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In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States

Andrea J. Ritchie

Joey L. Mogul

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IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE OF PEOPLE OF COLOR IN THE UNITED STATES

A report prepared for the United Nations Committee on the
Elimination of Racial Discrimination on the occasion of its re-
view of the The United States of America's Second and Third
Periodic Report to the Committee on the Elimination of
Racial Discrimination
December 2007

BY ANDREA J. RITCHIE, ESQ. &
JOEY L. MOGUL, ESQ.*

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* People's Law Office and Staff Instructor, DePaul College of Law Civil Rights Clinic, with invaluable contributions from Meron Wondwosen, Malcolm X Grassroots Movement; Michelle Gross, Communities United Against Police Brutality; *New York University School of Law Center for Human Rights and Global Justice*; Paul Mills, *L.A. Police Watch*; Tracy Siska and Joey Lipari, *Chicago Justice Project*; Beldon Fields, Nancy Bothne, *Justice Coalition of Greater Chicago*; Rashida Grinage, *People United for a Better Oakland (PUEBLO)*; and Tonya McClary, Esq.

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I. INTRODUCTION

Since the advent of the first state-sponsored police forces in the United States – slave patrols¹ - racialized policing has been a feature of the American landscape. Indeed, racial profiling and police brutality have their roots in enforcement of Slave Codes, and later Black Codes and Jim Crow segregation laws. *We Charge Genocide*, a petition submitted to the United Nations (UN) by the Civil Rights Congress in 1951, documented thousands of incidents of police violence against African Americans alone.² Police brutality against Native Americans was also a constant of colonial culture in the United States.³ Official studies, as well as those of domestic and international civil and human rights organizations, have consistently found that people and communities of color are disproportionately subjected to human rights violations at the hands of law enforcement officers, ranging from pervasive verbal abuse and harassment, racial profiling, routine stops and frisks based solely on race or gender to excessive force, unjustified shootings and torture.

Increased national and international attention was brought to bear on the issue of police brutality, its widespread nature, and its disproportionate impact on people of color in the United States in the 1990s following the release of a videotape documenting the beating of Rodney King by Los Angeles police. Over the course of the ensuing decade, U.S. Non-Governmental Organizations (NGO), including the National Association for

¹ CORAME RICHEY MANN, *UNEQUAL JUSTICE: A QUESTION OF COLOR (BLACKS IN THE DIASPORA)* 165, 195 (Indiana University Press 1993); [4 Georgia Narratives] *Born in Slavery: Slave Narratives from the Federal Writers' Project, 1936-1938*, at 321-29, <http://lcweb2.loc.gov/ammem/snhtml/snhome.html> (last visited Mar. 26, 2008).

² CIVIL RIGHTS CONGRESS, *WE CHARGE GENOCIDE: THE CRIME OF GOVERNMENT AGAINST THE NEGRO PEOPLE* (1951).

³ See S.D. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, (Mar. 2000); Amnesty Int'l, *United States of America: Rights for All*, AMR 51/035/1998 [hereinafter *Rights for All*].

the Advancement of Colored People (NAACP), Human Rights Watch and Amnesty International documented widespread abuses by law enforcement agents across the country. Indeed, the UN Special Rapporteur on contemporary forms of racism has stated that “[t]he use of excessive force by police against African Americans, Asian Americans, Arabs and Indians has been cited as one of the most pressing human rights problems facing the United States.”⁴ In 2000, the U.S. Civil Rights Commission [hereinafter Commission], an independent, bipartisan agency established by Congress in 1957, reviewed the findings of its 1981 report *Who is Guarding the Guardians: A Report on Police Practices*, and concluded that “[m]any of its findings and recommendations still ring true today,” noting that “[r]eports of alleged police brutality, harassment, and misconduct continue to spread throughout the country. People of color, women, and the poor are groups of Americans that seem to bear the brunt of the abuse. . . .”⁵

Since this Committee’s 2001 review of the United States, during which it expressed concern regarding incidents of police brutality and deaths in custody at the hands of U.S. law enforcement officers, there have been dramatic increases in law enforcement powers in the name of waging the “war on terror” in the wake of September 11, 2001. Consequently, both public discussion and accountability with respect to the use of excessive force against people of color and racial profiling have eroded significantly.⁶ Systemic abuse of people of color by law enforce-

⁴ Special Rapporteur of the Comm’n on Human Rights, *Elimination of Racism and Racial Discrimination*, ¶ 65, U.N. Doc. E/CN.4/1995/78/Add.1 (Jan. 16, 1995) (prepared by Maurice Glélé-Ahanhanzo) [hereinafter *Special Rapporteur on Racism*].

