

# HUMAN RIGHTS AT HOME: IMPLICATIONS FOR U.S. LEADERSHIP

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## HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

JULY 2, 2020

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**HUMAN RIGHTS AT HOME: IMPLICATIONS  
FOR U.S. LEADERSHIP**

JULY 2, 2020

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## **HUMAN RIGHTS AT HOME: IMPLICATIONS FOR U.S. LEADERSHIP**

**July 2, 2020**

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC

The hearing was held at 11:08 a.m. via videoconference, Hon. Emanuel Cleaver II, Commissioner, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Emanuel Cleaver II, Commissioner, Commission on Security and Cooperation in Europe; Hon. Gwen Moore, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Sheldon Whitehouse, Commissioner, Commission on Security and Cooperation in Europe.

*Other Member present:* Hon. Sheila Jackson Lee, Member of Congress.

*Witnesses present:* Nkechi Taifa, Founding Principal & CEO, The Taifa Group, LLC; Malcolm Momodou Jallow, Member of Parliament (Sweden); and Ambassador (ret.) Ian Kelly, Former U.S. Permanent Representative to the Organization for Security and Cooperation in Europe (OSCE).

### **HON. EMANUEL CLEAVER II, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. CLEAVER. [In progress]—Alex Johnson to share the modalities of this hearing.

### **ALEX JOHNSON, CHIEF OF STAFF, COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. JOHNSON. Thank you, Mr. Chairman. Thank you for joining us for today's first-ever remote hearing of the Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission. This hearing is being conducted in compliance with House Resolution 965, which provides for official remote proceedings during the COVID-19 pandemic. We have decided to hold this hearing remotely to protect the health and ensure the safety of our witnesses, members, staff, and the public. This hearing is being broadcast live on our website at [www.OSCE.gov](http://www.OSCE.gov), and on our YouTube channel at [www.YouTube.com/HelsinkiCommission](http://www.YouTube.com/HelsinkiCommission).

Before we begin, I would like to review a few housekeeping items for our members and witnesses. Members and witnesses are asked to keep themselves muted when not actively engaging in the discussion to limit background noise, keep themselves muted for the

purposes of limited echoes or other disruptions. Members and witnesses are responsible for unmuting themselves when they seek recognition or when they are recognized by the chair.

Please remember that there is often a short delay in muting or unmuting your microphone. Members and witnesses should allow sufficient time before speaking to ensure their microphones have been successfully unmuted and the last speaker has finished completely. Members and witnesses must keep their cameras on at all times during the hearing. If you need to step away for any reason please make sure you leave your camera on. Finally, the chair may declare a recess at any time to address technical difficulties with these remote proceedings. If you personally encounter technical difficulties, please contact our tech support channels provided prior to the hearing. Our staff will resolve any issues for you.

The hearing chair will now proceed with his opening statement, to be followed by opening statements by all witnesses. Commissioners and guest members may then offer statements or ask questions in the following general discussion with the witnesses. I yield back to the chair.

Mr. CLEAVER. Thank you. I recognize myself for an opening statement.

When the United States signed the Helsinki Final Act, this country, along with 34 other nations, explicitly recognized respect for human rights as an essential factor for the attainment of peace, justice, and cooperation among nations. Moreover, the Helsinki Commission, which was created 1 year after the Helsinki Final Act was adopted, was mandated by law to monitor the acts of the signatories which reflect compliance with or violation of the articles of the Helsinki Final Act, with particular regard to the provisions relating to human rights and cooperation in humanitarian fields.

The United States has long been a champion of human rights and democracy in our foreign policy. Many of the OSCE's groundbreaking commitments were actually spearheaded by the United States, including those relating to anti-Semitism, freedom of religion, free elections, and the rule of law, to name only a few. Most of the time, the Helsinki Commission focuses on those issues in countries where there may be particular concerns. Sometimes we engage with countries where circumstances create windows of opportunity or historic inflection points. Our goal is always to encourage positive change and better implementation of Helsinki commitments. Today we look inward as we examine the Black Lives Matter protests and related domestic compliance issues in the context of our OSCE human dimensions commitments and implications for U.S. foreign policy.

The death of George Floyd was a tragedy, and the video of his fatal encounter with police was sickening to witnesses. Thus, the American people, and later the entire world, responded. The freedom with which Americans were able to respond to this tragedy is at the root of this hearing. If there is no respect for the rights of Americans to address wounds left open by centuries-old systemic racism we cannot achieve necessary healing, nor will we have the standing to advocate for fundamental freedoms abroad. We must practice what we preach.

I'm working with my colleagues in the House of Representatives on legislative measures to meaningfully address systematic racism and policing, curb police brutality and racial profiling, and ultimately save lives. These policies to achieve these objectives are the jurisdiction of other committees; however, we have an opportunity through the Helsinki Commission to reflect on the nexus of our international commitments in terms of our standing in the world.

Clearly the U.S. record has been on full display around the globe in recent weeks, beginning with the 8 minutes and 46 seconds of George Floyd's death on May 25th, and the protests which followed. In fact, thanks to the unprecedented reach of modern technology, the world has been able to watch in real time.

I will keep the record of this hearing open for 48 hours, and any additional information, statements will be accepted.

Now I would like to introduce our witnesses for today's hearing. First, we will hear from Nkechi Taifa, who is the founding principal and CEO of Taifa Group, LLC, and will also be testifying on behalf of the Justice Roundtable and the Center for Justice at Columbia University. Ms. Taifa will provide a scene-setting overview of the underlying human rights and democracy issues that have been fueling ongoing protests in the United States.

After Ms. Taifa, we will hear from Mr. Momodou Malcolm Jallow. Mr. Jallow is a member of the Swedish Parliament and also serves as the Council of Europe Parliamentary Assembly General Rapporteur on Racism and Intolerance. Mr. Jallow will help us understand how the issues in the United States are resonating in Europe, and the shared challenges we face combating racism and intolerance in the transatlantic community.

Finally, we will hear from Ambassador Ian Kelly. Ambassador Kelly served as the head of the U.S. Mission to the OSCE from 2010 to 2013—excuse me, and as a spokesperson for the Department of State before that. Ambassador Kelly, you're well-versed in matters related to the OSCE, the way in which human rights and democracy issues are raised in that forum, how U.S. compliance with OSCE commitments may be raised in the OSCE, and how those issues impact U.S. foreign policy leadership.

I'd like to thank all of you for agreeing to participate with us today. I give the floor now to Ms. Taifa.

**MS. NKECHI TAIFA, FOUNDING PRINCIPAL & CEO, THE TAFIA GROUP, LLC**

Ms. TAIFA. Thank you so very much, Chairman Cleaver, for convening this critical Helsinki Commission hearing on "Human Rights at Home: Implications for U.S. Global Leadership."

And thank you for this opportunity to testify this morning on behalf of my company, The Taifa Group, as well as the Justice Roundtable, which I convene, and the Center for Justice at Columbia University, where I serve as senior fellow. In addition to the above, I'm also a commissioner on the National African American Reparations Commission, convened by the Institute of the Black World 21st Century, and am a founding member of N'COBRA, the National Coalition of Blacks for Reparations in America.

So one of the best explanations for the coast-to-coast protests in the wake of the police killings of George Floyd, Breonna Taylor,

and others can be encapsulated by a poem by Langston Hughes. “What happens to a dream deferred?/ Does it dry up like a raisin in the sun/ Or fester like a sore, and then run/ Does it stink like rotten meat/ Or crust and sugar over, like a syrupy sweet?/ Maybe it just sags like a heavy load/ Or does it explode?”

This poem literally suggests that unrealized dreams can wreak havoc and lead to anger, resentment, and despair. When we see young people in the United States taking to the streets in protest, we are seeing the overflow of dreams deferred—dreams of freedom, equality, and justice. Dreams that have been tarnished, if not obliterated, by the reality of structural racism, bolstered by White supremacy.

We have just passed the mid-mark of the International Decade for People of African Descent. And for centuries, people of African descent in the United States have not only dreamed of justice but have demanded it. We have urged the country to provide not even grandiose opportunities, but just basic human rights that protect our life and liberty. The response? Systemic racism, through which we suffer through decreased life expectancy rates, health disparities, economic inequality, mass incarceration and more.

Anti-slavery abolitionist Frederick Douglass once said, “Power concedes nothing without a demand.” And when we see young people in the streets, we are not only seeing protest, we are seeing demand. We are seeing the outpouring of decades of deferred dreams.

How does change happen? There is usually a triggering event, representing the tip of an iceberg that, in the context of Black people in the United States, has been building for centuries. And then, a cataclysmic event that explodes. And tragic as it was, the explosion resulting from George Floyd’s death represented only the tip of Black people’s demands for justice.

The deferred dream exploded with Emmett Till, whose brutal 1955 murder shocked the nation. It exploded with the senseless slayings of Trayvon Martin and Michael Brown, Eric Garner and Philando Castile, Tamir Rice, Rekia Boyd, Freddie Gray and Breonna Taylor, Ahmaud Arbery, Rayshard Brooks. The list seemingly grows daily. With each death of a Black person by police or racist Whites, with each affront to voting rights, with each health disparity, with each trip down the school-to-prison pipeline, with each widening of the Black/White wealth gap, with each house pilfered by redlining, with each intergenerationally transmitted traumatic injury, there was and is a demand for justice.

The U.S. Government has failed to protect Black people from systemic racism and police violence. Advancing societies that are safe, inclusive, and equitable is central to the work of the Helsinki Commission. The international community must bear witness. The United States must not be above scrutiny. It must meet its commitments, review its own record, and be open to criticism. It is incumbent that this country engage in candid self-assessment, if it wishes to legitimately demand a similar level of reflection from other OSCE participating States.

