



Mothers Against Police Brutality

**Proposals for Justice in Policing
Submitted to the United Nations
Office of the High Commissioner for Human Rights
Mothers Against Police Brutality
April 18, 2022**

A. Mothers Against Police Brutality.

The mission of Mothers Against Police Brutality is to prevent police use of deadly force, particularly the killing of Black and other people of color; to change police deadly force policies and practices; to advocate for and with families who have lost loved ones to police violence; and to expand the concept of public safety with new policies limiting encounters between police and the public and making deep social investments in housing, health care, mental health services, employment, education, arts, recreation, and other presently unmet human needs. MAPB protests unjust policing, organizes communities most impacted, conducts research, and advocates for policy change in local, national, and international forums

B. Proposals for the U.N. Office of the High Commissioner for Human Rights (OHCHR).

1. The OHCHR should take the lead in forming an open-ended working group to develop a new *international convention on justice and human rights in policing.*

The major international conventions on human rights amplify the rights enumerated in the Universal Declaration of Human Rights with regard to specific groups (e.g., conventions on the rights of children and eliminating discrimination against women); types (e.g., economic, social and cultural rights; and practices (e.g., torture and cruel, inhuman or degrading treatment or punishment). It has been half a century since the adoption of the International Covenant on Civil and Human Rights (ICCPR). This document addresses the rights of persons arrested, capital punishment, and other aspects of law enforcement; and other conventions touch upon issues related to policing.

With the worldwide unrest following the murder by U.S. police of George Floyd, and with the relentless toll of dead and injured persons at the hands of police, notably in the U.S., it is time to draft a new convention on justice and human rights in policing.

A new convention can respond to changes in policing since ICCPR's entry into force in 1976. The working group's research and hearings can bring into sharp focus the ways that internationally recognized human rights are subverted by police, particularly the rights of persons of African descent in the Western democracies.

There is a precedent for this kind of update and focus of elements of a prior convention. Article 24 of ICCHR described basic right of every child the right “to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” These “measures of protection” and others were elaborated and amplified in the Convention of the Rights of the Child (1989).

By taking the lead to draft a new convention on justice and human rights in policing, OHCHR will be acting in its best legacy as the protector of human rights worldwide.

2. The OHCHR should create an international database on the use of deadly force by law enforcement agencies.

This database can develop international standards for the use of force; compile comprehensive use of force data; prepare a guide to best practices; and provide a standard to recognize agencies whose policies and practices respect human rights and to identify those whose practices are oppressive and do not meet international standards on the use of force.

Beyond the fatal shootings of a thousand persons annually by law enforcement officers in the United States, which are undeniably oppressive, it is police officers in cities from Lagos to Hong Kong who are the enforcers of overt political repression. The OHCHR has programs concerning issues from “adequate housing” to “water sanitation,” and there is in fact a human rights dimension to all of these issues. Surely there is a place for “justice and human rights in policing” in the inventory of the High Commissioner’s concerns. This initiative will provide hope of redress for citizens throughout the world who suffer from police brutality, corruption, and repression.

C. Proposals for the United States Congress and Department of Justice.

1. The U.S. Congress should enact a national legislative standard for police use of deadly force.

a. The criteria for use of force described in *Tennessee v. Garner* (1985) and *Graham v. Conner* (1989) decisions of the U.S. Supreme Court, the basis for almost all deadly force policies, are not adequate to prevent unnecessary loss of life at the hands of law enforcement officers.

b. Deadly force law, regulations, and policy should describe specific conditions under which an officer may not kill a person. Under a policy based on objective, visible conditions, an officer should be prohibited from using deadly force if:

- 1) a suspect is unarmed;
- 2) a suspect is running away or attempting to withdraw;
- 3) a suspect is driving away or sitting in a parked car;
- 4) a suspect is not armed with a firearm – for example, when a suspect is holding a knife, screwdriver, or blunt object; and
- 5) if the officer is alone – for example, after a solo foot chase.

In the event that deadly force is used, officers shall not shoot multiple times at a suspect without re-evaluating the necessity of additional deadly force.

Instead of relying on the officer's subjective judgment of a threat to his/her life or that of a passer-by, the use of force is governed by observable conditions. The officer under current criteria thinks, "Is this person a threat to my life?" In the proposed criteria, an officer is trained to think, "This person is unarmed (or fleeing, sitting in a car, holding a screwdriver). How can I apprehend him without using my firearm?"

Note: For a scholarly discussion of these recommendations, see Zimring, Franklin. 2017. *When Police Kill*. Harvard University Press, Cambridge, p. 227-232.

2. Congress should establish a dedicated fund to make deep investments in community-based public safety initiatives that do not rely on law enforcement to address community harm and that promote community health, safety, and well-being.

Congress must address the paradox of current police practice in the U.S., specifically that the over-policed, racially profiled communities remain "high crime areas" year after year. These communities are severely under-resourced in accessible health care, affordable housing, living wage jobs, and other aspects of a secure family and social life. The typical police budget across the U.S. is regularly increased, even though it dwarfs spending on human needs in most local governments, and particularly in the neighborhoods that suffer the worst of police brutality.

