Amnesty International submits this document in response to the call for inputs issued by the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement to inform their 24 April – 5 May 2023 visit to the USA. This contribution focuses on several law enforcement issues specifically impacting Black communities in the USA, the use of lethal force by law enforcement, the policing of protests and immigration enforcement. The visit comes at a crucial time due to the recent killings of Tyre Nichols, Keenan Anderson and others.1

Police use of lethal force

The use of lethal force against people of colour in the USA should be seen in the context of a wider pattern of racially discriminatory treatment by law enforcement officers, including police harassment, over-policing, arbitrary arrest and detention, excessive use of force, deaths in custody, unjustified stops and searches and racial profiling.2 Amnesty International has previously raised concerns about these issues, including the failure of the federal government to pass the End Racial and Religious Profiling Act (ERRPA), which would prohibit any law enforcement agent or agency from engaging in racial profiling.3

The US government does not document how many people die due to police use of force, so the exact number is unknown. In response to the failure of government agencies to collect reliable and complete data, several NGOs have tried to document the number of police killings. They estimate that more than 1,000 people are shot and killed by police each year, and hundreds more are killed using other forms of force.4

For instance, according to The Washington Post, 8,087 people died between 2015 and 2022 from police use of firearms alone.5 Black people are disproportionately impacted by this use of lethal force as they comprise nearly a quarter of deaths (23.4%) from police use of firearms and are killed by police at more than twice the rate of white people, despite being less than 13% of the US population.6

While the government has an obligation7 to document and provide this data, consistent with the enactment of federal law requiring it to do so, it has not yet done so.

Congress passed the Death in Custody Reporting Act in 2014, requiring states that receive federal criminal justice funding to gather and report data to the US Attorney General on how many individuals die each year while in police custody or during arrest. However, nearly nine years after enactment, the US Department of Justice has failed to fully implement the program. Therefore, there is no single, comprehensive source of data on the number and circumstances of these deaths, disaggregated by identity such as race, gender, age, etc, creating an information vacuum that deprives policymakers of crucial data which could improve policies aimed at identifying discriminatory patterns and reducing these deaths.

There is also another factor at play when it comes to policing in the USA. The federal and state governments’ failure to adequately regulate the acquisition, possession and use of firearms has led to pervasive gun ownership among the general public. This has heightened risks of police lethality against individuals who are assumed to be armed and posing threat to life, but who in many instances are in fact unarmed. This is especially the case when law enforcement interacts with young Black men, who – due to systemic biases – are assumed to be armed and involved in group violence. While federal law seeks to prevent guns from getting into the hands of those that may be high risk, such as those previously convicted of felonies, there are significant gaps and loopholes.8 With such a heavily armed population, it is critical that all law enforcement officers and agencies understand and adhere to their obligation to respect and adhere to their obligation to respect and
preserve human life. Law enforcement officials must always seek to apply non-violent means before resorting to the use of force and firearms.\textsuperscript{14}

In 2020, Amnesty International reanalysed state statutes on the use of lethal force and found that they are far too permissive and do not meet international standards, violating the right to life, the right to security of the person, the right to freedom from discrimination and the right to equal protection of the law.\textsuperscript{4}

There is no federal statute governing the use of lethal force in the USA. The use of lethal force is governed by individual state statutes and US common law. The US Supreme Court ruled in \textit{Tennessee v. Garner} that lethal force may not be used unless it is necessary to prevent escape of someone where the officer has probable cause to believe that the suspect committed a crime involving the infliction of serious physical harm or where the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.\textsuperscript{15} In \textit{Graham v. Connor}, the US Supreme Court established the standard by which a jury is to judge an officer’s actions in the use of force - namely whether an officer’s actions were “objectively reasonable in light of the facts and circumstances confronting them” and that the “reasonableness” of a particular use of force must be judged from the perspective of a “reasonable officer on the scene.”\textsuperscript{16} These Court-created standards fall far short of international law and standards on the use of force and firearms.\textsuperscript{17}

Laws that exist within the USA should be very clear about what the essential criteria are that define the legal standard for the nature of the harm threatened, i.e., the requirement of a present or future threat and the nature of that threat (imminent threat of death or serious injury). Amnesty International found that seven states and Washington, D.C. have not enacted any laws governing the use of lethal force.\textsuperscript{18} Of the states which do have such laws, none of them were sufficiently stringent to comply with the US’s obligations under international law to respect and protect the right to life.\textsuperscript{19} Lastly, 11 states reviewed do not even comply with the standard of \textit{Tennessee v. Garner}.\textsuperscript{20}