⁵ U.S. Comm’n on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, CR1.2:P75/28 (Nov. 2000), <http://www.usccr.gov/pubs/guard/stat.htm> (last visited Mar. 26, 2008) [hereinafter *U.S. Comm’n on Civil Rights*].

⁶ October 22nd Coalition, *Police Brutality Did Not Die on Sept. 11th!*, leaflet distributed at April 20, 2004 rally against the U.S. war in Iraq, <http://mailman.lbo-talk.org/2002/2002-April/010574.html> (last visited Mar. 26, 2008).

ment officers has not only continued since 2001 but has worsened in both practice and severity. According to a representative of the National Association for the Advancement of Colored People (NAACP), “the degree to which police brutality occurs. . . is the worst I’ve seen in 50 years.”⁷

Moreover, racial profiling by law enforcement officials and racially disproportionate concentration of law enforcement efforts continues to afflict African American, Latino/a and Native American communities in the United States. Post 9/11 has escalated this profiling and concentration with respect to Arab, South Asian, Middle Eastern and Muslim men and women. As recognized by the Declaration of the World Conference Against Racism, Racial Discrimination, Xenophobia and related intolerance, such racially discriminatory conduct, policies, and practices on the part of law enforcement agencies substantially contribute to persistent racial disparities in the criminal justice system and in the incarcerated population.⁸ As law enforcement officers typically represent the initial point of contact with the criminal justice system, racially discriminatory stops, searches and arrests, particularly in the context of the “war on drugs” and “quality of life” strategies, fuel racial disparities in incarceration rates in the United States.

This report addresses the U.S. government’s failure to comply with its obligations under the Convention for the Elimination of Racial Discrimination (Convention) to prevent and punish acts of excessive force, rape, sexual abuse and racial profiling committed by law enforcement officers against people of color.

⁷ Press Release, NAACP, *NAACP Calls for Investigation of Excessive Force of Jacksonville Police Officers* (Dec. 30, 2004).

⁸ Declaration of the World Conference Against Racism, Racial Discrimination, *Xenophobia and Related Intolerance*, ¶ 25 (September 2001) [hereinafter *Durban Declaration*] (“We express our profound repudiation of the racism, racial discrimination, xenophobia and related intolerance. . . in the actions and attitudes of institutions and individuals responsible for law enforcement, especially where this has contributed to certain groups being over-represented among persons under detention or imprisoned.”)

While the U.S. government references various law enforcement training programs in its report, it is clear that these are ineffective in addressing and deterring violations of the Convention by law enforcement officers. This report will also examine the failure of existing legislative and judicial remedies cited by the United States as evidence of its compliance with the Convention to afford victims of racially discriminatory law enforcement practices vindication of their human rights, financial compensation or systemic change. It concludes by offering concrete recommendations to bring the United States into compliance with the Convention.

II. USE OF EXCESSIVE FORCE (ARTICLES 1, 2, AND 5)

The U.S. government has failed to fulfill its obligations under article 5(b) of the Convention to ensure people of color are “secure from violence or bodily harm” inflicted by government officials.⁹ The U.S. government has also failed to adequately address the concerns expressed by this Committee in its Concluding Observations on the United States in 2001 regarding “incidents of police violence and brutality, including cases of deaths as a result of excessive force by law enforcement officials, which particularly affect minority groups and foreigners.”¹⁰

Indeed in May of 2006, the Committee Against Torture (CAT) expressed concern regarding continuing “reports of brutality and use of excessive force by law enforcement personnel in the United States, noting numerous allegations of the ill-treatment of racial minorities, migrants and persons of different

⁹ Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation XXXI On the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, ¶ 21, A/60/18, pp. 98-108, available at http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf [hereinafter *General Recommendation XXXI*].

