

The Need for Mechanisms to Ensure Accountability to Reduce Unlawful Police Violence Against People of African Descent in the United States of America

For the Report of the International Independent Expert Mechanism to
Advance Racial Justice and Equality in the context of Law
Enforcement, pursuant to Human Rights Council Resolution 47/21

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The Center for Law, Equity and Race (CLEAR)ⁱ and the Program on Human Rights and the Global Economy (PHRGE)ⁱⁱ at Northeastern University School of Law welcome the opportunity to provide input for the preparation of the report of the International Independent Expert Mechanism to advance racial justice and equality for Africans and people of African descent in the context of law enforcement, pursuant to Human Rights Council Resolution 47/21. This response to the Call for Input addresses the need for additional tools to ensure accountability and provide redress measures for people of African Descent who continue to be subjected to excessive force and human rights violations by law enforcement.

Current State of Human Rights Violations by United States Law Enforcement

While an estimated 250,000 people are injured during encounters with United States law enforcement every year, and more than 600 are killed by law enforcement annually, few of the officers involved in these incidents face criminal prosecution.¹ This is in part due to an American legal doctrine known as “qualified immunity,” which grants protection from prosecution to police officers if they can establish that they have not violated “clearly established” rights.² The U.S. Supreme Court has further held that police use of force must be considered from the perspective of the reasonable officer at the time of the incident.³ The combination of these two rules has shielded much of harmful police behavior from judicial scrutiny and sanction.⁴

Almost half of Americans believe that police officers see themselves as above the law, and that police are generally not held accountable for misconduct or other harmful behavior.⁵ A different survey discovered that civilians were dissatisfied with their inability to hold officers accountable for bad behavior, with two-thirds of Americans believing that civilians should have the power to sue police

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ⁱ The Center for Law, Equity, and Race (CLEAR) uses an interdisciplinary, collaborative approach to enrich and inform the national discourse on reparative justice and criminal justice reform and build additional strength in racial justice research and practice.

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officers for misconduct or excessive use of force.⁶ The number of people of African descent who hold that view is considerably larger – 86%. Civilians who hold these views are less likely to seek out or rely on police assistance, and may react with hostility to officers during police encounters. Officers respond to this animus as their training prepares them to: by viewing every encounter as a potential threat, rather than as a partner in ensuring public safety.⁷ These mindsets create a self-perpetuating cycle: officers act with excessive force in response to a perceived threat or combative attitude, but not held accountable by the criminal justice system. In turn, civilians witnessing this are reinforced in their view that officers are not held accountable, leading to apathetic or hostile attitudes towards police officers.

Police Are Rarely Held Accountable for Constitutional Violations Against Civilians

In an extremely rare incident in March of 2024, six former Mississippi law enforcement officers from the Rankin County Sheriff's Office were sentenced to prison terms ranging from 10 to 40 years for assaults they committed in their capacity as police officers.⁸ While their offenses were “shocking, brutal, and cruel,” the most surprising aspect of their sentencing was not the nature and scope of their crimes, but the fact that they were sentenced at all.⁹ In recent years, evidence has established that police officers who have engaged in various forms of brutality against citizens - including sexual assaults, theft, shootings, and other harmful acts - are rarely face prosecution for these wrongs.¹⁰ In the rare instances when they are charged and tried, the officers are too often acquitted. In virtually all cases, police officers face less serious consequences than a civilian would for the same offense.

The case of Freddie Gray in Baltimore, Maryland exemplifies this disparity in outcomes. On April 12, 2015, Gray was arrested after running from police officers.¹¹ While in police custody, Gray's spinal cord was severed, and he was brought to the hospital, where he died a week later.¹² The officers involved were suspended from duty and charged in connection with his death. However, ultimately after three of the officers were acquitted, prosecutors dropped all remaining charges.¹³ In 2024, one of the officers involved in Gray's death was promoted to oversee the Baltimore Police Department's Public Integrity Bureau, which handles misconduct investigations.¹⁴ This officer's journey from being charged

with manslaughter and misconduct to supervising the division of the police department that investigates misconduct investigations epitomizes the utter inadequacy of the mechanisms now in place to hold police officers truly accountable for any harms that they cause, and a cynical approach to accountability on the part of police leaders.¹⁵