Similarly, the United States must fully embrace human rights conventions that it is a party to and eliminate limitations to [their] use in U.S. courts. These include the Convention on the Elimination of All Forms of Racial Discrimination, the Convention

Against Torture, the Convention on Political and Human Rights, the Office of the High Commissioner's Basic Principles on the Use of Firearms by Law Enforcement Officials, and the Convention on the Prevention and Punishment of the Crime of Genocide.

Black people in the United States have dissented many times in the past. And, once, again, they are visible in the streets, showing that Black lives do indeed matter. Policies that once seemed radical now appear more palatable. Where we once spoke of reform, we now demand transformation. The blueprint is still being formulated, and no one will leave this moment without having been changed. What we are witnessing today is the unprecedented possibility for change, and the unprecedented possibility for the dream to expand, and not explode.

Thank you very much for this opportunity to testify. I have submitted my full testimony for the record, which relies heavily upon previous works I have authored relative to the use of international human rights treaties applied to the United States.

Mr. CLEAVER. Thank you, Ms. Taifa, for your testimony.

I now recognize Mr. Jallow for 5 minutes. Mr. Jallow you are recognized now for 5 minutes.

**MR. MALCOLM MOMODOU JALLOW, MEMBER OF PARLIAMENT  
(SWEDEN)**

Mr. JALLOW. Can you hear me, sir?

Mr. CLEAVER. Yes. Please.

Mr. JALLOW. Thank you. Thank you very much. Thank you very much, Chairman Cleaver, for giving me this opportunity to speak at this very important hearing on the topic—on this very important topic, “Human Rights at Home: Implications for U.S. Leadership.”

I'm going to be speaking in my capacity as a member of the Council of Europe and the rapporteur responsible for combating racism and intolerance. In this assembly that I'm sitting at, I have the opportunity to exchange regularly with parliamentarians from 47 European countries, in which the United States also has an observatory status.

The political developments in the U.S., United States, today have a significant socioeconomic and political impact on the rest of the world, especially among member States of the Parliamentary Assembly of the Council of Europe. There is very good reason for concern about the unfolding grave human rights crisis in the United States, partly as a result of the systemic brutal police killings of Black people, but also the use of state-sanctioned excessive force and suppression of peaceful protesters. These are clear violations of United States obligations under international law.

The current government and administration has, within a short period of time, completely eroded the authority of the United States as a standard bearer, and thereby undermined the legitimacy of the so-called United States global leadership. One cannot exercise effective soft power without legitimacy. The isolationist foreign policy direction, the nationalist rhetoric, and the blatant noncompliance to the international human rights standards only accelerate the decline in confidence from the rest of the world in the United States.

We have had a series of evidence of structural and institutional racism and racist policing fueled by historical abuses and negative stereotyping, leading to the exclusion and dehumanization of Black people in the United States. However, this particular murder of George Floyd has become a clear manifestation and a tipping point for what many, including many Europeans, perceive as state-sanctioned racism and blatant violation of the civil and human rights of Black people.

What we have seen in the U.S. does not only illustrate the deep rooted and historical systemic injustice against Black people, it also clearly manifests the extent to which White supremacy ideologies are normalized. What we are seeing is a manifestation of a democracy in crisis. And if this were happening in any other part of the world, the United States and other Western countries would be demanding a regime change.

It is remarkable, however, how much time it took and how much pressure from the Black community that was required for the global leadership to react. When leaders sow the seeds of hatred and stoke the flames of racist violence, we legitimize intolerance and bigotry. We create division rather than unite people. And most importantly, we undermine the fundamental values of democracy, human rights, and the rule of law.

In fact, we as politicians and leaders, we have both a political obligation and a moral responsibility to refrain from using hate speech and stigmatizing language, and to condemn promptly its use by others. Our silence may be interpreted as approval or support. The enhanced protection of freedom of expression that we, politicians, and leaders enjoy also strengthens our responsibility in this area.

Structural, and institutional, and systemic racism—including racist violence—is not confined only to the boundaries of the United States. It is also very much present in Europe. Over the last decade, we have seen an increase both in gravity and number in the manifestation of racism in all its forms in Europe. The effects of governments' failure to devise and implement adequate policies on social cohesion, diversity, migration, and social inclusion have triggered this upsurge, which has been amplified by the increasing use of internet and social media.

The dimension, gravity, and frequency of their manifestation are of great concern and urgency. The urgency becomes even more acute considering these phenomena have repercussions that go well beyond the single individuals that are directly targeted. They affect entire communities and they create divides in society, affecting human rights and social cohesion. And they erode even further the trust in public authority, the rule of law and ultimately democracy.

In addition, issues of race relations deeply affect the conduct of our foreign policy relations. The European project has an anti-discrimination, antiracist dimension to it, with a fundamental commitment to ensuring that we learn the lessons of the Holocaust and past European divisions through pursuit of human rights for all. However, this project appears to be failing with regard to Black Europeans. The pain and denigration of Black people has a historical context that we must remember. Hence, the U.N. Decade on

People of African Descent and its three focus areas: Recognition, Justice, and Development.

The images of the brutal and tragic death of George Floyd triggered a protest movement not only in the United States, but around the world. The scale and intensity of the protests illustrates a deep sense of frustration and pain that Europe, for the longest time, had shown no regard for. The usual silence and exceptional entitlements from European leaders are no more working, as this is not a moment. It is a movement, a movement that is deeply and permanently committed to justice, human rights, and the rule of law. Not in words, but also in action.

So we must act quickly, firmly, and collectively, because when we choose to be silent in the face of hatred, bigotry, and racism, we choose to be complacent, thereby undermining the fundamental values of human rights, democracy, and the rule of law. As the United States enjoyed status of observer in the Council of Europe and member State of the United Nations, I would like to emphasize the recommendations and language in United Nations Resolution HRC/43, in establishing an Independent International Commission of Inquiry.

And this Commission of Inquiry will establish the facts and circumstances relating to the systemic racism and violation of the international human rights law. And this is against Africans and people of African descent in the United States. It will also examine Federal, and state, and local government responses to peaceful protest, including the alleged use of excessive force against protesters, bystanders, and journalists. I would also—as you know, racism does not spare any level of society. And no institutions are perhaps immune to it.

The Parliamentary Assembly of the Council of Europe, of which I am a member, is particularly concerned about racial profiling and racist behavior, and practices within the police against visible minorities have a negative impact on public opinion and can increase stereotyping and prejudice. So to acknowledge the existence of this problem is the first step. We need to do that. There can be no impunity for manifestation of racism within or by the police. And police officers must be held accountable individually for that behavior. And to do this, we also have to establish independent police complaint mechanisms where they do not exist yet, allocate appropriate means for their functioning, and ensure that sanctions are imposed on police officers following a racist incident.

And last, we know intolerance, racism, and xenophobia are fed by stereotypes and prejudices which must be prevented and eradicated at every level. So the Council of Europe Parliamentary Assembly urges political leaders not to use fear to fuel their electoral campaigns, but to continually reaffirm the democratic values of our societies, of respect for human rights and human dignity at all times.

Thank you very much.

Mr. CLEAVER. Thank you, Mr. Jallow.

And finally, we will hear from Ambassador Ian Kelly. Ambassador Kelly, you're now recognized for 5 minutes.

**AMBASSADOR (RET.) IAN KELLY, FORMER U.S. PERMANENT REPRESENTATIVE TO THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)**

Amb. KELLY. Well, thank you, Mr. Chairman. I'd like to concentrate on the impact of recent events on U.S. global leadership, particularly within the OSCE.

And among the many contributions of the Helsinki process to international peace, perhaps the greatest was the consensus that security among states depends on respect for human rights within states. We support the OSCE because we know that a world where fundamental freedoms are upheld is a safer world. We support the OSCE because we know that a world—as I say, where freedoms are upheld is a safer world. As OSCE leaders agreed in the Charter of Paris in 1990, observance and full exercise of human rights are the foundation of freedom, justice, and peace.

At the OSCE, to advance that cause, the U.S. has worked together with our allies in Europe and Canada to support human rights. In my time at the OSCE, the greatest challenges to the cause were the political use of judiciary and law enforcement, government intimidation of critical media and civil society, and the lack of checks and balances against the power of the executive. Recent events have shown that America as a model for fighting against the first two tendencies has been greatly tarnished. But I think we can still be a beacon for promoting separation of powers to ensure transparency and accountability.

The recent beatings of protestors in the U.S. served as an uncomfortable reminder, for me, of events in Minsk in 2010, when police used violence to break up rallies against the government. It caused us and our allies at the OSCE to invoke something called the Moscow Mechanism, where a group of OSCE countries can appoint a special representative to investigate abuse against those exercising their basic freedoms. We knew that Russia and others would veto the recommendations of the report. We invoked the Moscow Mechanism because we wanted to send a strong signal, that we found the use of violence to quell dissent unacceptable.

A decade later, of course, we've seen in our country the excessive use of force against protestors who are peaceably assembling. Perhaps the most prominent example was in Lafayette Square. There, authorities put a higher priority on clearing peaceful protestors for a photo op than on allowing them to exercise their basic rights. I don't want to compare our response to protest to that of the Lukashenko regime, but until the highest levels of our government condemn what happened in Lafayette Square and elsewhere, we've lost much of our moral authority to call other countries to account.

