

United States' Compliance with the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment

Written Statement on the Police Shooting of Michael Brown and Ensuing
Police Violence Against Protesters in Ferguson, Missouri

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Submitted by the Family of Michael Brown,
HandsUpUnited, Organization for Black Struggle (OBS), &
Missourians Organizing for Reform and Empowerment (MORE).



I. Reporting Organization(s)

This report is being submitted on behalf of the Family of Michael Brown, Organization for Black Struggle (OBS), Hands Up United and Missourians Organizing for Reform and Empowerment (MORE).¹

II. Issue Summary

This report addresses both the killing of 18 year-old unarmed black male Michael (“Mike”) Brown by a police officer in Ferguson, Missouri, and the excessive use of force by police officers on peaceful protesters in the weeks following Brown’s killing. Both issues represent violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

a. Murder of Michael Brown by Ferguson Police Officer

Midday on August 9, 2014, Michael Brown, an 18 year-old black male, was walking down a small street in the middle of an apartment complex with a friend when they were approached by a white police officer. According to his friend, the closest witness to the afternoon’s events, the officer approached them in his SUV police vehicle, told them to “get the [expletive] off the sidewalk,” which then escalated into a confrontation.² After a struggle, the officer began to shoot the teen. Brown ran away, as he was hit by the officer’s bullets. The officer chased the teen on foot, and according to multiple witnesses, even after Michael Brown raised his hands to surrender and begged the officer not to shoot, the officer continued to fire. No witness reported any orders being given to Brown as these shots were fired.³

As evidenced by audio recordings of the shooting,⁴ Officer Wilson fired approximately six bullets, and then after several seconds, fired an additional four times. The teenager was hit by at least six shots according to an autopsy conducted by a pathologist not affiliated with the government.⁵ The autopsy further revealed that the final shots included one that entered his eye, and another at the top of the head, which may have indicated his head was lowered as he collapsed or kneeled to surrender.⁶ The intentional, arbitrary killing of Michael Brown, shot to death by Ferguson police officer Darren Wilson, amounts to torture under Article 1 of the Convention.

Following his murder, Michael Brown’s body was left uncovered in the middle of the street that runs through the Canfield Green Apartments, a densely populated apartment complex, for over four hours. This treatment of his body, grotesquely mutilated by the six bullets and left bleeding in the street in plain view, traumatized countless neighbors who witnessed either the shooting, its aftermath, or both. This trauma was all the more intense for Michael Brown’s family, who came to the scene only to find their young son’s remains quickly decomposing on the hot summer street.⁷ Given the history of racial tensions in the city of Ferguson, this particularly disrespectful treatment of Brown’s body and callous disregard for the trauma it could cause Ferguson residents repeated and reinforced the longstanding degrading treatment of black racial minorities by an overwhelmingly white police force. Not only did the abandonment of the body convey to residents that the police officer regarded the black youth as less than human, but it also illustrated the officer’s brazen confidence that he would not be punished for such unwarranted violence. One local leader noted that this action was a message from the police that “we can do this to you any day, any time, in broad daylight, and there’s nothing you can do about it.”⁸ A local resident shared her belief that these efforts were done to “set an example” and that “they shot a black man, and they left his body in the street to let you all know this could be you.”⁹

The intimidation caused by the shooting of Michael Brown and the disrespect for his body was amplified by the impunity that followed. Officer Wilson has not been arrested, and public officials have shown a clear reluctance to actively pursue his prosecution. The police department incident report drafted following the shooting contains few details about the event, contrary to typical practices,¹⁰ and the veracity of other reports released is dubious.¹¹ Other police statements reportedly contained false

justifications for the teen's murder, including the release of unrelated video footage maligning the victim.¹²

Additionally, the manner in which Darren Wilson's prosecution has proceeded and the concerning decisions of the prosecutor have raised questions as to government bias in favor of the police. For example, rather than filing a set of potential charges that the grand jury would endorse, as is typical practice, the state prosecutor in this case, Robert McCulloch is allowing the grand jury maximum discretion to decide the appropriate charge.¹³ McCulloch is viewed to be biased towards the police because he has "support[ed] police officers in another police misconduct case" and other indications of bias in favor of the police including close family ties to policing.¹⁴ Of particular concern is the prosecutor's decision to present every witness and every shred of evidence to the grand jury as the prosecutor's office receives it, without waiting for county and federal investigations to be completed, as prosecutors typically do¹⁵ In addition to applying this legal but infrequently used process, the prosecutor has sought an atypical amount of time for the grand jury decision to be announced. Grand jury panels within that jurisdiction usually sit for four months, meeting in private sessions on a weekly basis to hear evidence on cases, but that term for the current jury has already expired.¹⁶ The state court judge extended the term for two additional months, and added 60 days to that, to give the grand jury the maximum possible time under Missouri law.¹⁷ While the grand jury need not take all of that time to reach a finding on this case, the only one on their docket, it can if it deems it necessary. Community members widely believe that this is an effort to delay the announcement of an indictment decision, and an effort for McCulloch (an elected officer) to avoid any political backlash from its outcome.¹⁸ At the same time, an indictment by the Grand Jury is uncertain, as Missouri's Defense of Justification for the use of force statute gives broad discretion for law enforcement to use deadly force to effect an arrest.¹⁹ Some commentators have noted that this might be unconstitutional after the U.S. Supreme Court's ruling in *Tennessee v. Garner*, cited in the U.S. government reports.²⁰ In the meantime, Officer Darren Wilson continues to take home a paycheck, on paid administrative leave pending a grand jury verdict.²¹

