER:

1. **Racial hostility against persons of African descent is part of the genetic history of the United States of America.**

Any cursory review of United States history makes this clear. A reasonable analysis of race jurisprudence in the U.S. only furthers this point. From the earliest documented arrival on the shores of the original colonies in 1619,[2] the "evolution by revolution" of the rights of persons of African descent has required war in the federal courts, even after the war that split the country in half.

The most notable case of codifying the dehumanization of the bodies of persons of African descent and other persons of color is the Supreme Court ruling in *Dred Scott v. Sandford.* In addition to providing a historically flawed justification for the reasoning proffered, Chief Justice Roger Taney asserted that the United States was always intended to be a white nation, and that the meanings of the words "citizen" and "people" was a settled matter and did not include the concerns of persons of African descent held in perpetual bondage. Rather, the chief justice noted (quoted at length):

> "In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.
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> It is difficult at this day to realize the state of public opinion in relation to that unfortunate race which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.
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> They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics which no one thought of disputing or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."[3]

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[2] Hannah Nikol Smith has written a cogent piece on the matter in the New York Times. It raises core questions that lie at the root of the legacy of slavery which includes police violence. *See* "The 1619 Project," https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html

[3] *Dred Scott v. Sandford,* 60 U.S. 393, at 407. For a more fulsome context of the judicial precedent set by the Dred Scott decision, the entire ruling should be read with a recognition that the reach and impact of the reasoning in the decision remained in some form until the *Brown v. Bd of Education* decision in 1954.

As the United States approaches the end of the Administration of President Donald Trump, the world must recognize the hostility and damage imposed on human rights norms generally, and race relations in the United States, specifically. In effect, the spirit of the Dred Scott decision is alive and well, although the ruling no longer holds legal authority. The damage inflicted by this Administration's policies provide the context for such an international review of the U.S. government's adherence to the commitments codified in this Convention. For example, the aggressive policies directed at persons of color who are seeking asylum, along with the targeting of communities of color by aggressive litigation after the recent national election, and encouragement by leaders of the national government that police use excessive force against particular communities is troublesome and is a reminder that the mindset of Chief Justice Taney still resonates with many in the United States. However, it should be clear that the current challenges involving law enforcement predate the current Administration and must be reviewed in the deeply imbedded historical context that brings us to this point in time and history.

2. **Legal enforcement against police abuses is difficult to achieve in the United States.**

Policing in the United States was created from the interests in property rights. This included land and "other chattels," which included the property interests in African bodies. This attitude seems to persist today.

In policing, the doctrine of qualified immunity[4] provides a spurious cover for malicious acts by police against persons of color. In the United States, there is little likelihood of any charges or convictions for the majority of deaths by law enforcement officers in the U.S. Additionally, disciplinary processes are often complicated and lead to ineffective corrective action to remedy human rights violations, and necessary oversight of police officer prosecutions is often precluded by limits in the law. The lack of accountability is complicated by the doctrine of qualified immunity and warrants a review by collaborative, international bodies to determine what recourse is owed to individuals and citizens whose rights have been violated by law enforcement.

3. **The United States is in violation of multiple articles of the International Convention on the Elimination of All Forms of Racial Discrimination.**

[4] *See* https://www.law.cornell.edu/wex/qualified_immunity. Qualified immunity is a legal doctrine created by the courts that establishes that government actors (including police officers) can avoid liability if the actions were objectively reasonable and did not violate a clearly defined right of a person. The framing of the legal doctrine presents a number of challenges when addressing police violence. The applicability of Human Rights Covenants and International Law can help clarify these definitions and better inform how qualified immunity is applied in the United States.

The definition of “discrimination” in Article 1 of the Convention establishes the foundation for the assessment of conditions on the ground. The persistence of racial and ethnic profiling by law enforcement continues to beset the work toward justice. Many times, persons of African descent are viewed with suspicion and lack of credible evidence. We’ve seen this in the arrest and murder of George Floyd in Minneapolis and Breonna Taylor in Louisville.

In the George Floyd case, Mr. Floyd had been suspected of passing a counterfeit twenty-dollar bill. The classification of that charge is a minor one, and should not have resulted in Mr. Floyd’s arrest, much less his death. His detention, arrest, being held against his will after submitting (kidnapping according to Minnesota law), and his death were all unnecessary. More importantly the inability to charge the officers of murder in the first degree (malice), points to the challenges with appropriately prosecuting these cases. The qualified immunity doctrine should be evaluating to determine whether the improper application of such a doctrine violates international law and human rights covenants/treaties.

In the death of Breonna Taylor, police acted on information that was not current enough to justify a warrant application. The fact that an officer could produce outdated justifications for a “no-knock” search warrant that is not adequately scrutinized by a judge points to the ways in which deference to police officers by the courts has been normalized without the necessary due diligence to protect the rights of persons. Additionally, numerous violations of police department policy continue to plague the investigation into Breonna Taylor’s death. Additionally, no evidence of anything mentioned in the warrant application was found at the residence on the night Breonna Taylor was killed, nor since. Yet, the attorney general for the Commonwealth (State) of Kentucky chose not to address significant areas of concern in his review of the police officers’ cases. Not only did the attorney general act in a derelict manner, the failure of a government official to fulfill its duties under international law is a violation that ought to be reviewed.

Accordingly, the United States actions and policies should be reviewed to ascertain compliance with the following Articles to the Convention (specific provisions violated are in boldface):

Article 1

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, 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.

Article 2

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a**) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure**

that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(c) **Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;**

(d) **Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;**

2. **States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.** These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and under-take to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) 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;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:

(i) **The right to freedom of movement and residence within the border of the State;**
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) **The right to freedom of peaceful assembly and association;**

(e) Economic, social and cultural rights, in particular:

(i) **The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;**
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) **The right to public health, medical care, social security and social services;**
(v) **The right to education and training;**
(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

CONCLUSION:

The world has watched in horror after the ongoing sequence of police involved deaths in the United States. The presence and utility of social media and the ability to report news through mobile phones has shed a bright light on a very dark problem. We cannot forget the horror of the taking of life indiscriminately, and without proper remedy. This international body can change this reality for many who continue to live under the suspicion and hostility of race in America.

When we consider the imposition of indignity by police officers on George Floyd, Breonna Taylor, Rayshard Brooks, LaQuan McDonald, Michael Brown, Freddie Gray, Tamir Rice, Sandra Bland, Eric Garner, Amadou Diallo, and so many others too numerous to name here we must recognize that this is a moment of profound moral opportunity and responsibility for the international community. The United States cannot be permitted to chastise the world for human rights abuses while not confronting the abuses in its own back yard. The Christian scriptures tell us that we ought not point out the speck in another's eye and miss the plank embedded in our own. In fact, and in essence, the United States has continuously violated this moral maxim. Now is our opportunity as partners in creating a more just world to change this.

Too many people die much too soon, with their whole lives ahead of them. We are burying our future without so much as a demand for accountability and change. There are more equitable means for advancing public safety in the United States. The

world cannot allow its demand for redress to be muted by the inconsistent response of a government that continues to normalize and accept police violence and police abuse.

Now is the moment to create real collective momentum through the available processes that bring these issues before international tribunals and ensure that human rights and human dignity are protected for all – even in the United States of America. This international tribunal should consider whether Article 11 proceedings against the United States Government are warranted on behalf of persons of African descent who continue to be harmed by both government action and government inaction as it pertains to policing in the U.S.

We stand ready for a more fulsome follow-up conversation and to support the efforts of the United Nations High Commission for Human Rights in this regard.

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