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**Human Rights Council**

**Fifty-seventh session**

9 September–9 October 2024

Agenda item 9

**Racism, racial discrimination, xenophobia and related
forms of intolerance: follow-up to and implementation of
the Durban Declaration and Programme of Action**

 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

 Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement[[1]](#footnote-1)\*

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| *Summary* |
|  In the present report, submitted pursuant to Human Rights Council resolutions 47/21 and 56/13, the International Independent Mechanism to Advance Racial Justice and Equality in Law Enforcement provides an overview of activities undertaken since its previous report. |
| The report also elaborates on the concrete steps needed to ensure access to justice, accountability and redress for the excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent, relying on paragraphs 11 (g) and (h) of Council resolution 47/21. The Mechanism proposes a series of recommendations in this regard. |
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 I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with its resolutions 47/21 and 56/13.

2. In 2021, the Council established the International Independent Mechanism to Advance Racial Justice and Equality in Law Enforcement and, on 16 December 2021, the President of the Council appointed Yvonne Mokgoro (Chair, South Africa); Tracie Keesee (United States of America) and Juan Méndez (Argentina) to serve as experts on the Mechanism. In January 2024, the President of the Human Rights Council received a letter of resignation from a *curator bonis* on behalf of Ms. Mokgoro. In March 2024, the Council appointed Akua Kuenyehia (Ghana) to serve as new expert and Chair of the Mechanism.[[2]](#footnote-2) In May 2024, the President of the Council received a letter of resignation from Mr. Méndez, effective 31 July 2024. At the time of submission of the present report, the appointment of a new expert is pending.

3. In May 2024, with deep regret and much sadness, the Mechanism received the news of the untimely passing of Ms. Mokgoro, former Chairperson. Justice Mokgoro played a pivotal role in operationalizing the Mechanism and establishing the foundations for its work. The Mechanism would like to honour her lasting legacy in the fight for racial justice and equality around the world.

4. The Mechanism would also like to pay tribute to Mr. Méndez, for all the invaluable knowledge and skills he offered during almost three years of work. His decades of human rights work around the world will continue to inspire generations to come.

5. In the present report, the Mechanism sets out an overview of its activities since its previous report[[3]](#footnote-3) and its reflections and recommendations on the concrete steps needed to ensure access to justice, accountability and redress for the excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent, relying on paragraphs 11 (g) and (h) of resolution 47/21.

 II. Activities

 A. Country visits

 Brazil

6. At the invitation of the Government, the Mechanism conducted a country visit to Brazil from 27 November to 8 December 2023, visiting the cities of Brasilia, Salvador, Fortaleza, São Paulo and Rio de Janeiro.[[4]](#footnote-4) The Mechanism heard more than 100 testimonies from victims and their families and met with federal officials and local officials in various states, including law enforcement and prison officers, internal oversight bodies and the offices of public prosecutors and defenders, and visited two criminal detention centres.

7. At the end of its visit, the Mechanism took note of some positive practices implemented by the federal and local governments to guarantee the human rights of people of African descent, such as the recognition of the existence of systemic racism against them and the implementation of quotas to enhance representation at all levels and branches of government. The Mechanism condemned, however, the extrajudicial killings by police officers outlined in dozens of testimonies and reports received and the allegations of a pattern of deposit by police officers of firearms, drugs or other materials at crime scenes to be used as evidence to falsely incriminate victims and justify their killing. It also denounced the threats, intimidation, reprisals and stigmatization that victims face in their pursuit of justice, and called for system-wide transformative change, including the revision of the current procedures for investigating law enforcement misconduct, the dismantling of systemic racial inequalities and investing in addressing historical disparities at the root of such issues.[[5]](#footnote-5)

 Italy

8. At the invitation of the Government, the Mechanism undertook a country visit to Italy from 2 to 10 May 2024, visiting Rome, Milan, Catania and Naples.[[6]](#footnote-6) The Mechanism met with representatives of the primary law enforcement agencies of Italy: the national police, financial police, penitentiary police and the Carabinieri and with prosecutors and lawyers, equality bodies, representatives of civil society and affected individuals and communities, among others, and visited three local law enforcement headquarters, two centres of criminal detention and two places of administrative detention of migrants.

9. The Mechanism heard direct testimonies and received reports on racial profiling as a basis for identity and stop-and-search checks by law enforcement agencies in Italy made on the presumption that the person was not an Italian citizen or was engaging in criminal behaviour. The Mechanism called for an end to such practices. It also called for the collection, publication and analysis of data, disaggregated by race or ethnic origin, on all aspects of life, especially regarding interactions with law enforcement and the criminal justice system, as an essential element for designing and assessing responses to systemic racism. The Mechanism raised concerns about the challenges that migrants and asylum-seekers faced in having access to legal protections. Such challenges were exacerbated by instances of abuse of authority by law enforcement and by bureaucratic delays. The Mechanism recommended that immigration services be included as part of the civilian governance structure rather than the policing structure. The Mechanism also expressed concerns about overcrowding in Italian prisons and its impact on detainees’ human rights, highlighting the disproportionate incarceration of Africans and people of African descent, also noting instances of torture and ill-treatment in detention centres.[[7]](#footnote-7)

 B. Second annual session

10. The Mechanism held its second annual session from 11 to 15 September 2023 at the Palais des Nations in Geneva. On 14 September, the Mechanism held a meeting open to all stakeholders, with the purpose of seeking information and their views and answering questions on the implementation of the Mechanism’s mandate. The meeting was attended by States Members of the United Nations and members of civil society.[[8]](#footnote-8)

11. In addition to holding internal meetings on its activities and mandate, the Mechanism also held bilateral meetings with the Working Group of Experts on People of African Descent, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Working Group on discrimination against women and girls, the United Nations High Commissioner for Human Rights and staff of his Office (OHCHR) and with civil society organizations and directly affected individuals.

