Submission to the UN Working Group of Experts on People of African Descent

_Hexcessive Use of Force by Police Against Black Americans in the United States_

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I. Overview

Since the beginning of 2015, police officers have killed over 1100 people in the United States.\(^1\) Black Americans represent a grossly disproportionate number of these victims; they are killed by police at rates that far exceed their share of the national population.\(^2\) Statistically, Black Americans are significantly more likely to die at the hands of police than white, Latino, and Asian Americans.\(^3\) Among those people killed by the police, Black victims are more than twice as likely as white victims to have been unarmed at the time of their death.\(^4\)

Discriminatory police violence is by no means a new phenomenon in the United States. In recent years, however, reinvigorated protests and the organizing efforts of human rights defenders in the movement for Black lives and other community groups have thrust these injustices into the public eye. Despite widespread and growing recognition of the gravity of the problem and the need for radical changes in law enforcement practices, police officers are rarely held accountable for their actions; investigations and prosecutions of killings and excessive use of force by the police are the exception rather than the norm.\(^5\) When officers do face criminal charges, they are often acquitted, or, if convicted, receive much lighter sentences than are typical for civilians convicted of similar crimes.\(^6\) Impunity and the lack of accountability lie at the heart of a cycle of police violence and discrimination against Black Americans.

Discriminatory and excessive use of force by the police violates the obligations of the United States under international law to respect and protect the rights to life and security of person, to freedom from arbitrary detention, torture and cruel, inhuman and degrading treatment (“CIDT”), and to equality before the law. The United States has signed and ratified various international human rights instruments that guarantee these rights, including the American Declaration on the Rights and Duties of Man (“American Declaration”), the Universal Declaration of Human Rights (“UDHR”), the International Covenant on


\(^2\) The U.S. Census Bureau estimated that Black Americans constituted 13.2% of the country’s population in 2014. State and County QuickFacts, United States Census Bureau (Sept. 30, 2015), http://quickfacts.census.gov/qfd/states/00000.html. In 2015, however, one quarter (25%) of people killed by police were Black. See Guardian Database, supra note 1 (reporting that 272 of 1103 victims of police killing in 2015, or 24.6%, were Black); Washington Post Database, supra note 1 (reporting that 242 of the 954 people fatally shot by police in 2015, or 25.4%, were Black).

\(^3\) Guardian Database, supra note 1; Washington Post Database, supra note 1. Some studies indicate that Native Americans are killed at a higher rate, in comparison to their percentage of the population, than Black Americans. “[A]ccording to the Center on Juvenile and Criminal Justice, a nonprofit organization that studies incarceration and criminal justice issues, police kill Native Americans at a higher rate than any other ethnic group.” A.J. Vicens, Native Americans Get Shot By Cops at an Astonishing Rate: So why aren’t you hearing about it?, Mother Jones (July 15, 2015, 5:57 PM EDT), http://www.motherjones.com/politics/2015/07/native-americans-getting-shot-police; see also Cecily Hilleary, Native Americans Most Likely Victims of Deadly Police Force, Voice of America (Aug. 15, 2015, 6:50 AM), http://www.voanews.com/content/native-americans-most-likely-victims-of-deadly-force-by-police/2918007.html.

\(^4\) See Jon Swaine, Oliver Laughland, & Jamiles Larney, Black Americans killed by police twice as likely to be unarmed as white people, The Guardian (June 1, 2015), http://www.theguardian.com/us-news/2015/jun/01/black-americans-killed-by-police-analysis.


Civil and Political Rights (“ICCPR”), the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”), and the International Convention on the Elimination of all forms of Racial Discrimination (“ICERD”). This submission examines the factors that contribute to the excessive and discriminatory use of force by police against Black Americans from the perspective of international human rights law.

II. Pervasive and Disproportionate Police Violence against Black Americans

Online databases documenting the deaths of those killed by police officers in the United States help to expose discrimination against Black Americans and increase pressure for urgent reforms. In the wake of high-profile police killings in the past three years, media outlets have begun to collate this information in order to paint a more complete (and heretofore unavailable) picture of police violence in the United States. Sites such as “Killed by Police” and databases published by the Washington Post and the Guardian provide invaluable information about those who have been killed and the circumstances of their deaths.\(^7\)

These databases reveal the disparate treatment of Black Americans by the police. According to the U.S. Census Bureau, Black Americans constituted 13.2% of the country’s population in 2014.\(^8\) The proportion of individuals killed by police in 2015 who were Black, however, is far higher: As of December 22, 2015, the Guardian counted 1103 people killed by law enforcement in 2015, of whom 272, or 24.6%, were Black.\(^9\) Among unarmed victims, the discrepancy is even greater: Of the 212 unarmed people killed by the police during the same period, 69, or 32.5%, were Black.\(^10\) The Washington Post’s numbers are similar: As of December 22, 2015, the newspaper counted 954 people shot and killed by the police in 2015, of whom 242, or 25.4%, were Black.\(^11\) Among the 88 unarmed people shot dead by police, 34 were Black: 38.6% of the total.\(^12\) All except one of these unarmed Black victims were men.\(^13\)

While police violence affects Black women and men alike, the figures regarding the rates of killing of Black men are particularly stark: Although Black men constituted approximately 6% of the national population according to 2013 figures,\(^14\) they made up 23.7% (according to the Guardian)\(^15\) or 24.4% (according to the Washington Post)\(^16\) of victims of police violence in 2015 as of December 22, 2015—a rate roughly four times their share of the national population.