The Police Exercising Absolute Care with Everyone Act, (PEACE Act), was introduced in Congress in 2019.\textsuperscript{21} If enacted, among other provisions, it would bar federal law enforcement officers from using deadly force unless necessary as a last resort to prevent imminent death or serious bodily injury, and only after reasonable alternatives have been exhausted.\textsuperscript{22} It would also require states that receive specific federal funding to enact a similar use of force law in order to continue receiving those funds. The PEACE Act, along with the ERRPA, was later enfolded into the George Floyd Justice in Policing Act in 2020, however, Congress has failed to pass this larger law enforcement reform bill since introduced.\textsuperscript{23}

With the current statutory situation being conducive to the early and unjustified use of lethal force, police practice has aggravated this situation even more and in particular when it comes to the use of lethal force against people of colour. Many incidents involving the use of firearms against people of colour (for instance the shooting of Tamir Rice or Kajieme Powell) demonstrate that the first choice for police is the use of their firearm, rather than to attempt any de-escalating tactics or less harmful methods of control. The duty to minimize harm and injury and to preserve human life is regularly disregarded. Furthermore, the doctrine of “qualified immunity”\textsuperscript{24} creates an environment where accountability for law enforcement officers who unjustifiably use force or lethal force is the exception rather than the rule. Even though there are some recent emblematic cases where individual officers were convicted, there is still a lack of overall accountability for unlawful and excessive use of force.

### Policing of protests

During the policing of the protests sparked by the police killings of George Floyd and other Black people in 2020, Amnesty International documented serious human rights concerns in relation to the use of excessive force. In city after city, Amnesty International documented incidents of unnecessary and excessive use of force by law enforcement agencies while policing Black Lives Matter protests.\textsuperscript{25} The unnecessary and excessive use of specific weapons, such as chemical irritants and kinetic impact projectiles (KIPs), is ultimately a symptom of the very issue that started these protests: unaccountable unlawful police use of force targeting people of colour.

In many cities law enforcement confronted protesters while wearing riot gear as a first level of response, rather than in response to any particular acts of violence. Again and again, law enforcement used physical force, chemical irritants, KIPs, and arbitrary arrest and detention as a first resort against largely peaceful demonstrations. In several cities, law enforcement resorted to physical force against largely peaceful protesters to enforce hastily rolled out curfews.

Amnesty International documented the use of tear gas and pepper spray in dozens of incidents across the country.\textsuperscript{26} In many cases, these were used against people non-violently protesting, rather than as a necessary and proportionate response to widespread violence.
or a perceived threat. In many of the documented incidents, chemical irritants were used as a first resort to disperse a peacefully assembled crowd or in response to non-compliance with some specific order.

In numerous incidents across the USA, law enforcement personnel targeted media representatives with chemical irritants, KIPs and arrest and detention. Amnesty International documented cases in several states where journalists sustained serious injuries resulting from KIPs and/or were detained and arrested without proper access to medical care. Legal observers and street medics were similarly targeted.

Due to the systemic racism inherent in US policing, majority Black protests have been faced by the type of violations described above. One recent example is the police response to protests in Akron, Ohio in June 2022 following the fatal shooting by police of Jayland Walker, a 25-year-old Black man, who was shot 46 times. The local community and activists organized largely peaceful protests demanding accountability. Local authorities issued a curfew that remained in effect for two weeks following some property damage during the initial nights of the protests. Officers repeatedly confronted protesters in riot gear and discharged tear gas and stun grenades to disperse the crowds. More than 75 protesters were arrested following these protests, many still facing charges. The investigation into the officers who killed Jayland Walker continues nearly eight months after his death.

Authorities must develop a system for the collection and distribution of a wider range of disaggregated data on the policing of protests and the treatment of protesters in the criminal justice system more broadly to take into account the use of particular police tactics, such as containment or surveillance tactics, the deployment of less lethal weapons, and the specific offenses for which individuals are arrested and/or charged following demonstrations.

### Immigration enforcement

The USA ratified the UN Convention Against Torture (UNCAT) with numerous limiting conditions, including a reservation to the prohibition of cruel, inhuman or degrading treatment or punishment and a declaration that “the provisions of articles 1 through 16 of the Convention are not self-executing”, that is, none of the substantive provisions of UNCAT would be enforceable in US courts. Therefore, there is no domestic statute on torture in US law. The USA has also narrowed its understanding of the definition of what constitutes torture under the Convention, making it more restrictive than what is understood in international law. While various remedies and protections are available that individuals may seek in the US legal system, for many survivors of torture – whether that be individuals subjected to torture under the CIA’s interrogation program, Black and Brown individuals who were subjected to torture perpetrated by police in Chicago between 1972 and 1991, or asylum-seekers who were subjected to race-based torture in their forced repatriation to Haiti, justice is far from accessible and effective.

