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# Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson

JUSTIN HANSFORD AND MEENA JAGANNATH\*

*With special thanks to Jessica Lee and Jeena Shah*

## Introduction

We believe that our problem is one not a violation of civil rights but a violation of human rights. Not only are we denied the right to be a citizen in the United States, we are denied the right to be a human being.

– Malcolm X, January 5, 1965.<sup>1</sup>

The United States has long touted itself in the international community as having an exemplary human rights record, the standard for the rest of the world to follow. Yet history is replete with events impugning this record, and one of the most salient arose in the aftermath of the police killing of Mike Brown, Jr. in Ferguson, Missouri in August 2014.<sup>2</sup> Until then, much of the international

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1. *Front Page Challenge* (CBC television broadcast Jan. 5, 1965), available at <http://www.cbc.ca/archives/entry/1965-malcolm-x-on-front-page-challenge>.

2. See Glenn Greenwald, *The Militarization of U.S. Police: Finally Dragged Into the Light*

community's critique of the United States had focused on its human rights abuses abroad.<sup>3</sup> However, last August, the world watched in awe as a heavily militarized local police force in a small U.S. suburb used repressive force against a community voicing their grief and anger at the state-sponsored killing of their child.<sup>4</sup> As many community members, activists, and human rights lawyers are increasingly recognizing, this international attention is necessary to hold the U.S. government to account for the level of social injustice and inequality that persists in U.S. society.

The Mike Brown killing and the demonstrations that followed sparked a national dialogue on police misconduct, militarization of the police and racial bias within the U.S. justice system on a nearly unprecedented scale. Largely to the credit of young organizers of color that have arisen as leaders in this moment in history, this dialogue has surfaced the extent to which the civil rights reforms of the 1960s left intact the structures that produced and now perpetuate a racial caste system in the United States.<sup>5</sup> The movement's rallying cry of "Black Lives Matter" boldly highlights exactly where Black individuals fall in this caste system.<sup>6</sup>

There is now a revived sense that victories in the realm of civil rights legislation, policy reforms, and court cases alone are inadequate to dismantle this system of racial hierarchy and bring about true social equality. The movement catalyzed by the events of August 2014 is cognizant that deep structural changes need to occur at the political, economic, and social levels of this country. "Social progress," as this growing movement defines it, is not limited to incremental reforms within deeply flawed institutions such as law enforcement and prisons, but rather encompasses transformative solutions to dramatically shift how our society ensures public safety for all and move towards addressing societal ills with significant input from and investment in communities. There is also a revived sense that racism and marginalization must be addressed in all of its manifestations.

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by the Horrors of Ferguson, THE INTERCEPT (Aug. 14, 2014), <https://firstlook.org/theintercept/2014/08/14/militarization-u-s-police-dragged-light-horrors-ferguson>.

3. Within weeks after the grand jury decision not to indict the police officer who killed Mike Brown was announced, the Senate Intelligence Committee released its report on the CIA's use of torture in the "War on Terror," merely confirming what much of the world already knew or suspected. See Mark Mazetti, *Panel Faults C.I.A. Over Brutality and Deceit in Terrorism Interrogations*, N.Y. TIMES, Dec. 10, 2014, at A1, available at <http://www.nytimes.com/2014/12/10/world/senate-intelligence-committee-cia-torture-report.html>.

4. See Greenwald, *supra* note 2.

5. This is illustrated by popular reference to the 1960s "Civil Rights Movement" rather than the "Black Freedom Movement," which called for more than liberal reforms but the liberation of Black Americans at all levels.

6. For information about the history of the "Black Lives Matter," see BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited Apr. 8, 2015).

Advocates and activists are putting forward platforms that not only address racist and excessive policing and mass incarceration, but also address disparities in education, health, political participation, and economic opportunity. In short, there is a greater recognition that racial justice demands not only civil rights, but human rights for all.

The human rights framework, which places human dignity at the center of policymaking and governance, provides a pathway towards realizing the vision of a just, equal, and open democratic society. It is in this spirit that the family of Mike Brown, Jr. and young Black leaders that emerged through the demonstrations in Ferguson chose to air their grievances before the United Nations Committee Against Torture in the fall of 2014. They called their efforts "Ferguson to Geneva."<sup>7</sup> After submitting a report to the Committee describing the extrajudicial killing of Mike Brown and the repressive and violent response to protestors in Ferguson through the lens of torture and cruel, inhuman and degrading treatment, the Ferguson to Geneva delegation traveled to Geneva to take part in a live dialogue with representatives of the U.S. government, U.N. human rights experts, and members of the Committee Against Torture. The Ferguson to Geneva delegation formed part of a larger delegation of human rights activists and advocates from the United States, including members of We Charge Genocide, a Chicago-based movement organizing around police violence, and the Malcolm X Center for Self-Determination, which advocates for the release of political prisoners in the United States, and numerous others.<sup>8</sup>

Following that process, advocates have continued to engage with additional U.N. human rights experts to draw international attention to the targeting of young Black leaders and the repressive police response to largely peaceful assemblies in St. Louis. Additionally, advocates and leaders are engaged in a process to build the capacity of grassroots organizers to use the human rights framework to articulate their demands for racial justice and facilitate dialogue with movements elsewhere to situate the struggle for Black lives in the United States within a larger global human rights struggle against systems that have been the cause of political, economic, and social marginalization of communities of color worldwide.

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7. To document and raise support for their efforts, they created a website. See [FergusonToGeneva.org](http://FergusonToGeneva.org).

8. These advocates and activists were organized, along with those seeking accountability for the U.S.'s torture in the so-called "War on Terror," by the U.S. Human Rights Network, "a national network of organizations and individuals working to strengthen a human rights movement and culture within the United States led by the people most directly impacted by human rights violations." See *About Us*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/about-us#sthash.70am865Z.dpuf> (last visited Apr. 8, 2015).

Following a brief introduction to the Convention Against Torture and the treaty monitoring process in Part I of this Article, substantial excerpts of the shadow report submitted to the U.N. Committee Against Torture are published in Parts II-III. Parts IV-VI describe in detail the review process as well as advocacy efforts following the submission of the report, and the Conclusion presents a vision for a way forward.