12. The Mechanism adopted its methods of work,[[9]](#footnote-9) which contain the principles, practices and procedures governing its work, including in relation to internal decision-making, its thematic scope, country engagement, outreach and consultation, cooperation, coordination and engagement with human rights mechanisms and other stakeholders, the consideration of specific incidents and situations and reporting.

 C. Written engagement on specific incidents and situations

13. Since its inception, the Mechanism has transmitted 10 letters to seven Member States regarding specific incidents and situations (see annex).

 D. Statements and other communications

14. On 15 June 2023, Ms. Keesee participated in the high-level debate of the General Assembly entitled “Equal access to justice for all: advancing reforms for peaceful, just and inclusive societies”, organized in cooperation with the United Nations Office on Drugs and Crime at United Nations Headquarters. She emphasized the importance of disaggregated data and of ensuring that members of law enforcement bodies were representative of the communities they served.[[10]](#footnote-10)

15. On 7 July 2023, the Mechanism endorsed the statement of the Committee on the Elimination of Racial Discrimination on the situation in France, in which the Committee had expressed concerns and made recommendations regarding racial profiling and the excessive use of force by law enforcement officials.[[11]](#footnote-11)

16. On 30 August 2023, the Mechanism, along with expert bodies, issued a joint statement on the occasion of the International Day for People of African Descent urging the General Assembly to consider the proclamation of a second International Decade, for the period 2025–2034, with a view to taking further action to address systemic discrimination and the legacies of the past to bring about the full recognition of and justice and development for people of African descent worldwide.[[12]](#footnote-12)

17. On 20 March 2024, on the occasion of the International Day for the Elimination of Racial Discrimination, the Mechanism, along with other expert bodies, issued a joint statement calling on States to push forward in the fight against racial discrimination and to fight all forms of racism everywhere by implementing their international human rights obligations and commitments under the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action.[[13]](#footnote-13)

18. On 25 March 2024, on the occasion of the International Day of Remembrance for the Victims of Slavery and the Transatlantic Slave Trade, the Mechanism, along with other United Nations bodies, called for a strengthened commitment by States to acknowledge and redress the enduring disparities and inequalities that stemmed from that cruel chapter of history, including by ensuring the effective participation of people of African descent in decision-making processes and implementing reparatory justice measures to redress the long-standing injustices.[[14]](#footnote-14)

19. On 26 April 2024, the Mechanism, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, filed an amicus brief before the Supreme Court of Pennsylvania, United States, to express why the mandatory sentence of life imprisonment without parole in the State of Pennsylvania for people convicted of felony murder violated international human rights law, including in relation to the disproportionate sentencing of people of African descent.[[15]](#footnote-15)

20. On 3 June 2024, the Mechanism joined the experts of other United Nations bodies in a call for further action to remedy racialized police violence and misconduct within the law enforcement and criminal justice system of Chicago, United States, against people of African and Latino descent.[[16]](#footnote-16) The Mechanism met with victims of police violence and misconduct situation during its visit to the United States and addressed the issue in the related report.[[17]](#footnote-17)

 III. Justice, accountability and redress

 A. Introduction: persistence of broad impunity

21. In its continuous interactions with people and communities affected by police violence and misconduct, the Mechanism hears repeatedly about the difficulties they face when demanding justice, accountability and redress for violations by law enforcement officials. That broad impunity for the excessive use of force and other human rights violations against Africans and people of African descent by law enforcement officials has been documented by organizations around the world, including by United Nations human rights mechanisms and OHCHR, including in its reports specifically on the topic.[[18]](#footnote-18)

22. Broad impunity is present not only in relation to killings by the excessive use of force, but also in all other violations against Africans and people of African descent, including widespread racial profiling, harassment, verbal abuse, abuse of power, discriminatory and unjustified stop-and-search checks, ill-treatment and arbitrary arrest and the unnecessary and disproportionate use of less-lethal weapons. Broad impunity is also present in many other interactions that occur in the context of the criminal justice system, for example in the discriminatory overrepresentation of Africans and people of African descent in detention, including stemming from the overuse of pretrial detention, discrimination in the application of bail or parole and excessive sentencing, as well as in the discriminatory disciplinary sanctions in correctional facilities and the ill-treatment and the excessive use of force against Africans and people of African descent in detention. Each of those violations entails the right of the victims to justice, truth, reparation and guarantees of non-repetition. Those rights are not respected, protected or fulfilled.[[19]](#footnote-19)

23. Generalized low rates of criminal investigation and prosecution of excessive use of force and other violations by law enforcement officials could be attributed to many different reasons, including the lack of independent and robust oversight, complaint and accountability mechanisms; a deep distrust in law enforcement and the justice system; the lack of cooperation or even active attempts to undermine the investigations by police officers and law enforcement agencies; the inequality of arms resulting from the availability or not of legal assistance for victims and defendants; the reluctance of prosecutors to charge law enforcement officials; the high standards on criminal intent that may be in place in cases involving police officers; and in general racial biases and structural discrimination emanating from systemic racism that can exist in all the phases of the criminal justice system.[[20]](#footnote-20)

24. Laws, policies and regulations governing law enforcement that do not comply with international human rights law, including the basic principles on the use of force of precaution, necessity and proportionality, are also major impediments to accountability. Such regulatory situations, including ones that do not prioritize de-escalation and other less harmful methods of control, are conducive to the early and unjustified use of force, including lethal force, by law enforcement. The broad allowance of personal discretion in the use of force by law enforcement officials rules out effective accountability.[[21]](#footnote-21) As long as the regulations on the use of force are not in accordance with international standards,[[22]](#footnote-22) even if the accountability mechanisms are robust, many of acts of excessive use of force by the police will continue to go unpunished.