Police violence not only affects people differently based on their race, but also based on their socioeconomic status, mental health, gender identity, and sexual orientation. In this way, intersecting forms of discrimination and structural biases compound one another, exacerbating rights violations. For example, cities where some of the highest-profile police killings have occurred in the past two years, such

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\(^8\) State and County QuickFacts, United States Census Bureau (Sept. 30, 2015), http://quickfacts.census.gov/qfd/states/00000.html.

\(^9\) Guardian Database, supra note 1.

\(^10\) Id.


\(^12\) Id.

\(^13\) Id.


\(^15\) Guardian Database, supra note 1.

\(^16\) Washington Post Database, supra note 1.
as Baltimore, Maryland, have long histories of economic inequality that falls along racial lines due in part to explicit government policies and in part to implicit social dynamics and institutionalized racism. In addition, at least one-fourth of all people fatally shot by the police in 2015 displayed signs of mental illness. According to an extensive 2011 national survey, 60% of all Black transgender individuals who interact with police reported experiencing harassment or physical or sexual assault, compared to 24% of white transgender individuals.

Advocates and activists, particularly local organizers and leaders of color, have been highlighting the persistent problems faced by Black communities in the United States and articulating what steps need to be taken to address these issues. Movements against anti-Black racism are gaining strength and Americans are demanding justice. International human rights bodies, such as the Committee on the Elimination of Racial Discrimination, have likewise voiced “concern at the brutality and excessive use of force by law enforcement officials among members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on African Americans and undocumented migrants crossing the United States–Mexico border.” The United States has a duty to take urgent action to prevent and remedy the excessive use of force by police against Black Americans.

III. Legal Framework Regulating the Use of Force by Police

Law enforcement agents, including police officers, inevitably confront situations in which they must decide whether to use force and how much force is appropriate. The U.N. Human Rights Committee has stressed that a situation where the use of force by authorities of the State has the capacity to deprive life is one of the “utmost gravity” and that “the law must strictly control and limit the circumstances in which a person may be deprived of his or her life.” The Inter-American Court of Human Rights has likewise held that States have a duty to adapt their national laws to ensure that “security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.” In order to ensure “the conditions required for the full enjoyment and exercise of the right to life,” the use of lethal force, in particular, must be adequately regulated.

The legal framework regulating the use of force in the United States does not conform to the requirements of international human rights law or international best practices. The United States has not implemented the standards contained in the U.N. Code of Conduct for Law Enforcement Officials (“U.N. Code of


18 Washington Post Database, supra note 1.


20 Comm. on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, CERD/C/USA/CO/7-9, ¶ 17 (Sept. 25, 2014); see also Comm. Against Torture, Concluding observations of the U.S., U.N. Doc. CAT/C/USA/CO/3-5, ¶ 26 (Dec. 14, 2014) (expressing “concern about the numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals . . . [as well as] racial profiling by police and immigration offices and the growing militarization of policing activities.”)


Conduct”), adopted by the U.N. General Assembly in 1979, or the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“U.N. Basic Principles”), developed at a U.N. conference on crime prevention and the treatment of offenders in 1990, which together provide authoritative guidance on internationally accepted methods of policing and the use of force. Together, these two U.N. documents require law enforcement to “apply nonviolent means before resorting to the use of force.” If force is “unavoidable,” police must “exercise restraint in such use and act in proportion to the seriousness of the offence.” In all circumstances where forced is used, police should “minimize damage … and respect and preserve human life” and dignity. “[I]ntentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

The Inter-American Commission on Human Rights has held that States have an obligation to “be clear when defining domestic policies on the use of force and pursue strategies to implement the [U.N. Basic Principles].” In the United States, the legal framework for the use of force, training practices, and policing methods do not systematically reflect or uphold these international standards. The discrepancies between the U.S. domestic legal framework and international human rights standards are starkest with regard to the treatment of lethal versus non-lethal force, the circumstances in which recourse to force and lethal force is permissible, and the purposes for which the use of force is deemed legitimate.

The Fourth Amendment of the U.S. Constitution, which guarantees the right of the people to be free from unreasonable seizure of their person, is the primary lens through which police use of force is analyzed in the United States. In its Fourth Amendment jurisprudence on use of force, the U.S. Supreme Court’s sole focus is on the “reasonableness” of police actions under the circumstances. This approach contrasts with the U.N. Basic Principles’ categorization of different types of force, which distinguishes the lethal use of force from other forms of force. Because the U.S. constitutional standard regarding the use of force does not treat lethal force as a separate category, permitted in only limited circumstances, there is no uniform floor or common baseline for individual state laws on lethal force. Unsurprisingly, this leads to considerable variation in how individual state statutes define lethal force and regulate the circumstances in which it may be used. In fact, as of June 2015, nine states and the District of Columbia had no laws on the use of lethal force by law enforcement officers. Many of the state laws that do exist fail to meet the domestic constitutional standard, let alone the standard set by international law.