## I. The U.N. Convention Against Torture and the Treaty Monitoring Process.

The United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "CAT") on October 21, 1994.<sup>9</sup> The CAT requires governments to, among other things, "take effective legislative, administrative, judicial or other measures to prevent acts of torture,"<sup>10</sup> hold accountable those who commit acts of torture,<sup>11</sup> train law enforcement personnel on the prohibitions against torture and cruel, inhuman or degrading treatment,<sup>12</sup> ensure that policies governing law enforcement protect against such acts,<sup>13</sup> and provide redress to victims.<sup>14</sup>

The monitoring and implementation of the CAT, along with other international human rights treaties, takes place through the treaty body process supported by the United Nations Office of the High Commissioner for Human Rights in Geneva, Switzerland.<sup>15</sup> Each treaty has a corresponding treaty body, a committee of independent experts tasked with monitoring compliance with a given treaty.<sup>16</sup> For example, the CAT is monitored by the U.N. Committee Against Torture. Countries that have a ratified a particular treaty are required to submit to the appropriate committee periodic reports on their efforts to comply with their obligations under the treaty. Following a country's submission of its periodic report, civil society organizations and other U.N. entities may also submit to the

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9. U.N. Treaty Collection, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=IV-9&chapter=4&lang=en).

10. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2., *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 78 (entered into force June 26, 1987) [hereinafter Convention Against Torture].

11. *Id.* at arts. 4-9, 12, 16.

12. *Id.* at arts. 10, 16.

13. *Id.* at arts. 11, 16.

14. *Id.* at arts. 13-14, 16.

15. U.N. Office of the High Commissioner for Human Rights, *Human Rights Bodies*, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (last visited Apr. 5, 2015).

16. *Id.*

committee what are known as “shadow reports.” Given that governments are not likely to admit to their own violations of a treaty, shadow reports help educate the committee on areas in which the government is failing to fulfill its obligations and the impact this failure is having on particular communities.<sup>17</sup>

After all reports have been submitted, the committee will engage in an in-person review process.<sup>18</sup> Representatives of the country’s government, as well as its civil society members who submitted shadow reports, are invited to meet with the committee in person. In a plenary discussion with the committee, the civil society members have the opportunity to help focus the committee’s attention on particular issues and recommend questions the committee should ask of the government to measure its compliance with the treaty.<sup>19</sup> Following the plenary discussion, the committee engages in an active dialogue with the government during which it poses questions to the government representatives on the country’s human rights record as it relates to the terms of the treaty.<sup>20</sup> The committee then issues Concluding Observations on how the government can improve its compliance with the treaty, and the government is required to respond to these observations in the months following the review.<sup>21</sup>

## II. Submission to the U.N. Committee Against Torture

Frustrated by attempts to obtain justice at the local, state, and federal levels, and given the ongoing display of excessive force by a militarized police force, Mike Brown Jr.’s family and several community organizations from St. Louis submitted a written statement to the U.N. CAT and traveled to Geneva to testify before the Committee during its review of the United States in November 2014. These organizations and members of the Ferguson to Geneva delegation regarded their written statement and trip to Geneva to testify as an indictment of the U.S. justice system, which had repeatedly proven itself to be willfully blind to demands for justice from the Black community. They also believed it necessary to use this global stage as a way to build awareness among the international community of the U.S. government’s human rights abuses against its communities of color, particularly in the form of racial discrimination in the U.S. justice

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17. U.N. Office of the High Commissioner for Human Rights, *supra* note 15.

18. U.N. Office of the High Commissioner for Human Rights, *Committee Against Torture: Overview of the Working Methods*, <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx> (last visited Apr. 5, 2015).

19. *Id.*

20. *Id.*

21. *Id.* For more information on the process, see MARTHA DAVIS, JOHANNA KALB & RISA KAUFMAN, *HUMAN RIGHTS ADVOCACY IN THE UNITED STATES* 497 (2014).

system, the lack of accountability for police violence and the alarming trend towards militarized policing taking place in the United States. The shadow report included below was drafted by the authors of this article in consultation with and on behalf of Mike Brown Jr.'s family, the Organization for Black Struggle, Hands Up United, and the Missourians Organizing for Reform and Empowerment in September 2014 and submitted to the CAT in October 2014. The following excerpts the substantive portions of the submission.<sup>22</sup> Note that though there have been events that have transpired since the report was drafted, we have not altered the text of the report for the purposes of preserving it as it was at the time of submission.

### A. Issue Summary

The 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.

#### 1. 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] onto the sidewalk," which then escalated into a confrontation.<sup>23</sup> 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.<sup>24</sup>

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22. JUSTIN HANSFORD & MEENA JAGANNATH ET AL., 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 PROTESTORS IN FERGUSON, MISSOURI (2014), available at <http://fergusontogeneva.org/FergusonReport.pdf>.

23. 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>.

24. Ryan Reilly & Amber Ferguson, *Witnesses to Michael Brown Shooting Tell the Same Basic Story About His Death*, THE HUFFINGTON POST (Sept. 16, 2014), <http://www.huffington>

As evidenced by audio recordings of the shooting,<sup>25</sup> 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.<sup>26</sup> 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 that his head was lowered as he collapsed or kneeled to surrender.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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 anv dav. anv time. in broad davlight. and there's nothing you can do about it."<sup>31</sup> 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

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post.com/2014/09/16/michael-brown-shooting-video\_n\_5831226.html.

25. Jason Hanna, *Audio Captured at Time of Michael Brown Shooting, Company Says*, CNN (Aug. 28, 2014), <http://www.cnn.com/2014/08/28/justice/michael-brown-ferguson-shooting-audio>.

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

27. *Id.*

28. Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, N.Y. TIMES (Aug. 23, 2014), <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html>.

29. *Id.*

30. *Id.*

31. *Id.*

the street to let you all know this could be you.”<sup>32</sup>

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,<sup>33</sup> and the veracity of other reports released is dubious.<sup>34</sup> Other police statements reportedly contained false justifications for the teen’s murder, including the release of unrelated video footage maligning the victim.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup> 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

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32. David Hunn, *Why Was Michael Brown’s Body Left There for Hours?*, ST. LOUIS POST-DISPATCH (Sept. 14, 2014), [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](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).

33. FERGUSON POLICE, INCIDENT REPORT (Aug. 9, 2014), available at [http://www.aclumo.org/files/4314/0871/7727/Ferguson\\_Police\\_incident\\_report.pdf](http://www.aclumo.org/files/4314/0871/7727/Ferguson_Police_incident_report.pdf); Saki Knafo, *Ferguson Police Report Raises More Questions Than It Answers*, THE HUFFINGTON POST (Aug. 22, 2014), [http://www.huffingtonpost.com/2014/08/22/ferguson-police-incident-report\\_n\\_5701131.html](http://www.huffingtonpost.com/2014/08/22/ferguson-police-incident-report_n_5701131.html).

34. Paul Rosenberg, *Ferguson’s Massive Cover-Up: How Police Departments are Protecting Michael Brown’s Killer*, SALON (Sept. 14, 2014), [http://www.salon.com/2014/09/14/fergusons\\_massive\\_cover\\_up\\_how\\_police\\_departments\\_are\\_protecting\\_michael\\_browns\\_killer](http://www.salon.com/2014/09/14/fergusons_massive_cover_up_how_police_departments_are_protecting_michael_browns_killer).