In my last post, as Ambassador to Georgia, I experienced in dramatic fashion how attacks on critical media in the U.S. have eroded our power to persuade other countries to protect free speech. A few months before I retired in early 2018, a Georgian court was close to ruling on replacing the managing editor of the leading opposition television station with someone more amenable to the government. I met with a senior official to try to convince that individual to speak out in favor of maintaining critical voices in the media. To support my argument, I drew upon many of the OSCE principles,

such as the importance of free speech to ensuring strong, accountable government.

I then deployed what I thought was my strongest argument, that Tbilisi needed Washington's support, and that Washington would have a hard time understanding why the Georgian Government wouldn't keep—wouldn't support keeping its critics on the air. The response was both illuminating and deflating. The official looked at me, smiled, and said, "Really, Ian? You really think Washington's going to have a problem with fake news going off the air?" A few months after I left, the court did order new management at the station, and Georgia lost a critical platform for keeping government accountable.

Given what is happening here in the U.S., I can imagine how difficult it is for my former colleagues in the field now to promote human rights. With the recent gross abuse of police powers, characterization of journalists as enemies of the people over the last few years, diplomats' powers of persuasion have been greatly eroded. But they should still have hope in the power of American institutions.

When I tell my students about my distress at my own government's abuses over the years—such as the CIA black sites and the torture at Abu Ghraib—they ask me how I was able to continue to work for such an administration. I tell them it's because of my deep belief in the system's ability to investigate abuse, correct itself, and ultimately do the right thing.

While we look to right our own country's wrongs, we cannot avert our eyes from assaults on Helsinki principles elsewhere in the OSCE space. We should be particularly concerned about increasing centralization, and personalization, of political power. Just yesterday, Russia concluded a plebiscite on an amendment that could allow Putin to stay in power until 2036. And then there's the pandemic. It attacked at a time when democracy was already in retreat. Even before COVID-19, Freedom House noted that since 2006 democracy has been in decline in 25 of 41 established democracies. The challenge of curbing the pandemic has emboldened authoritarian rulers. It has given them another excuse to curb fundamental rights, to remove institutional checks on their power, and silence those who dissent.

As Dr. King wrote, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

So when we redress wrongs, we make our country stronger. We restore our position of leadership in a world where democracy needs champions. And by so doing, we make the world safer.

Thank you, Mr. Chairman, for inviting me to participate in this hearing today.

Mr. CLEAVER. Thank you very much, Ambassador.

We will now have participation from the members. We'll begin with the gentlewoman from Wisconsin, Ms. Gwen Moore.

**HON. GWEN MOORE, COMMISSIONER, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE**

Ms. MOORE. Thank you so much, Mr. Chairman. And thank all of our witnesses for bearing witness to this international phenomenon. I just want to say to Ms. Taifa, I bring you greetings from Janette Herrera, who lives here in Milwaukee, Wisconsin, an N'COBRA member. And she—I spoke with her early this morning to make sure I send you her peace and blessings. And she told me you were dynamic, but I just was not prepared for all that.

And of course, my good friend, the parliamentarian from Sweden, we have met many times before. It is really great to see you. Can't wait until we can get back and forth across the pond. I'm not proud of the fact that Europe says keep all you nasty—all you nasty people stay home, because you haven't really observed the best practices with regard to COVID-19. But it's really good to be here.

I guess I want—and of course, Ambassador Kelly, the Moscow Mechanism, that we always have to respect our Russian counterparts. But we got to always have a check. And we appreciate your service and your observations with the OSCE engagement.

I just want to commend the European Union, the United Nations, all of these international agencies who are joining in in creating the international, global attention to the abuses in the United States and, indeed, joining a global family of these same phenomenon.

And of course, it was a very big—the EU report was very comprehensive, and all of the Helsinki commissioners from the United States—Mr. Hastings, of course, our leader, our chair today Mr. Cleaver, Mr. Veasey and I all are writing a letter to the European Union asking that they give us a path forward, do a resolution in terms of adopting—not only adopting this, but putting an action plan in place to make this happen.

And here in the United States not only do we have our commissioners signing onto that, but there is a letter that we are having Members of Congress who are signing on. I'm looking for it right now. Signing onto it, including Senator Booker, and Karen Bass, who is the subcommittee chair on Africa, Representative Greg Meeks, who is on the Foreign Affairs committee as well. And we have Ted Deutch, who's the Foreign Affairs Subcommittee on International Terrorism, Eleanor Holmes Norton, Bobby Rush, of course Sheila Jackson Lee, Barbara Lee, Donald Payne, Frederica Wilson, Terri Sewell, Yvette Clarke, Congresswoman Watson Coleman, and, of course, all of the commissioners. So we are delighted our international partners are weighing in on this.

So I don't want the chairman to gavel me, so let me get to some questions. The U.N. declared 2015 to 2025 a declaration of Decade of Persons of African Descent, with the intent of strengthening national actions to ensure equal respect for the rights of people of African descent. And of course, the OSCE is a regional organization under Chapter 7 of the U.N. Charter. Now we're just, like, halfway through the decade. Some of us were kind of getting worried that nothing was happening.

And so, you know, Momodou, you suggested that this was an inflection point. And there's a debate about whether or not this is just a moment or a movement. So I guess I would ask both you and

Ms. Taifa, do you—what do you think it will take to make this a sustainable movement, as opposed to just a moment?

Ms. TAIFA. So it definitely needs to be a sustainable movement and not just a moment. And I think that this moment that we're in, people should take the opportunity to really look at things, such as the International Decade for People of African Descent, when in this country it has not been as visible as around the world. [Laughs.] I hope that people take this moment to look at the movement for reparations that is sweeping the world, actually, and really make some program changes.

Mr. CLEAVER. I'm going to—Mr. Jallow, if you could answer—if you will answer briefly, so I can move onto the next speaker. I apologize for not being firm on the time when we first started, but if you would excuse me and everyone just give a short—the shortest answers you could possibly give at this point.

Thank you.

Mr. JALLOW. Yes, now. Yes, thank you very much. Honestly, I agree 100 percent that the International Decade for People of African Descent has been ignored greatly by most member states of the United Nations. And from the EU point of view, what we—what has happened now, last week, was there was a resolution. And it is one of its kind, because in this resolution for the first time the EU was talking about reparations. They're talking about the transatlantic slave trade as the worst crime against humanity. They're talking about the decade and the national action plans that need to be in place.

So this resolution should be the roadmap in trying to really find a way to recognize the decade and do something about it. So what we're doing now is we're trying to use this document, this resolution, both the one from the United Nations but also from the European Union, to move on from words to action. And that is going to take—is going to take a lot because that's what we've been lacking. There is no political will to recognize this decade. And we have to work from both sides of the Atlantic to push for it. And I, for one, am going to push for it. And all these meetings that we've been having these past weeks, that has been the point of this conversation.

Thank you.

Mr. CLEAVER. Thank you. I will now recognize Senator Sheldon Whitehouse from Rhode Island.

Senator.

**HON. SHELDON WHITEHOUSE, COMMISSIONER, COMMISSION  
ON SECURITY AND COOPERATION**

Mr. WHITEHOUSE. Thank you so much, Chairman. It's great to be with you all. I'd like to ask anybody on the panel who'd care to answer this, that there was a news story a day or two ago about the United Nations getting ready to do an investigation within the United States, and the Trump administration using all of its diplomatic leverage to prevent that from happening. If anybody has any insight into that episode, I'd be delighted to hear what you have to say.

Again, Chairman, thank you very much.

Mr. CLEAVER. Thank you.

Ambassador.

Amb. KELLY. Yes, thank you. Thank you, Senator. I don't know that I have any special insight into the motivations of the State Department for trying to block that particular investigation. I would say that that would be a mistake. That we have invoked a number of mechanisms to look into abuses of human rights in individual countries. And I think that it would be just a huge, huge mistake to try and make the argument that we're above such an investigation. I think that there is probably a lot of room for making it a more universal investigation into systemic racism, not only in the United States but also in other countries. But I don't think we look very good when we try to stomp on a legitimate concern of the international community.

Mr. CLEAVER. Any other response from any of the other witnesses?

Mr. JALLOW. Just quickly, as I mentioned in my initial statement, that is one of the recommendations. That is something that we included in the resolution—in the United Nations Resolution HRC/43, establishing this Independent International Commission of Inquiry. And I think just like the Ambassador mentioned, it's extremely important that the United States fully cooperates with this inquiry to make sure that they'll be able to fulfill its mandate promptly and efficiently because that's the only way we'll be able to know the truth. And that's the only way we'll be able to move on from the situation as it is, but also find durable political solutions when it comes to the situation in the United States now.

Thank you.

Mr. CLEAVER. All right. Thank you. We also have with us today Representative Sheila Jackson Lee of Texas, who is a guest of our commission today. Welcome, Representative Lee. You are now recognized for 5 minutes.

**HON. SHEILA JACKSON LEE, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. And thank you to all of the witnesses, as well as all of the members, for their intent. And, of course, Chairman Hastings for his leadership.

It is sad to be able to give a list of widespread human rights abuses from a nation that actually was using the gold standard—or was viewed as the gold standard for human rights, and whose voice could always be lifted very quickly. In addition to what we have been speaking about this morning, holding children in cages, a court decision to release mothers and children from immigrant detention facilities, barring people from coming into the country and holding them in devastating conditions on the southern border, blocking immigrants—in particular immigrants of African heritage—and, of course, what we have seen over the last years. Three years, in fact. Four years, in fact. As whole countries and just a whole litany of non-disputable acts of heinous behavior, and is not befitting of our values, our Constitution, and who we are.

I want to say that the killing of George Floyd on the streets of America exacerbated and accelerated the understanding that we needed to change the order of policing to a guardian. And of course,

the work of the George Floyd Justice and Policing Act has done that. But in the other end of it, there's systemic racism. And I would appreciate the response from the ambassador and all of the witnesses about seeing permeated through these issues that reflect on human rights that question.