¹⁰ Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 394, A/56/18 (Aug. 14, 2001) [hereinafter, *CERD Concluding Observations*].

sexual orientation which have not been adequately investigated.”¹¹ Later the same year, the UN Human Rights Committee reiterated “its concern about reports of police brutality and excessive use of force by law enforcement officials” and called on the U.S. government to significantly increase its efforts to eliminate police brutality and excessive use of force.¹²

It is clear from the statistics and cases discussed in this section that disproportionate use of excessive force by law enforcement officers against people of color remains endemic across the United States. While the U.S. government acknowledges the existence of police brutality in its current report to the Committee, it maintains that existing judicial remedies are sufficient to meet its obligations under the Convention.¹³

In reality, law enforcement officials enjoy impunity with respect to the use of excessive force against people of color. Criminal investigations are rarely convened, charges are seldom brought and convictions are rarely sought or obtained against officers responsible for such violations. The Federal Department of Justice, limited by the high standard of intent imposed by legislation,¹⁴ as well as the limited resources devoted to investiga-

¹¹ Conclusions and Recommendations of the Committee Against Torture: United States of America, (Advance Unedited Version) ¶ 37, CAT/C/USA/Co/2 (May 18, 2006) [hereinafter, *CAT Concluding Observations*].

¹² Concluding Observations of the United Nations Human Rights Committee: United States of America, (Advance Unedited Version), ¶ 30, CCPR/C/USA/Q/3/CRP.4 (July 27, 2006) [hereinafter *UNHRC Concluding Observations*].

¹³ Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, submitted by the United States of America to the Committee on the Elimination of Racial Discrimination, ¶ 324, (Apr. 2007). (“U.S. law prohibits racially discriminatory actions by law enforcement agencies, including police violence and brutality, and the Civil Rights Division of the Department of Justice, with the aid of the United States Attorney’s Offices and the FBI, actively enforces those laws.”) [hereinafter *U.S. Report*].

¹⁴ *U.S. Comm’n on Civil Rights*, *supra* note 5.

tion and prosecution of law enforcement misconduct,¹⁵ is often unable or unwilling to bring federal criminal charges against law enforcement officers who engage in race-based policing and abuse or to initiate civil actions where a pattern and practice of such abuse exists. Police department disciplinary investigations are often conducted by the very same law enforcement agencies which employ the offending officers, or by civilian review agencies with little or no authority to discipline officers.¹⁶ Given the likely lack of any criminal, civil or professional repercussions, law enforcement officers feel free to commit racist acts of violence and to engage in disproportionate use of force against people of color on a daily basis.

Moreover, complaints of police misconduct remain private and confidential and governmental agencies resist efforts to obtain full disclosure or transparency in agency investigations. Thus, members of the public do not have access to the information necessary to determine the effectiveness, or lack thereof, of law enforcement departments' training, monitoring and disciplinary systems.

Therefore, it is clear that the United States has failed to satisfy its obligations under the Convention to "prevent and severely punish," and to take effective measures to prevent and eliminate, racially discriminatory violence by law enforcement officials.¹⁷

¹⁵ *Id.*; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5 (July 1, 1998).

¹⁶ *Id.*

¹⁷ *General Recommendation XXXI*, *supra* note 9, at ¶ 21. ("State parties should prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights affecting persons belonging to the groups referred in the last paragraph of the preamble which are committed by State officials, particularly police and army personnel, customs, authorities and persons working in airports, penal institutions and social, medical and psychiatric services.")

While the U.S. government has failed to comply with its obligations to comprehensively document incidents of excessive force by law enforcement officers,¹⁸ what information does exist confirms that racial minorities are disproportionately subject to police misconduct and abuse.

In 1998, Amnesty International concluded in its report *Rights For All* that:

Members of racial minorities [including African Americans, Latino/as, and Native Americans] bear the brunt of police brutality and excessive force in many parts of the USA. . . evidence of racially discriminatory treatment and bias by police has been widely documented by commissions of inquiry, in court cases, citizen complaint files, and countless individual testimonies. Reported abuses include racist language, harassment, ill-treatment, unjustified stops and searches, unjustified shootings, and false arrests.¹⁹

Reports received by U.S. NGOs indicate that law enforcement officers continue to violate individuals' rights under the Convention with alarming regularity and impunity. Police brutality against people of color is particularly common in the context of strategies used in the "war on drugs," the "war on terror," "zero tolerance" and "quality of life" policing initiatives and policing of protests.²⁰ Violations, enumerated below, include the use of

¹⁸ See *infra* p. 28.