25. The present thematic segment of the report is aimed at outlining the minimum steps necessary to combat widespread impunity and to provide the minimum specific action-oriented recommendations necessary to combating it. The present report should be read in conjunction with the two previous reports of the Mechanism, in which it also explored ways to combat systemic impunity. The first report[[23]](#footnote-23) was focused on the relevance of the collection, publication and analysis of data disaggregated by race or ethnic origin with regard to interactions of Africans and people of African descent with law enforcement authorities and the criminal justice system as an essential element for accountability. The second report[[24]](#footnote-24) was focused on exploring ways for adopting alternative and complementary methods of policing to prevent further violations.

 B. Justice: mandatory reporting and investigations

26. Automatic mandatory reporting and independent review and investigation are essential for accountability. They should be put in place for all use of force or threat of use of force by law enforcement, not only for lethal events or cases of firearms use. Law enforcement authorities should therefore establish effective reporting and independent review procedures for that purpose.

27. At a minimum, all incidents of the use of force or the threat to use force should be recorded and reviewed by a senior law enforcement official, who should take appropriate measures, defined by law, to detect, document and refer incidents for further follow-up and review.[[25]](#footnote-25) The reporting should be done in real time or immediately after the incident; the use of information technology should be considered for that purpose. The reporting should preferably be forwarded automatically to an independent civilian oversight body for review.[[26]](#footnote-26) In cases of death or serious injury, the reports should also be referred automatically to the competent authorities responsible for administrative review and for criminal review and judicial control.[[27]](#footnote-27) An independent and impartial autopsy should always be conducted.

28. In its previous report, the Mechanism noted the importance of recording police officers’ actions in real time, stating that body-worn cameras should be mandatory for all police officers wearing uniforms.[[28]](#footnote-28) The Mechanism is also of the view that body-worn cameras should also be mandatory for plain-clothes operations. Sanctions should be imposed against law enforcement officers for not using such cameras or for turning them off. Furthermore, officers should not have control over their own camera to reduce opportunities for selective documentation.

29. The display of names or identification numbers should also be mandatory for all police officers wearing uniforms.[[29]](#footnote-29) In exceptional cases in which officers are wearing civilian clothes, they should be obliged to identify themselves when asked.

30. Law enforcement officials implicated in a killing or the excessive use of force should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving contact with the public and access to detainees. The officer implicated should be required to hand in their firearm and less-lethal weapons pending the investigation and should not be returned to the community in which the event took place or where the victims live until the investigation has been completed.[[30]](#footnote-30)

31. All excessive use of force and other human rights violations by law enforcement officials should be investigated and prosecuted in an independent, impartial, prompt, thorough, effective, credible and transparent manner. All killings and incidents of the use of force should be investigated in accordance with relevant international standards, especially the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

32. Criminal investigations into killings and serious injury related to the use of force should always be initiated automatically, i.e. irrespective of whether a complaint has been filed. Such investigations should also address the command responsibility, and not only of the officers directly involved. Superior officers should always be held responsible if they know or should have known that law enforcement officials under their command are resorting, or have resorted to, the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.[[31]](#footnote-31)

 1. Essential role of affected communities and individuals

33. Victims should be allowed to participate actively in investigations, including to present evidence and have access to information during the investigation process. Family members must be enabled by the investigating authorities to make suggestions and arguments as to what investigative steps are necessary, provide evidence and assert their interests and rights throughout the process.[[32]](#footnote-32) When necessary, the authorities should provide funding for a lawyer to represent family members in the process. Victims’ relatives or a representative should have the right to be present during the autopsy and the official autopsy report should be available to them. They should have the right to perform an independent autopsy on their own, especially if an official autopsy has not been performed. Failure to provide relatives with information on the circumstances of the death may violate their right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[[33]](#footnote-33)

34. Victims, families, witnesses, affected communities, human rights defenders or any other person who comes forward to file a complaint or provide any kind of evidence or any kind of demand for an investigation to be triggered and pursued must be protected against any form of intimidation, threat, violence or ill-treatment. Appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy.

 2. Central need to examine the role of systemic racism

35. The central element needed to reach reparatory justice is the examination and consideration of the role that systemic racism plays in violations by law enforcement against Africans, people of African descent and other racialized individuals and communities.

36. Systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.[[34]](#footnote-34)

37. The systemic racism faced today by Africans and people of African descent is also deeply affected by intersectionality, that is, in combination with discrimination based on one or more of their other identities, including based on sex, gender, gender identity, sexual orientation, nationality, migration status, disability, religion and socioeconomic or other status. Women and girls of African descent experience greater forms of discrimination arising not only from their racial or ethnic origin and their sex, but also with gender-based discrimination and stereotyping. Migrants of African descent also face broader forms of discrimination arising from their nationality and migration status.

38. Systemic racism creates prejudice in different sectors of society, including the harmful association of Africans and people of African descent with criminality and delinquency. Such prejudice has a direct impact on their interactions with law enforcement officials and the criminal justice system, which are often discriminatory due to systemic racism. The impact of such prejudice needs to be examined in all investigations, prosecutions, judicial and administrative decisions and any reparation measure.

39. Law enforcement officers share and reproduce the values, attitudes and stereotypes of societies and institutions. In a society with systemic racism, law enforcement agents will themselves internalize, reproduce and implement racist behaviour and practices, regardless of their personal beliefs and values, or their own ethnicity or origin.[[35]](#footnote-35) Thus, racism, racial discrimination, xenophobia and related intolerance in policing is not the result of isolated actions of some rogue police officers (“bad-apple theory”). That abusive behaviour is part of policing culture, which is connected with larger social, historical, cultural and structural contexts within which policing is undertaken.