35. *Id.*

36. Kim Bell & 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](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).

37. Nicole Flatow, *Why Civil Rights Groups Are Calling for the Ferguson Prosecutor to Step Down*, THINK PROGRESS (Aug. 26, 2014), <http://thinkprogress.org/justice/2014/08/26/3474838/why-civil-rights-groups-are-calling-for-the-ferguson-prosecutor-to-step-down>.

investigations to be completed, as prosecutors typically do.<sup>38</sup> In addition to applying this legal but infrequently used process, the prosecutor 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.<sup>39</sup> 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.<sup>40</sup> While the grand jury need not take all of that time to reach a finding on this case, as 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> In the meantime, Officer Darren Wilson continues to take home a paycheck, on paid administrative leave pending a grand jury verdict.<sup>44</sup>

The actions of the police department and the local prosecutor come against the backdrop of deep racial divisions in the community and a

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38. 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>.

39. 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-295254c9-8316-76c4867dea48.html](http://www.stltoday.com/news/local/crime-and-courts/grand-jury-now-has-until-january-to-decide-whether-to/article_aa4111fc-295254c9-8316-76c4867dea48.html).

40. *Id.*

41. Lee, *supra* note 38.

42. MO. REV. STAT. § 563.046 (1979), available at <http://www.moga.mo.gov/mostatutes/stathhtml/56300000462.html>.

43. 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>; see *Tennessee v. Garner*, 471 U.S. 1 (1985).

44. Lee, *supra* note 38.

history of racial bias in the Ferguson Police Department. While the population of Ferguson is 67% Black, its police force is 94% white.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> The Department of Justice is also conducting its own investigation into the shooting of Michael Brown.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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

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45. 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>.

46. MISSOURI ATT'Y GEN., FERGUSON POLICE DEPT. VEHICLE STOPS REPORT (2013), available at <http://ago.mo.gov/divisions/litigation/vehicle-stops-report?lea=161>.

47. 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>.

48. Press Release, Attorney General Statement on Latest Developments in Federal Civil Rights Investigation in Ferguson, Missouri (Aug. 18, 2014), available at <http://www.justice.gov/opa/pr/attorney-general-statement-latest-developments-federal-civil-rights-investigation-ferguson-mo>.

49. 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>.

50. Sean Gardiner & John Surico, *Federal Government Will Review Ramarley Graham Shooting*, WALL ST.J. 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*, N.Y. DAILY NEWS (Sept. 18, 2014), <http://www.nydailynews.com/new-york/bronx/ramarley-graham-mother-praises-doj-article-1.1944997>.

forces.<sup>51</sup> 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,<sup>52</sup> and the shooting death of 25-year-old unarmed Black man Ezell Ford by a Los Angeles police officer underscore the failure of the United States to adequately address brutality and racial profiling by law enforcement.<sup>53</sup>

## 2. 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 bullets<sup>54</sup> on

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51. 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>.

52. *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>.

53. *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>.

54. In their response to the protest, police forces were documented using rubber bullets, bean-bag projectiles, and wooden baton bullets. Wesley Lowery, *Police Use Tear*

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 12, 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.<sup>55</sup> The police knowingly kept protesters penned in to expose them to force that would cause them considerable pain and anguish.<sup>56</sup> Frequently, children and elderly people were among the crowds when the police launched tear gas upon them without warning.<sup>57</sup> 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.<sup>58</sup> In addition to harming crowds of peaceful protesters of all ages and physical conditions, 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,<sup>59</sup> countless residents were trapped inside their home or hit with this chemical agent in their own yards.<sup>60</sup> 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."<sup>61</sup> In addition to blocking escape routes, in some cases, police actively obstructed victims' access to treatment for tear gas exposure.<sup>62</sup> 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, resulting in numerous children being

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*Gas on Crowd in Ferguson, Mo., Protesting Teen's Death*, WASH. POST (Aug. 12, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/08/12/police-use-tear-gas-on-crowd>.

55. Lowery, *supra* note 54.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. 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\\_own\\_backyard.php](http://blogs.riverfronttimes.com/dailyrft/2014/08/police_in_ferguson_fire_tear_gas_on_protesters_with_hands_up_in_their_own_backyard.php); 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>.

61. This Week in Blackness TV, *Ferguson Dispatch: Gassed*, YOUTUBE (Aug. 19, 2014), <http://youtu.be/DA4IT-rGNDg> (note, live recording from gassing includes explicit language).

62. Amanda Terkel & Ryan J. Reilly, *Ferguson Police Fire Tear Gas at Protesters Hours Before Curfew*, THE HUFFINGTON POST (Aug. 18, 2014), [http://www.huffingtonpost.com/2014/08/17/ferguson-protests\\_n\\_5686601.html](http://www.huffingtonpost.com/2014/08/17/ferguson-protests_n_5686601.html).

tear gassed, including some young enough to be in strollers.<sup>63</sup> Eyewitnesses report that they were unable to escape the gas.<sup>64</sup> 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.<sup>65</sup> The St. Louis Children's Hospital announced that it did indeed treat children who suffered from tear gas exposure,<sup>66</sup> and photos of an eight-year-old victim were widely circulated.<sup>67</sup>

On one evening, police officers did not allow protesters to stand still upon threat of arrest,<sup>68</sup> commanding some at gunpoint to keep walking.<sup>69</sup> Rifles were pointed at adults and children alike.<sup>70</sup> 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.<sup>71</sup> Over 200 individuals were arrested in the course of these protests and taken into custody.<sup>72</sup> As detailed below, one woman arrested during the protests attested to having been sexually harassed while detained.<sup>73</sup>

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,<sup>74</sup> but permissible in domestic law enforcement contexts.<sup>74</sup> Tear gas most frequently causes intense burning sensations and skin irritation, chest

63. Terkel & Reilly, *supra* note 62.

64. *Id.*

65. *Id.*

66. Aisha Sultan, *2 Children Treated for Tear Gas Exposure in Ferguson*, ST. LOUIS POST-DISPATCH (Aug. 18, 2014), [http://www.stltoday.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.stltoday.com/lifestyles/relationships-and-special-occasions/parenting/aisha-sultan/children-treated-for-tear-gas-exposure-in-ferguson/article_3f2653cc-61cd-5754-b9c5-5d327f3accad.html).

67. Sarah Kliff, *Report: 8-Year-Old Hit with Tear Gas in Ferguson*, VOX (Aug. 17, 2014), <http://www.vox.com/2014/8/17/6029589/report-8-year-old-hit-with-tear-gas-in-ferguson>.

