



THURGOOD MARSHALL  
CIVIL RIGHTS CENTER  
HOWARD UNIVERSITY SCHOOL OF LAW



THE CENTER FOR JUSTICE & ACCOUNTABILITY

October 6, 2020

Maria Claudia Pulido  
Acting Executive Secretary  
Inter-American Commission on Human Rights  
Washington D.C.

**Re: Movement Lawyering Clinic at Howard University School of Law, the Thurgood Marshall Civil Rights Center, and the Center for Justice and Accountability submission to the Inter-American Commission on Human Rights Hearing on Structural Racism and Police Violence in the United States**

Dear Acting Secretary Pulido and Commissioners:

The Commission's November 26, 2018 report "Police Violence Against Afro-descendants in the United States," recommended that the United States provide reparations for police violence against Black Americans.<sup>1</sup> Since then, more evidence has accumulated justifying that demand. That evidence includes more thorough and specific documentation of the harms to victims, families, and the larger Black community, and more robust proposals for reparatory justice that have emerged from Black human rights activists in the United States including the Movement for Black Lives. In this submission, we provide a survey of these most recent developments.

**I. The harm of police violence includes severe damage to the mental health of both the family members of those directly impacted and the larger Black community.**

**a. Reparations are due for harms to family members**

Under international law, the victims of gross human rights violations include family members of the victims. The Inter-American Court initially recognized that family members of victims of gross human rights violations should be beneficiaries of reparations because of the deep

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<sup>1</sup> IACHR, *African Americans, Police Use of Force, and Human Rights in the United States*, OEA/Ser.L/V/II.Doc.156/18 (Nov. 26, 2018) [hereinafter "*Report on Police Use of Force*"] at 164, Recommendations E32, E33 ("E32: Undertake studies with the goal of creating guidelines for the reparations of historic and structural discrimination against African Americans and other historically marginalized groups. E33: Provide appropriate reparation to those affected by the racially disparate impact of federal, state, and local laws and policies")

psychological harms that they suffer.<sup>2</sup> Later, the Court went a step further and held that family members are victims in their own right. In a case related to the enforced disappearance of Nicholas Blake in Guatemala, the Court held that the parents and siblings of Mr. Blake had suffered violations of their right to humane treatment.<sup>3</sup> The Court held that Mr. Blake's disappearance and the Guatemalan government's failure to effectively investigate the case caused the family "suffering, intense anguish, and frustration in the face of the Guatemalan authorities' failure to investigate and the cover up of what occurred."<sup>4</sup> The Court underscored that a violation of the right to humane treatment was based on two types of harms to the family: the harm to Blake (his disappearance and death) and the frustration and emotional distress caused by the failure to investigate and prosecute. The perpetuation of injustice to the family, in other words, is also a violation to the right to humane treatment.

Soon after issuing its judgment in *Blake* the Court also issued its judgment in *Villagrán Morales* (known as the "street children" case). Here, the case was squarely about arbitrary killings. The Court found evidence that Honduran government security forces had an open and notorious practice of regularly targeting youth considered to be "street children" with violence, and it concluded that the abduction, torture and extrajudicial killing of three minor children and two young adults by government security forces was part of the "prevailing pattern" of violence against so-called "street children."<sup>5</sup> No adequate investigation was conducted. No one was held to account. No information was provided to the families for days after the deaths of the victims. The Court found that the family members of the victims suffered anxiety and fear, and that "the feeling of insecurity and impotence caused to the next of kin by the failure of the public authorities to fully investigate the corresponding crimes and punish those responsible" amounted to a violation of the right to humane treatment of the family members.<sup>6</sup> In addition, the Court

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<sup>2</sup> In *Velásquez Rodríguez*, the Court found that there was sufficient evidence of "fright, anguish, depression and withdrawal, all because of the disappearance of the head of the family" and held that "the disappearance of Manfredo Velásquez produced harmful psychological impacts among his immediate family which should be indemnified as moral damages." *Velásquez Rodríguez v. Honduras*, Reparations, Judgment, IACtHR (ser. C) No. 7 (July 17, 1989).

<sup>3</sup> The right to humane treatment is protected under article 5 of the American Convention. Article 5.1 and 5.2 provide for the right to physical, mental and moral integrity as well as the right to be free from torture, cruel, inhuman and degrading treatment (CIDT). These are core human rights protected under Article I of the American Declaration of Human Rights, article 5 of the African Charter of Human and Peoples' Rights, Article 3 of the European Convention on Human Rights, article 7 of the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The United States has ratified the latter two instruments.

<sup>4</sup> *Blake v. Guatemala*, Reparations and Costs, Judgment, IACtHR (ser. C) No. 48 (Jan. 22, 1999); see also *Bámaca Velásquez v. Guatemala*, Merits, Judgment, IACtHR (ser. C) No. 70, ¶¶ 162–166 (Nov. 25, 2000).