40. The excessive use of force and other human rights violations against Africans and people of African descent by law enforcement officers are frequently perpetrated as a result of systemic racism in policing. When investigations are conducted, however, they often do not take into account the role that systemic racism and racial discrimination in policing, including stereotypes and biases, may have played in the violations. As a consequence, prosecutions, trials and judicial decisions also fail to take that aspect into account.[[36]](#footnote-36)

41. Affected communities and individuals have repeatedly demanded that investigations examine and consider the role that systemic racism played in the violations. The European Court of Human Rights has stated that the national authorities have a positive obligation to investigate whether racism played a role in a police offence.[[37]](#footnote-37) In the case of the illegal detention and death of José Delfín Acosta Martínez in Argentina, the Inter-American Court of Human Rights ordered the State to investigate the facts, being careful to take the context of police violence due to racism and discrimination into consideration. It also ordered the State, in particular, to ensure that the investigation was carried out in consideration of the context of police violence, racism and discrimination.[[38]](#footnote-38) Also in Argentina, a national court found that racial hatred was an aggravating factor in the killing of teenager Lucas Gonzalez and sentenced three police officers to life imprisonment.[[39]](#footnote-39) In the case of the illegal detention, torture and extrajudicial execution of Owel Jaciel Cañola Zambrano, in Ecuador, the prosecutors’ line of argument was based on racial profiling, which led to the conviction of four police officers for torture and murder and of two others for illegal detention.[[40]](#footnote-40) In the United Kingdom of Great Britain and Northern Ireland, one of the two thematic focus areas of independent investigations by the Independent Office for Police Conduct is race discrimination.[[41]](#footnote-41)

42. States should guarantee that the role that systemic racism played in the violations by law enforcement against Africans, people of African descent and other racialized communities and individuals is examined and considered in any accountability mechanism, including investigations, prosecutions, judicial and administrative decisions and any reparation measures. Such a guarantee is essential to achieve true reparatory justice.

 C. Accountability: the need for independent civilian oversight bodies

43. In its previous report, the Mechanism stated that the proper civilian review of law enforcement activities could improve relationships between communities and the police, enhance the safety of law enforcement officers and ensure more effective performance of their duties. It also recommended that independent civilian monitoring mechanisms complement internal police investigations and criminal justice processes.[[42]](#footnote-42) The Mechanism wishes to elaborate on the reasons that States should establish independent civilian oversight bodies, highlighting the relevance of that type of mechanism and the specific characteristics they should have.

44. As explained above, all excessive use of force and other human rights violations by law enforcement officials should be investigated and prosecuted in an independent, impartial, prompt, thorough, effective, credible and transparent manner. For investigations to be independent, practical independence and a lack of hierarchical or institutional connection between the investigators and those involved are necessary. That means that there must be independence not only in law, but also in fact.[[43]](#footnote-43) Victims have the right to complain to a professional authority that is independent from the authority accused and that has the obligation to promptly and impartially examine all allegations. Similarly, victims and witnesses should be protected against all ill-treatment or intimidation and reprisals as a consequence of their complaints or any evidence given. Often, such protection is not respected.

45. Victims of racial discrimination and racially motivated misconduct by law enforcement are in a particularly vulnerable situation, since the police force is itself generally the first and natural interlocutor for victims of violence. In all the interactions that the Mechanism has had with people and communities affected by police violence, it has heard and felt repeatedly the confusion, concern and anger regarding, and the lack of interest in, filing a complaint at the same institution and sometimes with the same individuals who are the perpetrators. Having to file the complaint with the same institution is standard in many parts of the world.

46. The responsibility for law enforcement accountability is generally borne by the same police force that perpetrated the violence, occasionally by the criminal justice system and rarely by the legislative power. In most situations, the system for law enforcement accountability has proven to be inadequate.[[44]](#footnote-44)

47. There is an inherent bias in mechanisms for combating impunity for violations of law enforcement that are based on investigations that are either internal to the police or conducted by police officers. Any system of purely internal accountability tends to be partial, and internal police disciplinary mechanisms are no exception. Any system that uses police officers as investigators on cases against other police officers is inclined to be partial. An existing internal police culture of taking care of each other in all types of situations does not help in that regard. Police internal review is vulnerable to bias in all countries, but especially where there is minimal respect for the rule of law, where senior officers fail to push the importance of accountability and where corruption is rampant.[[45]](#footnote-45) In countries with a generalized distrust of law enforcement and the criminal justice system, it is almost impossible for such a system to be effective.

48. Even in the case of impartial investigations within internal police control bodies, the perception of their impartiality and independence is extremely difficult to achieve. Real independence and impartiality, as well as the appearance of such, are extremely important for accountability and for building trust among the communities served.

49. The system of accountability for police actions should always be complemented by independent civilian oversight bodies established by law and with enough sustained political support to carry out their functions. To function properly, that type of agency should have a system of certain characteristics and powers (described below).[[46]](#footnote-46)

 1. Involvement of affected communities and individuals

50. To be successful, such bodies require the trust of civil society from their inception. Trust is essential for members of civil society to file reports on possible police misconduct. An independent civilian oversight body should be established, operated and reformed with the active consultation and participation of civil society, including communities and individuals affected by police misconduct. Inclusive outreach and consultations with affected communities and representatives of civil society should be scheduled periodically and, in general, a strategy to maintain their active participation should be implemented. All the rights that victims have in the framework of investigations, as set out above, must be respected and guaranteed by the independent body.

 2. Independence

51. Civilian oversight bodies should have total operational and hierarchical independence from the police. That independence should exist in fact and in law. Its civilian nature is a step towards its independence from law enforcement. Its leadership, investigators and other staff should not include active members of the police. Its reporting lines should be different from those of law enforcement, e.g. the oversight bodies should not be placed under the same ministry or department of government. Preferably, such an agency would report directly to the legislative power.

