

# Black Lives Matter is a Human Rights Issue

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## Introduction

In 2015, Opal Ayo Tometi, one of the three Black women who co-founded Black Lives Matter (BLM), along with this author, co-authored an article on the *Time* magazine website titled, “Black Lives Matter is Not a Civil Rights Movement.” In that piece, we argued that the Black Lives Matter Movement has been described as the “New Civil Rights Movement” by the media and political pundits. However, characterizing BLM as such is far too narrow and limiting. Like the Civil Rights and Black Power Movements before it, as well as the Abolitionist Movement, it is fundamentally a movement for basic human rights as enshrined in the United Nations Universal Declaration of Human Rights.<sup>1</sup> The founders of BLM have described it as such, much like how the leaders of the Civil Rights and the Black Power movements did. BLM is the historical successor of those movements.

Since its inception, the Black freedom movement in all its phases has been a struggle against being denigrated as “the other,” and stands for the recognition and realization of Black people as full human beings with claim to all the rights and privileges enshrined in the U.N. declarations, U.N. conventions, and U.S. Constitution.

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1. Opal Ayo Tometi and Gerald Lenoir, *Black Lives Matter is Not a Civil Rights Movement*, TIME (Dec. 10, 2015, 12:34 PM), <https://time.com/4144655/international-human-rights-day-black-lives-matter> [https://perma.cc/Z2FP-MHM6].

Throughout history, Black leaders, abolitionists, human rights activists, legal scholars, and lawmakers have applied human rights standards to the emancipatory struggle of people of African descent in the U.S.

### I. The Historical Context

In the early 19th century, the British government, responding to strong domestic pressure from the Abolitionist Movement, endeavored to suppress the transatlantic slave trade.

In her book, *The Slave Trade and the Origins of International Human Rights Law*, Jenny S. Martinez, the Dean of Stanford Law School, wrote:

The abolition of the slave trade has received a great deal of attention from historians, but much less so from international lawyers. Yet the abolition of the transatlantic slave trade remains the most successful episode ever in the history of international human rights law. Slavery and the slave trade are among the few universally acknowledged crimes under international law.<sup>2</sup>

Professor Martinez argues that legal actions to end the international slave trade were crucial to the development of modern international law.<sup>3</sup> The admiralty courts' prosecution of the crews of slave ships in West Africa, Cape Town, Brazil, and the Caribbean between 1807 and 1871 created the legal basis for contemporary human rights law, she argues.<sup>4</sup> International courts targeted states and non-state transnational actors, prosecuted them, and freed captured West Africans bound for the slave plantations of the Americas and Brazil.<sup>5</sup>

In the twentieth century, the quest for human rights continued. In 1947, the NAACP submitted its "An Appeal to the World: A Statement of Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress." In the appeal, the NAACP made the case for UN support for Negroes, stating:

It is not surprising, then, that M. F. Dehousse, the Belgian delegate to the first session of the Economic and Social Council, stated on January 23, 1946: ". . . if human rights are systematically denied or violated in one or other part of the world; there can be no doubt that such a situation, with which we are only too well acquainted, will, after a more or less brief period of confusion and anarchy, lead again to war."

We submit that the well-nigh universal violation of the principle of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion," as far as Negroes are concerned, comes

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2. JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* 13 (Oxford Univ. Press 2014).

3. *Id.* at 14.

4. *Id.* at 24.

5. *Id.* at 6.

within the category of the situation outlined by Dehousse.<sup>6</sup>

In 1951, the Civil Rights Congress engaged in a campaign to hold the United States accountable for genocide against African Americans. The organization's petition, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of The United States against the Negro People*, sought to demonstrate that the government of the United States was in violation of the U.N. Convention on the Prevention and Punishment of Genocide, which was adopted in 1948 in the aftermath of the Holocaust.<sup>7</sup> *We Charge Genocide* demanded that the United States, which failed to enforce its own Constitution, be punished under international law for its genocidal acts against African Americans.<sup>8</sup> In more than two hundred pages, the petition cited 152 incidents which the Civil Rights Congress offered as evidence in support of this claim.<sup>9</sup> These killings of unarmed Black men and women by police and lynch mobs took place between 1945 and 1951.<sup>10</sup>

The Introduction to the petition emphasized the relationship between Hitler's crimes against the Jews and America's crimes against African Americans, stating:

