

**TESTIMONY OF**

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**on behalf of the**

**Justice Roundtable**

**and the**

**Center for Justice at Columbia University**

**BEFORE THE**

**COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
(U.S. HELSINKI COMMISSION)**

**ADDRESSING**

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

**JULY 2, 2020**

## **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 21<sup>st</sup> 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 -- 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.” 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 WEB 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 US 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 53<sup>rd</sup> Session of the Committee Against Torture in Geneva to present evidence of police violence at the 53<sup>rd</sup> 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 173<sup>rd</sup> 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 US 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 freedoms 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 14<sup>th</sup> 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 20<sup>th</sup> century would be the problem of the color line. And now, into the 21<sup>st</sup> 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 21<sup>st</sup> 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 advantage. 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 anti-segregation 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 21<sup>st</sup> Century – genocide.

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This testimony relies on works previously published by Nkechi Taifa:

“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