52. They should also be granted freedom from any political interference. Such interference should be avoided by providing the civilian oversight body with full financial autonomy and structural independence from the executive branch of government. Financial autonomy is key to ensuring overall independence. Funding should be placed under parliamentary control, with such guarantees as a minimum annual operational budget. The budget should be self-administered, without interference.

53. The leadership of independent oversight bodies should also be democratically appointed, as opposed to being appointed by a single person, e.g. a minister or head of government. A good formula could involve a competitive process in which various organs and powers of the State participate, including the legislative branch.

 3. Investigatory powers

54. An independent civilian oversight body should possess investigatory powers for individual cases and general situations. Such a body should possess a broad legislative mandate to investigate information and complaints received from any person, including victims, witnesses, police officers and anonymous persons, accept formal referrals from law enforcement agencies and initiate investigations on its own. Its work should encompass any type of law enforcement, including, for example, border and immigration police, prison, investigative and judicial police and military police doing law enforcement work.

55. The oversight body should be able to receive information from police officers on an individual basis. Law enforcement officials are in a privileged position to bring to light police misconduct that would otherwise remain hidden. Officials who blow the whistle concerning misconduct practices in the police force may face retaliatory measures at their workplace and beyond.[[47]](#footnote-47) Such officials, as well as any other person who comes forward to file a complaint or provide evidence or a demand for an investigation, must be protected against all forms of retaliation, intimidation, threat, violence and ill-treatment. Appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy. Independent civilian oversight bodies should have the capacity and power necessary to provide or make available witness protection programmes for victims, complainants or other individuals cooperating with their investigations.[[48]](#footnote-48)

56. For its investigative powers to be effective, an independent oversight body should be given the authority to subpoena documents and other information, including recordings, the capacity to obtain search warrants from judicial authorities and the power to force the police to cooperate. At a minimum, law enforcement agencies should be required by law to transfer all cases of death and serious injury to the independent body.

57. It is essential that such bodies be enabled to issue legally binding decisions, not only recommendations. In the case of police misconduct findings, the oversight bodies should be mandated to impose specific disciplinary sanctions, such as fines or suspensions. They should also be able to order administrative internal bodies to enforce further administrative sanctions. Even when such bodies are given complete powers of investigation, those powers would be only partial if the oversight bodies could not, at a minimum, provide their findings of police misconduct and their decisions to prosecutors or judges to initiate criminal proceedings. Ideally, such bodies should also be authorized to participate in the criminal proceedings and to present the full details of their investigations and findings to judges and juries.

58. Beyond focusing on individual cases, independent oversight bodies should also carry out broader police inspections to identify trends and patterns, evaluate the general quality of police operations, identify the need for policy changes and recommend and implement plans for reform.[[49]](#footnote-49) When trends or patterns are identified, reform proposals are an essential element for tackling root causes and bringing about long-term change. The ability of independent oversight bodies to make general recommendations for policy change is essential to promote accountability and guarantee of non-recurrence.

 4. Resources

59. Independent civilian oversight bodies should have adequate human and financial resources to carry out all the activities mentioned above, including the capacity to undertake serious investigations without the need to rely on the police for investigative services. Competent investigators and other support staff are essential to that aim.

60. Where the creation and funding of oversight mechanisms are difficult because of the country’s limited financial resources, the international community can play an important supporting role. Often, in such contexts, foreign aid is targeted towards the police force only. The international community, however, should improve police accountability by extending such foreign assistance to independent civilian oversight bodies. The international community should also play a much-needed role by providing training, experts or other technical assistance.[[50]](#footnote-50)

 5. Transparency

61. Transparency and public reporting are very relevant for the long-term success of an independent civilian oversight body. Public reports and general disaggregated data should be made public regularly, including on complaints received and findings. The progress and outcomes of investigations should be also made publicly available after being properly communicated to victims and the relevant authorities and other actors involved. Information on general financing and budgeting should also be made available.

 6. Complementarity

62. In general, independent civilian oversight bodies should not be aimed at replacing internal control and oversight bodies entirely. Rather the two bodies should follow the principle of complementarity, cooperating when necessary to achieve the same general results.

63. Internal control and oversight bodies can have some structural advantages, including that of being inside the organic police structure and being formed by active police officers with better knowledge of the current police culture and environment. Complementary investigations by internal control and oversight bodies can instil confidence among the police officers being investigated, increasing cooperation and compliance. States should implement effective internal police accountability structures that function with the independence and impartiality that are essential for promoting an internal culture of accountability, discipline and respect for the law within the police force.

64. In countries in which internal police investigations are considered to have a good level of impartiality and independence, complementarity can take the form of selective oversight or review. For example, in a selective oversight approach, the civilian body can focus on the most serious cases, such as extrajudicial executions or killings in general. In the form of a review body, the civilian agency can be a subsidiary body similar to an appellate body, reviewing internal investigations and conducting its own investigations only where internal investigations are believed to have been unsuccessful.

 D. Redress: the need for independent mechanisms to support victims and communities

65. Reparatory justice for the excessive use of force and other human rights violations by law enforcement against Africans and people of African descent is long overdue. Such violations are frequently perpetrated as a result of systemic racism, which is rooted in the legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism. A serious barrier to reparatory justice is the lack of awareness and understanding among the public and political leaders regarding those persisting legacies and their successive racially discriminatory policies and systems. Establishing the truth on those causes and impacts is crucial to building support for reparatory justice. States should acknowledge the negative effects of the injustices inflicted on people of African descent in the past, the effects of which continue to disadvantage people of African descent today. Those impacts of the past should be recognized and acknowledged before any other reparation measures are taken.

66. Victims of police misconduct have an undeniable right to reparation. International human rights law has progressively recognized the right of victims of human rights violations to pursue their claims for redress and reparation before national justice mechanisms and, subsidiarily, before international bodies. The international legal basis for the right to a remedy and reparation is firmly enshrined in numerous international instruments, such as the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14).