The actions of the police department and the local prosecutor come against the backdrop of deep racial divisions in the community and a history of racial bias in the Ferguson Police Department. While the population of Ferguson is 67% black, the police force that is 94% white.²² An annual state report on racial profiling in Ferguson notes that last year, 86% of police stops and 92% of police searches were on black people.²³ In September 2014, the Department of Justice (DOJ) announced it would be conducting a civil rights investigation into the Ferguson police, and is working with law enforcement in surrounding areas in efforts towards reform.²⁴ The Department of Justice is also conducting its own investigation into the shooting of Michel Brown.²⁵ The initiation of this investigation is a positive step and places pressure on local authorities to conduct a credible investigation as well. Nevertheless, DOJ investigations do not guarantee a prosecution, regardless of its findings, and research has shown that between 1986 and 2003, less than 2% of federal civil rights referrals to the DOJ were actually prosecuted.²⁶ DOJ investigations can take years to complete, as evidenced by the investigation of another unarmed black teenager Ramarley Graham in early 2012, which is still ongoing.²⁷ Moreover, Ferguson is but one of numerous cities in St. Louis County that have a longstanding racial profiling problem. The killing of Michael Brown brought to the surface a pattern of systematic targeting and harassment of racial minorities for fines and minor infractions by municipal police forces.²⁸ A larger probe into the policies and practices of North St. Louis County police departments and indeed, nationwide, is required to begin addressing discriminatory policing problems.

In addition, more concrete steps beyond investigations need to be taken to ensure that law enforcement is held accountable for racial profiling and excessive use of force. Not only do officers need to be prosecuted, but significant reform including more intensive training on racial bias, reporting and monitoring must be implemented to prevent rights abuses like the tragic killing of Michael Brown. Recent incidents of police brutality, including the choking death of 43 year-old black man Eric Garner by

a New York police officer who used a chokehold banned by the NYPD,²⁹ and the shooting death of 25 year-old unarmed black man Ezell Ford by a Los Angeles police officer underscore the U.S.'s failure to adequately address brutality and racial profiling by law enforcement.³⁰

b. Excessive use of force by law enforcement on protesters

The most egregious acts of excessive force by law enforcement in Ferguson took place during the protests in the weeks following Brown's murder, when law enforcement officials donned riot gear, tanks, armored vehicles and other military-style armaments, and placed the town under siege in response to largely peaceful protests. Law enforcement officials used the few isolated incidents of property damage or violence as justification to engage in brutal repression of protesters and those living in the neighborhoods surrounding protest areas, using intimidation tactics and disproportionate force without distinction or regard for who would be harmed. For example, law enforcement officials brandished their guns and threatened protesters, in addition to excessively firing tear gas and less lethal bullets³¹ on crowds while blocking egress from the area in which such force was being used.

Numerous media reports corroborate law enforcement's use of force on protesters that was deliberate, malicious and demonstrated a wanton disregard for their safety. The *Washington Post* reported that on August 11, 2014, "many residents said they were trapped" as law enforcement blocked off the entrance and exits to main roads and began shooting rubber bullets and tear gas into the crowds. The police knowingly kept protesters penned in to expose them to force that would cause them considerable pain and anguish. Frequently, children and elderly people were among the crowds when the police launched tear gas upon them without warning. One 23 year-old man said he was walking home when officers approached him and sprayed tear gas in his face and peppered him with rubber bullets.³² In addition to harming crowds of peaceful protesters of all ages and physical condition, this use of force also impacted those not directly participating in the protests; by setting up roadblocks and then blanketing residential streets with tear gas,³³ countless residents were trapped inside their home or hit with this chemical agent in their own yards.³⁴ Another witness, who was trapped outside in a residential neighborhood near protest sites stated "police armored trucks are throwing tear gas any time they see a human being outside."³⁵ In addition to blocking escape, in some cases, police actively obstructed victims' access to treatment for tear gas exposure. On one of the worst nights of police violence, Sunday, August 17, 2014, police launched tear gas into crowds without warning even before the state imposed curfew went into effect and numerous children were tear gassed, including some young enough to be in strollers. Eyewitnesses report that they were unable to escape the gas. That evening, police justified the indiscriminate tear gassing of several hundreds, including children, by the arrest of seven or eight people who may have engaged in unlawful behavior.³⁶ The St. Louis Children's hospital announced that it did indeed treat children who suffered from tear gas exposure,³⁷ and photos of an eight year old victim were widely circulated.

On one evening, police officers did not allow protesters to stand still upon threat of arrest, commanding some at gunpoint to keep walking. Rifles were pointed at adults and children alike.³⁸ Others were directly shot by Ferguson police with less lethal bullets, such as African Methodist Episcopal church pastor Renita Lamkin, who was shot in the stomach by a rubber bullet while attempting to mediate between protesters and police.³⁹ Over 200 individuals were arrested in the course of these protests and taken into custody. As detailed below, one woman arrested during the protests attested to having been sexually harassed while detained.