And to Ms. Taifa, and thank you for your work, thank you for N'COBRA, we have introduced—been leading on H.R. 40, which is a commission to study and develop proposals for reparations. It is the first elevation of discussion of race and systemic racism that this nation will ever confront. It is a result of decades of agitation. My colleague, the late John Conyers, started this decades ago. So let me just yield to you and ask how that would impact the thoughts of the needs of correcting human rights abuses that are too long to chronicle as it related to African Americans?

Ms. Taifa.

Ms. TAIFA. Yes. Thank you, Congresswoman Sheila Jackson Lee. And thank you for your longstanding leadership on many issues in general, and particularly—on H.R. 40 in particular. This is a bill, the Commission to Study and Develop Reparations Proposals for African Americans, that's been languishing in the Congress for 30 years. And actually, it really is 155 years late, after the passage of the 13th Amendment. But it is timely.

We talked earlier about moments and movements. This is a moment that is turning into a movement. And on the international front the U.N. human rights chief, Michelle Bachelet, she stressed the need to make amends for centuries of violence and discrimination, including through formal apologies, and truth-telling processes, and reparations in various forms.

So if not now—this is the time. People on the streets demanding justice, demanding redress, demanding amends. And H.R. 40 is one way in which to accomplish that.

Ms. JACKSON LEE. Ambassador Kelly, it's important for people to understand—thank you so very much—that what this commission does is to deal with the state-sanctioned structure of racism. It is not to go against an individual American. It is a commission selected by the heads of the House, and the Senate, and the President of the United States to deal with the constitutional fraction of not being a whole person, and for all of the state-sanctioned issues of racism, Jim Crow and others.

What is your thought about getting once and for all, and how the world would respond to that—passing that legislation and beginning that process with people who had been slaves in this country?

Amb. KELLY. Yes, thank you very much for that question. I think for the OSCE—I think the OSCE has done a good job at shining a light on the problems of intolerance. But these problems of intolerance are basically really focused on sort of religious—religion-based intolerance. And I think that comes out of the experience of Europe during World War II. What it hasn't done such a good job of doing is exposing the abuses against people of color in the OSCE states.

And I think that that is probably a lack that really needs to be addressed by the participating states of the OSCE, to look at how the experience of colonialism in European countries, slavery in the United States, has—how that legacy has continued to perpetuate

the myth of White supremacy in the United States, but also I think the myth of ethnic-based supremacy in Europe.

So I would hope that the OSCE would take advantage of this moment to expand its mandate for looking at race-based intolerance and systemic racism against people of color, against migrants, against people of African descent, against the Roma in Europe. And I would hope that the OSCE would rise to that occasion.

Ms. JACKSON LEE. Mr. Chairman, would you allow the parliamentarian to make a quick answer to that? I don't have any other questions.

Mr. CLEAVER. Sure, absolutely. Go ahead.

Ms. JACKSON LEE. Thank you. It's good to see you. Yes.

Mr. JALLOW. Thank you very much.

Thank you, I do agree with the ambassador. I think this is a milestone. It's a tipping point that we need to really act because, as I said, it's not a moment, it's a movement. And I think this movement is permanently ready to see change. If we do not act, the movement will continue to react to some of—the lack of political will to create change.

I mean, Europe, we've seen, as I mentioned—the past decade we've seen an upsurge of racism and White supremacy. And normalization has reached even higher heights. When you look at the European Parliament, the number of right-wing—extreme right-wing political parties that are represented there have increased significantly.

So it is important, especially for the Council of Europe, where I'm a member of, we are the guardians of human rights and the rule of law. We cannot be the guardians of human rights and rule of law and continue to ignore or to deny the realities of 15 million Black people living in Europe. We need to really make sure that we take into account the realities of Black people, we take into account the impact of colonialism, we take into account all system and structural racism that takes place.

And to be able to do that, this commission that is—that is suggested, I think, will be able to investigate, map out the situation, and based on that data, those facts, will be able to come up with solutions that are long-standing solutions that will be able to provide a conducive environment, a Europe without racism. And I think that's the ambition. And I am personally writing a report—I have been given the mandate to write a report. And this is going to be my main focus, to try to come up with a resolution that would focus on solutions forward. That is what my objective is. And the situation right now is actually extremely important in the report that I'm writing right now.

Thank you.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I just will end on this sentence to all of you. Malcolm, I'm going to call you appropriately parliamentarian. If the United States starts a commission like this, I believe it will be a shot in the arm to the world, dealing with the descendants of Africans and, in particular in the United States, descendants of enslaved Africans, to be able to once and for all place race in a place that gets the data, that gets the understanding, that develops the construct of how you deal with it. And

it will reflect on Europe because Europe was part of the transatlantic slave trade.

And we have never addressed this question, nor have we ever addressed the complete loss of wealth [of] all peoples of African descent. And I want people to know that this is not taking a check away from my neighbor. It is talking about the governments of our respective countries, who dealt with these issues and dealt with it in a way that continued to put us in a disparate and unequal way.

Thank you.

Mr. CLEAVER. Yes, thank you, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chairman, for your leadership.

Mr. CLEAVER. Absolutely. Let me, as we prepare to close out, let me, first of all, thank all three of you. I might need 1 minute out of each of you as we close.

I know that our government, at least at the higher echelons, [is] embarrassed that we will be unable to spank the hand of President Xi for the crackdown in Hong Kong. We're losing our credibility. And Russia's move in Crimea, and any other gangster-like international actions might reflect poorly on us, because I can see leaders around the world spanking us.

I was on an Alex Witt MSNBC show 2 weeks ago. And as she was interviewing me, she actually interrupted me to tell me that she had a friend who now lived in Eastern Europe who was expressing pity for the United States. She actually said: I feel really sorry for those of you in the United States for what you're going through.

In 1 minute from each of you, do you think that we have lost our place as the leading voice of democracy and human rights around the world, with what we've been doing? Not only in police conflict, but even more so with some of the other actions we've been taking diplomatically around the world?

We'll start with the ambassador.

Amb. KELLY. Yes. Thank you. Thank you, Congressman. And thank you, again, for allowing me to participate in this very, very necessary discussion.

I would say that the hundreds of American foreign service officers who are overseas are still working very hard to promote American values, to promote basic human rights. The difficult—the difficulty has been, as you made reference to, is that the highest reaches of our government are constantly undercutting the message that we're still sending out there, that respect for human rights within countries are important to our mutual security. And until we get a voice at the top of our government who will stand up and support important principles like the importance of keeping critical voices on the media, of allowing citizens to peaceably assemble and redress abuses against human rights, it will be difficult for my colleagues to continue to promote those values. And I assure you, they all believe very strongly in the idea of the United States as a city on the hill, as a standard bearer of human rights.

Thank you.

Mr. CLEAVER. Thank you, Ambassador.

Ms. Taifa, 1 minute, please. And then Mr. Jallow.

Ms. TAIFA. Yes. So, Chairman, so you asked, have we lost our place? I would say from the vantage point of people of African descent in the United States, the question more so is were we ever in place—[laughs]—in terms of the United States? I concluded my written testimony with a statement that the cumulative impact of destructive treatment against Black people in the criminal punishment system in general, and policing in particular, combined with the destructive conditions of life negatively impacting generations, are violations of international law, specifically the international convention on prevention and elimination of all forms of racial discrimination, and the international convention on the prevention and punishment of the crime of genocide. I concluded by saying that these and all other international instruments must be used so that we might abate what I deemed the human rights crisis facing Black people in the 21st century, which is genocide.

Mr. CLEAVER. Thank you.

Mr. Jallow.

Mr. JALLOW. Thank you very much. First of all, let me just thank the chairman for inviting me to take part. And also, Congressman Hastings for his leadership. Let me just say the words of Nelson Mandela. He says, “To deny people their human rights is to challenge their very humanity.” And that is what we’ve seen when it comes to Black people, is denying our humanity. And that does not only happen in the United States, it happens worldwide globally. This is something that I have been historically—a historical fact for many, if not all, Black people.

Now the standing of the United States as the right-bearer, of course, has been shaken.

What we’ve seen is a manifestation of a democracy in crisis. And we’ve seen that in so many other locations. So what we need to do is that we must act quickly, firmly, and collectively, because when we choose to be silent, when we choose not to act in conformity with the rule of law and human rights, then we’ll be failing a lot of people.

And that’s what the United States needs not to do right now. I hope they will open up, they will show accountability, they will show leadership, and follow the values of human rights, democracy, and the rule of law.

That is what needs to be done in order to be able to go back to this leadership, to get this global leadership, and as standard bearers when it comes to human rights that the United States has been before. But for now, we need to see change now. Not tomorrow, not next week. We need it now.

Thank you.

Mr. CLEAVER. Thank you.

Ambassador Kelly, Mr. Jallow, Ms. Taifa, thank you very much for being with us. Your insights have been significant. And we appreciate your contributions to this country, even beyond what you’re doing now.

I want to thank our staff, the Executive Director Alex Johnson. And I want to just say that we are in a tight spot in the United States. And somehow we’re going to have to get out of it. Having the Helsinki Commission dealing with this issue is something new, but I think it’s something that’s necessary because we’ve got to

have a very serious and thoughtful discussion in this country about where we are.

If there are no other comments from our staff, this meeting is adjourned.

[Whereupon, at 12:06 p.m., the hearing ended.]



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## **A P P E N D I X**

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PREPARED STATEMENTS

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## PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN

I commend Chairman Hastings for convening this hearing on “Human Rights at Home: Implications for U.S. Foreign Policy.”