Out of the inhuman Black ghettos of American cities, out of the cotton plantations of the South, comes this record of mass slayings on the basis of race, of lives deliberately warped and distorted by the willful creation of conditions making for premature death, poverty and disease. It is a record that calls aloud for condemnation, for an end to these terrible injustices that constitute a daily and ever-increasing violation of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>11</sup>

The report further stated, “[o]nce the classic method of lynching was the rope. Now it is the policeman’s bullet. To many an American, the police are the government, certainly its most visible representative. We submit that the evidence suggests that the killing of Negroes has become police policy in the United States . . . .”<sup>12</sup>

In July of 1964, Malcolm X attended the second meeting of the Organization of African Unity (OAU), where he presented a petition to the 33 heads of state to intervene on behalf of 22 million American Negroes.<sup>13</sup> In his speech, he stated, “[i]n the interest of world peace, we beseech the

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6. W.E.B DuBois et al., AN APPEAL TO THE WORLD: A STATEMENT OF DENIAL OF HUMAN RIGHTS TO MINORITIES IN THE CASE OF CITIZENS OF NEGRO DESCENT IN THE UNITED STATES OF AMERICA AND AN APPEAL TO THE UNITED NATIONS FOR REDRESS 91 (1947).

7. See generally *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Against the Negro People*, CIV. RTS. CONG. (1951), <https://depts.washington.edu/moves/images/cp/1.%20We%20Charge%20Genocide%201-28.pdf> [<https://perma.cc/W397-C8SG>].

8. *Id.* at 6.

9. *Id.* at 29, 55.

10. *Id.* at 9-12.

11. *Id.* at 1.

12. *Id.* at 8-9.

13. Malcolm X, Address to the Organization of African Unity (July 17, 1964) (transcript available at the Organization of Pan African Unity).

heads of the independent African states to recommend an immediate investigation into our problem by the United Nations Commission on Human Rights.”<sup>14</sup>

In the *Autobiography of Malcolm X*, he queried, “[h]ow is a black man going to get ‘civil rights’ before he first wins his *human rights*? If the American black man will start thinking about his *human rights*, and then start thinking of himself as part of one of the world’s greatest people, he will see he has a case for the United Nations.”<sup>15</sup>

The African heads of state discussed the proposition at the OAU summit but failed to bring the case before the United Nations, due in part to pressure from the United States State Department.

Dr. Martin Luther King Jr. also spoke in human rights terms when addressing the plight of Negroes. In his book, *From Civil Rights to Human Rights: Martin Luther King, Jr. and the Struggle for Economic Justice*, Thomas F. Jackson observed:

Rev. Martin Luther King, Jr. wove together African American dreams of freedom with global dreams of political and economic equality. King opposed racism, imperialism, poverty, and political disfranchisement in increasingly radical terms. Often he referred to the American civil rights movement as simply one expression of an international human rights revolution that demanded economic rights to work, income, housing, and security.<sup>16</sup>

## II. BLM and Human Rights in the 21st Century

With George Zimmerman’s extralegal murder of Trayvon Martin in 2012 and Zimmerman’s subsequent acquittal, Alicia Garza, Opal Ayo Tometi, and Patrice Cullors began a social media campaign under the hashtag #BlackLivesMatter. BLM became a full-blown social movement on the ground in August of 2014, when Michael Brown was gunned down by Darren Wilson, a white police officer in Ferguson, Missouri, where his body was left in the streets for four hours. The county prosecutor and the U.S. Department of Justice declined to prosecute Wilson and that moment led to the movement’s beginning.

From 2013 to 2020, police in the United States killed 8,768 people, according to Mapping Police Violence, an advocacy and research group.<sup>17</sup> Currently, a Black person is 2.9 times as likely, and a Latinx person 1.4 times as likely, to be killed by police as a White person.<sup>18</sup>

The 2016 “Report of the Working Group of Experts on People of African Descent on Its Mission to the United States” contained recommendations for human rights reparations. The report stated, “Despite substantial

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14. *Id.*

15. MALCOLM X & ALEX HALEY, *THE AUTOBIOGRAPHY OF MALCOLM X* 207 (1965).

16. THOMAS F. JACKSON, *FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR. AND THE STRUGGLE FOR ECONOMIC JUSTICE* 1 (2017).

17. Mapping Police Violence, <https://mappingpoliceviolence.org/> [https://perma.cc/5SDN-YQAL]; then search corresponding year.