These abuses and others amount to cruel, inhuman and degrading treatment directed towards protesters primarily representing racial minorities. Tear gas is a chemical agent, precluded from use in warfare, but permissible in domestic law enforcement contexts. Tear gas most frequently causes intense burning sensations and skin irritation, chest pain and difficulty breathing.⁴⁰ These effects can be magnified for vulnerable persons, such as children and those with asthma. Other reports indicate that tear

gas can cause miscarriages and stillbirths, damage to major organs, or even cause death, due to the chemical or physical impact of the canister.⁴¹ Less lethal projectiles also cause intense pain, injury and even death.⁴² A 2004 study funded by the Department of Justice found that impact projectiles, such as rubber bullets and bean bags, had resulted in serious injury, fractured bones, and as of the year 2000, ten deaths.⁴³ One of the deaths occurred as a result of both trauma to the head and complications from tear gas exposure.⁴⁴ Long Range Acoustic Device (LRAD) sound cannons, which were also deployed against peaceful protesters in Ferguson, emit a painful sound that can “incapacitate anyone within 300 metres by giving them an instant headache,”⁴⁵ and potentially cause permanent hearing loss.⁴⁶

The following are some additional examples of abuses experienced by protesters:

- On August 17, 2014, 30 year old Jawanna Wilkins from neighboring city St. Ann, Missouri, was engaged in a peaceful protest with her sister on West Florissant Avenue. While protesting, police officers gave conflicting orders, at gunpoint, on which direction the protesters could walk. Both she and other protesters were told that they would be arrested if they stopped moving at any time. Although a midnight curfew was in place, Jawanna was caught in an area where law enforcement officers began firing tear gas and rubber bullets before the curfew, without any warning. When she tried to leave the area to protect herself from the tear gas and rubber bullets, police officers blocked her exit, saying that only residents could exit via certain roads. Police officers refused to give her any response to questions about how to exit the area. Jawanna was badly injured as a result of the tear gas. She could not see out of either eye, and had to stay home from work the next day. She continued to feel the effects for many days, and as a result of the ongoing mental anguish from the threats made against her by armed police and physical agitation resulting from the tear gas, she dropped out of college.
- On August 18, Jasmine Wellington was peacefully protesting in the early afternoon. Police officers gave her conflicting directions on where to stand. When a police officer pushed her onto the sidewalk from behind, she grabbed his hand not knowing who it was who had touched her or why she had been pushed. For instinctually grabbing his arm, Jasmine was arrested and charged with assaulting a police officer. While in detention, a female police officer completed a full body search, lingering while searching her private parts, leading Jasmine to believe that she was touching her for sexual purposes or an attempt to humiliate her. Other officers present and watching the search laughed when she complained. While she was detained, she was denied access to a sanitary napkin for many hours and soiled herself while the police were unresponsive. She was held until early afternoon the next day.
- On August 16, Coleen Kelly and other local organizers created a space in a local church to treat protesters who had suffered from tear gas, rubber bullet, and other police attacks. Police brought 5 or 6 squad cars, and surrounded the church, blocking the entrance and intimidating protesters who sought to enter and receive treatment within the church. A few days later, police entered the church with a person they presented as a building inspector, who said that the organizers were violating occupancy permits by having 5-7 people sleep there. However, a subsequent check by attorneys confirmed that no violations were present.⁴⁷
- On August 12, 2014, Brandon Snead was engaged in peaceful protesting in the evening. Police gave him conflicting orders, at gunpoint, as to which way he could walk. He tried to leave, but in addition to having the exits blocked, buses stopped running in Ferguson, and he had to wait for friends to provide him with transportation. Police shouted expletives at him, and pointed guns towards him threateningly. Without warning, a police officer shot rubber bullets at him, he was exposed to tear gas and was present when law enforcement utilized Long Range Acoustic Device (LRAD) Sound Cannons, which emitted painful sound waves. Weeks later, he continues to suffer

the physical and psychological effects from the tear gas, LRAD cannons, and rubber bullets, including trouble sleeping, severe nasal congestion, and a hoarse voice.

Despite the injuries to hundreds if not thousands of civilians in his state, Missouri Governor Jay Nixon has not yet called for a state investigation into police violence on the protesters, thereby reinforcing the climate of impunity around police abuses and sanctioning the disproportionate and excessive use of force on people exercising their right to protest. Failure to investigate allegations of excessive use of force amounts to state acquiescence in police misconduct and sets a terrifying example of how an excessively militarized police force can commit abuses on individuals with impunity. Recently, Human Rights Watch sent an open letter to Governor Nixon detailing additional instances of excessive police violence and calling on the governor to open a state investigation.⁴⁸

Law enforcement's militarized response to protesters in Ferguson is part of widespread militarization of local police forces across the U.S., permitted, if not encouraged, by the federal government. The American Civil Liberties Union reported, "Every year, the Departments of Defense, Homeland Security and Justice funnel billions' worth of dollars and military equipment to state and local law enforcement agencies to help them amass arsenals of combat-ready weaponry," as detailed in its report *War Comes Home: The Excessive Militarization of American Policing*.⁴⁹ It also follows a historical pattern of using excessive force against entire communities of racial minorities in crisis, as the Committee had previously recognized with respect to the violent and abusive response of law enforcement towards minority communities struggling to survive in New Orleans in the aftermath of Hurricanes Katrina and Rita.⁵⁰