We cannot stay silent about George Floyd’s brutal and unnecessary death. Our country is grieving over the loss of this father, son, and brother. His life mattered. Black lives matter. He did not need to die. Both State and Federal law enforcement officers are moving quickly to bring police officers in this case to justice and hold them accountable for their actions.

The roots of systemic racism in law enforcement were planted centuries ago and can be unraveled with targeted and conscious action. I have introduced legislation to reform police departments in America and rebuild trust between police officers and the communities they are sworn to protect and serve. There are many other areas of long-standing systemic racism and inequality that must also be addressed, including restoring voting rights to those who have served their time and been released from incarceration. I have also joined legislation requiring the Pentagon to remove all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederate States of America from all military bases and other assets of the Department of Defense.

I welcome this hearing as an opportunity to consider these issues in the context of the United States’ Helsinki commitments and the resolutions previously adopted by the OSCE Parliamentary Assembly on racism and xenophobia affecting persons of African descent. I hope the OSCE participating States will build on its engagement with diverse civil society across the OSCE region.

Principle VII of the Helsinki Final Act is probably the most quoted text from that document, because the participating States committed to “respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.” Not always quoted, but essential for fulfilling our promises, is the commitment to do so “for all, without distinction as to race, sex, language or religion.”

As the OSCE Special Representative on combatting anti-Semitism, racism, and intolerance, I know our country is not alone in confronting these issues. We have friends and allies who face similar challenges. We also face malign actors who seek to sow divisions in our country whenever and where ever they can. But in holding this hearing today, our principal motivation should not be fear of other countries, but the aspiration for justice in our own.

## PREPARED STATEMENT OF NKECHI TAIFA

**INTRODUCTORY REMARKS**

Thank you Chairman Alcee Hastings for convening this critical Helsinki Commission hearing on Human Rights at Home: Implications for U.S. Global Leadership. And thank you for this opportunity to testify this morning on behalf of my company—The Taifa Group—as well as the Justice Roundtable coalition I convene, and the Center for Justice at Columbia University where I serve as Senior Fellow.

My name is Nkechi Taifa. In addition to the above, I also serve as a Commissioner on the National African American Reparations Commission, convened by the Institute of the Black World 21st Century, and am a founding member of N'COBRA—the National Coalition of Blacks for Reparations in America.

One of the best explanations for the coast-to-coast protests in the wake of the police killings of George Floyd, Breanna Taylor, and others can be encapsulated by a poem by Langston Hughes.

What happens to a dream deferred?  
*Does it dry up like a raisin in the sun*  
*Or fester like a sore, and then run*  
*Does it stink like rotten meat*  
*Or crust and sugar over, like a syrupy sweet?*  
*Maybe it just sags like a heavy load*  
*Or does it explode?*

This poem literally suggests that unrealized dreams can wreak havoc and lead to anger, resentment and despair. When we see young people in the U.S. taking to the streets in protest, we are seeing the overflow of dreams deferred. Dreams of freedom, equality and justice. Dreams that have been tarnished, if not obliterated, by the reality of structural racism, bolstered by white supremacy.

We are just past the mid-mark of the International Decade for People of African Descent. For centuries People of African Descent in the U.S. have not only dreamed of justice, but demanded it. We have urged the country to provide not even grandiose opportunities, but just basic human rights that protect our life and liberty. The response—inequality, mass incarceration and more.

Anti-slavery abolitionist Frederick Douglass once said “Power concedes nothing without a demand.” When we see young people in the streets, we are not only seeing protest, we are seeing demand. We are seeing the outpouring of decades of deferred dreams.

How does change happen? There is usually a triggering event, representing the tip of an iceberg that, in the context of Black people in the U.S., has been building for centuries. And then, a cataclysmic event that explodes. Tragic as it was, the explosion resulting from George Floyd’s death represented only the tip of Black people’s demands for justice. The deferred dream exploded with Emmett Till, whose brutal 1955 murder shocked the nation. It exploded with the senseless slayings of Trayvon Martin and Michael Brown, Eric Garner and Philando Castile, Tamir Rice and Rekia Boyd, Freddie Gray and Breanna Taylor, Ahmaud Arbery and Rayshard Brooks, and the list seemingly grows daily.

With each death of a Black person by police or racist Whites, with each affront to voting rights, with each health disparity, with each trip down the school to prison pipeline, with each widening of the Black/White wealth gap, with each house pilfered by redlining, and with each intergenerationally-transmitted traumatic injury—there was and is a demand for justice.

The U.S. government has failed to protect Black people from systemic racism and police violence. Advancing societies that are safe, inclusive and equitable is central to the work of the Helsinki Commission, of which the U.S. is signatory. The international community must bear witness. The U.S. must not be above scrutiny. It must meet its commitments, review its own record, and be open to criticism. It is incumbent that this country engage in candid self assessment, if it wishes to legitimately demand a similar level of reflection from other OSCE participating states.

Similarly, the U.S must fully embrace human rights conventions it is a party to and eliminate limitations to their use in U.S. courts. These include the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture, the Convention on Political and Human Rights, the Office of the High Commissioner’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Convention on the Prevention and Punishment of the Crime of Genocide..

Black people in the U.S. have dissented many times in the past and, once, again, they are visible in the streets showing that Black lives do indeed matter. Policies that once seemed radical now appear more palatable. Where we once spoke of reform, we now demand transformation. The blueprint is still being formulated and no one will leave this moment without having been changed.

What we are witnessing today is the unprecedented possibility for change, and the unprecedented possibility for the dream to expand, not explode.

Thank you for this opportunity to testify. I have submitted my full testimony for the record, which relies heavily upon previous works I have authored relative to the use of international human rights treaties applied to the U.S.

### **BLACKS HAVE HISTORICALLY APPEALED TO INTERNATIONAL BODIES FOR VINDICATION OF BASIC HUMAN RIGHTS**

In the absence of genuine opportunities for redress within the U.S. body politic, Black people in the U.S. have made constant appeals to international bodies for vindication of their basic human rights. We have made conscious attempts to internationalize our plight, as we struggle to affect changes in the country’s priorities, policies and practices.

In 1829 David Walker published his distinguished “Appeal to the Coloured Citizens of the World.” This document not only was a clarion call to Africans held as slaves in North America to struggle for liberation, but was also a plea to the international community to support the struggle for basic human rights and an end to the system of chattel slavery in the U.S.

In 1841 the U.S. Supreme Court drew on international law principles in addressing the issue of the rights of Africans who had, on

shipboard, freed themselves from kidnapping and enslavement. The Court held that such freed persons are clothed with inalienable human rights, and these rights are a shield against unilateral, definitive actions of other political communities. The Court found that the Africans who achieved their freedom were subject to neither the law of Spain nor to U.S. law, but to "the general law of nations," and they were subsequently allowed to return to Africa.

In 1920 the Honorable Marcus Mosiah Garvey presented to the League of Nations twelve complaints and a fifty-four point document entitled "Declaration of Rights of the Negro Peoples of the World." This document was ratified by the first Universal Negro Improvement Association Delegate Convention of 25,000 participants representing 25 countries. Blacks took great interest in the proceedings and pressed for the inclusion of human rights concerns in the United Nation's Charter, resulting in the provision declaring that the United Nations should promote universal respect for, and observance of, "human rights and for fundamental freedoms for all without distinction to race, sex, language or religion."

In 1951 W.E.B. DuBois, Paul Robeson, William L. Patterson, Mary Church Terrell and others presented the United Nations General Assembly in Paris and the United Nations Secretary General's office in New York with the renowned petition "We Charge Genocide," which chronicled the terroristic sufferings, murder, mental assault, and crimes against humanity inflicted against Black people.

In 1971 a letter was addressed to the Member Nations of the U.N. General Assembly, directly following a pre-dawn unprovoked attack by U.S. governmental and state police forces upon the residence and office of the Republic of New Afrika, requesting that international observers be sent to Mississippi and "act immediately to avoid loss of life and a conflagration and in the interests of world peace."

A petition was filed with the United Nations in 1979 by Attorney Lennox Hinds on behalf of three petitioning organizations, the National Conference of Black Lawyers, the National Alliance Against Racist and Political Repression and the United Church of Christ, Commission for Racial Justice. This same petition was filed with the U.N. Human Rights Commission and its sub-commission on Prevention of Discrimination and Protection of Minorities. Here the petitioners alleged a pattern of gross violations of human rights and fundamental freedoms of political prisoners and prisoners of war wrongfully held on account of their race, economic status and political beliefs and inhumanely treated in U.S. prisons.

In 1996 an array of Black nationalist groups in the U.S. petitioned the United Nations Special Committee of 24 on Decolonization, seeking international support for the right to self determination. Inspired by the genocide petition submitted to the U.N. 46 years earlier, the National Black United Front in 1997 delivered a petition containing 157,000 names of people who again formally charged the U.S. government with genocide against its Black population. This petition was launched following allegations of CIA collusion in the funneling of crack cocaine into predominately Black inner city communities in America.