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29 Id.
30 U.N. Code of Conduct, supra note 24, art. 2.
32 See U.S. Const. amend. IV.
36 Id.
37 Id.
Moreover, the legal framework for the use of force in the United States does not clearly require exhaustion of non-violent or less-than-lethal means before resort to lethal force.\textsuperscript{38} Nor does it consistently prohibit the use of force to maintain law and order, prevent escape, or apprehend a suspect, in absence of an imminent threat of death or serious injury.\textsuperscript{39} Guidelines issued by the U.S. Department of Justice state that deadly force is unnecessary if non-deadly force is sufficient to accomplish a law enforcement purpose.\textsuperscript{40} While these Guidelines represent an improvement upon the constitutional standard, they still set the baseline at non-deadly force rather than at non-violent means of diffusing the situation. This approach is at odds with the standard set forth in the U.N. Basic Principles requiring exhaustion of alternatives to force.\textsuperscript{41}

The absence of sufficiently clear, specific, and objective criteria regarding what constitutes lawful use of force in a given context contributes to an over-reliance on officers’ subjective views in determining the reasonableness of their actions. Deferring to the views of officers, however, runs the risk of allowing their biases—whether explicit or implicit—to define the parameters of the lawful use of force. Implicit bias, including racial bias, affects perception and may contribute to officers’ decisions to use lethal force unnecessarily.\textsuperscript{42} Bringing the domestic legal framework into line with international standards would help clarify and strengthen the rules governing the use of force, minimize the influence of racial bias, and ensure greater respect for and protection of human rights.

### IV. Police Training

The United States is required by international human rights law to ensure that all law enforcement agents are properly trained in the lawful use of force and non-discrimination to prevent human rights abuses resulting from the excessive and discriminatory use of force.\textsuperscript{43} As agents of the State, police officers must

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  \item \textsuperscript{38} For instance, in \textit{Harris v. Serpas}, 745 F.3d 767, 772–73 (5th Cir.), cert. denied, 135 S. Ct. 137 (2014), the U.S. Court of Appeals for the Fifth Circuit ruled that officers were reasonable in fatally shooting Mr. Harris after he raised a knife above his shoulder in a stabbing position. The court reached this decision despite the fact that the officers initially found Mr. Harris lying down on his back and had received no reports that he was a threat to anyone but himself before they used Tasers on him, leading him to become agitated. The court did not contemplate whether officers could have used other less-than-lethal means to deescalate the situation, or consider any of the officers’ actions leading up to the shooting. Because the officers “reasonably feared for their safety at the moment of the fatal shooting,” the Fifth Circuit concluded that the use of lethal force was not excessive. \textit{Id.} at 773.
  
  \item \textsuperscript{39} For instance, in \textit{McKenney v. Harrison}, the U.S. Court of Appeals for the Eighth Circuit ruled that an officer’s fatal Taser of an unarmed person suspected of a misdemeanor as he lunged toward an open window was a reasonable use of force because the individual’s sudden movement could be interpreted as an attempt to flee, only a single Taser shock was used, the officer was in a position of having to make a split second decision, and some form of warning was given. There was no evidence that the suspect posed an imminent threat to the life or limb of the law enforcement officers or bystanders. The officer’s only apparent objective was bringing this individual into custody. McKenney v. Harrison, 635 F.3d 354, 360 (8th Cir. 2011). Permitting the prioritization of law and order over preservation of life does not comport with international human rights law. \textit{Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions}, ¶ 73, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).
  
  
  \item \textsuperscript{41} See U.N. Basic Principles, supra note 25, at principle 4; see also U.N. Code of Conduct, supra note 24, at art. 3 & cmt. This issue is described by the Inter-American Commission on Human Rights in Leydi Dayán Sánchez v. Colombia, Case 12.009, Inter-Am. Comm’n H.R., Report No. 43/08, ¶ 54 (2008).
  
  
  \item \textsuperscript{43} See, e.g., Comm. on the Elimination of Racial Discrimination, \textit{General Recommendation XXXI, on the prevention of racial discrimination in the administration and functioning of the criminal justice system}, ¶ 1.B.5(b), U.N. Doc. A/60/18, at 101 (2005); see also Comm. on the Elimination of Racial Discrimination, \textit{General Recommendation XIII on the training of law enforcement officials in the protection of human rights}, U.N. Doc. A/48/18, ¶ 2 (1993) (“The fulfillment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their State has entered into under the Convention.”).
\end{itemize}
be informed of their international human rights law obligations with respect to the use of force and non-discrimination. They must also be trained to conduct themselves in a manner that fulfills these obligations, and respects and protects the rights of the individuals with whom they interact. At the same time, police officers, as individual citizens and employees of the State, have a right to proper training, so that they are equipped to perform their duties safely and effectively.