III. 2006 Concluding Observations and 2006 U.S. Government Response

The CAT Committee's 2006 Concluding Observations included several recommendations pertinent to the violations that have taken place in Ferguson.⁵¹

In paragraph 25, in response to allegations of impunity for acts torture or cruel, inhuman or degrading treatment or punishment by officers from the Chicago Police Department, the Committee recommended that the U.S. "promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice, in order to fulfil its obligations under article 12 of the Convention."⁵² The U.S. did not respond to this particular recommendation in its 2006 response.⁵³

In paragraph 37, the Committee expressed concerns about police brutality and excessive force against vulnerable groups, in particular racial minorities, and the failure to adequately investigate these incidents. It recommended that the U.S. "ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished."⁵⁴ The U.S. did not respond to this particular recommendation in its 2006 response.⁵⁵

IV. Legal Framework - CAT Provisions and General Comments

Article 1 of the Convention defines torture as "[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, *or for any reason based on discrimination of any kind...*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (emphasis added) The Committee has emphasized that "the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture."⁵⁶ Among many community groups across the U.S. that have noted a pattern of

law enforcement killing unarmed black persons, community-based group the Malcolm X Grassroots Project, found that there were 313 black people killed by the police, security guards or vigilantes in 2012 alone—or one person every 28 hours.⁵⁷ Nearly half of those individuals were unarmed. The report notes that these numbers likely fall short of reality, due to the dearth of nation-wide statistics. The killing of Mike Brown and the abandonment of his body in the middle of a neighborhood street is but an example of the utter lack of regard for, and indeed dehumanization of, black lives by law enforcement personnel.

Article 16 prohibits “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1...” The former U.N. Special Rapporteur on Torture, Theo van Boven, noted that the misuse of weapons, such as batons, stun guns, shields and belts, and tasers, and chemical control substances, such as tear gas, can amount to “torture or other forms of ill-treatment.”⁵⁸ Pursuant to his mandate, the current Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, has investigated excessive use of force against protesters, including “including beatings, tear gas, and stun grenades, during and following arrest for peaceful human rights demonstrations.”⁵⁹ Thus, the acts of violence committed by law enforcement during the protests in Ferguson, including indiscriminate use of tear gas and rubber bullets in a confined area, intimidation, fear of imminent death and sowing confusion by directing protesters at gunpoint and the sexual harassment of at least one protester while in custody, fall in the category of acts prohibited by Article 16.

Article 12 states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” The Committee has specifically instructed all state parties to “ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection...”⁶⁰ State party obligations under the Convention reach actions committed at the lower levels of government; the federal nature of the U.S.’s political system does not shield the U.S. from responsibility over the acts and omissions that occurred in Ferguson.⁶¹

While it is acknowledged that the U.S. Department of Justice has opened an investigation both into the killing of Michael Brown and the Ferguson Police Department, Michael Brown’s killer still remains at large, and the aforementioned concerns regarding the conduct of the prosecution raise doubts as to the ability of local officials to undertake an impartial trial, if any. Local law enforcement’s disproportionate and indiscriminate response to protests following the killing of Michael Brown also merits a thorough investigation under Article 12. Moreover, the U.S. has failed to take any meaningful steps to remediate federal policies and practices that facilitated, and perhaps even encouraged, the militarized response to the protests.

V. The CAT Committee List of Issues and U.S. Government Responses

In 2010, the Committee identified a number of issues related to the violations raised in this report for the U.S. to respond to in its fifth periodic report.

In Question 42, the Committee reiterated its concern regarding reports of “brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities” and posed a two-part question to the U.S. The first part in Question 42(a) asked the U.S. to detail the steps taken to address this concern, including “establishing adequate systems for monitoring police abuses and developing adequate training for law enforcement officials.” It also asked the steps taken to ensure accountability for reports of police brutality, including information on “the impact and effectiveness of these measures in reducing cases of police brutality and excessive use of force.” In response, the U.S. relies on its efforts described in its 2011 report to the U.N. Human Rights Committee

to “train[] law enforcement officers with a view to combating prejudice that may lead to violence,” and prosecute charges of excessive force. However, the Human Rights Committee found these efforts wanting and called on the U.S. to “[s]tep up its efforts to prevent the excessive use of force by law enforcement officers by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” and “[i]mprove reporting of violations involving the excessive use of force and ensure that reported cases of excessive use of force are effectively investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation.”⁶²

The CERD Committee, which issued its Concluding Observations just as the events in Ferguson had unfolded in August 2014, echoed the Human Rights Committee’s recommendations by recognizing the need for the U.S. government to go further in its efforts, especially with respect to investigating every complaint of excessive use of force by law enforcement, improving oversight and reporting, and providing additional details on the outcomes of the investigations.