<sup>5</sup> *Villagrán Morales v. Honduras*, Merits, Judgment, IACtHR (ser. C) No. 63, ¶¶ 189–190 (Nov. 19, 1999).

<sup>6</sup> *Id.* at ¶¶ 173, 177.

held that the failure to investigate and prosecute resulted in a violation of the rights to judicial protection and due process of the families.<sup>7</sup>

In *Gómez Paquiyauri Brothers v. Peru*, the Court was especially clear about the ways in which the killing of a loved one, compounded by the failure to investigate and prosecute, and the government's cover-up attempts at defaming the victim all constitute violations of the human rights of the family members:

[V]iolation of the right to psychological and moral integrity of the next of kin of Rafael Samuel and Emilio Moises Gómez Paquiyauri is a direct consequence of their unlawful and arbitrary detention on June 21, 1991; of the maltreatment and torture they suffered during their detention, and of the death of both approximately one hour after they were detained, as well as of officially presenting the facts as “a confrontation with subversives.” All this generated suffering and powerlessness of their immediate next of kin vis-à-vis the State authorities, for which reason, in this case, the next of kin can be considered the victims of cruel, inhumane, and degrading treatment, in violation of Article 5 of the American convention.<sup>8</sup>

The cases involving families of Black American victims of police brutality include similar facts:

-Samaria Rice, Tamir Rice's mother, reported deep psychological impact that violated her right to humane treatment, including not having slept a full night since the death of her son five years ago. Tajai Rice, Tamir Rice's sister, developed an eating disorder following the killing. Tamir Rice's brother has developed anger issues and now has a criminal record.<sup>9</sup>

<sup>7</sup> *Villagrán Morales v. Honduras*, Merits, Judgment, IACtHR (ser. C) No. 63, ¶253(6) (Nov. 19, 1999). See also *Gómez Paquiyauri Brothers v. Peru*, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 110, ¶ 118 (July 8, 2004).

<sup>8</sup> *Gómez Paquiyauri Brothers v. Peru*, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 110, ¶ 118 (July 8, 2004), citing, inter-alia, *Juan Humberto Sánchez v. Honduras*, Merits, Reparations and Costs, Judgment (ser. C) No. 99 ¶ 101 (June 7, 2003), *Bámaca Velásquez v. Guatemala*, Merits, Judgment, IACtHR (ser. C) No. 70, ¶ 160, 168 (Nov. 25, 2000), *Case of Cantoral Benavides v. Peru*, Merits, Judgment, IACtHR, ¶ 105; *Villagrán Morales v. Honduras*, Merits, Judgment, IACtHR (ser. C) No. 63, ¶¶ 175-176 (Nov. 19, 1999); and *Castillo Páez v. Peru*, Reparations and Costs, Judgment IACtHR (ser. C) No. 43, ¶ 59 (Nov. 27, 1998). Referencing *Case of Kurt v. Turkey*, App. No. 24276/94, ECHR (25 May 1998), ¶¶ 130-134. See also, *Çakici v. Turkey*, ECtHR, App. No. 23657/94, Judgment of 8 July, 1999, ¶ 98 (setting forth criteria to determine if a family member is a victim of a violation when their next of kin suffers abuses by state agents, including “the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries”).

<sup>9</sup> Adam Hudson. *Families of Police Violence Face Trauma Without Support* (2015). <https://truthout.org/articles/families-of-murdered-black-men-deal-with-trauma-channel-anger/>

-John Crawford's girlfriend, Tasha Smith, reported paranoia and fears of being alone.<sup>10</sup> She had isolated herself after her 22 year old boyfriend was murdered by police in a Walmart store in Beavercreek, Ohio for having a BB gun. She died in a car accident soon thereafter.

-Marshall Miles's sister, Maureen Miles has developed PTSD and has not been able to sleep since her brother's death.<sup>11</sup> Marshall went into cardiac arrest after being hogtied by police and placed face down on the jail cell floor. Four deputies then held him down with their knees, pressing down on his head, neck, back, and legs with their full body weight.

-Clinton Allen's mother has suffered from PTSD following the murder of her son.<sup>12</sup> His father has had two strokes and Allen's grandmother died on year after the murder, at 69, from a heart related issue. Allen was brutally murdered by Dallas police. Allen was shot seven times and one of those shots was in Allen's armpit, indicating that he had his hands up. Another one of those shots was in Allen's back, indicating Allen was retreating, thus not the aggressor. Allen was also unarmed.