¹⁹ *Rights for All*, *supra* note 3.

²⁰ See, e.g., New York Civil Liberties Union, *Rights and Wrongs at the RNC: A Special Report About Police and Protest at the Republican National Convention* (2005); New York Civil Liberties Union, *Arresting Protest* (Apr. 2003); Ron Daniels, *The Crisis of Police Brutality and Misconduct in America: The Causes and the Cure*, in *POLICE BRUTALITY*, (Jill Nelson ed. 248 2000); *ZERO TOLERANCE: QUALITY OF LIFE AND THE NEW POLICE BRUTALITY IN NEW YORK CITY* (A. McCardle and T. Erzen, ed. 2001); Craig B. Futterman, et al., *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System*, 1 DEPAUL J. FOR SOC. JUST. 101 (2008).

torture, use of electro-shock weapons (“TASERs”), unjustifiable shootings, beatings and abusive searches.

A. The Reality: Torture and Other Cruel Inhuman and Degrading Treatment

Torture and cruel, inhuman or degrading treatment by law enforcement agents during interrogations and in police custody continue to take place within the United States.²¹ Law enforcement officers who have engaged in torture for the purpose of extracting confessions continue to escape prosecution while individuals who were tortured continue to be prosecuted or languish in prison based on the use of coerced confessions in their criminal cases.

1) The Chicago Police Torture Cases (Burge Cases)

From 1972 to 1991, more than 100 African Americans were tortured by former Police Commander Jon Burge (a former military police officer who served in Vietnam) and detectives under his command at Area 2 and 3 Police Headquarters in Chicago, Illinois. The torture was intentionally inflicted to extract confessions, and techniques included electrically shocking men’s genitals, ears and lips with cattle prods or an electric shock box, anally raping men with cattle prods, suffocating individuals with plastic bags, mock executions, and beatings with telephone

²¹ Torture and cruel, inhuman or degrading treatment by military personnel against detainees in U.S. custody in Afghanistan, Iraq, and Guantánamo Bay has been well documented, and we urge the Committee to take strong action against the U.S. for torture committed or condoned in the context of its global “war on terror.” This report focuses on domestic incidents of torture by law enforcement agents in an effort to bring forward incidents that have receded from the public discourse in the face of egregious human rights violations overseas by U.S. agents, but are no less disturbing, and often involve similar targets, tactics, and personnel.

books and rubber hoses, as well as routinely depriving the victims of bathroom facilities, sleep and nourishment.²²

The torture was clearly racially motivated. Many of the victims were subjected to racist epithets and slurs throughout their interrogations.²³ Numerous victims were repeatedly called “nigger,” while others were threatened or subjected to what detectives referred to as the “nigger box.” – the electric shock box. In one instance a victim was threatened with hanging, “like they had other niggers” — an obvious reference to lynchings.²⁴ Often, Burge or other detectives would taunt the victims stating “Who are people going to believe – a ‘nigger’ like you or a cop like me.”²⁵ All of the detectives who committed the torture are white; all of the known victims are Black.

A wealth of evidence, numerous judicial decisions,²⁶ several

²² See “Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systematic Police Torture,” pp. 31-35 and Appendix C, the Victim’s chart, www.peopleslawoffice.com (last visited Apr. 9, 2008) [hereinafter *Failure of Special Prosecutors*].

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ At least 11 decisions in both federal and state courts have found or noted the practice of torture by Burge and his men. See *U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp.2d 1078, 1094 (N.D. Ill. 1999) (“It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis.”); *Hinton v. Uchtman*, 395 F.3d 810, 822-23 (7th Cir. 2005) (Wood, J., concurring) (“a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department [. . .] And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the report [OPS Goldston report] said that ‘[t]he type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture.’ [. . .] Indeed, the alleged conduct is so extreme that, if proven, it would fall within the prohibitions established by the United Nations Convention Against Torture (“CAT”) [. . .] thereby violating the fundamental human rights principles that

admissions by the City of Chicago²⁷ and recent findings by a State court appointed Special Prosecutor,²⁸ not only establish that Burge and his men systematically tortured individuals during interrogations, but also prove that superior officers were aware of and condoned the torture. For example, Michael Goldston, an investigator with the Office of Professional Standards (OPS) of the Chicago Police Department (CPD), concluded that the abuse was “systematic,” and that “[p]articular command members were aware of the systematic abuse and either actively participated in it or failed to take any action to bring it to an end.”²⁹