18. *Id.*

changes since the end of the enforcement of Jim Crow and the fight for civil rights, a systemic ideology of racism ensuring the domination of one group over another continues to impact negatively on the civil, political, economic, social and cultural rights of African Americans today.”<sup>19</sup>

The Working Group stated that it was disturbed by the “alarming levels” of police brutality against Black people and the killing of unarmed African Americans.<sup>20</sup> The report highlighted the fact that “racial bias and disparities in the criminal justice system, mass incarceration and the tough-on-crime policies disproportionately impact African Americans.”<sup>21</sup>

The report also stated:

The cumulative impact of racially motivated discrimination faced by African Americans in the enjoyment of their rights to education, health, housing, and employment, among other economic, social, cultural and environmental rights, has had serious consequences for their overall well-being. Racial discrimination continues to be systemic and rooted in an economic model that denies development to the poorest African American communities.<sup>22</sup>

Further, the report acknowledged that the “dangerous ideology of white supremacy was a barrier to social cohesion.”<sup>23</sup> It expressed concern about increased voting restrictions and the gutting of the 1965 Voting Rights Act by the 2013 U.S. Supreme Court decision in *Shelby v. Holder*.<sup>24</sup>

The report offered 36 recommendations including:

1. The establishment of a national human rights commission;
2. the ratification of the core international and regional human rights treaties to which the United States is still not a party;
3. acknowledgement that the transatlantic trade in Africans, enslavement, colonization and colonialism were a crime against humanity and are among the major sources and manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance, as well as reparations for people of African descent.
4. Elaboration of a national action plan to fully implement the International Convention on the Elimination of All Forms of Racial Discrimination and comprehensively address racism affecting African Americans.
5. The taking of urgent action to ensure accountability for police violence against African Americans: by improving the reporting of violations involving the excessive use of force and extrajudicial killings by the police, and ensuring that reported cases of excessive use of force are independently investigated; by ensuring that alleged perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions;

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19. U.N. Hum. Rts. Council, 33rd Sess., *Report of the Working Group of Experts on People of African Descent on Its Mission to the United States* 4, U.N. Doc. A/HRC/33/61/Add.2 (Aug. 18, 2016).

20. *Id.* at 7.

21. *Id.* at 16.

22. *Id.* at 12.

23. *Id.*

24. *Id.*

by ensuring that investigations are re-opened when new evidence becomes available; and by ensuring that victims or their families are provided with remedies.

6. The development of guidelines on how to ensure that school discipline policies and practices are in compliance with international human rights standards.
7. The observance of international human rights standards in the criminal justice system and the abolition of the death penalty throughout the United States.

Very few of the recommendations were implemented, including the seven cited.

On May 25, 2020, George Floyd was the victim of another one of the appalling human rights violations. The sight of officer Derek Chauvin of the Minneapolis Police Department with his knee buried in Floyd's neck for 9 minutes and 29 seconds sparked national and international outrage, and spawned what pundits call the largest social movement in the history of the world.

Along with the demand of the Black Lives Matter movement to "Defund the Police, Invest in Communities" came a call for international bodies and human rights advocates to condemn the daily violations of human rights perpetrated against people of African descent in the U.S.

Once again, the human rights community responded. In June of 2020, sixty independent experts of the Special Procedures of the United Nations Human Rights Council issued their "Statement on the Protests Against Systemic Racism in the United States." They stated that the uprising is:

[A] protest against systemic racism that produces state-sponsored racial violence, and licenses impunity. . . . Many in the United States and abroad are finally acknowledging that the problem is not a few bad apples, but instead the problem is the very way that economic, political and social life are structured. . . . The true demonstration of whether Black lives do indeed matter remains to be seen in the steps that public authorities and private citizens take in response to the concrete demands that protestors are making. One example is nationwide calls to rollback staggering police and military budgets, and for reinvestment of those funds in healthcare, education, housing, pollution prevention and other social structures . . . .<sup>25</sup>

In the concluding paragraph, the Statement says, "[r]eparative intervention for historical and contemporary racial injustice is urgent, and required by international human rights law."<sup>26</sup>

Also, in June of 2020, the families of victims Michael Brown, George Floyd, Philando Castile, and Breonna Taylor, who were all murdered by policemen, joined with over 600 human rights organizations in a call for an

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25. Statement on the Protests Against Systemic Racism in the United States, U.N. HUM. RTS. OFF. HIGH COMM'R (Oct. 11, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927> [https://perma.cc/7NKY-N7W3].

