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Presentation to the Working Group of Experts on People of African Descent
The Urgency of Now: Systemic Racism and the Lessons of 2020
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Thank you. Following recent conversations with the Special Rapporteur for Contemporary Forms of Racism and recent submissions to the High Commissioner's forthcoming report on systemic violence in law enforcement, it is an honor to now present to the Working Group of Experts on People of African Descent.

Forensic Architecture is an international human rights investigative agency based at Goldsmiths, University of London. We conduct visual and spatial investigations of state and corporate humanitarian and environmental violence and have investigated racialized police violence around the world, including the killing of Mark Duggan in London in 2012 and the killings of Adama Traoré in Paris and Harith Augustus in Chicago, both in 2016. The incidents and sites of racial abuse and the names of all those assaulted and killed, are too numerous to list. But this year has encouraged us at Forensic Architecture to direct our attention toward the particularly atrocious conduct of the United States, which has for generations held itself aloft as a global standard-bearer of human rights. This year has brought global recognition to what Black, Brown and Indigenous US civilians, as well as Black and Brown civilian populations subjected to US militarism around the world, have known all too well, all too intimately, and all along:

Namely that, today, as in the past, the US is a political and economic driver of racism against people of African descent. It is both an archetype and an *architect* of structural racial terror in domestic and foreign policy and policing.

Since the killing of George Floyd by Minneapolis police in May of this year, protests against racialized police violence have swept the US. These protests have themselves been met with egregious acts of violence. This repressive response to legitimate demands for justice **constitutes a 'widespread' and 'systematic' pattern of behavior that** is at odds with basic principles and norms of international human rights treaties, many of which the US has never ratified.^{1 2} Forensic Architecture and Bellingcat have compiled video evidence of this brutality and mapped them within a publicly accessible interactive platform. We intend to submit this data to further analysis and scrutiny over the coming months.

I will begin by addressing the who, what, when, where, why of the law enforcement violence in the United States over the course of this year.

Since May, Forensic Architecture and Bellingcat have compiled, verified, and geolocated open source video evidence of over one thousand incidents of violence and misconduct directed against Black Lives

¹ See for example www.aclu.org/issues/human-rights/treaty-ratification and www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/the-united-states-hollow-commitment-to-eradicating-global-racia

² E.g. International Criminal Tribunal on Yugoslavia, Kordić and Čerkez Appeal Judgement (2005), para. 94: "*widespread*" refers to the large-scale nature of the attack and the number of victims, whereas "*systematic*" refers to "the organised nature of the acts of violence and the improbability of their random occurrence." *Patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence.* cd.irmct.org/notions/show/1015/widespread-or-systematic-attack

Matter activists by local, state, and federal law enforcement agents across 43 states and the District of Columbia.³ This includes:

- 179 instances of the use of CS or “tear gas”
- 427 instances of the use of so-called ‘less-lethal’ rounds or pepper spray
- 363 instances of arbitrary arrest, detention and intimidation
- 299 physical assaults, sometimes with batons, rifle butts, or vehicles, and
- 249 attacks on journalists, medics or legal observers

Our research also shows law enforcement agents:

- abducting civilians using unmarked vehicles;⁴
- using ‘kettling’ tactics to prevent civilians from leaving the site of a protest, even after the issuance of orders to disperse, and then assaulting them⁵ or pushing them towards clouds of tear gas;⁶
- deploying impact projectiles at dangerously close range in violation of policy;⁷
- assaulting and deploying impact projectiles against retreating civilians;⁸
- causing injury to minors through the use of physical force;⁹
- hiding their identities from civilians;¹⁰
- and displaying differential favorable treatment toward nationalist, far-right, or white supremacist militia groups.

What kinds of weapons are being used?

We have seen the wanton use of so-called ‘less-than-lethal’ munitions, which are demonstrably capable of serious injury, including blunt force trauma and loss of sight¹¹, and which have caused fatal injuries.¹²

As well as explosives such as ‘flash-bang’ grenades which can cause heart failure.³

We have seen the indiscriminate use of chemical agents, including CS or “tear gas,” which causes widespread health complications, including respiratory distress—a significant concern during the COVID-19 pandemic⁴—skin irritation and chemical burns⁵, irregular menstruation⁶, an elevated risk of cancer, and organ and eye damage.⁷

In several US states, activists have reportedly discovered *expired* gas canisters. There is little scientific

³ FA/B Public Dataset available at: docs.google.com/spreadsheets/d/1-9KKfaEDhgeJ8dz8HjsFNBniDCQj-5ADWbuMkw2hNBU. Incident numbers given to support particular claims throughout this document should not be considered exhaustive.