-Sherita Jackson was not murdered by police, but was brutally arrested and assaulted in front of her children. Jackson's children are dealing with symptoms of PTSD. Her daughter is often triggered into crying spells and her son has been coping by writing his feelings in a journal. None of the issues were present until after Jackson's brutal arrest.

-Mary Stewart, the mother of Darrius Stewart, has reported not being able to eat or sleep.<sup>13</sup> She says that she constantly replays visuals of her son being murdered in her head. Darrius was murder in 2015 by police after having a scuffle which resulted in the police shooting him.

-Kalief Browder's mother, Venida Browder died of complications from a heart attack only 16 months after her son committed suicide.<sup>14</sup> Kalief has been struggling with depression since his release from Rikers Island. He spent three years awaiting trial for allegedly stealing a backpack. While Kalief was incarcerated, he was severely beaten and spent more than 800 days in solitary confinement.

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<sup>10</sup> Tom Archdeacon. *Months after Walmart Police Shooting , Tasha Thomas Dies in Car Crash* (sep. 24, 2016). <https://www.daytondailynews.com/news/arch-months-after-walmart-shooting-tasha-thomas-dies-car-crash/3Fv7BRG2z4ffYMv9hEltxN/>

<sup>11</sup>Geoff Gilbert. *Meet the Families Affected by Police Violence Who are Organizing to Stop the Killing* (May 7, 2015). <https://wagingnonviolence.org/2015/05/meet-families-affected-police-violence-organizing-stop-killing/>

<sup>12</sup> Adam Hudson. *Families of Police Violence Face Trauma Without Support* (2015).

<https://truthout.org/articles/families-of-murdered-black-men-deal-with-trauma-channel-anger/>

<sup>13</sup> Geoff Gilbert. *Meet the Families Affected by Police Violence Who are Organizing to Stop the Killing* (May 7, 2015). <https://wagingnonviolence.org/2015/05/meet-families-affected-police-violence-organizing-stop-killing/>

<sup>14</sup> Christen A. Smith. *The Fallout of Police Violence is Killing Black Women like Erica Gardner* ( Jan. 5, 2018). <https://www.pbs.org/newshour/nation/the-fallout-of-police-violence-is-killing-black-women-like-erica-garner>

-Erica Garner, Eric Garner's daughter, died from the brain damage caused by a heart attack. Before her death, she reported the mental and physical toll that her father's death has had on her, as well as her role as an activist. Erica Garner was only 27.<sup>15</sup>

### **b. Reparations are due for harms to the larger community**

When violations are of such a scale and nature that entire communities' rights are affected, the Court has ordered reparations that reach individuals who are beyond the group of direct victims and their family members. These have included public acts of acknowledgement and memorial spaces, a housing program for those who lost their homes as a result of the massacre, medical and psychological treatment, and health, education, production and infrastructure programs.<sup>16</sup> It is important to note, however, that when such reparations are ordered by the Inter-American Court, the nature and extent of the reparations are requested by the victims and their representatives. Thus, while Inter-American Court jurisprudence shows that communities affected by collective violations are entitled to community-wide reparations, the formulation of those reparations requires consultation with the affected communities. Community-wide reparations are consistent with the concept that when "full restitution" is not possible "an international court must order a series of measures that will safeguard the violated rights, redress the consequences that the violations engendered, and order payment of compensation for the damages caused."<sup>17</sup> They are also consistent with the key concept of transformative reparations, which is discussed in detail in section II, below.

In the case of Black Americans, studies have shown that the scale and nature of the harm reaches beyond the families, impacting the broader mental health of the Black community.<sup>18</sup> The widespread publications of these killings, although necessary, have created a form of vicarious trauma that increases the scope of harm to include all Black mothers and fathers, sisters and brothers, protesters, and concerned community members. The clinical term "vicarious trauma" has been used to describe the trauma that those in community with 9/11 victims and Boston bombing victims suffered, and it similarly applies to police brutality crimes.

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<sup>15</sup>*Id.*

<sup>16</sup>*Plan de Sánchez v. Guatemala*, Reparations, Judgment, IACtHR (ser. C) No. 116 ¶80 (Nov. 19, 2004); see also *Alobeboetoe v. Suriname*, Reparations, Judgment, IACtHR (ser. C) No. 15 ¶ 116(5) (Sept. 10, 1993) (ordering the reopening and staffing of the local school and the establishment of a medical dispensary).

<sup>17</sup>*Cantoral Benavides v. Peru*, Reparations, Judgment, IACtHR (ser. C) No. 88, ¶ 41 (Dec. 3, 2001).

<sup>18</sup> Study did not find that police killings of unarmed Black Americans had any significant mental health effects among white Americans. This specificity is important because it suggests that the adverse mental health effects are not simply driven by indirect exposure to violent events and the resulting experience of vicarious trauma.