26. *Id.*

emergency session of the U.N. Human Rights Council.<sup>27</sup> This precipitated an urgent debate in the U.N. Human Rights Council. However, a strong draft resolution introduced by the Group of African States was significantly watered down. The Human Rights Council authorized a report by the Office for the High Commissioner for Human Rights with no delineations of State cooperation requirements, limited resources for already overextended global mandates, and no specific focus on the United States.<sup>28</sup> E. Tendayi Achiume further critiques the outcome of the Urgent Debate by stating:

Some of the positions adopted by states within the Urgent Debate call to mind Makau Mutua's seminal analysis in *Savages, Victims, and Saviors*, in which he mounts a sharp critique of embedded, racialized biases of the international human rights system. The outcome of the Debate suggests an inability of the system to position the United States as anything other than "savior," rendering the framework fundamentally incapable of challenging the structural racism that pervades the United States and other 'savior' nations.

An international human rights system that shields powerful actors in Europe and North America from accountability, including through misplaced faith in liberal democratic institutions that have repeatedly failed to deliver racial justice, is not just an obstacle to racial justice; such an international human rights system itself embodies and perpetuates structural racism.<sup>29</sup>

I concur with Achiume's diagnosis and with her prescription to remedy this situation. She writes:

In my capacity as Special Rapporteur on Contemporary Forms of Racism, I have argued that states have obligations under international human rights law to pursue reparative justice for historical and contemporary racial injustices. Central to reparations is undoing structures of systemic racism rooted in historical legacies of colonialism and slavery. At a minimum, international lawyers and human rights lawyers are positioned to activate existing legal structures that have some capacity to advance reparations for racial discrimination and inequality.<sup>30</sup>

Achiume cites the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as a central pillar of international

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27. Arica L. Coleman, *A Plan to Take the George Floyd Case to the U.N. Highlights a Decades-Old Tension Between Civil Rights and Human Rights*, TIME (June 18, 2020, 11:53 AM), <https://time.com/5850623/malcolm-x-human-rights/> [https://perma.cc/RYB9-SGCC].

28. *Human Rights Council concludes urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against potential protests*, U.N. HUM. RTS. COUNCIL (June 18, 2020), <https://www.ohchr.org/en/news/2020/06/human-rights-council-concludes-urgent-debate-current-racially-inspired-human-rights> [https://perma.cc/Q9ZC-P4Z9].

29. E. Tendayi Achiume, *Black Lives Matter and the UN Human Rights System: Reflections on the Human Rights Council Urgent Debate*, EUR. J. INT'L L. (Dec. 15, 2020), <https://www.ejiltalk.org/black-lives-matter-and-the-un-human-rights-system-reflections-on-the-human-rights-council-urgent-debate/> [https://perma.cc/3EHT-USJB].

30. *Id.* at 3.

efforts to eradicate racial injustice.<sup>31</sup> Yet, she says, ICERD is a marginal treaty in international legal scholarly analysis, in international human rights education, and in international human rights advocacy:

[A]t the very least using international law (to the extent possible) to pursue the reparative visions advanced by community-centered organizations. . . . International lawyers should be working closely with the communities at the forefront of struggles for racial justice to transform international human rights frameworks in ways that bring these frameworks closer to the racial justice visions advanced by movements, and in ways that make it harder for states to legitimate the sort of outcome we witnessed from the Urgent Debate.<sup>32</sup>

She goes on to write:

International law itself has played a central role in the transnational systems of racial domination and imperialism, and states continue to use appeals to doctrine, tradition, or neo-imperial discourses to evade their obligations to harmed individuals and communities. In this sense, the movement for transnational racial justice must also be a decolonial project. International lawyers have the monumental responsibility and opportunity to begin identifying international legal doctrines which are ill-suited for achieving reparative racial justice and in their place, envisioning new legal principles capable of achieving reparations. This process will involve the active imaginations of international lawyers, but it should be grounded in legal and value systems drawn from indigenous, Black, and non-imperial sources. The experiences, proposals, and demands of the Black Lives Matter movement, indigenous peoples, and other subordinated communities must be the epistemic vanguard of a better future for international law.<sup>33</sup>

The Black Live Matter Movement is not simply a movement for civil rights or just against police brutality. Like the abolitionist, the Civil Rights, and the Black Power movements, BLM is a movement that demands the full panoply of human rights recognized by the United Nations and enshrined in its treaties and conventions. For Black lives to matter and for Black people in the US and across the globe to enjoy the full measure of internationally recognized human rights, legal systems must change. And lawyers must be instruments of that change, both nationally and internationally.

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31. *Id.*

32. *Id.*

33. *Id.* at 3-4.