Indeed, in a recent report, ‘They Did Not Treat Us Like People’: Race and Migration-Related Torture and Other Ill-Treatment of Haitians Seeking Safety in the USA, Amnesty International detailed how US immigration authorities subjected Haitian asylum seekers to arbitrary detention and discriminatory and humiliating ill-treatment that amounted to race-based torture, rooted in anti-Black discrimination. US-based NGOs and lawyers interviewed for the report said the treatment Haitians receive under the control of US immigration is deeply interconnected with the way Black people in the USA have been treated historically, including in the criminal justice system, where evidence demonstrates Black people are vastly overrepresented.

Between September 2021 and May 2022, the USA expelled more than 25,000 Haitians, making significant use of Title 42, an order implemented under the Trump administration and thinly disguised as a public health measure, which has always worked as an immigration and asylum deterrence policy, in express violation of national and international law.

Amnesty International's research found that these mass expulsions were only the latest chapter in a long history of detention, exclusion, and the practice of trying to deter Haitians seeking safety in the United States, rooted in systemic anti-Black discrimination.

As well as being denied access to sufficient food, healthcare, information, interpreters, and lawyers – cumulatively amounting to ill-treatment, all 24 Haitians interviewed by Amnesty International for the report said they were returned to Haiti by plane in handcuffs and shackles – treatment that caused them severe psychological pain and suffering due to its association with slavery and criminality. In the assessment of Amnesty International, based on the testimonies gathered, this amounts to torture based on their race and migration status under international human rights law, which absolutely prohibits torture and other ill-treatment, and requires states to protect people from all acts of torture, including those based on specific vulnerabilities such as race, migratory status, and nationality.
The history of enslavement of people of African descent and contemporary forms of systemic anti-Black racism provided a critical backdrop to this research. As evidence highlighted in the report suggests, practices of ill-treatment towards Haitians are widespread and have occurred historically at different times and in different places, pointing to long-term and systemic racial discrimination within the immigration system with the aim of punishing Haitian people and deterring them from seeking asylum in the United States.

As part of the research, Amnesty International reviewed and summarized strong evidence that anti-Black racism is embedded within the US immigration system. However, just as US authorities do not collect disaggregated data on the number of people killed by the police, they also do not appear to proactively collect data on racial bias or discrimination within the immigration system, as required by international human rights standards. With one of the biggest immigration detention systems in the world, Amnesty International has called on the US government to commit to reversing anti-Black policies and to conduct a full review of the disparate treatment of Black people seeking protection in the US immigration system.

For a complete list of recommendations on these issues, please see:

- **Amnesty International, USA**: “They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA, 2022.

1. Amnesty International USA, Amnesty International USA calls on Memphis Police Department, Congress to take accountability for systemic failures that led to death of Tyre Nichols. 27 January 2023; OHCHR, UN experts call for new approaches to policing in the United States following deaths of Keenan Anderson and Tyre Nichols, 10 February 2023.

2. For example, according to the US Department of Justice’s Bureau of Justice Statistics, despite comprising just 13% of the population, Black people were more likely to be stopped by police, both in traffic stops and street stops, than white or Hispanic people in 2015, the most recent year for which national data from the government is available. US Department of Justice, Office of Justice Programs, Contacts Between Police and the Public, 2015, Bureau of Justice Statistics Special Report. Appendix Table 4: Number and percent of U.S. residents age 16 or older with police-initiated contact, by type of contact and demographic characteristics, 2015 (Percentage of whites arrested .03%; percentage of Blacks arrested .09%), www.bjs.gov/content/pub/pdf/cpp15.pdf. Appendix Table 4: Number and percent of U.S. residents age 16 or older with police-initiated contact, by type of contact and demographic characteristics, 2015 (Percentage of whites arrested .03%; percentage of Blacks arrested .09%).

3. Amnesty International, United States of America: Submission to the UN Committee on the Elimination of Racial Discrimination, 107th Session, 8-10 August 2022, AMR 51/873/2022, 2022, p. 13. ERRPA has never passed since first introduced in 2001, despite being repeatedly introduced in different iterations from session to session of Congress. The bill is designed to enforce the constitutional right to equal protection of the laws by eliminating racial profiling through changing the policies and procedures underlying the practise. In addition to prohibiting racial profiling, the bill mandates training on racial profiling issues as part of Federal law enforcement training, conditioning the receipt of funds by state and local governments on their adoption of effective policies that prohibit racial profiling, and providing grants for the development and implementation of best policing practises, among other elements. See: US Senate, End Racial and Religious Profiling Act (S. 2355), 2019, www.cardin.senate.gov/wp-content/uploads/imo/media/doc/ERRPA%202019%20bill%20text%20.pdf.


6. The Washington Post, “Fatal Force: 1,106 people have been shot and killed by police in the past 12 months”, 15 February 2023, www.washingtonpost.com/graphics/investigations/police-shootings-database/. Similar databases which include deaths resulting from law enforcement use of other force as firearms, such as Mapping Police Violence and the Fatal Encounters database, show that annual numbers are likely much higher when other uses of force are included. They also indicate that the racial disparities persist when other forms of violence are included in the data. See: Mapping Police Violence, 31 December 2022, mappingpoliceviolence.org/; Fatal Encounters, fatalexcounters.org/.