In 2018, the American Psychological Association issued an official statement acknowledging the undue psychological burden that police brutality has had on the Black community.<sup>19</sup> Mental health experts have previously established a causal link between racism and an increase in depression, anxiety, substance abuse, and suicide amongst Black adults and youth.<sup>20</sup> In particular, Black men who have been racially profiled by police are at an increased risk of succumbing to these mental health issues, as well as post-traumatic stress disorder.

Similarly, the American Journal of Public Health published a survey in which young urban men were asked about their experience with police encounters and their subsequent mental health.<sup>21</sup> This survey specifically focused on Terry stops in New York City (commonly known as “stop and frisk” stops) in neighborhoods that have been targeted with aggressive policing tactics. Researchers recruited 1261 participants between the ages of 18 and 26. Overall, 85% of respondents reported having at least one police stop, and 46% reported being stopped at least once in the year they were surveyed. Of these police encounters, young men who had reported having more contact with the police also reported higher anxiety scores. The anxiety also increased based on how critical or intrusive the encounter with the police was.

This survey also estimated the likelihood of post-traumatic stress disorder based on the level of aggression shown by law enforcement during the police stop. There was more trauma in men who lived in public housing areas, suggesting that more aggressive policing occurs in these areas. There was also a strong correlation between invasive police stops and high levels of trauma. Young men who reported that they had been treated fairly by the police had reported lower levels of trauma. The survey concluded that aggressive policing that occurs in communities that are already targeted by law enforcement disproportionately creates compromised mental health outcomes.

Researchers also found that police brutality which results in death to another also creates trauma and stress to community members who become aware of it, especially in the first month or so after the incident. According to the survey, nearly 39 percent of over 100,000 Black Americans reported being directly exposed to one or more police killings of unarmed Black Americans in their state of residence in the 3 months prior to the survey. In essence, this survey found that police killings of unarmed Black Americans are responsible for more than 50 million additional days of poor mental health per year among Black Americans.<sup>22</sup>

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<sup>19</sup> A. (2018). Position Statement on Police Brutality and Black Males. Retrieved 2020, from file:///Users/brookeradford/Downloads/Position-Police-Brutality-and-Black-Males-1.pdf

<sup>20</sup> *Id.*

<sup>21</sup> Geller, A., Fagan, J., Tyler, T., & Link, B. G. (2014). Aggressive policing and the mental health of young urban men. *American journal of public health, 104*(12), 2321–2327. <https://doi.org/10.2105/AJPH.2014.302046>

<sup>22</sup> *Id.*

Black men are 2.5 times more likely to be killed by police than White men; one out of every 1000 young Black men will be killed by the police.<sup>23</sup> This statistic causes Black Americans to live in fear, even if they have not been directly impacted by police brutality. Dealing with this reality has an impact on the mental, as well as physical health of Black people in the U.S. According to the research, living in areas with a heavy presence of whites where there are large racial differences in police use of force is associated with an increased risk of poor/fair self-rated health, high blood pressure, diabetes, and obesity.<sup>24</sup>

Because of the persistence of police brutality many Black Americans live in fear of future encounters with police officers. The police killings can trigger acute stress that can become amplified when the killings are perceived to be unjustified, meaning that avoiding wrongdoing is not sufficient to protect Black Americans from the harm. Black Americans have no place to feel safe because even their homes can become a battle ground—Breonna Taylor’s killing in Louisville, Kentucky is a prime example. Another recent study analyzed the “spillover effect” that members of the community suffer from, even when they are not directly affected, but instead have witnessed or heard about the killings.<sup>25</sup> The study showed that for each additional killing of an unarmed Black American, in the three month period prior to the interview, there was about a fourteen day increase in the number of poor mental health days reported. **Overall, the survey implies that police killings of unarmed Black Americans affect 33% of Black Americans (four killings per year) could contribute 55 million excess poor mental health days per year for Black adults.<sup>26</sup> To put this in perspective, 20.6% of Blacks suffer from diabetes, which means that diabetes is responsible for 75 million additional poor mental health days. According to these statistics, the killing of unarmed Black Americans is as detrimental to one's health as a life threatening disease such as diabetes.**

These health conditions lead to shorter life spans for Black Americans. One survey measured the years of life lost (YLL) to evaluate the public health of Blacks as a result of police violence.<sup>27</sup> People of color accounted for 51.5% of YLLs as a result of police violence, despite making up only 38.5% of the population. The most affected age group was 25–34.