On March 3, 2006, the Inter-American Commission on Human Rights accepted the Justice Roundtable's request and held a thematic hearing on the 100:1 quantity disparity between crack and powder cocaine as the most egregious example of mandatory minimum sentencing in the U.S. criminal justice system. The petition argued that de facto discrimination against African Americans that is a result of harsh mandatory minimum sentences for crack cocaine cases is a violation of the American Declaration on the Rights and Duties of Man—specifically the right to equal protection under the law, the right to a fair trial, and the right to judicial protection against violations of fundamental rights. Professor Charles Ogletree delivered the Roundtable's testimony, joined by the First U.N. Independent Expert on Minority Issues Gay McDougall; directly impacted person Kemba Smith; and the Honorable Patricia Wald. Wald, a former judge of the International Criminal Tribunal for the former Yugoslavia, who testified on behalf of the American Bar Association, poignantly testified:

Unduly long and punitive sentences are counter-productive, and candidly, many of our mandatory minimums approach the cruel and unusual level as compared to other countries—as well as to our own past practices. On a personal note, let me say that on the Yugoslavia War Crimes Tribunal, I was saddened to see that the sentences imposed on war crimes perpetrators responsible for the deaths and suffering of hundreds of innocent civilians often did not come near those imposed in my own country for dealing in a few bags of illegal drugs. These are genuine human rights concerns that I believe merit your interest and attention.

In 2014 after the horrific police killing of Michael Brown in Ferguson, Missouri, Attorney Justin Hansford led the “Ferguson to Geneva” delegation, accompanying Ferguson protestors and Michael Brown's parents to testify before the United Nations Committee Against Torture. “We need the world to know what's going on in Ferguson and we need justice,” said Leslie McSpadden, the mother of Brown as she testified in Geneva, Switzerland.

Over the course of several decades over 110 African American and Latino men and women were subjected to torture that was racially motivated and included electric shocks, mock executions, suffocation and beatings by John Burge, a Chicago police commander and his subordinates. Scores of Chicago police torture survivors suffered from the psychological effects of the torture they endured and, with no legal recourse for redress, appealed to the international arena. A shadow report on the Burge torture cases was submitted to the UN Committee Against Torture. In May 2006 and November 2014, the UN Committee condemned the U.S. Government and the City of Chicago for failing to fulfill its obligations under the Convention Against Torture with respect to the Burge torture cases. The UN Committee also cited its concerns about police militarization, racial profiling and reports of police brutality. The international body's intervention was pivotal to the May 2015 passage by the Chicago City Council of an Ordinance providing

compensation, restitution and rehabilitation to survivors of the racially motivated police torture. The Ordinance contained a formal apology to the survivors, a Commission to administer financial compensation, free enrollment in city colleges to the survivors; the requirement that the city's public schools teach about the torture, and the funding of city memorials about the torture.

On November 12–14, 2014, We Charge Genocide (WCG), a Chicago based grassroots inter-generational organization whose name was inspired by the historic 1951 petition to the United Nations, sent a delegation of eight youth to the 53rd Session of the Committee Against Torture in Geneva to present evidence of police violence at the 53rd session of the United Nations Committee Against Torture. The delegation was following up on the submission of the shadow report, *Police Violence Against Youth of Color*, published by WCG. The goal of addressing the U.N. was to increase the visibility of police violence in Chicago and call out the continued impunity of police officers who abuse, harass, and kill youth of color in Chicago every year.

On September 24, 2019 the Inter-American Commission on Human Rights convened a thematic hearing on reparations as a remedy for human rights violation against Afro-descendants in the U.S. during the 173rd Period of Sessions, spurred by the Thurgood Marshall Civil Rights Center at Howard University School of Law, along with 29 co-sponsoring organizations. The hearing highlighted the need for reparations for the systematic pattern of human rights violations against Afro-descendants attributable to the U.S. government including the crimes of slavery, Jim Crow laws, excessive and violent policing practices, mass incarceration and other forms of structural racial discrimination.

On June 17, 2020 an Urgent Debate in the United Nations Human Rights Council in Geneva was convened, focused on systemic racism and policing in the U.S. The session followed demands for international action issued by human rights groups and experts from dozens of countries who cited the repeated deaths in the U.S. of unarmed Black people, brutal police tactics against protestors and police assaults on journalists covering them. A letter filed by the U.S. Human Rights Network and endorsed by family members of George Floyd, Breanna Taylor, Michael Brown and Philando Castile, called on the Council to pass a Resolution that would have established an independent international commission of inquiry related to the systemic racism, human rights violations and other abuses against People of African Descent in the United States and around the world. The Resolution was not adopted but a weaker version passed which fails to mandate the establishment of such a commission. Rather, it calls for a report from the High Commissioner to be presented to the Human Rights Council, followed by an interactive Dialogue.

As part of the June 17, 2020 Urgent Debate on racism and police brutality at the UN Human Rights Council in Geneva, the UN's Human Rights Chief Michelle Bachelet called on countries to examine their pasts and to strive to better understand the scope of continuing "systemic discrimination." She pointed to the "gratuitous brutality" on display in the killing of George Floyd who died in Minneapolis on May 25 after a white police officer—since charged

with murder—kneeled on his neck for nearly nine minutes. She also stressed the need to “make amends for centuries of violence and discrimination, including through formal apologies, truth-telling processes and reparations in various forms.”

In sum, there has been a continuous evolution of appeal by people of African descent in the U.S. to the international sphere for recognition and redress, and the above recitations merely scratch the surface. The evidence and documentation presented to these international bodies clearly reveal patterns and practices of gross violations of human rights and fundamental freedoms in the U.S. This trend is contrary to the tenets of international law and universal norms.

### **THE U.S. MUST ADHERE TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has been described as “the most comprehensive and unambiguous codification in treaty form of the idea of the equality of the races.” CERD prohibits racial discrimination, which it defines as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” having the purpose of “nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Parties to the Convention are legally obligated to eliminate racial discrimination within their borders and are required to enact whatever laws are necessary to ensure the exercise and enjoyment of fundamental human rights free from discrimination.

The CERD provision relating to criminal justice concerns is subsumed within Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
- (c) Political rights, in particular to the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage to take part in the Government, as well as in the conduct of public affairs at any level and to have equal access to public service.

Enumerating a string of “other civil rights” encompassing the civil, politics, economic, social and cultural spheres, the Convention goes on to iterate the following:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies against any acts of racial discrimination which violate human rights and fundamental free-

doms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

The United States has promulgated numerous treaties proscribing various human rights violations, including genocide, civil and political rights, economic, social and cultural rights, and torture. However, it appears politically expedient for the U.S. to ratify human rights treaties with limiting reservations, understandings and declarations (RUDS). This practice not only nullifies these treaties' impact in the U.S., but nullifies their effect. It is readily apparent that when the U.S. ratifies a human rights treaty today, it not only attempts to ensure that it has not assumed any international human rights obligations not already guaranteed by U.S. law, but, by making the treaty non-self-executing, it effectively precludes individuals from relying on any of the treaty's provisions in U.S. courts.

### **THE INFLICTION OF POLICE BRUTALITY AGAINST BLACKS MUST END**

Many issues of racism in the U.S. violate the International Convention on the Elimination of all Forms of Racial Discrimination, specifically the clause that condemns laws and practices that have an invidious racially discriminatory effect, regardless of intent. The selective infliction of police brutality is an example of a gross inequality that could be alleviated by CERD in its unadulterated form.

The international race convention promotes the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

Statistics reveal that Blacks are far more likely to be physically abused and/or murdered by police officers charged to protect them. Indeed, by the admission of some police officers, race is used as a determinative factor in deciding who to follow, detain, search and arrest. The lengthy history of police brutality against Black people is legion, and is still very prevalent today. Statistics also reveal there are disproportionately high rates of the use of excessive and deadly force by police against Blacks. Research has shown that a variety of factors contribute to the problem—including racism and prejudice, unfettered police discretion, the infamous police code of silence, inadequate disciplinary measures by police departments and administrators, and the ineffectiveness of current remedies.

It is incumbent that the U.S. demonstrate a seriousness of purpose in eradicating racial discrimination in its criminal punishment system. I submit that the enforcement of international norms domestically, specifically the provisions of CERD, would eliminate the barriers presented by current law and practice with respect to racism, at least in the criminal justice system. Even if legislation is not implemented to enforce the treaty in U.S. law, if international law were used to assist in interpreting our constitutional rights "the right attains greater credence as one that has universal recognition."

The judicial system should interpret the U.S. Constitution's 14th amendments equal protection analysis in light of CERD's clause

abrogating laws with an invidious discriminatory effect irrespective of intent, enabling the higher standard of strict scrutiny to apply.

With respect to abating the racial infliction of police brutality and misconduct, there must be a new federal response toward police misfeasance. The U.S. is required, pursuant to the International Covenant on Civil and Political Rights, the Convention Against Torture, and CERD to file comprehensive reports with the United Nations on its domestic human rights compliance.

In its first report to the United Nations Committee on the Elimination of Racial Discrimination, three groups—Human Rights Watch, the International Human Rights Law Group and the NAACP Legal Defense and Educational Fund emphasized that the U.S. CERD Report and subsequent submissions include reference to U.S. law and practice relating to racial discrimination and a discussion of whether these laws are sufficient to eliminate discrimination in fact, or whether additional steps by the federal government are necessary. These organizations stressed that because the non-self-executing clause effectively denies Americans the enjoyment of international law protections in domestic courts, it is all the more incumbent upon the government to bring all aspects of U.S. law and practice into conformity with the international standards contained in CERD.

The Race Convention embodies the world community's expression that a universal, international standard against race discrimination is necessary if racial and ethnic bias are to be eliminated. The U.S. has been challenged to take appropriate measures to ensure that its laws are in conformity with the dictates of CERD. It is a sad commentary on this country that with respect to the ratification of human rights treaties in general and CERD in particular, the U.S. is not leading the way, but instead is pulling up the rear.

Indeed, the 94 petitioners who signed the 1951 Genocide complaint against the U.S. to the United Nations stated, "we believe that . . . the manner in which a government treats its own nationals is not to be found in the lofty platitudes that pervade so many treaties or constitutions. The essence lies not in the form, but rather, in the substance."