67. National, regional and international courts, as well as treaty bodies, have developed a growing body of jurisprudence in this regard, holding that the State obligation to provide reparation extends far beyond monetary compensation. Measures to redress violations of human rights should provide a range of material and symbolic benefits to victims or their families as well as to affected communities. Reparation must be adequate, effective and prompt and proportional to the gravity of the violations and the harm suffered.

68. Reparation could include measures of restitution, compensation, rehabilitation and satisfaction.[[51]](#footnote-51) Restitution refers to restoring the victim to the original situation before the violation occurred, e.g. the restoration of liberty, the reinstatement of employment or the return of property. Compensation should be provided for any economically assessable damage, e.g. the loss of property, the loss of earnings, the loss of economic opportunities, including the loss of earning potential, moral damages and costs incurred for legal or expert assistance or medical, social or psychological services. Rehabilitation measures should include medical and psychological care as well as legal and social services. Satisfaction should include the ending of further violations, the recognition of responsibility by institutions and public apologies, memorials and commemorations, among other symbolic relevant measures. Guarantees of non-repetition are also an essential part of reparatory justice.

69. At times, victims of police violence may obtain some form of financial compensation through civil lawsuits against authorities. The victims’ right to reparations should also include the possibility of seeking reparation through civil or administrative lawsuits against the perpetrators and authorities involved.

70. States must respect, protect and fulfil the right of victims and communities affected by law enforcement violations to know the truth, achieve reparatory justice and advocate for guarantees of non-repetition. States have the duty to fulfil a victim’s right to reparation promptly, adequately and effectively. Comprehensive and holistic support from the State is required in this regard, and the best way to provide it is through a specialized victim-centred independent mechanism specifically designed to support affected individuals and communities.

71. Such an independent mechanism should be established by law and be well resourced. When a serious violation of international human rights occurs and that violation is directly attributable to the State, that State is liable for reparations and is responsible for funding those reparation measures. Funding to provide independent mechanisms with sufficient resources can be derived from States’ annual budgeting, individual perpetrators, law enforcement agencies and the relevant authorities responsible for the violations, the international community, special taxation programmes and donations, among other means.[[52]](#footnote-52)

72. Such an independent mechanism should be able to provide legal advice, assistance and representation if needed. It should also provide other types of support, including interpretation, psychological and medical services and resources for independent autopsies, if needed. It should also work on offering compensation programmes for victims and financial assistance for the burials of victims. The provision of support should not be dependent upon the definitive conclusion in an investigation to be reached, but rather should start automatically immediately after the event, including the necessary contingency support.

73. The process for the establishment of an independent mechanism for reparatory justice should ensure the effective and meaningful participation and representation of affected communities and individuals, including in its creation, reform, implementation and assessment.[[53]](#footnote-53)

 IV. Conclusions and recommendations

74. **Broad impunity for the excessive use of force and other human rights violations against Africans and people of African descent by law enforcement officials persists and victims’ rights to justice, truth, reparation and guarantees of non-repetition are rarely fulfilled. Reparatory justice is long overdue. It is necessary for States to invest in strong institutions to provide justice, accountability and redress.**

75. **In its two previous reports, the Mechanism explored two essential elements to provide justice, accountability and redress: (a) the need for the collection, publication and analysis of data disaggregated by race or ethnic origin regarding interactions with law enforcement authorities and the criminal justice system and; (b) the need to adopt alternative and complementary methods of policing to prevent further violations.**

76. **The Mechanism believes that three additional minimum steps are necessary to combat widespread impunity and to provide justice, accountability and redress:**

 (a) **Effective reporting, review and investigation procedures;**

 (b) **Independent civilian oversight bodies;**

 (c) **Independent mechanisms to support victims and communities.**

77. **Throughout the present report, the Mechanism has detailed specific action-oriented recommendations for each of those steps, including their minimum necessary characteristics. Some of those characteristics are outlined below.**

 A. Effective reporting, review and investigation procedures

78. **States should put in place procedures for the automatic mandatory reporting and independent review and investigation of all cases of the use of force or the threat of the use of force by law enforcement, not only for lethal events or firearms use cases. The use or threat of the use of force should be recorded in real time or documented immediately after the incident. All such cases should be reviewed.**

79. **Cases of death or serious injury should be referred automatically to an independent civilian oversight body or to the competent authorities responsible for criminal review and judicial control for investigation. Such investigations should address the responsibility of the entire command hierarchy, not only the responsibility of the officers directly involved. The investigations and prosecutions should be conducted in an independent, impartial, prompt, thorough, effective, credible and transparent manner, in accordance with relevant international standards.**

80. **Body-worn cameras should be mandatory and sanctions should be imposed for not using them or turning them off. The display of names or identification numbers should also be mandatory.**

81. **The law enforcement officials implicated should immediately and for the duration of the investigation be, at a minimum, suspended from any duty involving contact with the public and access to detainees.**

82. **Victims should have the right to actively participate in investigations. They and their communities, witnesses or any other person involved in an investigation should be protected against any form of intimidation, threat, violence or ill-treatment. Their safety, physical and psychological well-being and privacy should be protected.**

83. **States should guarantee that the role that systemic racism played in the violations by law enforcement will be examined and considered in any form of accountability, including in investigations, prosecutions, judicial and administrative decisions and any reparation measure.**

 B. Independent civilian oversight bodies

84. **States should establish independent civilian oversight bodies to complement internal police investigations and criminal justice processes. Such bodies should:**

 (a) **Be established, operated and reformed with the active consultation and participation of civil society, including communities and individuals affected by police misconduct;**

 (b) **Have independence in fact and in law, with total operational and hierarchical autonomy from the police and its reporting lines, with freedom from political interference and with full financial and structural independence. Their leadership should be democratically appointed;**