Reforms Needed To Enable Greater Police Accountability

Several reforms have been proposed to break this cycle of lack of accountability, which not only fails the victims of police misconduct, but also disserves as community members and the officers themselves. The George Floyd Justice in Policing Act, one of the most comprehensive police accountability reforms, has received broad public support.¹⁶ This proposed law, introduced in Congress 2021 by U.S. Representative Karen Bass of California, would have furthered reform in several ways. The bill proposed making it easier to prosecute offending officers, and sought to enhance the ability of the Department of Justice to investigate police misconduct.¹⁷ The Act proposed the establishment of a national registry of police misconduct, which would collect all complaints filed against law enforcement officers and render that information publicly available.¹⁸ These reforms would make it easier to hold officers accountable for their misconduct, and would make it harder for officers with misconduct allegations to obtain another position in law enforcement. Unfortunately, although this bill passed in the House of Representatives it was never brought to the Senate floor for a vote and has not yet been reintroduced in subsequent sessions of Congress.¹⁹

Police reform advocates also present the use of body-worn cameras as another reform that could reduce police misconduct.²⁰ Body-worn cameras received widespread support after the shooting of Michael Brown in Ferguson, Missouri in 2014. In response to these calls, the U.S. Department of Justice awarded more than \$20 million in grants to expand their use.²¹ The use of these cameras was believed to herald a new era in terms of police accountability.²² While body-worn cameras have become more common throughout law enforcements over the course of the past decade, public access to the recorded

footage has been unduly limited, purportedly for reasons ranging from issues of privacy to police obstructionism.²³

Despite pledges to release footage within a reasonable amount of time, police departments have appeared to renege on these promises.²⁴ Departments have delayed releasing or refused to release body camera and dashcam footage for a variety of reasons, infamously in the case of Laquan McDonald, where the Chicago Police Department claimed that releasing the video would jeopardize an ongoing investigation into the incident. Laquan McDonald was a 17-year-old youth who was shot sixteen times by a police officer who claimed he feared for his safety. The video, ordered released by a judge more than a year after the killing, established that Laquan was walking away from the police when he was shot.²⁵ While proposals have circulated to increase transparency through expanding access to footage, different jurisdictions have different rules regarding disclosure of public records such as body camera footage.²⁶

Police departments and prosecutors have also been criticized for a failure to respond adequately to allegations of misconduct. In Rankin County, Mississippi, citizens whose rights were violated by the sheriff's deputies filed lawsuits or complaints against a "goon squad" in the department.²⁷ Despite these efforts, these reports were ignored by the sheriff.²⁸ In short, police officers repeatedly involved in instances of misconduct have been able to keep their jobs despite citizen complaints, and sometimes even after they have been charged with or convicted of crimes.²⁹

Further, elected prosecutors lack incentives to pursue cases of police misconduct, since these cases are often challenging and difficult to win. Prosecutors look to downstream prospects when bringing charges, and are disinclined to pursue cases they believe juries will reject.³⁰ Hence prosecutorial discretion introduces another factor militating against equal application of the law.³¹ Incentivating prosecutors to bring charges on incidents of misconduct would require an electorate more open to holding law enforcement to the same standards that apply to civilian crimes, and viewing police officers as fallible; such healthy skepticism about police behavior could lead to these cases coming to trial more frequently.³² As it stands, 69% of American adults reported having confidence in the police in 2023, a decrease of 4% since 2021.³³ If this trend continues, we may see prosecutors pursuing more charges

against police misconduct, which might inspire confidence in the ability of the justice system to hold law enforcement accountable for its harms.

Police reform efforts also gave rise to the BREATHE Act,³⁴ an omnibus bill that sought to address police brutality and racial injustice by proposing numerous economic, legal and social reforms. The bill sought comprehensive reforms to policing, emphasizing community-based solutions and investments in social services. The Act's second section establishes funding for creative community-based initiatives to improve public safety such as funding crisis intervention teams, programs that prevent violence, and projects that address social issues that lead to crime.³⁵ The bill did not pass.

Conclusion

There is an urgent need to establish meaningful accountability mechanisms to address the continuing violence and violation of the basic human rights of people of African descent in the United States. A system where law enforcement officers are essentially granted immunity from oversight or prosecution for their actions has led to the loss of public trust, trust which is necessary for officers to protect the public and capture wrongdoers. Current police accountability mechanisms are in need of immediate reform, and the enactment of legislation such as the George Floyd Justice in Policing Act of 2021 would be an important first step to establish a framework to prevent and remedy extra-legal actions and harms by law enforcement. We hope that this body can draw attention to the need for officers to operate with proper accountability, and to be held to account for their wrongdoing.

Respectfully Submitted,



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