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## Human Rights Council

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Agenda item 9

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

## **Written statement\* submitted by Advocates for Human Rights, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[04 June 2020]

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\* Issued as received, in the language(s) of submission only.

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## **Recent events highlight need to dismantle systemic racism in the United States of America**

The Advocates for Human Rights welcomes the annual report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

### **Police use of lethal force in the United States of America**

The Advocates for Human Rights condemns the killing of George Floyd, an African American man who died on May 25, 2020 while in police custody in Minneapolis, the city where The Advocates for Human Rights is headquartered. During his arrest for allegedly using a counterfeit \$20 bill, Mr. Floyd was pinned on the ground by four Minneapolis police officers, one of whom kept his knee on Mr. Floyd's neck for 8 minutes and 46 seconds, even after he lost consciousness. Mr. Floyd's death has been declared a homicide.

Mr. Floyd's murder is the latest of many killings of unarmed African Americans in the United States. In our own local community in Minnesota, Mr. Floyd's murder is the most recent of an estimated 195 officer-involved deaths since 2000,<sup>1</sup> including the killings of Jamar Clark (2015) and Philando Castille (2016). There has been a complete lack of accountability for these killings, with few police officers being prosecuted. Of the handful of officers who have been prosecuted locally, there has been only one conviction – of a Black Somali-American Minneapolis officer who shot Justine Damon (2017), who was a white woman. In the case, questioning of Officer Mohamed Noor revealed racial bias in defining the “threat” posed by the victim.<sup>2</sup>

The use of lethal force by law enforcement officers in the United States implicates important human rights, including the right not to be arbitrarily deprived of life, the right to security of person, the right to freedom from discrimination, and the right to equal protection of the law.

Police kill hundreds of people every year throughout the United States. While the U.S. fails to track how many people police kill, independent analysts report 1,099 people were killed by police in 2019, of whom 24% were Black people.<sup>3</sup> African American men are disproportionately represented in these statistics, part of a wider pattern of discrimination.

Under international human rights law, the State has the central obligation to respect and protect each person's life, liberty and security— regardless of the color of their skin. U.S. authorities at every level of government fail to prevent arbitrary deprivation of life. When an officer-involved killing occurs, the investigation must be prompt, effective, thorough, independent, impartial, and transparent – pursuant to the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths (2016). In the United States, investigation of many officer-involved killings have been internal, rather than truly independent and impartial. In many jurisdictions, investigations lack independent oversight. For example, Minnesota law prohibits municipal civilian review boards from making findings of fact or determinations regarding a complaint against an officer or from imposing discipline on an officer.<sup>4</sup>

All 50 states and Washington, D.C. fail to comply with international standards on the use of lethal force by law enforcement officer. Those standards authorize lethal force ONLY as a last resort, after law enforcement has tried non-violent/less harmful means to protect themselves or others from death or serious injury. These overbroad laws governing use of

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<sup>1</sup> Jeff Hargarten, et al., *Every police-involved death in Minnesota since 2000*, Star Tribune, May 31, 2020, <https://www.startribune.com/fatal-police-encounters-since-2000/502088871/>.

<sup>2</sup> Carl Takei and Paige Fernandez, *What Officer Noor's Conviction Says About Racism in America*, ACLU Blog, accessed June 3, 2020, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/what-officer-noors-conviction-says-about-racism-america>.

<sup>3</sup> Mapping Police Violence, accessed June 3, 2020, <https://mappingpoliceviolence.org/> Black people are three times more likely than white people to be killed by police; the police homicide rate is 6.6/1 million for Black people, 3.8/1 million for Hispanic people, and 2.5/1 million for white people. Id.

<sup>4</sup> Minn. Stat. sec. 626.89, subd. 17.

force influence the decision not to prosecute many officers responsible for killing African Americans. Further, police union contracts often undermine state authority to hold officers accountable.

States must ensure independent investigations and accountability for officer-involved killings. Even when law enforcement officers are prosecuted, overbroad deadly force statutes impede accountability. For example, Minnesota law allows an officer to use deadly force based on the officer's "reasonable belief."<sup>5</sup> Accountability is sometimes also limited by prosecutors' need to maintain good working relationships with police. Additionally, when victims' families pursue civil lawsuits, the judicially created doctrine of "qualified immunity" shields officials from liability for civil rights violations unless the conduct has been "clearly established" in a previous court decision to be an unlawful Constitutional violation.<sup>6</sup>

## Law enforcement response to peaceful protests

Mr. Floyd's murder and the lack of accountability and systemic change have resulted in protests that began in Minneapolis and spread throughout the United States. The vast majority of protests have been peaceful, but credible reports show unnecessary and disproportionate use of force by law enforcement and National Guard troops, including indiscriminate and improper use of less-lethal weapons and ammunition. They have deployed tear gas to disperse peaceful demonstrators and fired rubber bullets and flashbangs at protesters, including in situations where peaceful protesters were retreating or seeking shelter. In Minneapolis, some individuals who were not participating in protests were shot with less-lethal weapons while standing on their own front porches.

There have been also been several hundred reported incidents, including several in Minneapolis, of law enforcement physically attacking, intimidating, and arbitrarily arresting journalists covering the protests, despite their press credentials being clearly visible.