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<sup>23</sup> Police violence: Physical and mental health impacts on Black Americans. (n.d.). Retrieved September 29, 2020, from <https://www.medicalnewstoday.com/articles/police-violence-physical-and-mental-health-impacts-on-black-americans>

<sup>24</sup> *Id.*

<sup>25</sup> Bor, J. (June 21, 2018). *Police Killings and Their Spill Over Effects*. doi:[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31130-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31130-9/fulltext)

<sup>26</sup> *Id.*

<sup>27</sup> The report found that 57,375 years of life were lost due to police violence in 2015, while 54,754 years of life were lost in 2016.

### c. Intergenerational Trauma

Slavery and Jim Crow have been found to cause generational trauma to Black families when it comes to the relationship between the Black community and law enforcement. Black families had to learn how to survive in the face of extremely punishing law enforcement behavior, and they then pass these coping mechanisms on to later generations. These survival mechanisms thereby become “intergenerational” to the Black community. As noted by one scholar, “Our ancestors instilled a sense of fear in their children about the dangers of stepping out of line or speaking out of turn. It was to combat the very real and present reality that one wrong step could be a painful lashing or worse: a violent death.”<sup>28</sup>

This intergenerational trauma impacts the lives of Black Americans in numerous ways, similar to the way that the trauma of slavery has demonstrated by research to be the cause of many health problems experienced by the Black community.<sup>29</sup> The harm compromises the life projects of Black Americans, as well as their capacity to live a dignified life as demanded by inter American commission jurisprudence.

The concept of the right to a dignified life is drawn from the obligations of the State to ensure the enjoyment of the right to life (Article 4 of the Convention and Article I of the Declaration). “The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, *not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.*”<sup>30</sup>

Research reveals that the trauma of the elders of a community affects the descendants through the stories that are told, the warnings that are given, the survivor’s approach to parenting including racial socialization, and the behaviors that are modeled. Examples of racial socialization as a result of intergenerational trauma include informing a child of the types of discrimination and rejection they may face, or teaching African American and Latino children

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<sup>28</sup> *Healing from the past: Exploring the generational trauma of slavery and Jim Crow*

<https://www.c-ville.com/healing-from-the-past-exploring-the-generational-trauma-of-slavery-and-jim-crow/>

<sup>29</sup> Dr Michael Halloran. *The curse of slavery has left an intergenerational legacy of trauma and poor health for African Americans.* <https://blogs.lse.ac.uk/usappblog/2019/03/08/the-curse-of-slavery-has-left-an-intergenerational-legacy-of-trauma-and-poor-health-for-african-americans/>

<sup>30</sup> *Villagrán Morales v. Honduras*, Merits, Judgment, IACtHR (ser. C) No. 63, ¶ 144 (Nov. 19, 1999) (emphasis added)

how to behave when interacting with police officers, some of whom are corrupt and commit murder without consequence.<sup>31</sup>

#### d. The Concept of Life Project

The Court has used the concept of “life plan” or “life project” to recognize that some violations of human rights cause irreparable damage to the “self-fulfillment” plans and prospects of a person who might have had to interrupt her studies, leave the country, or abandon plans in order to attend to the consequences and impacts that the human rights violation has caused.<sup>32</sup> When a person is subjected to severe human rights violations, whether they are torture, arbitrary detention, or the extrajudicial killing of a loved one, compounded by the state’s failure to provide access to justice, the violations “dramatically alte[r] the course that [the victim’s] life would otherwise have taken. The pain and suffering that those events inflic[t] preven[t] the victim from fulfilling his vocation, aspirations and potential, particularly with regard to [their] preparation for [their] chosen career and [their] work as a professional. All this was highly detrimental to [their] ‘life project.’”<sup>33</sup> In *Escué Zapata*, the Court considered the argument that the unlawful killing of Myriam Escué’s father denied her “many opportunities she could have had” and the request for a university scholarship as “reparation for the life project and a restitution of what Myriam could have [had]” and granted the request.<sup>34</sup>

In the case of the *Massacre of Dos Erres*, the Court held that prolonged impunity itself is a harm and damages family members’ life projects:

226. The Court deems that the denial of justice to the victims of grave human rights violations, as in the case of a massacre, results in a series of problems, both individually and collectively.<sup>35</sup> In this regard, it is evident that *the victims of prolonged impunity suffer different infringements in their search for justice, not only materially, but also other suffering and damages of a psychological and physical nature and in their life projects, as well as other potential alterations to their social relations and to the dynamics of their families and communities.*<sup>36</sup> The Court has indicated that these damages are intensified by the lack of support of the state authorities in an effective search and identification of the

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<sup>31</sup> *Thema Bryant-Davis\*, Tyonna Adams, Adriana Alejandre, and Anthea A. Gray. The Trauma Lens of Police Violence against Racial and ethnic Minorities* (2017). <http://whereareyouquetzalcoatl.com/ace/DavisEtAl2017.pdf>

<sup>32</sup> See *Loayza Tamayo v. Peru*, Reparations and Costs, Judgment, IACtHR (ser. C) No. 42, ¶¶ 144-154 (Nov. 27, 1998).