68. *See* Complaint, Abdullah v. Cnty. of Saint Louis, No. 01436, 2014 WL 4979314 (E.D. Mo.), available at [http://www.aclu-mo.org/download\\_file/view\\_inline/1268/535](http://www.aclu-mo.org/download_file/view_inline/1268/535).

69. *See* Interview with Jasmine Wellington, *infra* note 86 and accompanying text.

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

71. 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](http://www.huffingtonpost.com/2014/08/14/ferguson-pastor-shot-police-rubber-bullet_n_5678973.html).

72. Ann O'Neill, *Who Was Arrested in Ferguson?*, CNN (Aug. 22, 2014), <http://www.cnn.com/2014/08/22/us/ferguson-arrests>.

73. *See* Interview with Jasmine Wellington, *infra* note 86 and accompanying text.

74. Kashmira 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>.

pain and difficulty breathing.<sup>75</sup> These effects can be magnified for vulnerable persons, such as children and those with asthma.<sup>76</sup> 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.<sup>77</sup> Less lethal projectiles also cause intense pain, injury and even death.<sup>78</sup> A 2004 study funded by the Department of Justice found that impact projectiles, such as rubber bullets and beanbags, had resulted in serious injury, fractured bones, and as of the year 2000, ten deaths.<sup>79</sup> One of the deaths occurred as a result of both trauma to the head and complications from tear gas exposure.<sup>80</sup> 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,”<sup>81</sup> and potentially cause permanent hearing loss.<sup>82</sup>

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

- 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

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75. Gander, *supra* note 74.

76. Brian Clark Howard, *The Surprising History and Science of Tear Gas*, NATIONAL GEOGRAPHIC (June 12, 2013), <http://news.nationalgeographic.com/news/2013/06/130612-tear-gas-history-science-turkey-protests>.

77. *Health Effects of Tear Gas and Pepper Spray*, FACING TEAR GAS, <http://facingteargas.org/bp/38/health-effects> (last visited Apr. 8, 2015).

78. 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> (last visited Apr. 8, 2015).

79. KEN HUBBS & DAVID KLINGER, *IMPACT MUNITIONS, DATA BASE OF USE AND EFFECTS 16* (Feb. 2004), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/204433.pdf>.

80. *Id.* at 19.

81. *The Future of Crowd Control*, THE ECONOMIST (Dec. 2, 2004), <http://www.economist.com/node/3423036>.

82. Press Release, Better Hearing Institute, *Better Hearing Institute Condemns Use of Sound Cannons (LRAD's) for Crowd Control during Chicago's May NATO Summit* (May 17, 2012), available at [http://old.betterhearing.org/press/news/Better\\_Hearing\\_Institute\\_Condemns\\_Use\\_of\\_Sound\\_Cannons\\_pr05172012.cfm](http://old.betterhearing.org/press/news/Better_Hearing_Institute_Condemns_Use_of_Sound_Cannons_pr05172012.cfm).

was exposed to tear gas and was present when law enforcement utilized Long Range Acoustic Device (hereinafter "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.<sup>83</sup>

- On August 16, 2014, 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 five or six 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 five to seven people sleep there. However, a subsequent check by attorneys confirmed that no violations were present. On August 20, 2014, police raided the building, taking the supplies protesters used to treat tear gas exposure.<sup>84</sup>
- 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

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83. Telephone Interview with Brandon Snead (Sept. 5, 2014).

84. 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](http://www.huffingtonpost.com/2014/08/20/church-police-ferguson_n_5695732.html); Telephone interview with Coleen Kelly (Sept. 1, 2014).

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.<sup>85</sup>

- 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.<sup>86</sup>

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, 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 to 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.<sup>87</sup>

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85. Telephone Interview with Jawanna Wilkins (Sept. 1, 2014).

86. Telephone Interview with Jasmine Wellington (Sept. 8, 2014).

87. Maria McFarland, *Letter to Missouri Governor Jay Nixon About Law Enforcement Response to Ferguson Protests*, HUMAN RIGHTS WATCH (Sept. 9, 2014), <http://www.hrw.org/news/2014/09/>

Law enforcement's militarized response to protesters in Ferguson is part of a widespread militarization of local police forces across the United States permitted, if not encouraged, by the federal government.<sup>88</sup> 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*.<sup>89</sup> It also follows a historical pattern of using excessive force against entire communities of racial minorities in crisis, as the CAT 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.<sup>90</sup>

## B. 2006 Concluding Observations and 2006 United States Government Response

The CAT Committee's 2006 Concluding Observations included several recommendations pertinent to the violations that have taken place in Ferguson.<sup>91</sup>

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 United States "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 fulfill its obligations under article 12 of the Convention."<sup>92</sup> The United States did not respond to this particular recommendation in its 2006 response.<sup>93</sup>

09/letter-missouri-governor-jay-nixon-about-law-enforcement-response-ferguson-protests.

88. Kara Dansky, *The Real Reason Ferguson has Military Weapons*, CNN (Aug. 19, 2014), <http://www.cnn.com/2014/08/19/opinion/dansky-militarization-police/index.html>.

89. *Id.*; AMERICAN CIVIL LIBERTIES UNION, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING* (2014), available at <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>.

90. U.N., Comm. 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, para. 42, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), available at [http://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) [herein after 2006 CAT Recommendations].

91. 2006 CAT Recommendations, *supra* note 90.

92. *Id.* at para. 25.

93. U.N., Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Comments by the Government of the United States of

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.<sup>94</sup> It recommended that the United States “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.”<sup>95</sup> The United States did not respond to this particular recommendation in its 2006 response.<sup>96</sup>

### C. 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.”<sup>97</sup> 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.”<sup>98</sup> Among many community groups across the United States that have noted a pattern of law enforcement killing unarmed Black persons, community-based group the Malcolm X Grassroots Movement found that there were 313

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America to the Conclusions and Recommendations of the Committee Against Torture, U.N. Doc. CAT/C/USA/CO/2/Add. 1 (Nov. 6, 2007), *available at* [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_USA\\_CO\\_2\\_Add-1\\_528\\_E.doc](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].

94. 2006 CAT Recommendations, *supra* note 90, para. 37.

95. *Id.*

96. 2006 U.S. Government Response, *supra* note 93.

97. Convention Against Torture, *supra* note 10, art. 1 (emphasis added).

98. U.N., Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, para. 20, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008), *available at* [http://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) [hereinafter CAT Gen. Cmt. 2].

Black people killed by police officers, security guards or vigilantes in 2012 alone—or one person every 28 hours.<sup>99</sup> Nearly half of those individuals were unarmed.<sup>100</sup> The report notes that these numbers likely fall short of reality, due to the dearth of nation-wide statistics.<sup>101</sup> The killing of Mike Brown and the abandonment of his body in the middle of a neighborhood street are but examples 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 . . . .”<sup>102</sup> 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.”<sup>103</sup> 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.”<sup>104</sup> 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.