There are 800,000 police officers across the United States, belonging to approximately 18,000 separate local and state law enforcement agencies, including more than 12,500 police departments. The decentralization of policing in the United States, coupled with a lack of transparency regarding police training policies and practices, impedes meaningful evaluation of whether police training complies with international human rights law and norms. According to the Guardian’s database of police killings, the U.S. cities with the highest number of police killings in 2015 were Los Angeles, Houston, Las Vegas, Indianapolis, and Phoenix. While the police department manuals for several of these cities are posted online, they are not uniformly available and there is little public information regarding the content of police training programs.

The United States has an obligation to protect the right to life. Death resulting from the excessive use of force by police officers violates the right to life. Under both the American Declaration and the ICCPR, the United States also must give effect to the right to life. This positive obligation includes mandatory

44 For example, in the words of the U.N. Committee on the Elimination of Racial Discrimination, “[l]aw enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, color or national or ethnic origin.” Comm. on the Elimination of Racial Discrimination, General Recommendation XIII on the training of law enforcement officials in the protection of human rights, supra note 44, at ¶ 2.
45 See Report on Citizen Security and Human Rights, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. doc. 57, 92 (2009), https://www.cidh.oas.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf (describing the entitlement to “constant training that enables the police officer to perform his or her functions” (quoting Dominguez Vial, Andrés Policía y Derechos Humanos, Policía de Investigaciones de Chile/IIDH, Santiago, 1996)). The Report specifies: “The men and women who serve on the police must receive ongoing instruction and practical training in human rights, and thorough training and instruction in the area of tactical danger assessment, so that they are able to determine, in every situation, whether the use of force, including lethal force, is proportionate, necessary and lawful.” Id.
47 Guardian Database, supra note 1.
51 ICCPR, supra note 50, art. 2. (“Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, . . . to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”) (emphasis added).
training. Accordingly, in order to give effect to the right to life under the American Declaration and the ICCPR, the United States must ensure that its law enforcement officers are adequately trained. International human rights law bans all forms of torture and CIDT, universally and without exception. While lawful use of force by police does not constitute torture or CIDT, excessive and unlawful use of force by police offers may. Under CAT, the United States has an obligation to train police forces to avoid torture and CIDT. Proper anti-CIDT training should be held regularly and should inform police officers of all provisions of the Convention, including the criminal liability to which they are exposed, as well as relevant provisions of U.S. domestic law.

International human rights law prohibits discrimination and requires equality before the law. The United States has a binding obligation to eliminate racial discrimination. Under ICERD, States must ensure that their public authorities act in conformity with this obligation, including by ensuring that police treat all people equally. States should pursue this duty by training police on their obligations to respect and protect human dignity and the human rights of all, without regard to race.

53 See Montero Aranguren et al. (Detention Center of Caria) v. Venezuela. Merits, Reparations and Costs. Judgment, Inter-Am Ct. H.R. (Ser C) No. 150, ¶ 147 (July 5, 2006).
55 CAT, supra note 54, art. 1 (“[CIDT] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”).
57 CAT, supra note 54, arts. 10.1 & 16.1 (mandating anti-torture training in art. 10.1 “[e]ach State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel,” and providing in art. 16.1 that training must include the prohibition against cruel, inhuman or degrading treatment).
60 ICERD, supra note 59, art. 2. (defining racial discrimination as, “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”); ICCPR, supra note 49, art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”); see also Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment, Inter-Am Ct. H.R. (Ser C) No. 251 ¶ 231 (Oct. 24, 2012) (relying on the CERD definition of racial discrimination).
61 ICERD, supra note 59, art. 2(a).
62 Id. art. 5(a) (“In compliance with the fundamental obligations laid down in article 2 … States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice.”).
63 See Comm. on the Elimination of Racial Discrimination, General Recommendation XXXI, on the prevention of racial discrimination in the administration and functioning of the criminal justice system, § I.B.5(b), U.N. Doc. A/60/18, at 101 (2005); see also Comm. on the Elimination of Racial Discrimination, General Recommendation XIII on the training of law enforcement
Committee on the Elimination of Racial Discrimination has repeatedly noted that racial profiling in the U.S. violates obligations under ICERD.\textsuperscript{64}

In sum, police officers must be trained to understand which types of force are permissible, and under which circumstances. Law enforcement agents must be equipped with tactics and tools that encourage de-escalation measures and alternatives to deadly force. Police training must not be limited, however, to teaching the mechanics of policing; it must also encompass programs to combat racial bias and overcome ignorance regarding the history of racial injustice in the United States. Furthermore, the public must also have access to, and opportunities to influence the content of, police training programs.

Ultimately, the efficacy of police training in the proper use of force and non-discrimination must be gauged by its effects on officer conduct. So long as Black Americans continue to be disproportionately victimized by excessive use of force, training programs must continue to be scrutinized and improved in order to ensure that they better prepare officers to respect and uphold the human rights of all. To be sure, the problem of discriminatory police violence is not simply one of inadequate training. It cannot be separated from systemic racism and inadequate accountability mechanisms, discussed below. All too often, officers display appropriate policing habits when operating in wealthy, white neighborhoods, suggesting that they don’t lack the capacity to police humanely—they just choose not to apply that knowledge in low-income, Black communities. Thus, efforts to end the disproportionate victimization of Black Americans by police must not be limited to reform of training programs. Nor should the call for improved training become a means to increase police budgets and thereby contribute to heightened police presence or militarization in the very communities suffering from excessive use of force today.