## Ongoing systemic racism in the U.S. and the impact of COVID-19

Policies and practices at the federal, state, and local levels continue to disproportionately affect racial and ethnic minorities. Racial, ethnic, and national origin bias pervade the criminal justice system, including widespread use of racial profiling and stark racial disparities in arrests, convictions, and sentencing.

The COVID-19 pandemic is exacerbating racial disparities in the United States. According to the Centers for Disease Control and Prevention, "current data suggest a disproportionate burden of illness and death among racial and ethnic minority groups."<sup>7</sup> These disparities find their roots in structural and institutional racism. COVID-19's racial disparities are

<sup>5</sup> Minn. Stat. sec. 609.066 Authorized Use of Deadly Force by Peace Officers Subd. 2 Use of deadly force. Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

- To protect peace officer or another from "death or great bodily harm";
- To effect the arrest or capture, or prevent escape of a person officer knows or reasonably believes has committed a felony involving the use or threatened use of deadly force;
- To effect the arrest or capture, or prevent escape of a person officer knows or reasonably believes has committed or attempted a felony if officer reasonably believes that person will cause death or great bodily harm if not apprehended.

<sup>6</sup> Reuters, *Shielded*, accessed June 3, 2020, <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/>.

<sup>7</sup> Centers for Disease Control and Prevention, *COVID-19 in Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

exacerbated in Minneapolis, a metropolitan area with some of the nation's worst underlying racial disparities.<sup>8</sup>

First, racial and ethnic minorities are disproportionately represented in criminal and immigration detention facilities. A May 29 statement by 11 special procedures mandate-holders recognized that “people in detention throughout the US are particularly vulnerable to COVID-19,” in part because the detention facilities are overcrowded and lack even basic protective measures. “Any failure to effectively mitigate the resulting risk,” the experts warned, is “an issue of racial discrimination and racial justice of paramount importance.”<sup>9</sup>

Second, institutional racism in the form of residential segregation exacerbates dangers to racial and ethnic minorities. Members of racial and ethnic minorities are more likely to live in densely populated areas, making physical distancing more difficult. Moreover, residential segregation is linked with adverse health outcomes and underlying health conditions that can increase COVID-19's severity.

Third, racial and ethnic minorities disproportionately work in conditions that exacerbate their vulnerability to COVID-19. According to The Lancet, they are more likely to be critical workers in essential industries, compelled to work outside the home.<sup>10</sup> Economic circumstances force some vulnerable workers to continue working in high-risk jobs. Lacking paid sick leave, people may continue to work even when they are ill.

Fourth, COVID-19 amplifies the effects of health disparities rooted in institutional and environmental racism. Systematic racism and stigma can elevate levels of chronic and toxic stress among racial and ethnic minorities, undermining prevention and treatment efforts. Racial and ethnic minorities and members of indigenous communities living on tribal lands also face barriers to accessing health care.

## Recommendations

The Advocates for Human Rights encourages the United States of America, as well as all Member States, to support the following recommendations:

### Law Enforcement

- Dismantle existing policing systems and redesign them to ensure respect for and protection of human rights;
- Adopt at local, state, and national levels comprehensive legislation prohibiting racial profiling;
- Collect and publish disaggregated statistics about police stops, searches, and use of force, to monitor trends regarding racial profiling and treatment of minorities by law enforcement;
- Establish independent oversight bodies with jurisdiction over police conduct, with real authority to conduct impartial investigations of all complaints of human rights violations;
- Conduct a full review of police procedures and training to better comply with international human rights standards;
- Provide adequate resources to train law enforcement officials de-escalation and other techniques and strategies to minimize use of force;

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<sup>8</sup> Greg Rosalsky, *Minneapolis Ranks Near The Bottom For Racial Equality*, Planet Money, National Public Radio, June 2, 2020, <https://www.npr.org/sections/money/2020/06/02/867195676/minneapolis-ranks-near-the-bottom-for-racial-equality>.

<sup>9</sup> United Nations (UN) Office of the High Commissioner for Human Rights, *US Government urged to do more to prevent major outbreaks of COVID-19 in detention centres—UN experts*, May 29, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25912&LangID=E>.

<sup>10</sup> Aaron van Dorn et al., *COVID-19 exacerbating inequalities in the US*, The Lancet, Apr. 18, 2020, at 1243, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30893-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30893-X/fulltext).

- Assess the disproportionate impact of mandatory minimum sentences on racial and ethnic minorities; and
- Create a national commission to examine police tactics nationwide, including the use of excessive force, militarization of local police forces, and policing of protests.

**COVID-19**

- Take immediate steps to reduce the number of people held in detention facilities and ensure that all persons in detention have the materials and other resources to follow best practices to mitigate the risks of COVID-19;
- Deploy substantial COVID-19 funding and health care resources to communities with large populations of indigenous people and racial and ethnic minorities, particularly communities with high levels of underlying racial disparities, and expand community-based, culturally appropriate preventive health care programs in those communities;
- Ensure that all workers who have underlying health conditions that make them more vulnerable to COVID-19, including undocumented workers, are eligible for income support payments and are not compelled to return to work, regardless of whether their positions are deemed critical; and
- Mandate that all employers provide paid sick leave for any worker who has symptoms of COVID-19.

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Minneapolis Commission on Civil Rights, NGO without consultative status, also shares the views expressed in this statement.