<sup>33</sup> *Cantoral Benavides v. Peru*, Reparations and Costs, Judgment, IACtHR (ser. C) No. 88, ¶ 60 (Dec. 3, 2001)

<sup>34</sup> *Escué Zapata v. Colombia*, Merits, Reparations, and Costs, Judgment, IACtHR (ser. C) No. 165, ¶¶ 169-170 (July 4, 2007).

<sup>35</sup> See *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 140, ¶ 256 (Jan. 31, 2006), and *Case of the Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 148, ¶ 396 (July 1, 2006).

<sup>36</sup> *Case of the Pueblo Bello Massacre*, ¶ 256, and *Case of the Ituango Massacres*, ¶ 385.

remains, and by the impossibility of properly honoring their dear ones.<sup>37</sup> In view of this situation, the Court has considered the need to provide different types of reparation so as to fully redress the damages, therefore in addition to pecuniary measures, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the gravity of the infringements and collective nature of the damage caused.<sup>38</sup>

The life projects of Black American family members of those impacted by police violence and the larger Black community have been gravely affected by racialized police violence. This can be demonstrated with a quick review of the cases above; for example, the life project of Erica Gardner was interrupted by the death of her father, as she was forced to dedicate her life to seeking justice for her father, dramatically altering whatever previous course her life would have taken. She passed away at 27 years old due to the mental and physical toll that advocating for her father took on her.

## II. Reparations as the Remedy for Racialized Police Violence

### a. The Breathe Act's plan for reparations

The need for reparations for systemic racism extends beyond remedies for the victims of police use of force and their families to the broader Black community, as recognized by the Movement for Black Lives' call to divest from police departments and reinvest in communities of color. This call comes in response to continued and escalating police violence against Black communities despite decades-long appeals for meaningful institutional reform that would put an end to racial disparities in the criminal legal system and stop excessive use of force by law enforcement.<sup>39</sup> As recognized by the Commission in its 2018 report,<sup>40</sup> the criminal legal system in the United States is built on centuries of systemic racism.<sup>41</sup> Transformative reparations are necessary to ensure that State's approaches to public safety do not perpetuate systems of harm and discrimination; indeed, the Commission specifically recommended reparations to "transform the underlying situation of inequality" and structural discrimination faced by Black Americans.<sup>42</sup> The Breathe Act (or the "Act") – legislation proposed by the Movement for Black Lives,

<sup>37</sup> See *Case of the Pueblo Bello Massacre* ¶ 256; *Ituango Massacres* ¶¶ 385, 387.

<sup>38</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 134 ¶ 294 (Sept. 15, 2005).

<sup>39</sup> *What Defunding the Police Really Means*, Black Lives Matter (July 6, 2020); Philip V. McHarris & Thenjiwe McHarris, *No More Money for the Police*, New York Times (May 30, 2020).

<sup>40</sup> IACHR, *African Americans, Police Use of Force, and Human Rights in the United States*, OEA/Ser.L/V/II.Doc.156/18 (Nov. 26, 2018) [hereinafter "*Report on Police Use of Force*"] at 37 et seq. (tracing the historic roots of racist policing in the United States to the slave patrols instituted to catch and return escaped enslaved persons).

<sup>41</sup> See e.g., Ctr. for Popular Democracy, et al., *Freedom to Thrive: Reimagining Safety & Security in Our Communities* at 1 (2017). nb

<sup>42</sup> IACHR, *Report on Police Use of Force* at 145.

championed by Congresswomen Ayanna Pressley and Rashida Talib and supported by over one hundred thousand community members, does just this.<sup>43</sup>

Section One of the Breathe Act lays out a detailed plan for divesting funds from and dismantling the current system of discriminatory policing and criminal justice in the U.S.<sup>44</sup> In addition to eliminating parts of the criminal justice system with a discriminatory effect on communities of color, such as Immigration and Customs Enforcement (ICE), mandatory minimum sentencing and civil-asset forfeiture,<sup>45</sup> the Act would abolish programs like the U.S. Department of Defense' 1033 Program,<sup>46</sup> which has caused the militarization of state and local police forces in the United States.<sup>47</sup> Sections Two and Three reallocate the divested funds to new community-based and non-carceral approaches to public safety, and to community and social programs, in areas proven to ensure that *all* communities thrive, regardless of race, or immigration and economic status.<sup>48</sup> The Act will thus move funds from incarceration, corrections, and policing, toward services needed in Black communities, such as education, healthcare, clean-environment and housing.<sup>49</sup> These Sections ensure essential elements for community safety, combatting the effects of centuries of systemic racism, and securing basic economic, social and cultural rights with equality and dignity. Section 4 provides for accountability and reparations for historic and current-systemic racism, by ending qualified immunity for law enforcement and developing reparations programs for slavery and police brutality.<sup>50</sup> The policies in Sections Two, Three and Four, which reinvest in communities and provide accountability and redress to impacted individuals, will begin to undo centuries of inequality undergirding the systemic racism and police brutality in the United States today, thereby fulfilling the U.S. obligation to change the status quo for Black communities.<sup>51</sup>

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<sup>43</sup> The BREATHE Act, Federal Proposed Bill. ; *see also* What is the Breathe Act?, M4LB (last visited Oct. 2, 2020).