 (c) **Possess legally binding investigatory powers over individual cases and general situations and any type of law enforcement officers and institutions, as well as to receive information and complaints from any person, including the police and to initiate investigations on their own;**

 (d) **Have the power to impose specific disciplinary sanctions and to send their findings and decisions to prosecutors or judges for the purposes of initiating criminal proceedings in which they are authorized to participate;**

 (e) **Be adequately resourced to carry out their activities;**

 (f) **Be guided by the principles of transparency and of complementarity with internal police oversight.**

 C. Independent mechanisms to support victims and communities

85. **States must respect, protect and fulfil the right of victims and communities affected by law enforcement violations to know the truth, achieve reparatory justice and advocate for guarantees of non-repetition. Those rights should be fulfilled promptly, adequately and effectively. Comprehensive holistic support from the State is required in that regard, and the best way to provide it is through a specialized victim-centred independent mechanism designed to support affected individuals and communities. The mechanism should:**

 (a) **Be established by law and adequately resourced and ensure the effective and meaningful participation and representation of affected communities and individuals in its creation, reform, implementation and assessment;**

 (b) **Provide contingency support automatically immediately following the incident, not waiting for a definitive conclusion in the investigation;**

 (c) **Provide legal advice, assistance and representation;**

 (d) **Provide other types of support, such as interpretation, psychological and medical services;**

 (e) **Offer resources for independent autopsies and burials;**

 (f) **Operate independently of all other restitution, compensation, rehabilitation and satisfaction measures and programmes.**

 Annex

 Letters sent by the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

| *Letter sent* | *Member State* | *Summary of issues* | *Replies received* |
| --- | --- | --- | --- |
| 20 June 2022 | United Kingdom of Great Britain and Northern Ireland | Permanent removal of restrictions under section 60 of the Criminal Justice and Public Order Act of 1994 on stop-and-search checks by police officers | None |
| 12 July 2022 | Spain | Events in Melilla leading to the death of 23 African migrants and the injury of law enforcement officials | 4 August 202221 February 2023 |
| 12 July 2022 | Morocco | Events in Melilla leading to the death of 23 African migrants and the injury of law enforcement officials | None |
| 12 July 2022 19 October 2022 | Brazil | Killing of 23 people of African descent in Vila Cruzeiro | 5 September 2022 |
| 19 October 2022 | United States of America | Killing of Patrick Lyoya and Jayland Walker | None |
| 2 February 2023 | United States  | Killing of Keenan Anderson | 30 March 2023 |
| 8 February 2023 | United States  | Killing of Tyre Nichols | 13 February 2023 |
| 3 August 2023 | Germany | Killing of Mouhamed Lamine Dramé | 24 October 2023 |
| 3 August 2023 | United States  | Detention and solitary confinement of Keith Clay | 28 December 2023 |
| 3 November 2023 | Sweden | Police protection and response following threats against Momodou Malcolm Jallow | 29 December 2023 |

*Note:* More information on the letters sent by the Mechanism is available on its web page (<https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-racial-justice-law-enforcement/communications>).