The U.S.’s reports responding to the various treaty bodies do not properly detail the total number of allegations of excessive use of force by law enforcement officials vis-à-vis those that are actually investigated and prosecuted over the last ten years. The Bureau of Justice Statistics’ most recent report, with data from 2008, sheds only some light on the extent of the problem. An overwhelming 74.3% of all those surveyed in 2008 considered their encounters with police to have involved excessive use of force.⁶³ Yet, an earlier 2006 report shows only 8% of the 25,556 complaints of excessive use of force by police in 2002 were sustained, and the rest were dismissed.⁶⁴ More up to date information on citizen complaints is necessary to get a clear picture of whether state, local and federal governments are taking adequate steps to hold accountable law enforcement officers’ excessive use of force.

The second part in Question 42(b) sought details on specific steps the U.S. has taken to end racial profiling by federal and state police, including the passage of legislation to prohibit racial profiling and collection of statistics on “the extent to which such practices persist, as well as on complaints, prosecutions and sentences in such matters.” While the U.S.’s response relies on the reports it submitted to the U.N. Committee on the Elimination of Racial Discrimination (CERD) in 2013 and the Human Rights Committee in 2011, both committees found the efforts described in those reports lacking. The Human Rights Committee called on the U.S. to “step up measures to effectively combat and eliminate racial profiling by federal, state and local law enforcement officials... .”⁶⁵ Similarly, the CERD urged the U.S. to “to intensify efforts to effectively combat and end the practice of racial profiling by federal, state and local law enforcement officials,” by “[a]dopting and implementing legislation which specifically prohibits law enforcement officials from engaging in racial profiling, such as the End Racial Profiling Act,” “[s]wiftly revising policies insofar as they permit racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,” and “undertaking prompt, thorough and impartial investigations into all allegations of racial profiling...; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition,” among other recommendations.⁶⁶

The authors of this report support these recommendations as important steps to address this problem and reiterate the need for the U.S. government to take more decisive measures to address a very serious, enduring problem of police misconduct at all levels, which is most troublingly disproportionately directed towards racial minorities.

VI. Recommended Questions

What steps has the U.S. taken, or what steps does it plan to take, to:

- Ensure that Michael Brown and other victims of torture and/or cruel, inhuman and degrading treatment at the hands of law enforcement during the protests following Michael Brown’s murder obtain “redress” and “fair and adequate compensation, including the means for as full rehabilitation as possible,” as required by Article 14 of the Convention?
- Ensure through “education and information” and “the training of law enforcement personnel” that similar acts of torture and cruel, inhuman and degrading treatment towards racial minorities are not perpetrated by law enforcement in Ferguson and other municipalities in St. Louis County, as well as other police departments nationwide – particularly those that receive federal funding – in the future, as required by Article 10 of the Convention?
- Review the constitutionality of statutes across the country regarding the use of force by law enforcement personnel and adopt strict guidelines regarding proportionate use of force?
- Ensure that military grade weaponry and equipment are not transferred to local police departments?

VII. Suggested Recommendations

The United States must take steps to address the torture and/or cruel, inhuman and degrading treatment of Michael Brown and other unarmed black and brown persons killed by law enforcement, as well as the torture and/or cruel, inhuman and degrading treatment of protesters in Ferguson exercising their right to peacefully assemble. As such, we make the following recommendations:

Ferguson-Specific Recommendations:

1. **Immediately arrest Officer Darren Wilson**, the police officer who killed Michael Brown.
2. **Urge political accountability for the killing of Michael Brown and the excessive force on protesters by:** (i) calling for the resignation of Ferguson Police Chief Thomas Jackson; (ii) placing the Ferguson Police Department under federal receivership to hold it accountable for systematically targeting and harassing residents of color in a predatory and degrading manner; (iii) calling upon Missouri Governor Jay Nixon to issue an apology to protesters for the intimidation and excessive force used against them in the protests following Michael Brown’s murder, as well as reparations for damages suffered; and (iv) offering amnesty to those protesters arrested while protesting the killing of Michael Brown.
3. **Racial profiling and racially-biased police harassment across the jurisdictions surrounding Ferguson, Missouri (referred to as North County), as documented by statistics compiled by the State of Missouri, must come to an end.** To that end we recommend: (i) ensuring that Missouri police forces are racially integrated and reflective of the communities they police and create a cause of action under Missouri’s existing racial profiling law; (ii) establishing a minimum population for a police department; (iii) developing a strategy for creating a community policing culture in Ferguson and the surrounding St. Louis County; (iv) condition state funding to municipal police departments based on minimum standards regarding use of force and the targeting of racial minorities.

National Recommendations:

1. **Provide mandatory guidelines** developed with input from communities vulnerable to police brutality **with strict regulations on the use of force** by state and local law enforcement departments that receive federal funding. Violation of these standards should result in financial penalties or reduction in federal funding.
2. **Improve accountability for police's use of deadly force, particularly in black and brown communities**, by: (i) establishing guidelines for a clear, transparent process of reporting and response to all incidents involving law enforcement's use of deadly force, including collection of facts, establishing timeline and all issues related to release of information; (ii) establish laws entitling the citizenry to know the name of each police officer involved in an situation including deadly force within 24 hours of said incident; and (iii) establish a federal law requiring an annual report on the use of deadly force by all federal police departments as well as state and local police departments that receive federal funding.
3. **Pass legislation to end racial profiling and police brutality against people of color**, like the End Racial Profiling Act.
4. **Ensure transparency, accountability, and safety of our communities by requiring front facing cameras in all police departments** with records of racial disparities in stops, arrests, killings, and excessive force complaints, while establishing clear guidelines around the control of the recordings and limiting infringements on individuals' right to privacy.
5. **Review and remediate laws regarding the use of deadly force** by law enforcement to accord with rule of law and international standards of necessity and proportionality in the use of deadly force.
6. **The Attorney General and the Department of Justice must conduct a nationwide investigation of systematic police brutality and harassment in black and brown communities, and youth** in particular. Methodology and findings of this investigation must be made publicly available.