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99. MALCOLM X GRASSROOTS MOVEMENT, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES 3 (Apr. 2013), available at <http://mxgm.org/wp-content/uploads/2013/04/Operation-Ghetto-Storm.pdf>.

100. *Id.* at 24.

101. *Id.* at 13-14.

102. Convention Against Torture, *supra* note 10, art. 16.

103. U.N., Report of the Special Rapporteur on the Question of Torture, Theo van Boven, U.N. Doc. E/CN.4/2005/62, para. 13 (Dec. 15, 2004), available at <http://daccess-ods.un.org/TMP/2448323.66704941.html>.

104. U.N., Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, U.N. Doc. A/HRC/22/53/Add.4, *e.g.* paras. 6, 10, 21, 77 (Mar. 12 2013), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.Add.4\\_Advance\\_version.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.Add.4_Advance_version.pdf).

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.”<sup>105</sup> 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 . . . .”<sup>106</sup> State party obligations under the Convention reach actions committed at the lower levels of government; the federal nature of the U.S. political system does not shield the United States from responsibility over the acts and omissions that occurred in Ferguson.<sup>107</sup>

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,<sup>108</sup> 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 United States 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.

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105. Convention Against Torture, *supra* note 10, art. 12.

106. CAT Gen. Cmt. 2, *supra* note 98, para. 21.

107. *Id.* paras. 15-18.

108. On March 4, 2015, the DOJ announced that it would not be pursuing federal charges against Officer Darren Wilson for the killing of Michael Brown, Jr. On the same date, it did, however, publish a scathing report from its investigation of the Ferguson Police Department, which found evidence of racially discriminatory policing practices and targeting of Black Ferguson residents for tickets, fines and fees to fund the activities of a majority-White police force and municipal government. See the report at: [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

#### D. The CAT Committee List of Issues and United States Government Responses

In 2010, the Committee identified a number of issues related to the violations raised in this report for the United States to respond to in its fifth periodic report.<sup>109</sup>

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 United States. The first part in Question 42(a) asked the United States 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 United States 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 United States 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 reopened when new evidence becomes available; and that victims or their families are provided with adequate compensation.”<sup>110</sup>

The U.N. Committee on the Elimination of Racial Discrimination (hereinafter “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,

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109. U.N., Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, U.N. Doc. CAT/C/USA/Q/5 (Jan. 20, 2010), available at <http://www.ushrnetwork.org/sites/default/files/catlistofissues2010.pdf>.

110. U.N., Human Rights Committee, Concluding Observations on the Fourth Periodic Report of the United States of America, para. 11, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), available at [http://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 Human Rights Committee 2014 Concluding Observations].

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.<sup>111</sup>

The United States 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.<sup>112</sup> 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.<sup>113</sup> 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 United States 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 United States' response relies on the reports it submitted to the CERD Committee 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 United States to "step up measures to effectively combat and eliminate racial profiling by federal, state and local law enforcement officials . . . ."<sup>114</sup> Similarly, the CERD urged the United States "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

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111. U.N., Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America, U.N. Doc. CERD/C/USA/CO/7-9, para. 8 (Aug. 29, 2014), available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd\\_concluding\\_observations2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf) [hereinafter CERD 2014 Concluding Observations].

112. CHRISTINE EITH & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2008, 12 (2011), available at <http://www.bjs.gov/content/pub/pdf/cpp08.pdf>.

113. Matthew J. Hickman, *Citizen Complaints About Police Use of Force*, BUREAU OF JUSTICE STATISTICS 1 (June 2006), <http://bjs.gov/content/pub/pdf/ccpuf.pdf>.

114. Human Rights Comm. 2014 Concluding Observations, *supra* note 110, at para. 7.

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.<sup>115</sup>

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.

### III. Recommendations Listed in the CAT Shadow Report

The submission to the CAT offered a number of recommended questions to the United States relating to the killing of Michael Brown.<sup>116</sup> In particular, the submission asked the Committee to determine what steps the United States had taken, or planned to take, to ensure the Brown family and other victims (and families of victims) of torture and/or cruel, inhuman or degrading treatment (CIDT) would receive redress and compensation and how the United States planned to prevent future abuses, including its plans to review and revise statutes regarding use of force. The submission also requested that the Committee question the U.S. government on its transfer of military grade weaponry and equipment to local police departments.

In addition to these questions, the submission suggested the committee set forth the following recommendations in order to protect against the torture and CIDT of Black and Brown persons and protesters:

#### A. 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

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115. CERD 2014 Concluding Observations, *supra* note 111, at para. 8.

116. HANSFORD & JAGNNATH, ET AL., *supra* note 22.

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.

## **B. 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.*

#### IV. CAT Review Proceedings

During the week of advocacy activities in Geneva, both the parents of Mike Brown and the young Black leaders from St. Louis had the opportunity to testify in a plenary meeting before members of the CAT Committee, and before the U.S. government delegation and other U.N. experts in meetings held during the week of the review. It was on the basis of these testimonies and the above submissions that Committee members posed incisive questions to the U.S. government delegation about the lack of police accountability in the United States, militarization of the police and the concerning unequal treatment of Black individuals by the U.S. justice system. On the first day of questioning, Committee member Essadia Belmir of Morocco went so far as to ask, in talking about racial inequality in the U.S. criminal justice system, “Why is it that people of color do not benefit from the same guarantees of others?”<sup>117</sup> On the second day of the review, Committee members continued questioning the United States on Ferguson, militarization of law enforcement and police accountability, marking a notable departure from past reviews during which police accountability did not feature so prominently.

Police brutality also featured strongly in the CAT Committee’s press remarks upon the release of their Concluding Observations from the review.<sup>118</sup> While not explicitly mentioning Ferguson, the Committee’s Concluding Observations directly addressed the concerns raised in the submission, referring to “excessive use of force and police brutality” as well as the Committee’s concern over “growing militarization of policing activities.”<sup>119</sup> Critically, the Concluding Observations of the Committee explicitly addressed the murders of unarmed African Americans,

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117. Essadia Belmir, Video 2 of CAT Review, available at <http://www.treatybodywebcast.org/category/webcast-archives/cat>.

118. Stephanie Nebehay, *U.N. Torture Watchdog Urges U.S. Crackdown on Police Brutality*, REUTERS (Nov. 28, 2014), available at <http://www.reuters.com/article/2014/11/28/us-usa-un-torture-idUSKCN0JC1BC20141128>.