It is clear that the CERD prohibition against violence by government officials or others is violated by the wanton infliction of brutality against Blacks by police. Over 100 years ago W.E.B. DuBois accurately predicted that the problem of the 20th century would be the problem of the color line. And now, into the 21st century, the problem of race in society is just as pernicious. Domestic law has proven inadequate in providing relief. The application of international human rights law to the U.S. could be the pivotal strategy which eradicates racism and its deleterious effects. To paraphrase the words of Human Rights Watch, the International Human Rights Law Group, and the NAACP Legal Defense and Education Fund:

"CERD needs to be promoted as the law of the land and U.S. law and practice must be brought into conformity with it. American must show a respect for the Convention and a seriousness of purpose in eliminating racial discrimination."

**THE INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE SHOULD BE USED IN U.S. COURTS**

In today's environment, we think about systemic racism, but what we should be discussing is the possible extermination of a people. This is because, I submit, the United States has moved beyond both overt Jim Crow and beyond unconscious bias in its criminal punishment system, to what I call, "institutionalized genocide." The coinage of this phrase represents a scientific framework through which to analyze what is happening to people of African descent in the 21st century. Although this testimony scrutinizes the concept through the lens of police killings on the Black community, the impact of the broader criminal punishment system and other systems with a disproportionate negative impact on Black people such as education, health care, and the economic system could and should likewise be so examined.

While genocide appears to many to singularly denote killings through massacre and annihilation, its international definition also includes the creation of "conditions of life" calculated to bring about the destruction of a people, in whole or in part. Unfortunately, seldom do people examine the internationally adopted parameters of the term genocide and then compare them with the treatment of Black people in the U.S. If one were to do so, state-sponsored genocide against Black people, particularly as it relates to police killings, is at least plausible, if not undeniable.

In 1948 the General Assembly of the United Nations adopted the International Convention on the Prevention and Punishment of the Crime of Genocide. "This Convention confirmed that genocide, whether committed in time of peace or in time of war is a crime under international law which must be undertaken to prevent and punish." Genocide, the Convention declares, is the committing of certain acts with intent to destroy—in whole or in part a national, ethnical, racial or religious group, as such:

- killing members of the group
- causing serious bodily or mental harm to members of the group
- deliberately inflicting upon the group conditions of life calculated to bring about its physical destruction in whole or in part
- imposing measures to prevent births within the group
- forcibly transferring children of one group to another group

Those acts, the international Convention states, constitute genocide. Pursuant to the Convention, however, genocide is not the only punishable act. Related acts are equally punishable:

- (a) conspiracy to commit genocide
- (b) direct and public incitement to commit genocide
- (c) attempt to commit genocide
- (d) complicity in its commission

The international definition concludes by reminding the parties that those who commit genocide or any other of the related acts "shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals."

It took the U.S. 38 long years to ratify the Convention. One fear was that Blacks in America would use the treaty to their advan-

tage. Segregationists felt that American ratification would subject the United States to charges based on the treatment of Native American and Black people, and Ohio representative Senator John Bricker in particular was alarmed at the thought that literally thousands of discriminatory Federal and State laws could automatically be invalidated by application of international human rights law in U.S. courts.

Largely as the result of that, it has been said that the Genocide Convention set a record as “the most scrutinized and analyzed non-military treaty ever to be considered by the Senate.” Thirteen days of public hearings were held by the Senate Committee on Foreign Relations, generating testimony from over 200 witnesses representing divergent views, culminating in a hearing transcript of over 2,000 pages.

After nearly four decades, however, and feeling comfortable that enactment of antisegregation laws mooted concern over attacks against U.S. racial practices of the 1950’s and 1960’s, and inserting language to limit the scope of the Convention within U.S. law, the U.S. Senate, nearly 40 years after its adoption by the United Nations, and after scores of other nations had already ratified it, finally gave its advice and consent to ratification in 1988.

What is so significant about the Genocide Convention to activists, advocates, and lawyers, is that it is the only international human rights treaty adopted by the United States that is fully actionable in U.S. law.

Later international human rights treaties such as CERD, the International Covenant on Civil and Political Rights, and the Convention Against Torture, while symbolic, are not self executing, meaning they have no enforceability in U.S. courts because there is no U.S. legislation to implement their provisions. Ratification of the Genocide Convention, however, required the adoption of implementing legislation, to ensure that the ratification not be a symbolic gesture, but have the full force of law and the authority to enact penalties.

On April 4, 1988, then President Ronald Reagan completed the final step to the ratification process by signing the treaty, “The Genocide Convention Implementation Act.” This Act codified the international Genocide Convention in U.S. law, although making various changes in an attempt to limit its applicability, such as adding the term “specific” before intent.

It is important to recall the full title of the Genocide Act. The International Convention on the *Prevention and Punishment* of the Crime of Genocide. There are necessary reforms that can prevent genocide and lead to systemic transformation, such as the use of force only as a necessary last resort; that all sorts of chokeholds be banned; that racial profiling be prohibited; that transfer of military equipment to law enforcement be ceased; that no-knock warrants be abolished; that there be a recklessness standard in the law so that killer cops can be held accountable; that a national public database be developed so that problematic police cannot easily move from one police agency to another; and that the doctrine of qualified immunity be ended, which shields police from being held legally accountable when they break the law.

In concert with such laws that could prevent the genocide from continuing, advocates and lawyers must also be in the courts, using provisions from the Genocide Convention, to punish those with the intent to destroy in whole or in significant part, a national, racial, ethnic or religious group.

I acknowledge that the specific intent prong as inserted by the U.S. ratification is the fundamental hurdle to use of this treaty in United States law. It is a difficult hurdle, given the restrictive manner in which U.S. courts continue to construe the intent requirement in general equal protection analysis involving criminal legal issues. It is clear that few public officials, private individuals or constitutionally responsible officials, much less police officers, will affirmatively state, 'I have the specific intent to destroy, in whole or in substantial part, your racial, ethnic or religious group,' yet that level of honesty appears to be what the U.S. codification requires.

In reality, however, many of the disparities arise from institutional and structural racism where bias is codified within the structural fabric of social institutions and manifests routinely without the need for a discrete actor to overtly perpetuate a discriminatory act.

There is a broader social context which underlies the criminal punishment system in the U.S. It is a social context permeated by the poverty, rampant unemployment, poor housing and homelessness, inadequate education, harmful health outcomes, and diminished life opportunities and it is these unmet social needs which provide the fuel for the cycle of incarceration and the police as its first responders. These damaging conditions of life often result in the destruction of not only individuals, but entire families and generations. Are these conscious acts intended to cause destruction? Are they the unconscious effects of structural racism in the system? Or do they constitute institutionalized genocide?

There is a solution. The International Race Convention allows intent to be gleaned through actions and impact, regardless of specific intent, reaching both conscious and unconscious forms of racism. Thus, if the intent standard of the Genocide Convention as ratified by the United States were to be interpreted in accordance with the intent standard in the international Race Convention—then a claim of genocide against a substantial portion of the Black populace in the United States resulting from institutionalized or structural racism in the criminal punishment system in general, and police killings under color of law could, in fact, be actionable.

It is clear that the horror of racism—overt as well as institutional—has not been repugnant enough for the fashioning of structural solutions to abate the problem. Perhaps the application of the intensified nomenclature of genocide will shock the conscience of the public to intensify actions to remedy the problem. Perhaps the stark correlation between the internationally-accepted definition of genocide and the juxtaposition of that definition against the impact of racism in the U.S. punishment system will spark needed revolutionary change in policies and practices, and move the system away from genocide, and toward transformative justice.

The Democratic majority House of Representatives recently passed the Justice in Policing Act, which contains some remedies

that could begin the process of abating the genocide, but it has to have the agreement of the Republican majority Senate. However, the bill drafted by the Senate to most activists is a total non-starter—doing nothing that will stop the killing, causing serious bodily or mental harm, or inflicting on the group conditions of life that lead to the destruction of Black people.

It is incumbent that those most affected by racism, as well as those who truly believe that Black Lives do, in fact, matter, have the audacity to advance creative theories.

The term, “institutionalized genocide” is a formulation illuminating the severity inherent in the international nomenclature, while acknowledging that there are complications with the U.S. interpretation of intent.

Is the impact of the actions of killer cops and the ensuing racism in the criminal punishment system genocidal against a substantial portion of the Black populace? I submit yes. As long as the lives of the people in Black communities are being destroyed; as long as genocidal treatment is embedded in police departments, prosecutor’s offices, and courtrooms, and the perception of unequal justice is perpetuated throughout the system; and as long as legislatures continue laws and practices that had a damaging effect, there will be genocidal consequences for Black people.

## CONCLUSION

The racially selective manner in which justice is administered in the United States violates not only elemental principles enshrined in the U.S. Constitution but basic human rights and fundamental freedoms outline in a myriad of international instruments as well. The dialogue and implications for U.S. global leadership with respect to the applicability of human rights norms to the U.S. must be amplified, and I am thrilled that Chairman Hastings has convened this timely hearing.

My testimony today has presented the case that the cumulative impact of destructive treatment against Black people in the criminal punishment system in general and policing in particular, combined with the destructive conditions of life negatively impacting generations, are violations of international law, specifically the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Prevention and Punishment of the Crime of Genocide. These and all other international instruments must be used so that we may abate the human rights crisis facing Black people in the 21st Century—genocide.