1. \* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information. [↑](#footnote-ref-1)
2. See https://www.ohchr.org/en/press-releases/2024/03/human-rights-council-president-names-new-chair-racial-justice-panel. [↑](#footnote-ref-2)
3. [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69). [↑](#footnote-ref-3)
4. The full report of the country visit to Brazil is contained in document [A/HRC/57/71/Add.1](http://undocs.org/en/A/HRC/57/71/Add.1). [↑](#footnote-ref-4)
5. See https://www.ohchr.org/en/press-releases/2023/12/brazil-government-must-intensify-efforts-ensure-racial-justice-and-redress. [↑](#footnote-ref-5)
6. The full report on the country visit to Italy is contained in document [A/HRC/57/71/Add.2](http://undocs.org/en/A/HRC/57/71/Add.2). [↑](#footnote-ref-6)
7. See https://www.ohchr.org/en/press-releases/2024/05/italy-un-experts-racial-justice-law-enforcement-warn-racial-profiling-risk. [↑](#footnote-ref-7)
8. See https://webtv.un.org/en/asset/k15/k15yl9jiym. [↑](#footnote-ref-8)
9. See https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-racial-justice-law-enforcement/methods-work. [↑](#footnote-ref-9)
10. See the conference room paper containing a summary of the debate by the President of the General Assembly, available at https://documents.un.org/doc/undoc/gen/v24/027/86/pdf/v2402786.pdf. [↑](#footnote-ref-10)
11. See https://www.ohchr.org/en/press-releases/2023/07/statement-france-un-committee-elimination-racial-discrimination. [↑](#footnote-ref-11)
12. See https://www.ohchr.org/en/press-releases/2023/08/international-day-people-african-descent-un-experts-urge-general-assembly. [↑](#footnote-ref-12)
13. See https://www.ohchr.org/en/statements/2024/03/all-states-must-push-forward-fight-against-racial-discrimination-un-experts. [↑](#footnote-ref-13)
14. See https://www.ohchr.org/en/press-releases/2024/03/un-experts-urge-states-recognise-and-address-legacy-slave-trade. [↑](#footnote-ref-14)
15. See https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/amicus/2024-4-26-lee-amicus-brief.pdf. [↑](#footnote-ref-15)
16. See https://www.ohchr.org/en/press-releases/2024/06/united-states-un-experts-urge-action-address-lives-stolen-systemic-racist. [↑](#footnote-ref-16)
17. See the conference room paper of the Mechanism on its visit to the United States, available at https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial. [↑](#footnote-ref-17)
18. [A/HRC/47/53](http://undocs.org/en/A/HRC/47/53) and the accompanying conference room paper of the High Commissioner on the 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, available at https://www.ohchr.org/en/documents/reports/ahrc4753-promotion-and-protection-human-rights-and-fundamental-freedoms-africans; [A/HRC/51/53](http://undocs.org/en/A/HRC/51/53) and [A/HRC/54/66](http://undocs.org/en/A/HRC/54/66). [↑](#footnote-ref-18)
19. See [A/HRC/47/53](http://undocs.org/en/A/HRC/47/53) and accompanying conference room paper; [A/HRC/51/53](http://undocs.org/en/A/HRC/51/53), [A/HRC/54/66](http://undocs.org/en/A/HRC/54/66) and [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69); and the conference room paper of the Mechanism on its visit to the United States. [↑](#footnote-ref-19)
20. See submission by the United Nations Children’s Fund for specific examples of barriers to access to justice for children belonging to minorities, including linguistic constraints, distrust, discrimination, access to information and other legal and practical obstacles. See also European Union Agency for Fundamental Rights, *Guidance on Investigating Alleged Ill-treatment at Borders* (Luxembourg, 2024) showing that few national investigations of loss of life and ill-treatment of migrants and refugees at borders are undertaken. All submissions are available at https://www.ohchr.org/en/calls-for-input/2024/call-inputs-justice-accountability-and-redress-report-international. [↑](#footnote-ref-20)
21. See [A/HRC/26/36](http://undocs.org/en/A/HRC/26/36). [↑](#footnote-ref-21)
22. Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. [↑](#footnote-ref-22)
23. [A/HRC/51/55](http://undocs.org/en/A/HRC/51/55). [↑](#footnote-ref-23)
24. [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69). [↑](#footnote-ref-24)
25. See Basic Principles on the Use of Force and Firearms. [↑](#footnote-ref-25)
26. See sect. C below. [↑](#footnote-ref-26)
27. See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/UseOfForceAnd
Firearms.pdf. [↑](#footnote-ref-27)
28. [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69), para. 61. [↑](#footnote-ref-28)
29. Ibid. [↑](#footnote-ref-29)
30. See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/UseOfForce
AndFirearms.pdf. [↑](#footnote-ref-30)
31. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 24. [↑](#footnote-ref-31)
32. Minnesota Protocol on the Investigation of Potentially Unlawful Death. [↑](#footnote-ref-32)
33. See Human Rights Committee, general comment No. 36 (2018). [↑](#footnote-ref-33)
34. [A/HRC/47/53](http://undocs.org/en/A/HRC/47/53), para. 9. [↑](#footnote-ref-34)
35. [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69), para. 22. [↑](#footnote-ref-35)
36. See the conference room paper of the High Commissioner on the 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, available at https://www.ohchr.org/en/documents/reports/ahrc4753-promotion-and-protection-human-rights-and-fundamental-freedoms-africans. [↑](#footnote-ref-36)
37. See submission by the European Union Agency for Fundamental Rights. [↑](#footnote-ref-37)
38. Inter-American Court of Human Rights, *Acosta Martínez et al, v. Argentina*, Judgment, 31 August 2020. [↑](#footnote-ref-38)
39. See https://www.argentina.gob.ar/noticias/para-el-inadi-el-fallo-en-la-causa-de-lucas-gonzalez-fue-historico (in Spanish). [↑](#footnote-ref-39)
40. See submission by Ecuador. [↑](#footnote-ref-40)
41. See https://www.policeconduct.gov.uk/our-work/investigations. [↑](#footnote-ref-41)
42. [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69), paras. 63 and 78. [↑](#footnote-ref-42)
43. [A/HRC/14/24/Add.8](http://undocs.org/en/A/HRC/14/24/Add.8), para. 23. [↑](#footnote-ref-43)
44. See [A/HRC/47/53](http://undocs.org/en/A/HRC/47/53) and accompanying conference room paper of the High Commissioner on the 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; [A/HRC/51/53](http://undocs.org/en/A/HRC/51/53), [A/HRC/54/66](http://undocs.org/en/A/HRC/54/66) and [A/HRC/54/69](http://undocs.org/en/A/HRC/54/69); and the conference room paper of the Mechanism on its visit to the United States. See also European Union Agency for Fundamental Rights, *Addressing Racism in Policing* (Vienna, 2024); and *Handbook on Police Accountability, Oversight and Integrity* (United Nations publication, 2011). [↑](#footnote-ref-44)
45. [A/HRC/14/24/Add.8](http://undocs.org/en/A/HRC/14/24/Add.8), para. 25. [↑](#footnote-ref-45)
46. For examples of several such mechanisms, see *Handbook on Police Accountability, Oversight and Integrity*. See also submissions by Mauritius, the Canadian Human Rights Commission, the National Human Rights Commission of Nigeria and the European Union Agency for Fundamental Rights, as well as its new report, *Addressing Racism in Policing*. [↑](#footnote-ref-46)
47. See the submission by the European Union Agency for Fundamental Rights and *Addressing Racism in Policing*. [↑](#footnote-ref-47)
48. [A/HRC/14/24/Add.8](http://undocs.org/en/A/HRC/14/24/Add.8), para. 41. [↑](#footnote-ref-48)
49. See the conference room paper of the Mechanism on its visit to the United States for an example on how the United States Department of Justice conducts general formal investigations into police departments in response to allegations of general police misconduct and agrees and negotiates consent decrees with law enforcement agencies to address the violations found. [↑](#footnote-ref-49)
50. [A/HRC/14/24/Add.8](http://undocs.org/en/A/HRC/14/24/Add.8), para. 50. [↑](#footnote-ref-50)
51. 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, para. 20. [↑](#footnote-ref-51)
52. For a discussion on the financing of reparations, see [A/78/181](http://undocs.org/en/A/78/181). [↑](#footnote-ref-52)
53. Updated set of principles for the protection and promotion of human rights through action to combat impunity, principle 32. [↑](#footnote-ref-53)