119. U.N., *Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding Observations on the Third to Fifth Periodic Report of the United States of America*, para. 26, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014) [hereinafter 2014 CAT Concluding Observations].

expressing “its deep concern at the frequent and recurrent police shootings or fatal pursuits of unarmed Black individuals. In this regard, the Committee notes the alleged difficulties to hold police officers and their employers accountable for abuses.”<sup>120</sup>

Additionally, the Concluding Observations acknowledged the U.S. government’s claims that prosecutions have occurred, but highlighted the lack of data on allegations of torture against which to compare the low number of prosecutions. It cited as an example of this impunity the case of the Chicago police department, where despite the department’s clear violations of the CAT, there have been no convictions, in part because of a statute of limitations. Moreover, the Committee noted, even where wrongdoing of the department was by the court, there have been no reparations, as called for by the CAT. Finally, the Committee raised its continuing concerns regarding the failure of the United States to adopt a federal offense of torture and failure to recognize the concept of mental torture, finding such failures to be contrary to the object and purpose of the treaty and therefore “impermissible.”<sup>121</sup>

The Committee’s recommendations directly addressed several of the state failures evident in the torture and CIDT of people in the Ferguson, Missouri area. Notably, the Committee called on the United States to:

- (a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;
- (b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts;
- (c) Provide effective remedies and rehabilitation to the victims . . . .<sup>122</sup>

Relating specifically to the right to redress, the Committee urged the United States to “take immediate legal and other measures to ensure that all victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, in particular victims of police brutality. . . .”<sup>123</sup> The Committee also specifically asked for follow-

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120. 2014 CAT Concluding Observations, *supra* note 119.

121. *Id.*; 2006 CAT Recommendations, *supra* note 90 at para. 9 (noting Convention Arts. 1, 2).

122. 2014 CAT Concluding Observations, *supra* note 119, at para. 26.

123. *Id.* at para. 29.

up information relating to redress for the victims of police brutality to be provided by November 28, 2015.<sup>124</sup> As of the date of this writing, it does not appear that the United States has provided this follow up information, nor taken any systemic reforms at the federal level to provide redress for the victims of police brutality.

## V. Post-Review Advocacy

In the aftermath of the treaty body process, questions remain as to whether the project provided a worthwhile outcome. Was it worth the effort? While a deeper reflection on the value of international human rights mechanisms to local advocacy will follow in Part VI, this Section reflects on some of the post-process advocacy undertaken and considers the value of the CAT review process in producing any positive outcomes.

### A. International Legal Advocacy

#### 1. Communications to Special Rapporteurs

After the CAT review, the Ferguson to Geneva delegation sent letters to several United Nations "Special Rapporteurs."<sup>125</sup> Special Rapporteurs are human rights experts bearing a specific mandate from the United Nations Human Rights Council's special procedures to "examine, monitor, advise and publicly report" on specific human rights issues by, among other things, "responding to individual complaints" regarding issues within their mandate.<sup>126</sup> They can often help bring both national and international attention to issues within their mandate, further adding legitimacy to claims made by victims and activists.

In anticipation of the grand jury's announcement of its decision whether or not to indict Officer Darren Wilson in late November, the Ferguson to Geneva delegation sent letters to the Special Rapporteurs with thematic mandates on torture, racism, minority issues, the situation of human rights defenders, the promotion and protection of the right to freedom of opinion and expression, and freedom of peaceful assembly and association, as well as the Chair of the Working Group of experts on people of African Descent.<sup>127</sup> Several of the

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124. 2014 CAT Concluding Observations, *supra* note 119, at para. 33.

125. Ferguson to Geneva Delegation, *Letters to Special Rapporteurs* (Nov. 21, 2014), available at <http://fergusontogeneva.org/OpenLettersUN.pdf>.

126. *Special Procedures of the Human Rights Council: Introduction*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

127. Ferguson to Geneva Delegation, *supra* note 125.

experts responded within a short period of time, urging us to keep them apprised of the situation as it unfolded on the ground. Shortly thereafter, many of the Rapporteurs that the delegation contacted, along with one it did not, released a statement regarding the “legitimate concerns” that the Mike Brown case had raised.<sup>128</sup> Although the delegation did not receive confirmation that the statement was released as a direct consequence of its communications, the publication of comments related to the case by these Special Rapporteurs communicated an encouraging message to advocates and leaders that the international community was aware of and paying attention to the concerning human rights issues around policing and racism in the United States.

On Human Rights Day, December 10, 2014, the delegation updated the UN experts it had previously contacted with a detailed letter describing the numerous human rights abuses witnessed in the St. Louis region in the days that followed the announcement of the grand jury decision in the Darren Wilson case. The letter included references to arbitrary arrests, excessive and indiscriminate force against peacefully assemblies, as well as several instances of targeting of leaders and human rights defenders who have been vocal since August 2014. This letter similarly drew positive responses from experts as an important supplement to reporting in the media.

## 2. Advocacy in Advance of the Universal Periodic Review of the United States

During the United Nations Human Rights Council’s session in March 2015, a small group of advocates and movement leaders coordinated by the U.S. Human Rights Network traveled to Geneva again in advance of that body’s Universal Periodic Review (hereinafter “UPR”) of the United States in May 2015. The UPR is a mechanism to review the full human rights record of every U.N. member state that was created when the UN Human Rights Council was established by Resolution 60/251 in 2006.<sup>129</sup> The purpose of the group’s visit to Geneva was to meet with government delegations, Special Rapporteurs, and other human rights experts to inform them about a broad cross-section of human rights issues in the United States. One of the authors of this article and member of the Ferguson

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128. Press Release, Office of the High Commissioner for Human Rights, “Legitimate Concerns” Over Outcome of Michael Brown and Eric Garner Cases (Dec. 5, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E>.

129. *Universal Periodic Review*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx> (last visited Apr. 17, 2015).

to Geneva delegation was able to participate in the March 2015 trip. The trip was useful not only because it allowed leaders and advocates to interface directly with delegates from countries that would be issuing recommendations and submitting questions for the United States delegation to answer during the process, but it also allowed for follow up on the Human Rights Day communications, in particular the situation of human rights defenders in the United States. One concrete outcome is that the Special Rapporteur on the Human Rights Defenders' office has asked for a formal submission regarding emblematic cases of human rights defenders who have been harassed for their activism and the concerning trend towards greater targeting and surveillance that has surfaced since August 2014.