<sup>44</sup> The Breathe Act, Section 1: Divestment from the Federal Criminal-Legal System Summary.

<sup>45</sup> *See e.g.*, Ashoka Mukpo, For Black Immigrants, Police & ICE Are Two Sides of the Same Coin, ACLU (Sept. 3, 2020); Racial Disparities in Sentencing Submitted to the Inter-Am. Comm'n on Hum. Rts. 153<sup>rd</sup> Session, ACLU (Oct. 27, 2014); Ronika Gillon, New Leaders Council, Mandatory Minimum – Destroying the Lives of the Black Community, Medium (May 16, 2018); ACLU-NJ Report Reveals Abuse and Overuse of Civil Asset Forfeiture in New Jersey, ACLU (Dec. 11, 2018)

<sup>46</sup> The Breathe Act, Section 1: Divestment from the Federal Criminal-Legal System Summary at 2-3.

<sup>47</sup> *See e.g.*, IACHR, Report on Police Use of Force at 46, 57; ACLU, The War Comes Home at 16 (June 2014).

<sup>48</sup> The Breathe Act, Section 2: Investing in New Approaches to Community Safety Utilizing Funding Incentives Summary; The Breathe Act, Section 3: Allocating New Money to Build Healthy Sustainable & Equitable Communities for All People Summary.

<sup>49</sup> The Breathe Act, Section 3: Allocating New Money to Build Healthy Sustainable & Equitable Communities for All People Summary at 4-15; *see also* What Defunding the Police Really Means, Black Lives Matter (July 6, 2020); Philip V. McHarris & Thenjiwe McHarris, No More Money for the Police, New York Times (May 30, 2020); Andre M. Perry, et al., To add value to Black communities, we must defund the police and prison systems, Brookings (June 11, 2020).

<sup>50</sup> The Breathe Act, Section 4: Holding Officials Accountable & Enhancing Self-Determination of Black Communities Summary.

<sup>51</sup> Plan de Sánchez Massacre v. Guatemala, ¶ 93-111 (ordering community wide programs for reparations including accountability, housing, healthcare, education, and infrastructure); Gonzalez et al. ("Cotton Field") v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶ 450 (Nov. 16, 2009), ¶ 450.

As part of community-wide reparations, one can consider reparations intended as guarantees of non-repetition. The Inter-American Court has often ordered that States adjust their laws to comply with their obligations to safeguard and ensure the enjoyment of human rights. For example, it has required that States eliminate amnesty laws that provided immunity for state agents' gross human rights violations,<sup>52</sup> change laws that gave the Military justice system exclusive jurisdiction of human rights violations committed by military personnel,<sup>53</sup> pass legislation that makes enforced disappearance a crime,<sup>54</sup> and create legislation to ensure the right of access to State-held information.<sup>55</sup> That the United States has not ratified the American Convention or accepted the jurisdiction of the Court means that the Inter-American Court may not order such changes, but the Commission may recommend that laws that are incompatible with the United States' international human rights obligations be adapted to bring the US in compliance with international human rights law.

In addition to fulfilling many of the recommendations in this Commission's 2018 Report,<sup>56</sup> the Breathe Act fulfills U.S. international legal obligations to provide transformative reparations, including guarantees of non-repetition, for systemic racism and police brutality. As the Inter-American Court held in the *Cotton Field* case, and the Commission endorsed in *The Right to Truth*, in the context of structural discrimination, adequate reparations are those “designed to change th[e] situation [of the impacted community], so that their effect is not only of restitution, but also of rectification.”<sup>57</sup> Transformative reparations must change the status quo and help “overcome[e] the unjustified legal, political, social, formal and factual inequalities that cause, promote or reproduce the factors of [structural] discrimination.”<sup>58</sup> Dismantling and divesting from current law

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<sup>52</sup> *Barrios Altos v. Peru*, Reparations and Costs, Judgment, IACtHR, ¶ 5 (Nov. 30, 2001).

<sup>53</sup> *Radilla Pacheco v. Mexico*, Merits, Reparations and Costs, Judgment, IACtHR, (ser. C) No. 209, “Operative Paragraphs” section, ¶ 10 (Nov. 23, 2009).