\textbf{V. Police Practices}

Aggressive police practices are deeply rooted in a history of discrimination against Black Americans and are part of a system of racial and social control.\textsuperscript{65} Historians have documented, for example, how the “first modern-style police forces” began as slave patrols in the pre-Civil War South.\textsuperscript{66} From the time of slavery, through the era of \textit{de jure} racial discrimination, to contemporary policing practices, race has been central “in the formation and organizing ethos of the police.”\textsuperscript{67} Today, four interrelated trends in aggressive and discriminatory police practices contribute to the use of excessive force disproportionately against Black Americans: “broken windows” policing, racial profiling, the increasing militarization of police forces, and policing motivated by profit.

First, broken windows policing is a law enforcement strategy that targets petty crimes such as loitering, spitting, vandalism, marijuana possession, and public consumption of alcohol, under the theory that these minor infractions, if left unaddressed, invite more mischief and increasingly serious crime.\textsuperscript{68} Data show


\textsuperscript{66} James Conser, Rebecca Payneich & Terry Gingerich, \textit{Law Enforcement in the United States} 50 (3d ed. 2013).


that this type of policing disproportionately targets communities of color,\textsuperscript{69} with little evidence of effectiveness.\textsuperscript{70} Instead, results indicate that broken windows policing practices “may have done more harm than good.”\textsuperscript{71} increasing the frequency of civilian encounters with police and thereby elevating the exposure of members of targeted communities to the risk of police violence.\textsuperscript{72}

According to one count, in 2014, police officers across the country killed more than 287 people who were involved in minor offenses.\textsuperscript{73} The killing of Eric Garner throws this issue into sharp relief. Garner, an unarmed 43-year-old Black man, was killed on July 17, 2014, when he was violently restrained by several New York City police officers during an arrest for selling individual untaxed cigarettes. Despite Garner’s repeated plea of, “I can’t breathe,” the arresting officer did not relent in his use of force, until Garner lay unconscious on the pavement.\textsuperscript{74}

Second, racial profiling also creates a disproportionate burden for communities of color. Black Americans are more likely than members of other ethnic and racial groups to be stereotyped as violent criminals or drug abusers.\textsuperscript{75} Although national surveys have demonstrated similar rates of drug use among different racial groups, law enforcement has targeted Black Americans for drug crimes in grossly disproportionate numbers since the launch of the federal government’s “war on drugs” in the 1980s.\textsuperscript{76} The Committee on the Elimination of Racial Discrimination has repeatedly recommended that the United States strengthen its efforts to combat racial profiling, emphasizing that the use of policing tactics with racially disparate impacts contravenes the State’s obligations under ICERD.\textsuperscript{77}

The racial profiling of Black Americans is a self-perpetuating cycle. When Black Americans are arrested and jailed at grossly outsized rates, they are stereotyped as criminals. That stereotype in turn fuels the profiling of Black individuals and communities, driving the rates of police encounters, arrests and incarceration even higher.\textsuperscript{78}

According to updated guidelines issued by the U.S. Department of Justice in December 2014, federal law enforcement officers are absolutely forbidden from relying upon generalized stereotypes based on race.\textsuperscript{79} The articulation of such a prohibition is a positive step, but its effectiveness is yet unproven. The previous version of the federal guidelines was issued in 2003, after President George W. Bush declared


\textsuperscript{70} \textit{See} Bernard E. Harcourt & Jens Ludwig, \textit{Broken Windows: New Evidence from New York City and a Five-City Social Experiment}, 73 U. Chi. L. Rev. 271, 316 (2006) (concluding that “there appears to be no good evidence that broken windows policing reduces crime, nor evidence that changing the desired intermediate output of broken windows policing—disorder itself is sufficient to affect changes in criminal behavior”).

\textsuperscript{71} Sterbenz, \textit{supra} note 69. \textit{See also} Shelden, \textit{supra} note 69, at 11.

\textsuperscript{72} Id.

\textsuperscript{73} Id.


\textsuperscript{75} Melanie Eversley & Mike James, \textit{No charges in NYCHokehold death; federal inquiry launched}, USA Today (Dec. 4, 2014), http://usatoday.com/story/news/national/2014/12/03/chokehold-grand-jury/19804577.


\textsuperscript{77} Id. at 279.


\textsuperscript{79} \textit{See generally} Michelle Alexander, \textit{The New Jim Crow: Mass Incarceration in the Age of Colorblindness} (2010).

that racial and ethnic profiling was “wrong” and promised to “end it in America.” Despite such pronouncements, the 2003 guidelines failed to stem the tide of racial profiling, which continued to characterize encounters between Black Americans and the police for the next decade.