Throughout Burge’s command, governmental officials were repeatedly provided concrete and credible information of the torture and asked to take action. Most notably, Richard M. Daley, then the lead prosecutor for Chicago’s Cook County State’s Attorney’s office, now Mayor of the City of Chicago, was advised of allegations of torture by Burge and his men as early as 1982.³⁰ Instead of initiating an investigation, Daley prose-

the United States is committed to uphold. ”) *See also supra* note 23 at 16-20, Appendix A.

²⁷ Investigators working with the OPS have sustained the torture allegations of seven individuals. In addition, attorneys on behalf of the City of Chicago have admitted “an astounding pattern or plan [. . .] to torture certain suspects, often with substantial criminal records, into confessing to crimes or to condone such activity.” Memorandum from the City of Chicago in Opposition to the Motion to Bar Testimony to the Police Board in the Matter of Charges filed against Respondents Jon Burge, John Yucaitis and Patrick O’Hara Misconduct (Jan. 22, 1992); *see also Failure of Special Prosecutors, supra* note 23 at 17.

²⁸ Most recently, Special Prosecutors, appointed by a State judge pursuant to a request from several community organizations, recently confirmed that Burge and those under his command committed acts of torture. *Futerman, supra* note 20.

²⁹ John Conroy, *Town Without Pity*, THE CHICAGO READER, Jan. 12, 1996.

³⁰ Andrew Wilson was suffocated with a plastic bag, shocked on his genitals and ears, burned with cigarettes, and beaten and handcuffed across a hot radiator while interrogated by Burge and other detectives. Dr. John Raba, the medical director at Cook County Jail, examined Wilson after his interrogation, and noted Wilson’s injuries in a letter sent to former Chicago Police

cuted the individual tortured, Andrew Wilson, for the murders of two white police officers, explicitly relying on his confession elicited by torture. As a result of Daley's failure to take any action in 1982, police tortured an additional 68 known victims over the next decade with impunity.³¹

Moreover, as Mayor of Chicago, Daley has failed to take action to rectify this serious pattern and practice of torture.³² Daley, along with the Chicago City Council, have violated article 2(1)(b) of the Convention prohibiting Government sponsorship or defense of racial discrimination by paying more than \$7 million in legal fees to private law firms to defend Burge and other detectives in civil rights cases brought by victims seeking financial compensation for their torture and wrongful convictions.³³

Although there is no doubt that these officers committed racist acts of torture, not a single officer has been prosecuted for the torture or for their subsequent efforts to cover up these crimes. Most of the officers have never been sanctioned in any manner whatsoever. While Burge was ultimately fired from the police department, he continues to live free and receive a police pension. No other officer involved was terminated, and many were promoted and allowed to retire with full pensions.³⁴

Unlike the torturers, their victims continue to suffer the lasting effects of these egregious violations. At least 26 individuals

Superintendent Richard Brzezczek, in which he requested an investigation. Brzezczek declined to act on this request, instead referring the investigation to Daley, the lead local prosecutor for the Chicago area at the time (now Mayor of Chicago), who took no action. See *Failure of Special Prosecutors*, *supra* note 22, at 9-14.

³¹ *Failure of Special Prosecutors*, *supra* note 20.

³² After the release of the Special Prosecutor's Report in July of 2006, Mayor Daley, for the first time, publicly acknowledged "the practice of abuse and torture of suspects" at Area 2 Police Headquarters describing it as a "shameful episode" in the City's history.

³³ John Conroy, *The Meter's Still Running and the Mayor's Still Mum*, THE CHICAGO READER, July 6, 2007.