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² Trymaine Lee, *Eyewitness to Michael Brown shooting recounts his friend's death*, MSNBC, Aug. 12, 2014, <http://www.msnbc.com/msnbc/eyewitness-michael-brown-fatal-shooting-missouri>.

³ Ryan Reilly & Amber Ferguson, *Witnesses to Michael Brown Shooting Tell the Same Basic Story About His Death*, The Huffington Post, Sep. 16, 2014, http://www.huffingtonpost.com/2014/09/16/michael-brown-shooting-video_n_5831226.html.

⁴ Jason Hanna, *Audio captured at time of Michael Brown shooting, company says*, Aug. 28, 2014, <http://www.cnn.com/2014/08/28/justice/michael-brown-ferguson-shooting-audio/>.

⁵ Frances Robles & Julie Bosman, *Autopsy Shows Michael Brown Was Struck at Least 6 Times*, NY Times, Aug. 17, 2014, <http://www.nytimes.com/2014/08/18/us/michael-brown-autopsy-shows-he-was-shot-at-least-6-times.html>.

⁶ Id.

⁷ Julie Bosman and Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, NY Times, Aug. 23, 2014, <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html>.

⁸ Id.

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- ⁹ David Hunn, *Why was Michael Brown's body left there for hours?* Sept. 14, 2014, St. Louis Post-Dispatch, http://www.stltoday.com/news/local/crime-and-courts/why-was-michael-brown-s-body-left-there-for-hours/article_0b73ec58-c6a1-516e-882f-74d18a4246e0.html.
- ¹⁰ Ferguson Police Incident Report, http://www.aclu-mo.org/files/4314/0871/7727/Ferguson_Police_incident_report.pdf; Saki Knafo, *Ferguson Police Report Raises More Questions Than It Answers*, NY Times, Aug. 22, 2014, http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html?_r=0http://www.huffingtonpost.com/2014/08/22/ferguson-police-incident-report_n_5701131.html.
- ¹¹ Paul Rosenberg, *Ferguson's massive cover-up: How police departments are protecting Michael Brown's killer*, Sept. 14, 2014, http://www.salon.com/2014/09/14/fergusons_massive_cover_up_how_police_departments_are_protecting_michael_browns_killer/.
- ¹² Id.
- ¹³ Kim Bell and Robert Patrick, *Ferguson officer appears before grand jury on shooting of Michael Brown*, St. Louis Post-Dispatch, Sept. 17, 2014, http://www.stltoday.com/news/local/crime-and-courts/ferguson-officer-appears-before-grand-jury-on-shooting-of-michael/article_74022ab8-756f-5e1d-81b3-3c577f1e9208.html.
- ¹⁴ Nicole Flatow, *Why Civil Rights Groups Are Calling For The Ferguson Prosecutor to Step Down*, Think Progress, Aug. 26, 2014, at <http://thinkprogress.org/justice/2014/08/26/3474838/why-civil-rights-groups-are-calling-for-the-ferguson-prosecutor-to-step-down/>.
- ¹⁵ Trymaine Lee, *As Michael Brown grand jury extended, patience for justice wears thin*, MSNBC, Sept. 17, 2014, <http://www.msnbc.com/msnbc/michael-brown-grand-jury-extended-patience-justice-wears-thin>.
- ¹⁶ Christine Byers, *Grand jury now has until January to decide whether to charge Ferguson officer*, St. Louis Post-Dispatch, Sept. 16, 2014, http://www.stltoday.com/news/local/crime-and-courts/grand-jury-now-has-until-january-to-decide-whether-to/article_aa4111fc-2952-54c9-8316-76c4867dea48.html.
- ¹⁷ Id.
- ¹⁸ Lee, *supra* note 14.
- ¹⁹ Mo. Rev. Stat. §563.046, available at <http://www.moga.mo.gov/statutes/chapters/chap563.htm>.
- ²⁰ Chad Flanders, *Commentary: Missouri's Use Of Force Statute Goes Against Constitutional Rulings*, St. Louis Public Radio Aug. 25, 2014, <http://news.stlpublicradio.org/post/commentary-missouris-use-force-statute-goes-against-constitutional-rulings>.
- ²¹ Id.
- ²² Katie Sanders, *Ferguson, Mo., had 50 white police officers, three black officers, NBC's Mitchell claims*, Politifact, Aug. 17, 2014, <http://www.politifact.com/punditfact/statements/2014/aug/17/andrea-mitchell/ferguson-police-department-has-50-white-officers-t/>.
- ²³ Ferguson Police Dept. Racial Profiling Data, 2013, available at <http://ago.mo.gov/VehicleStops/2013/reports/161.pdf>.
- ²⁴ Alice Speri, *Justice Department Launches Civil Rights Investigation of Ferguson Police*, VICE News, Sept. 4, 2014, <https://news.vice.com/article/justice-department-launches-civil-rights-investigation-of-ferguson-police>.
- ²⁵ U.S. Dept. of Justice Press Release, Aug. 18, 2014, <http://www.justice.gov/opa/pr/attorney-general-statement-latest-developments-federal-civil-rights-investigation-ferguson-mo>.
- ²⁶ Amanda Taub, *Darren Wilson killed Michael Brown. Here's why he probably won't go to jail*, VOX News, Aug. 27, 2014, <http://www.vox.com/2014/8/27/6058071/darren-wilson-killed-michael-brown-here-s-why-he-probably-won-t-go-to>.
- ²⁷ Sean Gardiner and John Surico, *Federal Government Will Review Ramarley Graham Shooting*, Wall Street Journal Blog, Aug. 8, 2013, <http://blogs.wsj.com/metropolis/2013/08/08/federal-government-will-review-ramarley-graham-shooting/>; Denis Slattery, *Ramarley Graham's mother says Department of Justice is investigating case after meeting with US District Attorney*, NY Daily News, Sept. 18, 2014, <http://www.nydailynews.com/new-york/bronx/ramarley-graham-mother-praises-doj-article-1.1944997>.
- ²⁸ Charing Ball, *St. Louis County's Racial Profiling Issue Is Bigger Than Mike Brown*, Madame Noire, Aug. 27, 2014, <http://madamenoire.com/463550/st-louis-county-race-problem/>.
- ²⁹ *Medical Examiner Rules Eric Garner's Death a Homicide, Says He Was Killed By Chokehold*, NBC New York, Aug. 21, 2014, <http://www.nbcnewyork.com/news/local/Eric-Garner-Chokehold-Police-Custody-Cause-of-Death-Staten-Island-Medical-Examiner-269396151.html>.
- ³⁰ *Police Fatally Shoot Man in South L.A.; Family Members Say He Was Lying Down When Shot*, KTLA, Aug. 12, 2014, <http://ktla.com/2014/08/12/man-hospitalized-after-being-shot-by-police-in-south-l-a/>.
- ³¹ In their response to the protest, police forces were documented using rubber bullets, bean-bag projectiles, and wooden baton bullets.
- ³² Wesley Lowery, *Police use tear gas on crowd in Ferguson, Mo., protesting teen's death*, The Washington Post, Aug. 12, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/08/12/police-use-tear-gas-on-crowd/>.
- ³³ Id.
- ³⁴ Ray Downs, *Police in Ferguson Fire Tear Gas on Protesters Standing in Their Own Backyard*, Riverfront Times Blog, Aug. 12, 2014, http://blogs.riverfronttimes.com/dailyrft/2014/08/police_in_ferguson_fire_tear_gas_on_protesters_with_hands_up_in_their_ow