Third, police departments also have become more militarized, using heavy arms and combat equipment with greater frequency, and deploying SWAT teams to carry out everyday policing duties, including in response to reports of non-violent crimes. Despite recent U.S. actions to ban federal transfers of certain military-style equipment to police departments, gear may still be purchased from private vendors. The militarization of the police encourages disproportionate responses by law enforcement and is at odds with principles enshrined in international human rights law.

Finally, in many municipalities, policing motivated by profit—sometimes called “for-profit policing”—underlies the disproportionately high rates of police-civilian interactions among Black and low-income communities. Law enforcement agencies stand to raise considerable revenue from a variety of practices, including criminal and civil asset forfeiture, and from fines and administrative charges for minor offenses, particularly from impoverished communities. In its investigation of the Ferguson Police Department in Missouri, for example, the Department of Justice noted that revenue-seeking police and court practices disparately impact Black Americans, and increase civilian-police encounters in Black communities. After the release of the Department of Justice report, President Obama commented on the racial biases underlying for-profit policing: “What we saw was that the Ferguson Police Department, in conjunction with the municipality, saw traffic stops, arrests, and tickets as a revenue generator, as opposed to serving the community, and that it systematically was biased against African Americans in that city who were stopped, harassed, mistreated, abused, called names, fined.”

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85 For more on civil asset forfeiture, see Marian R. Williams et al., Policing For Profit: The Abuse of Civil Asset Forfeiture, Institute for Justice (March 2010), http://www.ij.org/images/pdf_folder/other_pubs/assetforfeiture.pdf.
VI. Investigations and Accountability for Excessive Use of Force by Police

International human rights law guarantees individuals the right to an effective remedy for violations of their human rights.91 The United States bears a corresponding duty to provide access to such remedy.92 Police impunity lies at the heart of a cycle of violence and discrimination against Black Americans. The prohibition against the arbitrary deprivation of life is ineffective without accessible and independent proceedings to verify the legality of the use of force; thus, the State has a duty to adopt laws and practices for effective investigation.93 The Inter-American Court has defined impunity as “the absence of any investigation, pursuit, capture, prosecution and conviction” of those responsible for the violations of human rights.94 Further, the Inter-American Commission has noted that such impunity “corrodes the foundations of a democratic state”95 and “fosters chronic recidivism of human rights violations and the total defenselessness of victims and their relatives.”96 Full compliance with the obligations to investigate, prosecute, punish, and provide redress, in accordance with due process, is essential to combat impunity.97

As described above, police officers tend to enjoy wide discretion to use deadly force against civilians. Research indicates that systemic biases within the judicial system also insulate police officers from criminal liability for the violation of rights. Prosecutors are less likely to file charges against members of the police as a result of their professional relationship,98 and grand juries are less likely to indict them.99 Furthermore, only state and federal prosecutors, most of whom enjoy wide discretion, may initiate criminal proceedings. Finally, criminal proceedings against police are plagued by many of the same problems as internal investigations,100 including intimidated or unreliable witnesses, and limited evidence due to the influence of police unions, and departmental cultures of secrecy.101 Ultimately, the result is that, for conduct that causes death, police officers are typically held to a less stringent legal standard than civilians who commit similar acts, and all too often avoid punishment altogether.

Citizens wishing to file complaints against police officers encounter numerous obstacles, including state statutory requirements that limit the time, place, and manner in which citizens can file complaints.102

91 See, e.g., ICCPR, supra note 49, arts. 2, 14.
92 See, e.g., Inter-Am. Comm’n H.R., The Situation of People of African Descent in the Americas, supra note 86, at ¶ 141.
99 See Pinkerton, supra note 5.
Furthermore, some police departments actively discourage filing by providing incomplete information on the complaint process and refusing to accept complaints by juveniles unless submitted in person or in the presence of a parent, among other hurdles.\footnote{Id.}

Injured parties may sue individual police officers, a police department, or a municipality to obtain monetary damages for excessive use of force. Limitations on who can file a suit and when they can do so, the existence of high pleading standards, and the cost and lengthiness of proceedings, all present barriers to filing a civil case. Additionally, civil suits rarely result in institutional reform. Municipalities generally indemnify their officers, and the city pays the damage awards out of taxpayer money; most police departments do not even know how much a city has paid for police misconduct, or whose conduct resulted in a settlement.\footnote{Id.}

There are limited legal mechanisms available to address systemic discrimination within police departments. Consent decrees are agreements reached between a municipality and the U.S. Department of Justice, which describe the actions needed to end systematic violations of the Constitution or federal law by a given police department. By signing a consent decree that requires it to implement remedial measures, the municipality admits no liability, but avoids litigation and maintains eligibility for federal funding.\footnote{Id.} Consent decrees are approved and monitored by a federal judge and may be terminated only with judicial approval, upon determination that the remedial measures have been sufficiently implemented. While such reforms represent important measures to combat patterns of discriminatory and excessive use of force by law enforcement, at least two structural limitations hinder the efficacy and legitimacy of consent decrees. First, because there is no private right of action under Section 14141, enforcement depends on DOJ discretion and resources, which may vary with the political climate and changes in administrations.\footnote{See Elliot Harvey Schatmeier, Reforming Police Use-of-force Practices: A Case Study of the Cincinnati Police Department, 46 Colum. J.L. & Soc. Probs. 539, 448 (2013).} Second, there is often little scope for participation of community members in negotiations of consent decrees between DOJ and municipal officials.\footnote{See Kami Chavis Simmons, The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies, 98 J. Crim. L. & Criminology 489, 518–19 (2008).}