³⁴ *Failure of Special Prosecutors*, *supra* note 20 at 5-8.

are still incarcerated as a result of convictions based in whole or in part upon coerced confessions. Madison Hobley, a torture victim wrongfully convicted who spent 16 years on death row, is now once again the subject of an investigation by the U.S. Attorney's Office in Chicago for the crimes he was previously acquitted.³⁵ Other victims have served their sentences, but continue to suffer the stigma of their wrongful convictions. Most of the victims continue to suffer the psychological effects of torture, yet they are without resources to obtain any treatment. For many, the statute of limitations for any potential civil suit to recover money damages for the torture they endured expired during their term of incarceration, effectively precluding them from obtaining redress under the statutes relied upon by the U.S. government as evidence of its compliance with article 6 of the Convention.

While the officers involved may no longer be subject to prosecution for many of the acts of torture themselves, they can and should be prosecuted for related crimes, including perjury and obstruction of justice, committed within the last four years.³⁶ Recently, following the findings of the UN Convention Against Torture in these cases, the U.S. Attorney's Office in Chicago, Illinois announced it was investigating acts of perjury, false statement and obstruction of justice by Chicago police officers.³⁷

³⁵ CBS 2 News, *City Council Approves \$19.8M Burge Settlement: Previous Deal for 4 Alleged Torture victims Fell through at Council Hearing last month*, Jan. 9, 2008.

³⁶ In 2003, four of the torture victims, wrongfully convicted and sentenced to die due based on confessions elicited through torture, were pardoned on the basis of innocence. All four victims, Leroy Orange, Madison Hobley, Aaron Patterson and Stanley Howard, brought civil rights suits seeking damages for their torture and wrongful prosecutions. Throughout these civil suits, Burge and other detectives have repeatedly denied under oath in depositions and sworn legal documents that they and others ever committed an act of torture or abuse. These false denials are crimes of perjury and obstruction of justice under the U.S. federal law, and these officers can and should be prosecuted for these violations. *Failure of Special Prosecutors*, *supra* note 22.

³⁷ See *Futterman*, *supra* note 20 at 286.

While this is a positive step, it is not sufficient to satisfy the U.S. Government's obligations under the Convention. To date, there have been *no fewer than eight investigations* into the pattern and practice of torture by Chicago police officers. As noted by this Committee in its 2007 Concluding Observations and Recommendations with respect to Nigeria,³⁸ numerous investigations into law enforcement violations, do not, in the absence of prosecutions, satisfy a State's obligations with respect to the Convention.

2) San Francisco Eight Cases (SF8)

Another example of the domestic use of torture against African Americans by law enforcement officers involves the case of the San Francisco 8 (SF8). In 1973, John Bowman (deceased in December 2006), Harold Taylor and Ruben Scott were tortured by the New Orleans Police Department, with the assistance of two San Francisco detectives, Frank McCoy and Edward Erdelatz. The torture, which lasted for several days, included "strip[ing] the men, blindfold[in]g them, beat[ing] them and covering them in blankets soaked in boiling water. The detectives also used electric prods on their genitals."³⁹

As a result of the torture, the men confessed and signed pre-written statements. They were then charged with various crimes, including the 1971 death of Sergeant John Young, a San Francisco Police officer.⁴⁰ In 1974, a federal court ruled that the statements of the three men were inadmissible because they

³⁸ *Concluding Observations of the Committee Against Racial Discrimination: Nigeria*, CERD/C/NGA/CO/18, 27 Mar. 2007.

³⁹ Jaxon Van Derbeken & Marisa Lagos, *Ex-militants Charged in S.F. Police Officer's '71 Slaying at Station*, SAN FRANCISCO CHRONICLE, Jan. 24, 2007, at A-1 [hereinafter *71 Slaying*].

⁴⁰ *Id.*

were obtained through torture.⁴¹ Subsequently, a California court dismissed the charges against Bowman, Taylor and Scott.⁴²

The perpetrators of this torture have never been brought to justice, and the torture victims have not obtained any vindication of their human rights.⁴³

Rather, 30 years later, eight elderly Black activists ranging in age from 55 to 70 years old, including one of the men who was tortured, many of whom were former members or supporters of the Black Panther Party (a political organization), were arrested and charged in January 2007 with the murder of Sergeant Young based on the confessions obtained through torture.⁴⁴ On October 10, 2007, a judge ruled the confessions, previously found inadmissible under the Constitutional doctrines relied upon by the U.S. government as evidence of its compliance with the Convention, can now be offered as evidence at trial.⁴⁵ The prosecution of the SF8, spearheaded by the officers who tortured several among them and based on statements elicited by torture, violates article 5(b) and (d) of the Convention guaranteeing the right to be free of excessive force and the rights to freedom of speech, expression, assembly and association.⁴⁶

⁴¹ Jaxon Van Derbeken, *Former Black Panther Jailed For Not Testifying*, SAN FRANCISCO CHRONICLE, Sept. 1, 2005, at B-1.