*This testimony relies on works previously published by Nkechi Taiifa: “Codification or Castration: The Applicability of the international Convention to Eliminate All Forms of Racial Discrimination to the U.S. Criminal Justice System,” Howard Law Journal, Vol. 40, Issue 3, Spring 1997; “Racism in the U.S. Criminal Justice System: Institutionalized Genocide?” American Constitution Society Issue Brief, October 2016.*

## PREPARED STATEMENT OF MALCOLM MOMODOU JALLOW

A few words to introduce myself—I am a member of the Swedish parliament and of the Swedish delegation to the Parliamentary Assembly of the Council of Europe, the main human rights organisation of this continent. In this capacity, I have the opportunity to exchange regularly with parliamentarians from 47 European countries.

Political developments in the U.S. have a significant socio-economic and political impact on the rest of the world. There is reason for great concern about the unfolding grave human rights crisis in the United States: partly as a result of the systemic brutal police killings of black people, but also the use of state sanctioned excessive force and suppression of peaceful protesters. These are clear violations of United States obligations under international law.

The Trump administration has within this short period of time completely eroded the authority of the US as a standard bearer and thereby undermined the legitimacy of the so-called U.S. GLOBAL LEADERSHIP. One cannot exercise effective soft power without legitimacy. The isolationist foreign policy direction, the nationalist rhetoric and the blatant non-compliance to the international human rights standards and rules-based orders only accelerate the decline in confidence from the rest of the world.

We have had a series of evidence of structural and institutional racism and racist policing fuelled by historical abuses and negative stereotyping, leading to the exclusion and dehumanisation of black people in the U.S. However, this particular murder of George Floyd has become a clear manifestation and a tipping point for what many, including many Europeans, perceive as state sanctioned racism and blatant violation of the civil and human rights of black people.

What we have seen in the U.S. does not only illustrate the deep rooted and historical systemic injustice against black people. It also clearly manifests the extent to which white supremacy ideologies are normalised.

What we are seeing is a manifestation of a democracy in crisis.

If this were happening in any other part of the world, the U.S. and other western countries would be demanding a regime change.

It is remarkable, however, how much time it took and how much pressure from the black community that was required for the global leadership to react.

When leaders sow the seeds of hatred and stoke the flames of racist violence, we legitimize intolerance and bigotry.

We create division rather than unite the people.

And most importantly, we undermine the fundamental values of democracy, human rights and the rule of law.

Structural, institutional and systemic racism, including racist violence, is not confined only to the boundaries of the U.S. It is also very much present in Europe. We have, and continue to experience, our share of structural and institutional racism and police brutality. With impunity.

Over the last decade, we have seen an increase, both in gravity and number, in the manifestations of racism in all its forms.

I woke up yesterday morning reading on my time Line an article from New York Times with the title:

“A young Black man (Phillip Mbuji Johansen, 28 years old) was tortured and killed on a remote island in Denmark by two white men with known far-right affiliations, one of them with a swastika tattoo on his leg, but the authorities are refusing to call it a hate crime.”

Mr. Johansen’s mutilated body was found at a camp site. According to the preliminary indictment, his skull was broken after he was beaten several times with a wooden beam; he was stabbed multiple times; a knife was driven through his throat and a knee had been planted in his neck. He died sometime early Tuesday, according to a forensic report.

The prosecutor, Benthe Pedersen Lund, told a local newspaper that the killing had nothing to do with “skin color” but with “a personal relationship that has gone wrong.”

Woury Jallow in Germany, Adama Traore, in France, Steven Laurence UK and now Phillip Mbuju are just a few amongst a long list of victims of racist violence that lead to the loss of their lives. All of these cases were systematically met with blatant denial of the root causes that lead to the tragic consequences for these victims.

The effects of governments’ failure to devise and implement adequate policies on social cohesion, diversity, migration and social inclusion have triggered this upsurge, which has been amplified by the increasing use of Internet and social media. The dimension, gravity and frequency of their manifestations are of great concern and urgency.

The urgency becomes even more acute, considering that these phenomena have repercussions that go well beyond the single individuals that are directly targeted.

They affect entire communities and they create divides in society, affecting human rights and social cohesion; and they erode even further the trust in public authorities, the rule of law and ultimately democracy.

In addition, issues of race relations deeply affect the conduct of our foreign policy relations

The European project has anti-discrimination at its heart, with a fundamental commitment to ensuring that we learn the lessons of the Holocaust and past European divisions through pursuit of human rights for all. This project, however, appears to be failing with regard to Black Europeans. The pain and denigration of Black people has a historical context that we must remember., Hence, the UN Decade on People of African Descent and its three focus areas Recognition, Justice and Development.

The images of the brutal and tragic death of George Floyd triggered a protest movement not only in the U.S. but around the world. The scale and intensity of the protests illustrates a deep sense of frustration and pain that Europe, for the longest of time, had shown no regard for.

The usual silence and exceptional entitlements from European leaders are no more working, as **this is not a moment, but a movement.** A movement that is deeply and permanently com-

mitted to justice, human rights and the rule of law. Not in words, but in action!

“I want people across the world and the leaders in the United Nations to see the video of my brother George Floyd, to listen to his cry for help, and I want them to answer his cry,” said Philonise Floyd, brother of George Floyd. “I appeal to the United Nations to help him. Help me. Help us. Help Black men and women in America.”

There is a George Floyd in every part of Europe, and just like George Floyd, we can't breathe. It is time for the European leadership, as well as the U.S. leadership, to recognise their blind spots and listen to our demands for justice, equality and human rights.

You got a chance and a you got choice, so we demand to see changes. We must act quickly, firmly and collectively, because when we choose to be silent in the face of hatred, bigotry and racism, we choose to be complacent there by undermining the fundamental values of human rights, democracy and the rule of law.

## PREPARED STATEMENT OF AMBASSADOR IAN KELLY

Among the many contributions of the Helsinki process to international peace, perhaps the greatest was the consensus that security among states depends in part on respect for human rights within states. We support the OSCE because we know that a world where fundamental freedoms are upheld is a safer world. As OSCE leaders agreed in the Charter of Paris in 1990, “observance and full exercise (of human rights) are the foundation of freedom, justice and peace.”

At the OSCE, to advance that cause, the U.S. has worked together with our democratic allies in Europe and Canada to support human rights. In my time at the OSCE, the greatest challenges to the cause were the political use of the judiciary and law enforcement, government intimidation of critical media and civil society, and the lack of checks and balances against the power of the executive.

Recent events have shown that America as a model for fighting against the first two tendencies has been greatly tarnished. But we can still be a beacon for promoting separation of powers to ensure transparency and accountability.

The recent beatings of protestors in the U.S. served as an uncomfortable reminder of events in Minsk in December 2010, when police used violence to break up rallies against the government. It caused us and our allies at the OSCE to invoke something called the Moscow Mechanism, where a group of OSCE countries can appoint a special representative to investigate abuse against those exercising their basic freedoms.

We knew that Russia and others would veto the recommendations of the report. We invoked the Moscow Mechanism because we wanted to send a strong signal: that we found the use of violence to quell dissent unacceptable.

A decade later, we’ve seen in our country the excessive use of force against protestors who are peaceably assembling. Perhaps the most prominent example was in Lafayette Square. There, authorities put a higher priority on clearing peaceful protestors for a photo op, than on allowing them to exercise their basic rights. I don’t want to compare our response to protest to that of the Lukashenko regime. But until the highest levels of our government condemn what happened in Lafayette Square and elsewhere, we’ve lost much of our moral authority to call other countries to account.

In my last post, as Ambassador to Georgia, I experienced in dramatic fashion how attacks on critical media in the U.S. have eroded our power to persuade other countries to protect free speech. A few months before I retired in early 2018, a Georgian court was close to ruling on replacing the managing editor of the country’s leading opposition television station with someone more amenable to the government.

I met with a senior official to try to convince that individual to speak out in favor of maintaining critical voices in the media. To support my argument, I drew upon many of the OSCE principles, such as the importance of free speech to ensuring strong, accountable government. I then deployed what I thought was my strongest argument—that Tbilisi needed Washington’s support, and that

Washington would have a hard time understanding why the Georgian government wouldn't support keeping its critics on the air.

The response was both illuminating and deflating. The official looked at me, smiled, and said: "Really, Ian? You really think Washington will have a problem with fake news going off the air?"

A few months after I left, the court did order new management at the station, and Georgia lost a critical platform for holding government accountable.

Given what is happening here in the U.S., I can imagine how difficult it is for my former colleagues in the field now to promote human rights. With the recent abuse of police powers, and the characterization of journalists as "enemies of the people" over the last few years, diplomats' powers of persuasion have been greatly eroded.

But they should still have hope in the power of American institutions.

When I tell my students about my distress at my own government's abuses over the years, such as the CIA "Black Sites" and the torture at Abu Graib, they ask me how I was able to continue to work for such an administration. I tell them it's because of my deep belief in the system's ability to investigate abuse, correct itself, and ultimately do the right thing.

While we look to right our own country's wrongs, we cannot avert our eyes from assaults on Helsinki principles elsewhere in the OSCE space. We should be particularly concerned about increasing centralization—and personalization—of political power. Just yesterday, Russia concluded a plebiscite on an amendment that could allow Putin to stay in power until 2036.

And then there is the pandemic. It attacked at a time when democracy was already in retreat. Even before COVID-19, Freedom House noted that since 2006, democracy has been in decline in 25 of 41 established democracies. The challenge of curbing the pandemic has emboldened authoritarian rulers. It has given them another excuse to curb fundamental rights, to remove institutional checks on their power, and silence those who dissent.

As Dr. King wrote, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." When we redress wrongs, we make our country stronger. We restore our position of leadership in a world where democracy needs champions. And by so doing, we make the world safer.

Thank you, Mr. Chairman, for convening this hearing today.



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