⁴ e.g. FA/B Public Dataset: Incidents #442, #776, #858

⁵ e.g. FA/B Public Dataset: Incidents #446, #831, #899

⁶ e.g. FA/B Public Dataset: Incident #492

⁷ e.g. FA/B Public Dataset: Incidents #707, #858, #305, #576

⁸ e.g. FA/B Public Dataset: Incidents #482, #589, #630

⁹ e.g. FA/B Public Dataset: Incidents #46, #86, #114, #1027

¹⁰ e.g. FA/B Public Dataset: Incidents #415, #1079

¹¹ e.g. FA/B Public Dataset: Incident #65, see also www.washingtonpost.com/investigations/2020/07/14/george-floyd-protests-police-blinding and phr.org/news/u-s-law-enforcement-shot-at-least-115-people-in-the-head-with-crowd-control-weapons-during-the-first-two-months-of-george-floyd-protests-physicians-for-human-rights

¹² e.g. the fatal shooting of Victoria Snelgrove, in Boston in 2004, with an FN303 ‘Less Lethal Launcher’ (FN303 visible in FA/B Public Dataset: Incident #646); the fatal injury to Bassem Abu Rahma in 2009 (cf. forensic-architecture.org/investigation/the-killing-of-bassem-abu-rahma); and a 2017 study on injuries caused by impact projectiles (bmjopen.bmj.com/content/7/12/e018154).

research on the health effects of expired gas. Hexachloroethane gas,⁸ which has been used by federal agents, is a known carcinogen classified by the US Environmental Protection Agency as a toxic waste product.⁹

We have also seen the use of novel weapons, including acoustics-based weaponry, and an electric charge-based 'stun shield'.¹⁰

This violence is also directed toward non-Black allies who seek to affirm the value of Black life, and who are consequently seen as a threat to the racialised status quo. By contrast, the approach of local law enforcement agencies to the presence of nationalist or white supremacist groups at related and counter-protests is notably more gentle, and often permissive.¹³

How do we interpret these findings?

The use of toxic gases in warfare is prohibited by multiple international treaties, and rightly considered a grievous breach of humanitarian norms. But its use against civilians is increasingly a routine component of the authoritarian toolkit. We have seen reports that, in cities like Portland, Oregon, the gases deployed against anti-racism activists have seeped into neighboring private homes. Further, there is a concerning lack of research on the cumulative impact of tear gas toxins on environmental systems. After five months of protests, these gases have created both a public health and environmental emergency.

Here, I wish to emphasize that, while the Working Group's public session on the theme of environmental justice was postponed until March 2021, environmental racism is at play in the issue of racialized police violence.

Environmental racism is traditionally defined by such practices as the willful siting of toxic industrial facilities in Black and Brown neighborhoods, for example in Louisiana's Cancer Alley, the site of another of Forensic Architecture's investigations. Yet I suggest that we should *also* consider the wanton deployment of toxic waste chemicals like hexachloroethane against the Black Lives Matter movement as a form of environmental racism.

Further, a 2014 study by the Association of Military Surgeons of the US found an overwhelming link between acute respiratory illness and exposure to CS tear gas. The saturation of BLM activists with CS can only exacerbate the morbidity and mortality of a respiratory pandemic that disproportionately impacts Black and Brown communities.

This data aligns with yet another of the Working Group's reflections from August, namely the long history of scientific experimentation on Black populations. The use of increasingly advanced, novel, and under-researched chemical and kinetic weaponry against civilian populations is plainly experimental in nature and racialised in its application and impact.

Each of these are points along the thread that links 1619 with COVID-19, as noted by the working group.

The police power to use deadly force originated with slave patrols. The widespread and indiscriminate use of so-called less-than-lethal force against Black Lives Matter activists holds a mirror to our nation's emaciated efforts to redress the systemic racism that forms the foundational pillars of this society.

¹³ e.g. FA/B Public Dataset: Incidents #525, #543, #688. See also www.nytimes.com/video/us/10000007424380/police-black-lives-matter-protests.html

This video evidence must also be understood through the reality that brutality by law enforcement is enabled, legitimised, protected, and supplemented by aspects of the bureaucracy and administration that surrounds it.

- **Enabled:** many local law enforcement agencies offer minimal guidance on ‘use of force’,¹⁴ while officers have access to military-grade weapons that they routinely fail to use safely or responsibly.¹⁵
- **Legitimised:** patchwork use of ‘unlawful assembly’ and ‘riot’ declarations,¹⁶ curfew orders and emergency powers all of which make it practically impossible for civilians to know what law enforcement agents can and cannot do to them, or how to safely comply with directives, and resulting in an expansive culture of chaos and impunity.
- **Protected:** legal doctrines such as qualified immunity make it all-but impossible to seek redress for violence and misconduct by law enforcement,¹⁷ while the flagrant contravention of department codes and policies brings limited repercussions.¹⁸
- **Supplemented:** the criminalisation of protest activity¹⁹ and the pursuit of punitive felony charges for online actions surrounding protests²⁰ create additional risk for civilians, while the federal ‘deputization’ of local law enforcement agents exposes civilians to federal charges.²¹

In such a context, a Black US American finds themselves at risk of lethal violence by police in the course of their daily lives; at risk of brutality and prosecution when they protest that risk of that lethal violence; and at further risk of persecution when pursuing accountability for that brutality.

Of course, the reality painted by this evidence is already known and felt deeply by the communities that have long been exposed to this violence, and who have risen up in 2020 to express their frustration, hurt, and defiance, and to stake claim to rights that have long been denied.

Recommendations

In the United Kingdom, in the face of legal challenges to their assessment procedures for crowd control arms exports to the United States, the UK government maintains their position that US institutional protections for its citizens are adequate—that the US government can be trusted to protect its civilians from its own agents.

How much longer can this position be held? How much longer can member states allow commercial interests to supercede human rights concerns?

¹⁴ Details of police departments and the contents of their ‘use of force’ policies at useofforceproject.org/#review

¹⁵ e.g. www.fox13memphis.com/news/local/shelby-county-sheriff-calls-use-stun-shields-regrettable-mistake/WFLHXBK5XBAQJF5UMEX6Y3X7O4 and salon.com/2020/07/28/experts-alarmed-at-reports-of-expired-tear-gas-being-sprayed-on-protesters

¹⁶ www.theatlantic.com/ideas/archive/2020/08/the-whole-concept-of-unlawful-assembly-is-a-mess/615079

¹⁷ theappeal.org/qualified-immunity-explained

¹⁸ e.g. Osei, Simon, Syed, Waldron, *We Are Tracking What Happens to Police After They Use Force on Protestors* (2020), ProPublica (projects.propublica.org/protest-police-videos) and

¹⁹ See for example www.wsns.org/en/articles/2020/09/14/tenn-s14.html and www.flgov.com/2020/09/21/governor-ron-desantis-announces-the-combatting-violence-disorder-and-looting-and-law-enforcement-protection-act

²⁰ www.theverge.com/2020/8/6/21355999/twitter-cyber-harassment-felony-charges-police-protests-retweet

²¹ www.oregonlive.com/crime/2020/09/oregons-us-attorney-wont-cancel-federal-deputization-of-local-state-officers.html

We call on the Working Group to recommend that member states cease the sale of so-called less-than-lethal riot arms to the United States pending an independent investigation into their use in the violation of human rights.

The working group's August report noted that this year "has been a **complex test for the human rights system**, including its ability to **address grave violations** and States' commitments to compliance with and enforcement of human rights law."

We call on the Working Group to recommend that the US Congress enact implementing legislation for the Convention on the Elimination of All Forms of Racial Discrimination,²² which would provide individuals and groups a legal basis to sue for reparative damages in US courts for violations of human rights by US law enforcement.

The behavior of US law enforcement is routinely at odds with its own codes and policies, and our video evidence reveals the continued occurrence of incidents of police brutality *after* the passage of reform legislation. Indeed, civil society groups have long highlighted the fact that police reform is a mechanism used to maintain the institution, rather than redress its foundational corruptions.

If, as the working group's August report states, the foundations of police violence in the institution of slavery are evident, then we must recognize the merits of movement demands for the abolition of the institution of policing.

Given all this, **we challenge the lackluster recommendation of the Working Group** that member states "review applicable law, practices and policies to determine which reforms lead to future equitable outcomes" and direct your attention to the report on your 2016 mission to the United States, which boldly noted that there has been no US commitment to reparations for the legacy of racist oppression that spans from "the racial terror of lynching to police killings."

As such and in conclusion, we challenge the Working Group to develop a concrete framework with specific recommendations on reparations for this continuum of racial violence, perhaps in conjunction with the CERD committee and in alignment with your mandate to "make proposals on the elimination of racial discrimination" against people of African descent, as well as article 6 of CERD, which affirms the right to "just and adequate reparation" for such discrimination.

We ask you: What might reparations look like and how might they be implemented? And how does the legal mechanism of reparations intersect with movement demands for abolition? Such a framework would provide guidance to member states, such as the United States, as we note that the incoming Biden Administration has indicated a tentative willingness to study the issue.

I would like to thank my colleagues for their support in preparing this presentation. Once again, all of the data that I have presented is publicly available via our online platform. If the Working Group or any other international agencies or civil society groups in attendance wish to follow up with us on the use of this data in their legal, accountability, advocacy, or reporting efforts, please do reach out to me via email.

Thank you.

²² www.ohchr.org/en/professionalinterest/pages/cerd.aspx