<sup>54</sup> *Trujillo Oroza v. Bolivia*, Monitoring Compliance with Judgment, Order of the IACtHR, ¶¶ 5, 8, 9 (Nov. 21, 2007)

<sup>55</sup> *Claude Reyes v. Chile*, Merits, Reparations and Costs, Judgment, IACtHR (ser. C) No. 151, ¶¶ 161-163 (Sept. 19, 2006).

<sup>56</sup> IACHR, *Report on Police Use of Force*, at 145, 157 & 161 et sequ. (noting that the recommendations put forward by the Commission were “designed to promote concrete changes [in the] . . . United States to ensure effective compliance with its international obligations” and recommending: Recommendation 16 (on ensuring the participation of communities in the design of policing systems); Recommendation 17 (on reversing the militarization of law enforcement); Recommendations 20-25, 30 (on ensuring accountability and reparations for police brutality and killings); Recommendation 31 (on devoting resources to improve access to quality healthcare, h

<sup>57</sup> *Gonzalez et al. (“Cotton Field”) v. Mexico* at ¶ 450 (Nov. 16, 2009); IACHR, *The Right to Truth*, ¶ 123 (Aug. 13, 2014); see also *Plan de Sánchez Massacre v. Guatemala*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116 ¶ 93-111 (Nov. 19, 2004) (recognizing that “[r]eparations are not exhausted by compensation for pecuniary and non-pecuniary damage . . . other forms of reparation must be added” and ordering community wide programs including for housing, healthcare, education, and infrastructure).

<sup>58</sup> *Gonzalez et al. (“Cotton Field”) v. Mexico*, ¶ 495; see also *id.* ¶ 450 (“re-establishment of the same structural context of violence and discrimination is not acceptable”).

enforcement programs, as provided for in Section One of the Breathe Act, will prevent future repetition of harm to Black communities at the hands of the criminal justice system.

**b. Reparations for State Violence is not unprecedented**

The Commission will note that reparations for state violence against its citizens is not unprecedented.

Over the course of the last three decades, Chile has provided reparations for specific direct victims of extrajudicial killings, torture, or disappearance and their families. According to the International Commission of Jurists, “Chile has invested around US\$3.2 billion on reparations, including the relatives of 3,225 victims of forced disappearance and killing; 38,254 victims of political imprisonment and torture; and 114,225 victims of political dismissal from civil services or public companies.”<sup>59</sup> In the case of Chile, reparations were paid by pensions, which not only distributed the costs over several years, but also guaranteed that victims would not fall into poverty over the years. The reparations programs also included a specialized and victims’ sensitive health care system; and a program for university scholarships for victims or their children.

In Argentina, multiple reparations laws were passed to compensate for enforced disappearances, torture in clandestine torture centers, extrajudicial executions, the kidnapping of infants to be adopted by military families or their allies, and generalized persecution of all perceived political opponents. In 1985, Argentina passed a law which established provisional benefits for the families of the disappeared and killed, including a one-time payment of \$220,000 paid in state bonds.<sup>60</sup> Also, the law established a pension for the wife, minor children, and other dependents of the victims. The National Corporation for Reparations and Reconciliation was established in 1991 to implement the commission’s recommendations and help identify eligible victims.<sup>61</sup> Later in 1991, direct relatives of the disappeared were exempted from military service (in part to avoid having to be around the very people who victimized their family members).<sup>62</sup> This is not an exhaustive list of all the reparations provided. As victims and harms were identified and better understood, reparations were adjusted and expanded.

For these reasons, we request that the commission recommend that reparations is the appropriate remedy for racialized police violence in the United States.

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<sup>59</sup> *ICTJ Program Report: reparative Justice* (2013). <https://www.ictj.org/news/ictj-program-report-reparative-justice>

<sup>60</sup> Law No. 24.411, Argentina, December 7, 1994.

<sup>61</sup> Ernesto Verdeja. *Reparations in Democratic Transitions* (2006).

<sup>62</sup> Law No. 23.852, Argentina, September 27, 1990.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Justin Hansford". The signature is stylized with a large, looped "J" and "H".

Justin Hansford  
*Executive Director*  
*Thurgood Marshall Civil Rights Center*

Carmen K. Cheung  
*Executive Director*  
*Center for Justice & Accountability*

Claret Vargas  
*Senior Staff Attorney*  
*Center for Justice & Accountability*

Elzbieta T. Matthews  
*Staff Attorney*  
*Center for Justice & Accountability*

Brooke Radford  
*Movement Lawyering Clinic Student Attorney*

Nia Reese  
*Movement Lawyering Clinic Student Attorney*