### 3. Engagement with the Decade of the African Diaspora

As mentioned above, the Ferguson to Geneva delegation also sent letters to the Chair of the working group of experts on people of African Descent, Mirelle Fanon-Mendès France. At Ms. Fannon-Mendès' request, the delegation met with her in person during her trip to New York to launch the International Decade for People of African Descent.<sup>130</sup> She proposed further long-term engagement with the delegation and discussed a range of advocacy tools available to bring more attention to the issue. The delegation also used this meeting as an opportunity to further engage the media on this issue,<sup>131</sup> and continues to be in touch with experts in this Working Group. During the March 2015 Geneva trip, advocates were able to further discuss how civil society could be more closely tied into the activities for the Decade as a way to keep international attention on the racial justice conversation brewing in the United States.

## B. Legislative Advocacy

### 1. Testimony before the United States Congress

In December 2014, the Ferguson to Geneva delegation also submitted testimony to the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights during its hearing on the state of Civil and Human Rights in the United States.<sup>132</sup> In that

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130. United Nations, International Decade for People of African Descent (last visited Mar. 22, 2015), <http://www.un.org/en/events/africandescentdecade/index.shtml>.

131. Jazelle Hunt, *Failure to Indict White Cop in Ferguson Will Not Derail Movement for Justice*, NEW PITTSBURGH COURIER (Dec. 1, 2014), <http://newpittsburghcourieronline.com/2014/12/01/failure-to-indict-white-cop-in-ferguson-will-not-derail-movement-for-justice>.

132. *The State of Civil Human Rights in the United States: Hearing Before the S. Judiciary*

testimony, in addition to the structural changes mentioned above, the delegation stressed the importance of personal accountability for the public officials responsible for the reprehensible police activity that had taken place. Members of the delegation also had meetings with a number of members of the United States House of Representatives and the United States Senate. Although many politicians were aware of the trip to Geneva, primarily because it had garnered attention in mainstream media, few had been apprised of the CAT Committee's conclusions or their import. In these advocacy contexts, the Concluding Observations from the CAT committee were useful in supporting the delegation's testimony and legitimizing its call for the United States to improve its compliance with human rights standards.

## 2. Testimony before the Missouri Legislature

In January 2015, as the legislative calendar opened in Missouri, delegation members also engaged in advocacy at the state level.<sup>133</sup> The legislative session began with protests at the Missouri Statehouse by local activists.<sup>134</sup> Over the course of the following weeks, several meetings with the Missouri Black Caucus resulted in the formulation of a series of proposed bills aimed at reforming Missouri law to alter use of force standards, create civilian oversight mechanisms for state actors, and demilitarize the police. Many of the proposed reforms directly echoed the proposals made by the delegation. One of the delegation members attended these meetings and travelled to the State Capitol to testify before the Missouri legislature. During his testimony, he often referenced the trip to the U.N. and pointed out that, as a result of the events in Ferguson, people from all over the world saw Missouri as a locus of racial antagonism, adding urgency to the passing of meaningful legislation on the issue during this legislative session.

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*Subcomm. on the Constitution, Civil Rights, and Human Rights*, 113th Cong. (Dec. 9 2014), available at <http://static1.squarespace.com/static/54179ca4e4b0b0c7bc710d3d/t/548713ece4b01ea65acaf129/1418138604131/Ferguson+to+Geneva+Statement.pdf> (Testimony by Organization for Black Struggle, HandsUpUnited, Members of the Ferguson to Geneva Delegation).

133. Koran Addo & Elisa Crouch, *Ferguson Movement Drafts its Own Blueprint*, ST. LOUIS POST-DISPATCH (Jan. 4, 2015), [http://www.stltoday.com/news/local/metro/ferguson-movement-drafts-its-own-blueprint/article\\_e2b9a09f-f886-5825-8e5b-cf9aedcbbad8.html](http://www.stltoday.com/news/local/metro/ferguson-movement-drafts-its-own-blueprint/article_e2b9a09f-f886-5825-8e5b-cf9aedcbbad8.html).

134. Virginia Young, *Ferguson Could Set Tone for Missouri Legislative Session*, ST. LOUIS POST-DISPATCH (Jan. 4, 2015), [http://www.stltoday.com/news/local/govt-and-politics/ferguson-could-set-tone-for-missouri-legislative-session/article\\_63fda5d4-6975-5d66-b3a3-61f066a9fd85.html](http://www.stltoday.com/news/local/govt-and-politics/ferguson-could-set-tone-for-missouri-legislative-session/article_63fda5d4-6975-5d66-b3a3-61f066a9fd85.html).

### C. Executive Branch Advocacy

#### 1. Testimony before the President's Task Force of 21st Century Policing

In February 2015, a member of the Ferguson to Geneva delegation testified during a "listening session" of the President's Task Force on 21st Century Policing.<sup>135</sup> In that testimony, as with the Senate testimony, the delegation's engagement with the CAT Committee took center stage.<sup>136</sup> As the Task Force focused on community policing and the rebuilding of public trust between the police and the community, the delegation member pointed out that in light of the failure to "articulate a commitment to human rights, not just crime reduction," community policing as defined by the U.S. Department of Justice COPS program would never work.<sup>137</sup> The human rights framing in his testimony carried the potential to influence not just how these issues are discussed, but how future policing could be shaped.

#### 2. Testimony before the Missouri Advisory Committee to the United States Civil Rights Commission

In February 2015, a member of the delegation testified before the Missouri Advisory Committee to the United States Civil Rights Commission.<sup>138</sup> During that testimony, the delegation member recommended adopting measures championed by the delegation, including the annual reporting on the use of force and improved data collection measures. The Committee voted to send an advisory memo to the United States Commission on Civil Rights recommending the improvement of data collection measures, as well as the adoption of other reforms, including a call to limit the use of hot spot policing measures.<sup>139</sup>

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135. *Listening Session: Community Policing & Crime Reduction*, U.S. Dept. of Justice, <http://www.cops.usdoj.gov/Default.asp?Item=2770> (last visited Apr. 17, 2015).

136. Statement of Justin Hansford in Listening Session: Community Policing & Crime Reduction, U.S. Dept. of Justice (Feb. 12, 2015), [http://www.cops.usdoj.gov/pdf/taskforce/submissions/Hansford\\_Justin\\_Testimony.pdf](http://www.cops.usdoj.gov/pdf/taskforce/submissions/Hansford_Justin_Testimony.pdf).

137. *Id.*

138. Rebecca Riva, *Civil Rights Commission Reports on STL Hearing*, THE ST. LOUIS AMERICAN (Apr. 1, 2015), available at [http://www.stlamerican.com/news/local\\_news/article\\_5cd92472-d8d3-11e4-b8c7-8ff6587c89ea.html](http://www.stlamerican.com/news/local_news/article_5cd92472-d8d3-11e4-b8c7-8ff6587c89ea.html).