Consistent with principles of accountability and transparency under international law, the United States should ensure that there are mechanisms for external and community oversight of police conduct. Some communities have sought to create opportunities for civilian participation in external investigation procedures to accompany internal reviews. Others have advocated for the development of civilian review boards, whose duty it is to consider complaints against police departments and then recommend disciplinary actions. While their forms may vary, mechanisms of community involvement and civilian oversight boards possess enormous potential to improve transparency and accountability of police. Judges, prosecutors, and civilian review boards all play an essential role in ensuring access to justice for victims and their families.

VII. Conclusion & Recommendations

States have a duty to ensure that racism and other forms of prejudice never play a role in the use of force by law enforcement agents.\footnote{Id.} This duty is grounded both in the need to protect individuals from

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discrimination of all forms, and in the need to ensure that all communities equally benefit from the protection of law enforcement. The United States must respect, protect, and fulfill its international human rights obligations. This duty entails not only protecting against the excessive use of force by police against Black Americans, but also ensuring that police are informed of their obligations to respect and protect the human rights of all citizens, trained accordingly, and held accountable when they breach those obligations.

The authors of this submission respectfully ask the Working Group to recommend that the United States take the following steps to comply with its obligations under international human rights law to prevent and redress the excessive and discriminatory use of force by police against Black Americans. The recommendations outlined below are organized to correspond with the sections of this written submission addressing: (I) the legal framework for the use of force in the United States; (II) police training; (III) police practices; and (IV) investigations and accountability.

These recommendations are grounded in the rights to life and to security of the person, the rights to be free from arbitrary detention, torture and CIDT, and the rights to equal treatment under law and freedom from discrimination. The proposed actions outlined below draw on a variety of sources, including relevant concluding observations by human rights monitoring bodies, reports of U.N. human rights experts, civil society groups, and the President’s Task Force on 21st Century Policing. The list is by no means exhaustive; the authors have intentionally limited the scope of these recommendations to the obligations of the United States under international human rights law. Nor do the recommendations present a roadmap to implementation; the authors defer to the expertise of civil society organizations, government agencies, and the political process to devise strategies for implementing measures necessary to give effect to the rights guaranteed under international law and to prevent and remedy excessive and discriminatory use of force by police. Reform efforts must be guided by the demands of Black communities across the United States experiencing the impacts of discriminatory police violence. The individuals most affected, including the human rights defenders within the movement for Black lives and other community organizers who have brought ongoing injustices to light, must have meaningful opportunities to shape the decisions about how the State responds and what measures it adopts to better respect and protect human rights. The authors respectfully request the Working Group to remind the United States that while methods of implementation may vary at the local, state, and federal levels,

domestic law does not excuse the United States from complying with its binding obligations under international law.\textsuperscript{116}

\textbf{Legal Framework}

States have a duty under international human rights law to adopt legislation and regulations, and to take other necessary steps, to give effect to the rights recognized in international human rights treaties to which they are signatory and in customary international law. Individuals have a right to be informed of the laws that govern the State, including the conduct of State agents, such as police officers. Moreover, a clear and predictable legal framework regulating police activity is necessary to ensure that the use of force is not arbitrary. To that end, the United States should:

1. Implement laws, policies, operational procedures, training programs and practices that conform to the standards set forth in the U.N. Basic Principles on the Use of Force and Firearms and the U.N. Code of Conduct for Law Enforcement Officials, at local, state and federal levels.
2. Bring the legal framework governing the use of force into line with the requirements of international human rights law, by ensuring that it prioritizes the protection of life, differentiates between lethal and non-lethal force, and permits the use of lethal force only where necessary to protect against an imminent threat of death or serious injury, and only as a last resort, after exhaustion of non-violent means and non-lethal force.
3. Bring the Fourth Amendment reasonableness inquiry into line with international human rights law by focusing the analysis on whether the use of force was absolutely necessary and proportionate, taking into account the planning and precautions undertaken prior to the use of force.
4. Mandate that all laws and regulations at the local, state, and federal levels clearly prohibit the use of lethal force merely to apprehend criminal suspects or maintain law and order.
5. Strengthen the legal prohibitions against and available legal remedies for \textit{de facto} discrimination at the local, state, and federal levels so that domestic standards align with international human rights law, which prohibits both \textit{de jure} and \textit{de facto} discrimination and guarantees the right to substantive equality.