7. UN Basic Principles on the Use of Force & Firearms, principles 6, 11(f), and 22.

8. Federal law does not currently require universal comprehensive background checks with each and every transfer or purchase of a firearm in the USA. As a result, studies have shown that 22% of all firearm acquisitions are conducted without any background check. For further reading, see Amnesty International, USA: In the Line of Fire: Human rights and US gun violence crisis, 2018.


10. Amnesty International, Deadly Force: Police Use of Lethal Force in the United States, June 2015, pp. 21-23. International standards provide that law enforcement officers should only use force when there are no other means that are likely to achieve the legitimate objective and that the amount of force must be proportionate to the seriousness of the harm it is aiming to prevent, and designed to minimize damage and injury. Officers may use firearms only as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”


13. Tennessee v. Garner sets a lower standard than that required by international law and standards, in particular, with regards to the type of harm threatened by the individual fleeing (the decision notes death/serious injury and serious physical harm interchangeably in the opinion) and also because it allows for police to use deadly force to prevent the escape of a person who is reasonably believed at some time in the past to have committed a crime involving the infliction or threatened infliction of serious physical harm. This is a less stringent standard than set out in the UN Basic Principles which is clear about the requirement of present or future threat, and is also much clearer about the nature of the threat i.e., imminent threat of death or serious injury or grave threat to life. Furthermore, general formulations such as a whether an officer’s use of force was “reasonable”, as laid out in Graham v. Connor, are also problematic as such formulations are largely vague and give a tremendous amount of discretion to the individual law enforcement official, making it almost impossible to hold him or her accountable. This becomes particularly problematic when it comes to the use of lethal force, where, in accordance with international standards, the reasonable belief must not relate to some sort of “necessity”, but must be the objectively reasonable belief of an imminent threat of death or serious injury to the officer or other persons.
Immigrants. Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016

interactions with local law enforcement, because of disproportionately impacted Black migrants “who are more likely than immigrants from other regions to have criminal convictions...” See NY Morgan

This language is more stringent than that of any state statute on police use of lethal force and the current federal standard under US Supreme Court precedent. The PEACE Act would also require consideration of the actions of the individual and officer leading up to a use of force encounter. It would also require that less than lethal force only be used when necessary and proportional, and only after reasonable alternatives have been exhausted and a warning has been given, where feasible.

The doctrine of qualified immunity protects state and local officials, including law enforcement officers, from individual liability unless the official violated a “clearly established” constitutional right. Qualified immunity is generally available if the law a government official violated isn’t “clearly established.” If qualified immunity applies, money damages aren’t available even if a constitutional violation has occurred. “Clearly established” means that, at the time of the official’s conduct, the law was sufficiently clear that every reasonable official would understand that what he or she is doing is unconstitutional. According to the Supreme Court, qualified immunity protects all except the plainly incompetent or those who knowingly violate the law. The Supreme Court has held that use of force by police and corrections officials violates the Fourth Amendment when it is “excessive.” Police and correctional officers receive qualified immunity if it isn’t clearly established that their use of force was excessive. According to the Supreme Court, while qualified immunity “do[es] not require a case directly on point,” it does require that “existing precedent must have placed the statutory or constitutional question beyond debate.”


More generally, they point to unnecessary and disproportionate use of force against some protests, and they contrast the policing of racial justice protests with the policing of other demonstrations.

According to police accounts and later released dashboard and body camera footage, Akron Police officers attempted to stop Jayland Walker’s vehicle for an unspecified traffic violation in the early morning hours of 27 June. Walker did not stop and a chase by law enforcement ensued, which lasted several minutes. Police allege that Walker fired a single shot from his car at the police during the pursuit. Jayland Walker then fled his car on foot and was pursued by at least eight Akron police officers who unsuccessfully deployed a laser to stop him. When he then stopped and turned around, the officers shot him at approximately 90 times. Jayland Walker was unarmed at the time, though a firearm was reportedly found in his vehicle.

“The United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.”


Amnesty International, USA: They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA, 2022.

See for example: UN Special Rapporteur on extreme poverty and human rights, Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, 4 May 2018, A/HRC/38/33/Add.1, para: 54. Furthermore, a study conducted by the NYU School of Law Immigrant Rights Clinic and the Black Alliance for Just Immigration pointed out that the Obama’s administration immigration enforcement focus on individuals with criminal records disproportionately impacts Black migrants “who are more likely than immigrants from other regions to have criminal convictions, or at least to be identified through interactions with local law enforcement, because of rampant racial profiling.” See NY Morgan-Trostle, M., Zheng, K. & Lipscombe, C., The State of Black Immigrants. Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016.