139. *Id.*

### 3. Testimony before Ferguson Commission

In December 2014, two members of the delegation also testified before the Ferguson Commission in Saint Louis. During that testimony, the delegation members recommended implementing human rights norms on the local level, pointing out that the City Board of Aldermen could pass local ordinances to comply with human rights standards in lieu of action on the state or federal level.<sup>140</sup> This had a bracing effect on the audience of nearly 300 community members, and perhaps represented the widest dissemination of the outcomes of the CAT review process at the local level.

## VI. Evaluating the Impact of the Process

### A. Pragmatic Outcomes

As the above summary of subsequent events indicates, the advocacy efforts undertaken during the CAT review process produced significant fruit in the months that followed. Since traveling to Geneva, members of the Ferguson to Geneva delegation have been able to draw from their experiences with that process as well as the resulting Concluding Observations issued by the CAT Committee to deliver forceful recommendations using a human rights framework to shape policing reform and tackle racial justice issues in the United States.

This advocacy in turn had an immediate and direct impact on local officials' response to protests after the decision not to indict Darren Wilson was announced. Prior to the announcement of the grand jury decision, the trip to Geneva was reported on widely and cited during interviews with heads of local law enforcement.<sup>141</sup> In the aftermath of the grand jury decision, the leadership of the National Guard stated that decisions concerning the policing of demonstrations were made with regard to valuing the protection of life over property in large part to preserve the "image" of local government officials and politicians.<sup>142</sup> The Ferguson to Geneva

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140. *Ferguson Commission Meeting, Record of Proceedings at 59* (Dec. 8, 2014), available at [http://stlpositivechange.org/sites/default/files/meeting\\_attachments/ferguson-commissipn-meeting-transcript-12-8.pdf](http://stlpositivechange.org/sites/default/files/meeting_attachments/ferguson-commissipn-meeting-transcript-12-8.pdf).

141. Chris King, *Preparing for Peace? Meet the New, Improved Unified Command*, THE ST. LOUIS AMERICAN (Nov. 15, 2014), [http://www.stlamerican.com/news/local\\_news/article\\_747fce3a-6d05-11e4-a5e0-9b8aa0946089.html](http://www.stlamerican.com/news/local_news/article_747fce3a-6d05-11e4-a5e0-9b8aa0946089.html).

142. David Hunn & Virginia Young, *National Guard Would Have Had to Use 'Deadly Force' to Stop Riots in Ferguson, Official Says*, ST. LOUIS POST-DISPATCH (Feb. 18, 2015), <http://www.stltoday.com/news/local/crime-and-courts/national-guard-would-have-had->

delegation found this encouraging, as these revelations highlighted the fact that as long as public officials are concerned with their own image in the hopes of re-election, public shaming at the international level can have a local impact.

## B. Cultural Reverberations

One of the more interesting aspects of the Ferguson to Geneva project was the amount of attention the project received from mainstream popular media outlets.<sup>143</sup> The delegation received media inquiries from dozens of media outlets from around the world and ultimately had to decline many, as the interest was overwhelming. There was an effort to promulgate false news stories about the trip through social media, which was later debunked.<sup>144</sup> A course was offered at Stanford University entitled “Ferguson in a Global Frame.”<sup>145</sup> A few members of the delegation have attempted to engage in their own attempts to shape the narrative about the trip, and one delegation member has continued to use his advocacy as a rap artist to further the advocacy to through more nontraditional spheres.<sup>146</sup> But overall, the trip has taken on a life of its own in the popular imagination.

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to-use-deadly-force-to/article\_dc9f136e-6bf5-5370-96f7-1b4754f8839b.html.

143. See, e.g., Josh Levs, *Michael Brown's Parents Address U.N.: 'We Need the World to Know'*, CNN (Nov. 12, 2014), <http://www.cnn.com/2014/11/11/us/ferguson-brown-parents-un->; see also *Michael Brown's Parents Testify at U.N. Hearing*, USA TODAY (Nov. 11, 2014), <http://www.usatoday.com/story/news/world/2014/11/11/michael-brown-parentstestimony-united-nations/18857549>.

144. See, e.g., *Fergususpicious*, SNOPE.COM, <http://www.snopes.com/media/notnews/mikebrownun.asp> (last visited Apr. 17, 2015).

145. David Palumbo-Liu, *Ferguson in a Global Frame: Human Rights Matters in the US and Beyond*, *Comparative* (Jan. 3, 2015), available at <http://www.palumbo-liu.com/?p=968> (providing a link to syllabus for the course).

146. #TeamEbony, [*Ferguson Forward*] *From Local Movement to Global Action, Lawyer and Activist Justin Hansford Reflects on Going from 'Ferguson to Geneva' and Sustaining the Fight for Human Rights*, EBONY (Dec. 2, 2014), <http://www.ebony.com/news-views/ferguson-forward-from-local-movement-to-global-action-594#axzz3WTQLUmvK>; Jazelle Hunt, *UN Committee Hears About Violations in Ferguson, Mo.*, BLACK PRESS USA (Nov. 29, 2014), <http://www.blackpressusa.com/un-committee-hears-about-violations-in-ferguson-mo>; Alice Speri, *Michael Brown's Mom is Taking Her Son's Case to the UN in Geneva*, VICE NEWS (Oct. 31, 2014), <https://news.vice.com/article/michael-browns-mom-is-taking-her-sons-case-to-the-un-in-geneva>; Tom Barnes, *Tef Poe is More than a Rapper – He's Becoming the Voice of Ferguson*, MUSIC.MIC (Jan. 8, 2015), <http://mic.com/articles/108042/tef-poe-isn-t-just-a-rapper-he-s-becoming-the-voice-of-ferguson>.

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## Conclusion

While advocacy efforts continue and the full extent of the effectiveness of using international human rights mechanisms remains to be measured, what is clear is that the process in itself is of limited value without further follow up in domestic forums at all levels (local, state and federal). Of course, the CAT review process did generate a significant opening in the public dialogue for discussing human rights, but it is in taking advantage of that opening that the potential for real impact emerges. Though some activists and advocates have begun to do this, as the efforts detailed above indicate, more can be done to integrate human rights framing into local organizing efforts. It is incumbent on all human rights advocates to make both the framework and mechanisms established by the international community to protect human rights accessible to on-the-ground organizers doing the work necessary to build power in the marginalized communities of the United States. The quote from Malcolm X that opens this article reminds us all of the importance of moving beyond efforts to reclaim our rights as citizens of the United States through legal means, limited by laws and institutions that once enslaved, then legally segregated, and now subject to militarized policing and mass incarceration this country's Black population.<sup>147</sup> We must instead reclaim our rights as human beings. But in calling for human rights we must not again overemphasize the importance of international human rights law and mechanisms, rather ensure that they serve as useful tools to individuals leading the greater project of building a more just, and equal society that values the human dignity of all.

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147. Malcolm X, *supra* note 1.