[n backyard.php](#)^H; Rick Earle, *Video: Ferguson neighbors affected by tear gas from protests*, WPXI News, <http://www.wpxi.com/videos/news/rick-earle-ferguson-neighbors-affected-by-tear-gas/vCn7Ww/>.

³⁵ *Video: Ferguson Dispatch: Gassed*, This Week in Blackness TV, available at [Hhttp://youtu.be/DA4IT-rGNDg](http://youtu.be/DA4IT-rGNDg)^H (note, live recording from gassing includes explicit language).

³⁶ Amanda Terkel & Ryan J. Reily, *Ferguson Police Fire Tear Gas at Protesters Hours Before Curfew*, The Huffington Post, Aug. 18, 2014, [Hhttp://www.huffingtonpost.com/2014/08/17/ferguson-protests_n_5686601.html](http://www.huffingtonpost.com/2014/08/17/ferguson-protests_n_5686601.html)^H.

³⁷ Aisha Sultan, *2 children treated for tear gas exposure in Ferguson*, St. Louis Post-Dispatch, Aug. 18, 2014, [Hhttp://www.sltoday.com/lifestyles/relationships-and-special-occasions/parenting/aisha-sultan/children-treated-for-tear-gas-exposure-in-ferguson/article_3f2653cc-61cd-5754-b9c5-5d327f3accad.html](http://www.sltoday.com/lifestyles/relationships-and-special-occasions/parenting/aisha-sultan/children-treated-for-tear-gas-exposure-in-ferguson/article_3f2653cc-61cd-5754-b9c5-5d327f3accad.html)^H.

³⁸ *US: Missouri should Review Ferguson Response*, Human Rights Watch Press Release, Sept. 9, 2014, <http://www.hrw.org/news/2014/09/09/us-missouri-should-review-ferguson-response>.

³⁹ Yasmine Hafiz, *Ferguson Police Reportedly Shot Pastor Renita Lamkin with Rubber Bullet During Protest*, The Huffington Post, Aug. 14, 2014, http://www.huffingtonpost.com/2014/08/14/ferguson-pastor-shot-police-rubber-bullet_n_5678973.html.