Increased federal investment could begin as a program administered within USDOJ. How can the Justice Department, putting aside ideology, contribute to alleviating the large-scale, chronically underfunded, unmet human needs in cities throughout the country? By providing funding for community-based programs that address these needs at the grassroots level. Examples include:

- a. violence interruption by community residents/leaders;
- b. provision of mental health services for people in crisis (including homeless individuals), without police involvement;
- c. practical programs operated by community organizations, such as provision of transportation to seniors for shopping, medical appts., etc.;
- d. prevention of evictions and other tenant rights-based approaches to improving housing conditions;
- e. assistance with access to public benefits;
- f. assistance for residents to obtain a "medical home", and to obtain health insurance and related health services;
- g. employment programs for youth, formerly incarcerated persons, and others facing barriers to employment.

There are successful models of such programs in a number of localities, but their scale is inadequate given the emergency conditions in the most hard-pressed American communities. Congress and USDOJ may think of the increased investments as demonstration projects, or ways to illustrate non-police approaches to public safety. The scale may be initially small, but such projects would show a tangible improvement in the wellbeing of residents, and they could be rolled out fairly quickly. Successful projects could be replicated and scaled up.

Note: For research and discussion of this type of approach in Dallas County, Texas, see the *Final Report of the Working Group on 10 New Directions for Public Safety and Positive Community Change*, August 2020: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:bef0f610-9c01-402e-8242-5a8df32b0042>.

3. The United States Department of Justice (USDOJ) should create a new office within the Civil Rights Division for the purpose of investigating, and prosecuting where warranted, *all* officer-involved-shootings (OISs) by local police departments and other law enforcement agencies. Congress should remove barriers to effective federal prosecution in OISs.

a. The number of prosecutions – local, state, and federal – of officers who kill is so small compared to the number of fatal OISs as to be statistically insignificant. Local district attorneys do not have the inclination or the resources to effectively prosecute the police officers that they work with and depend on in the routine prosecutions of every other type of crime.

b. **Congress should legislate broader civil rights criteria** in order to enable prosecution of the ongoing, extra-judicial killings of the public by police, which have not decreased despite limited reforms in some local police departments. The taking of a life by law enforcement, unless in genuine self-defense, is an act of deadly official oppression and a violation of basic human rights. The victim in an OIS, it must be remembered, has not been convicted of any crime.

The criteria for USDOJ to launch a civil rights complaint in OISs are too narrow. Meeting the law’s “willfully subjects” criterion ([18 U.S.C. § 242](#)) and requiring “specific intent” ([Screws v. United States, 325 U.S. 91](#)) are so strict that a civil rights prosecution in a fatal police shooting is extremely rare.

c. **Congress should by legislation limit or end the judicial doctrine of “qualified immunity” (QI).** QI prevents the families of victims of police brutality from effectively prosecuting a wrongful death claim for civil damages, which given the paucity of criminal prosecutions is typically their only hope of justice. The QI doctrine often results in the loss or dismissal of a particular family’s wrongful death suit, but it has a broader more pernicious impact. The threat of civil cases is a weak deterrent to deadly police brutality because of the protections afforded officers and their agencies through qualified and sovereign immunity.

A recent opinion from the 4th Circuit Court of Appeals sought to limit qualified immunity, overturning a lower court ruling that dismissed a police brutality case on the grounds of qualified immunity. Circuit Judge Henry F. Floyd wrote in the opinion:

Although we recognize that our police officers are often asked to make split second decisions, we expect them to do so with respect for the dignity and worth of black lives. Before the ink dried on this opinion, the FBI opened an investigation into yet another death of a black man at the hands of police, this time George Floyd in Minneapolis. This has to stop. To award qualified immunity at the summary judgment stage in this case would signal absolute immunity for fear-based use of deadly force, which we cannot accept. ([Published opinion, U.S. 4th Circuit Court of Appeals, No. 18-2142](#), 10 June 2020, p. 20.)

d. The new USDOJ office should direct or oversee OIS investigations in each judicial district.

4. As a high priority, and as a demonstration of compassion for grieving, struggling families, USDOJ should develop model protocol for engaging families in the aftermath of a fatal police shooting. USDOJ should support research concerning the treatment by police departments of families who have lost a loved one to deadly police violence.

What has been the experience of these families? What help, if any, did local government provide these families? What policies exist in police departments to engage families after a fatal OIS? This research should inform development of new federal guidelines and protocols for how police departments should engage and assist families of victims of OISs. These policies should be grounded in the actual experience of directly impacted families.

5. Related to Item 4 above, USDOJ should make sure that families of victims of police brutality are eligible for compensation when police kill or seriously injure their loved ones.

Families are typically left on their own to cope with funeral expenses, recovery of victim's personal property and clothing, damage to their residences, official attacks on their loved one's reputation – all in addition to coping with their grief and loss.

But in many states, relief from the Crime Victims Compensation Program is allowed only if the victim “did not: participate in the crime; commit illegal activity at the time of the crime; or share responsibility for the crime due to [his/her] behavior.” Clauses such as these typically disqualify an individual or family victimized by the police. Officers involved in a shooting, however, are perfectly able to receive compensation – e.g., for emotional distress.

Note: For one example of such policies, see the U.S State of Texas guidelines here:

[https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program/eligibility-crime-victims-compensation-program.](https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program/eligibility-crime-victims-compensation-program))

The support and advocacy of the OHCHR for the proposals described herein could be pivotal in their implementation.

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