\textbf{Police Training}

As agents of the State, police officers are bound by international human rights law, and therefore must be aware of their obligations and equipped with the means to respect, protect, and fulfill the human rights of all individuals in the communities they serve. Those human rights obligations include not only the duty to respect and protect civilian life and physical integrity, but to refrain from and protect individuals against discrimination on the basis of race or other protected classes. In addition, as individuals to whom the State owes duties, police officers have the right to be provided with adequate training and resources in order to carry out their job responsibilities in a safe and effective manner. Sound training and healthy working conditions for police officers may help reduce instances of excessive use of force and discrimination, and help prevent recurrence of violations. While this document calls for human rights-compliant training of police, efforts to improve training must not become excuses to increase police budgets, thereby contributing to more policing in already over-policed communities. To ensure police officers receive the training that the State is required to provide, and to which officers are entitled, the United States should:

\textsuperscript{116} Vienna Convention on the Law of Treaties, art. 27, May 23, 1969, 1155 U.N.T.S. 331, \textit{entered into force} 27 Jan. 1980 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.").
1. Establish uniform, minimum training standards in line with international human rights law, to be implemented by local, state and federal law enforcement agencies with a special emphasis on the lawful and non-discriminatory use of force.

2. Ensure all police officers receive adequate and ongoing training on the proportionate use of force, including techniques for de-escalation and alternatives to the use of force.

3. Require mandatory training on the proper use and risks of electrical discharge weapons (Tasers).

4. Mandate officer training in non-discrimination principles and techniques, including, but not limited to, implicit bias training, cultural competence training, and education on the history and contemporary manifestations of racial inequality in the United States.

5. Incorporate specialized training in techniques for interacting with persons with mental health issues.

6. Require regular and accessible public disclosure of information regarding the content of police officer recruitment and training programs and policies.

7. Increase the opportunities for civil society and the public to participate in the design of training standards, at the local, state, and federal levels.

8. Ensure all officer recruits are subject to psychological evaluations, which address the officer’s attitudes and emotions concerning race and other bases of discrimination.

9. Mandate that the training programs of police departments incorporate behavior management and stress techniques for officers.

10. Require police departments to make counseling services available to police officers to assist them in coping with stress in the course of their duties.

**Police Practices**

International human rights law prohibits both *de jure* and *de facto* discrimination. Policing tactics and methods that disproportionately target and/or disparately affect Black Americans violate international human rights law. In all circumstances, the use of force by police must be proportionate in relation to the threat posed and must constitute a last resort, after non-violent means have been exhausted. Furthermore, the misuse of weapons and non-lethal incapacitating chemical agents for purposes of intimidation, coercion or discrimination of any kind can constitute torture or CIDT, prohibited under international law. In light of evidence indicating the abusive and discriminatory impact of current policing practices, the United States should:

1. Heed the demands of Black communities calling for divestment from current policing practices that reflect and entrench anti-Black discrimination, and investment in community-controlled programs.

2. Pass legislation, such as the End Racial Profiling Act of 2015, designed to bring an end to all police methods that target individuals on the basis of race.

3. Deprioritize “broken windows” policing practices and similar strategies that emphasize enforcement of non-violent drug offenses and other low-level infractions, to reduce the frequency of civilian encounters with the police and the probability of disproportionate use of force.

4. Strengthen regulations regarding the acquisition of military-grade equipment by local police departments and adopt clear, transparent limitations on the use of such equipment.

5. Restrict the use of SWAT-like tactics in non-crisis situations and in any operations where suspects are unarmed or are accused of nonviolent offenses.

6. Strengthen regulations regarding the use of electrical discharge weapons (Tasers), including by, *inter alia*, expressly prohibiting their use against certain categories of persons, such as children or pregnant women.
Accountability

International human rights law guarantees individuals the right to an effective remedy for human rights violations. The State bears a corresponding duty to provide access to such remedy. In accordance with the principles of transparency, accountability, and participation, grounded in human rights law, the State must not only ensure that civilians have the opportunity to raise grievances and petition independent tribunals for the enforcement of their rights, but also provide mechanisms for civilian participation in monitoring and oversight of public functions at the local, state, and federal levels. To guarantee these rights, the United States should:

1. Ensure that all killings of civilians by police trigger an immediate, mandatory, independent, impartial, and transparent investigation and that, when appropriate, prosecution or other legal action is taken against those responsible, in accordance with domestic and international law.
2. Ensure that effective remedies are available to parties harmed by law enforcement officers, including but not limited to compensation, and that officers who violate local, state, and federal regulations face appropriate civil sanctions and criminal penalties, after fair and impartial proceedings.
3. Mandate prompt, transparent, uniform, and accessible public reporting by all police departments of information regarding incidents involving the use of force, including details regarding the circumstances in which force was used and demographic data on the victims and officers involved, as well as the outcomes of all internal, civil and criminal police misconduct proceedings, with appropriate measures to protect the identity and respect the privacy of victims.
4. Mandate standard psychological evaluations of officers following use of force incidents.
5. Provide rehabilitation and re-training for officers who violate local, state, and federal regulations, to help prevent recurrence, and ensure that police departments in which such violations recur undergo reforms in order to bring their practices in line with international human rights law.
6. Mandate that all police departments provide an accessible channel and a clear procedure not only for citizen complaints but also for input on police activities.
7. Increase opportunities for civilian participation in police oversight and accountability mechanisms.