⁴⁰ Kashmiri Gander, *Tear gas: What is it and what does it do to your body?* The Independent, Aug. 14, 2014, <http://www.independent.co.uk/news/world/world-history/what-is-tear-gas-and-what-are-its-effects-9670302.html>.

⁴¹ *Health effects of tear gas and pepper spray*, Facing Tear Gas, <http://facingteargas.org/bp/38/health-effects>.

⁴² For example, doctors have found that when shooting rubber bullets it is “impossible to avoid severe injuries to vulnerable body regions such as the head, neck and upper torso, leading to substantial mortality, morbidity and disability.” *Doctors urge rubber bullet ban*, BBCNews, <http://news.bbc.co.uk/2/hi/health/2003999.stm>.

⁴³ Ken Hubbs and David Klinger, *Impact Munitions, Database of Use and Effects*, Feb. 2004, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/204433.pdf>.

⁴⁴ Id. at 19.

⁴⁵ *The Future of crowd control*, The Economist, Dec. 2, 2004, available at <http://www.economist.com/node/3423036>.

⁴⁶ *Better Hearing Institute Condemns Use of Sound Cannons (LRAD’s) for Crowd Control during Chicago’s May NATO Summit*, Better Hearing Institute Press Release, May 17, 2012, http://old.betterhearing.org/press/news/Better_Hearing_Institute_Condemns_Use_of_Sound_Cannons_pr05172012.cfm.

⁴⁷ Yasmine Hafiz, *Greater St. Mark Family Church, Shelter For Ferguson Protestors, Reportedly Raided By St. Louis County Police*, The Huffington Post, Aug. 20, 2014, http://www.huffingtonpost.com/2014/08/20/church-police-ferguson_n_5695732.html.

⁴⁸ *Letter to Missouri Governor Jay Nixon About Law Enforcement Response to Ferguson Protests*, Human Rights Watch Open Letter, Sept. 9, 2014, <http://www.hrw.org/news/2014/09/09/letter-missouri-governor-jay-nixon-about-law-enforcement-response-ferguson-protests>.

⁴⁹ Kara Dansky, *The Real Reason Ferguson has military weapons*, CNN, Aug. 19, 2014,

[Hhttp://www.cnn.com/2014/08/19/opinion/dansky-militarization-police/index.html](http://www.cnn.com/2014/08/19/opinion/dansky-militarization-police/index.html)^H; *War Comes Home: The Excessive Militarization of American Policing*, American Civil Liberties Union (2014), <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>.

⁵⁰ Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America*, UN doc. CAT/C/USA/CO/2, para. 42 (July 25, 2006), at [Hhttp://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en)^H (hereinafter “2006 CAT Committee Recommendations”).

⁵¹ 2006 CAT Committee Recommendations, *supra* note 49.

⁵² Id. at para. 25.

⁵³ Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Comments by the Government of the United States of America to the conclusions and recommendations of the Committee against Torture*, UN doc. CAT/C/USA/CO/2/Add. 1 (Nov. 6, 2007), at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT_C_USA_CO_2_Add-1_528_E.doc. (hereinafter “2006 U.S. Government Response”).

⁵⁴ 2006 CAT Committee Recommendations, *supra* note 49, at para. 37.

⁵⁵ 2006 U.S. Government Response, *supra* note 53.

⁵⁶ Committee Against Torture, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2*, U.N. Doc. CAT/C/GC/2, para. 20 (Jan. 24, 2008), at

[Hhttp://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en)^H (hereinafter “CAT Gen. Cmt. 2”).

⁵⁷ *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killings of 313 Black People by Police, Security Guards and Vigilantes*, Malcolm X Grassroots Movement (Apr. 2013), at <http://mxgm.org/wp-content/uploads/2013/04/Operation-Ghetto-Storm.pdf>.

⁵⁸ Report of the Special Rapporteur on the question of torture, Theo van Boven, UN doc. E/CN.4/2005/62, para. 13 (Dec. 15, 2004), at <http://daccess-ods.un.org/TMP/2448323.66704941.html>.

⁵⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN doc. A/HRC/22/53/Add.4, e.g. paras. 6, 10, 21, 77 (Mar. 12 2013), at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.Add.4_Advance_version.pdf.

⁶⁰ CAT Gen. Cmt 2, *supra* note 56, at para. 21.

⁶¹ *Id.* at paras. 15-18.

⁶² Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, UN doc. CCPR/C/USA/CO/4, para.11 (Apr. 23, 2014), at

[Hhttp://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4)

(hereinafter “CCPR 2014 Concluding Observations”).

⁶³ Christine Eith and Matthew R. Durose, *Contacts between Police and the Public, 2008*, Bureau of Justice Statistics (Oct. 2011), at 12. <http://www.bjs.gov/content/pub/pdf/cpp08.pdf>.

⁶⁴ Matthew J. Hickman, *Citizen Complaints about Police Use of Force*, Bureau of Justice Statistics (Jun. 2006), at 1,

[Hhttp://bjs.gov/content/pub/pdf/ccpuf.pdf](http://bjs.gov/content/pub/pdf/ccpuf.pdf).

⁶⁵ CCPR 2014 Concluding Observations, *supra* note 65, at para. 7.

⁶⁶ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of United States of America, CERD/C/USA/CO/7-9, para. 8 (Aug. 29, 2014), at

[Hhttp://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf).