

REFERENCE: EMLER/ARDS/YH/fc1

8 February 2023

**Subject: Mr. Tyre Nichols**

Excellency,

We have the honour to address you in our capacity as the United Nations International Independent Expert Mechanism mandated to advance racial justice and equality in the context of law enforcement, established pursuant to operative paragraph 10 of Human Rights Council resolution 47/21<sup>1</sup>. We are joined herewith by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.

We write in the spirit of dialogue, to initiate contacts with your Excellency's Government regarding the case of Mr. **Tyre Nichols**.

According to available information, on 7 January 2023 at approximately 8:30 p.m., Mr. Tyre Nichols, a 29-year-old man of African descent, was reportedly stopped at a traffic intersection, pushed to the ground, and beaten by police officers from the Memphis, Tennessee police department. Mr. Nichols died on 10 January 2023, reportedly as a result of the treatment inflicted upon him.

On 27 January 2023, the Memphis Police Department released videos from police body cameras and a public pole camera, where the events described below can be observed.

In a first scene, a police officer is seen approaching Mr. Nichols's vehicle while pointing his firearm at the driver's door. Another official opens the driver's door, and while using aggressive verbal commands, forcibly grabs Mr. Nichols to remove him from the vehicle. Mr. Nichols is heard saying "I didn't do anything". At least three police officers force Mr. Nichols to the ground using force, under threat of using pepper spray and tasers against him. Aggressive verbal commands continue.

Mr. Nichols is shown and heard to be cooperative as the officers continue to try to restrain him. A police officer then presses a taser gun against Mr. Nichols' left leg, apparently without discharging it.

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<sup>1</sup> The international independent expert mechanism to advance racial justice and equality in the context of law enforcement was established in July 2021 by the Human Rights Council to make recommendations, inter alia, on the concrete steps needed to ensure access to justice, accountability and redress for excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent. **Justice Yvonne Mokgoro** (South Africa, Chairperson); **Dr. Tracie Keese** (United States of America) and **Professor Juan Méndez** (Argentina) were appointed in December 2021 by the President of the Human Rights Council to serve as independent experts on the mechanism.

Right after, while Mr. Nichols is on the ground, one of the police officers pulls out a pepper spray and discharges it on Mr. Nichols' face, who gets up from the ground and starts running away. A police officer then unsuccessfully tries to use his taser gun against the victim, as he runs away. Additional police forces are then called upon.

In a second subsequent video, a police officer is seen chasing Mr. Nichols. At least two other police officers are then observed restraining Mr. Nichols, who can be heard yelling the words "stop" and "Mom" on several occasions. Police officers are seen punching Mr. Nichols in the face several times, while another officer discharges what appears to be a can of pepper spray in his face several times. This second scene would have happened on a corner 70 meters away from Mr. Nichols's house.

In a third video of the same second scene, apparently captured from a pole camera at 8:33 p.m., two police vehicles and at least four police officers can be seen. One of the police officers delivers two kicks to Mr. Nichols' face while he is on the ground being subdued by two other police officers. A fourth police officer then uses what appears to be a telescopic metal baton against Mr. Nichols at least three times. Mr. Nichols gets up to try to escape while two police officers continue to hold him down. Another police officer punches him at least five times in the face. Mr. Nichols collapses. Two police officers kick him again on the ground while two others hold him down. At that point there are at least six police officers on the scene, at least four of them next to Mr. Nichols as they handcuff him. Officers then drag him to a nearby car and prop him up in a seated position.

Throughout the events, Mr. Nichols appears to have been kicked violently at least twice in the face, beaten three times with a baton, sprayed in the face twice with a chemical and punched in the head six times, all within the span of three minutes.

From this point on, Mr. Nichols is seen with little body movement, slumping to the ground several times. At least eight police officers are on the scene. Although a medical team appears to the scene, it seems that they only begin to provide assistance to the victim 15 to 20 minutes later. At 9:00 pm, an emergency stretcher is seen arriving and a couple of minutes later an ambulance. Reportedly, an autopsy report later found that Mr. Nichols "suffered excessive bleeding caused by a severe beating".

The law enforcement officials involved reportedly belonged to the Scorpion Unit, an elite unit created to combat crime in the city. As a result of the events, this unit was allegedly dismantled in its entirety.

Five police officers of African descent were reportedly dismissed from the Memphis Police Department after an internal police investigation that found the violation of police protocols including duty to intervene, duty to render aid, and excessive use of force. Reportedly, other officers involved are currently being investigated and were suspended. The Memphis fire department also reportedly dismissed a Lieutenant and two members of the Emergency Medical Service team for allegedly violating several fire department's policies and protocols during the events.

The five officers of African descent have reportedly been criminally indicted with second degree murder, aggravated assault, aggravated kidnapping resulting in bodily injury, aggravated kidnapping involving the possession of a weapon, official misconduct through unauthorized exercise of power, and official misconduct through failure to act when there is a duty imposed by law and official oppression.

In the last few days, several protests related to the case have been reported in several cities of the USA, including in Memphis, Boston, Los Angeles, Philadelphia and New York City, among others.

We would like to express utmost concern, and stress that in this case, the use of force and less lethal weapons appears to have violated international norms protecting, in particular, the right to life and prohibiting torture or other cruel, inhuman or degrading treatment or punishment, as well as standards regulating the use of force by law enforcement officials, such as the United Nations Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-lethal Weapons in Law Enforcement.

These standards require that force should be used as a last resort, only when strictly necessary, and that officers must apply only the minimum amount of force necessary to obtain a lawful objective. They also provide that all use of force and harm expected must be proportionate to the threat posed and conducted to avoid unwarranted pain or injury.

In this case, it would seem that the use of force applied by the police officers was disproportionate to the aim of controlling the individual sought to be arrested. Furthermore, the seemingly intentional infliction of severe pain and suffering by public agents, while Tyre Nichols was offering no resistance, following what may be construed as racially motivated arrest, may lead to the conclusion that the victim's death resulted from torture.

This case should be seen within the context of numerous allegations of excessive use of force against Africans and people of African descent by law enforcement officials in the United States of America<sup>2</sup>.

We take this opportunity to recall that the United States is bound by several international human rights law provisions, notably those contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The Human Rights Committee and the Committee on the Elimination of Racial Discrimination – which monitor the implementation of these treaties – have made numerous recommendations regarding the use of force by law enforcement officials against people of African descent and related obligations of investigations and prosecutions. These recommendations can be found in concluding observations and statements addressed to the United States<sup>3</sup>, as well as in general comments<sup>4</sup> and recommendations<sup>5</sup>. The Human Rights Committee, inter alia, has clarified that States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. These measures include putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, as well as mandatory reporting, review and investigation of lethal incidents.<sup>6</sup>

Other UN human rights mechanisms – such as the Working Group of Experts on people of African descent and the Special rapporteur on contemporary forms of racism – have also issued pertinent recommendations to the United States within their respective mandates.

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<sup>2</sup> A/HRC/47/53 and its accompanying conference room paper (A/HRC/47/CRP.1).

<sup>3</sup> E.g. CCPR/C/USA/CO/4, para.11; CERD/C/USA/CO/7-9, para.17;  
<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/earlywarning/statements/USA.PDF>.

<sup>4</sup> E.g. General comment No. 36 on Article 6: right to life (CCPR/C/GC/36).

<sup>5</sup> E.g. General Recommendations No. 36 on Preventing and Combating Racial Profiling by Law Enforcement Officials (CERD/C/GC/36); No. 34 on Racial discrimination against people of African descent (CERD/C/GC/34); and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

<sup>6</sup> General comment No. 36 on Article 6: right to life (CCPR/C/GC/36), para. 13.

In light of these international human rights obligations, and in order to make further findings and recommendations regarding concrete steps to ensure racial justice and equality for Africans and people of African descent in the context of law enforcement, we would be grateful if the Government of the United States could provide us with information regarding the case of Mr. Tyre Nichols.

While acknowledging the public release of the footage of the incident; the prompt opening of investigations; and the dismissal or suspension of the officers involved, we would welcome the following information:

- Details and circumstances of the incident concerning Mr. Nichols.
- Details of all ongoing investigations and related proceedings, whether internal, independent, administrative or criminal, including on the use of force, and the authorities in charge of the investigations; information on whether such investigations comply with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016); and information on results achieved in terms of accountability, including disciplinary or prosecutorial action, of any person responsible, including superior officers, as well as with regard to victims' right to effective remedies, including compensation.
- Detailed reports on the use of force by the various law enforcement agencies and officers involved, including at least: the number of law enforcement officers deployed and involved; law enforcement agencies and groups involved; type and manner of force used; type and amount of weapons used, including lethal and less lethal weapons and type and amount of ammunition; type and amount of protective equipment that was available to law enforcement officers; measures taken to avoid the use of force and de-escalate the situation; other measures taken to reduce the risk of injury and death.
- Local legislation and/or manuals or protocols regulating the use of force by the Memphis Police Department, including the type of lethal and less lethal weapons and protective equipment authorized, as well as protocols for the use of less lethal weapons available.
- Information, in law, policy, and practice, concerning the management of traffic stops by law enforcement officials of the Memphis Police Department.
- Information on the educational requirements and background checks for recruitment, as well as the full program of training provided to officers at the Memphis Police Department, including on the use of force and the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment.
- Data, disaggregated by race or ethnic origin of the victims, on other past cases of use of force by the Memphis Police Department, including deaths and serious injuries and related investigations, prosecutions, convictions and any disciplinary actions; and any steps taken by this Police Department to drive and assess responses to such incidents.
- Measures being taken to ensure racial justice and equality in the context of law enforcement in the city of Memphis and in the State of Tennessee, and measures for non-recurrence being taken.
- Measures being taken or are planned to be taken by the Government or the legislative body to standardize the policies, procedures and practices of all law enforcement agencies in the United States, both federal and local, on the use of force and the prohibition of racial discrimination.
- Other relevant information deemed necessary for purposes of the mandates.

Given the seriousness of the matter, we would appreciate a response to these points at your earliest convenience and no later than 60 days after receipt of this letter. Please note that we may decide to make our views and concerns public in the coming days, and that such public statement will reflect that we have raised our concerns with your Excellency's Government.

Please accept, Excellency, the assurances of our highest consideration.

Sincerely,

Yvonne Mokgoro  
Chairperson

Alice Edwards,  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Morris Tidball-Binz,  
Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions

H.E. Ms. Michèle Taylor  
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