⁴² *Id.*

⁴³ Committee for Defense of Human Rights (CDHR), Freedom Archives, *Legacy of Torture: The War against the Black Liberation Movement*, <http://www.freedomarchives.org/BPP/torture.html>.

⁴⁴ 71 *Slaying*, *supra* note 39.

⁴⁵ Defense Motion on Torture Statements Denied in SF 8 Case, http://www.freethesf8.org/count_dropped.html (last visited Oct. 14, 2007).

⁴⁶ It is well established that the U.S. Government deliberately sought to disrupt and destroy the members and activities of the Black Panther Party, a political organization that supported and promoted the rights, freedom and self-determination of African American people in the United States. In the 1970s, the Black Panther Party was comprised of human rights activists who built community programs such as free breakfast programs for Black children, established free legal and health clinics and campaigned against police brutality. The prosecution of the SF8 is often seen as part of the continuing campaign to destroy and distort the work of the Black Panther Party. Begin-

ning in the 1950s, the United States launched a series of covert actions against domestic 'dissident' groups. See United States Senate, Final Report of The Select Committee To Study Governmental Operations with Respect To Intelligence Activities, April 23, 1976, *available* at <http://www.cointel.org> (last visited on Oct. 14, 2007) [hereinafter Church Report]; and see generally DAVID COLE & JAMES X. DEMPSEY, *TERRORISM AND THE CONSTITUTION: SACRIFICING CIVIL LIBERTIES IN THE NAME OF NATIONAL SECURITY* (3d ed. 2006). The policy, entitled "Counter Intelligence Program", or COINTELPRO, included infiltration of organizations, external psychological warfare, harassment through the legal system and extralegal force and violence, including assassinations. Among those targeted were prominent peace activists such as Dr. Martin Luther King Jr., as well as organizations such as Students for a Democratic Society (SDS), the Student Non-Violent Coordinating Committee (SNCC), the National Association for the Advancement of Colored People (NAACP), and the Congress for Racial Equality (CORE). While COINTELPRO victimized a range of political movements, including women's rights, anti-war activities, the Puerto Rican Independence Movement and the American Indian Movement, its most profound impact was on members of the Black civil and human rights movement. With the expressed intent of "preventing the rise of a black messiah," the FBI set out to systematically disrupt, distort and destroy organizations and individuals which it deemed a "security risk." See *Church Report*. With the motto that "to be a black revolutionary is to be a dead revolutionary," the FBI's field offices from California to Chicago to New York sought to discredit legitimate organizations and movements by eliminating leaders. See *Church Report*. One of the most egregious examples of these tactics was the murder of Fred Hampton, Chairman of the Black Panther Party in Chicago in a predawn police raid in 1969. See John Kifner, *F.B.I. Gave Chicago Police Plan of Slain Panther's Apartment*, N.Y. TIMES, May 25, 1974. Indeed, it is well documented that the FBI killed more than thirty Black Panther Party members. See *Church Report*. COINTELPRO was exposed following the leak of FBI files to the media. Subsequently, a congressional sub-committee known as the Church Committee was established to investigate the existence, consequences and legality of COINTELPRO. The Committee concluded, *inter alia*, that the FBI conducted a sophisticated operation that was aimed at suppressing the First Amendment rights of freedom of speech and association of black civil rights leaders. See DAVID COLE & JAMES X. DEMPSEY, *TERRORISM AND THE CONSTITUTION: SACRIFICING CIVIL LIBERTIES IN THE NAME OF NATIONAL SECURITY* (3d ed., 2006). Moreover, the Committee found that while COINTELPRO caused many seeking peaceful change to fear the government, it produced little evidence of any criminal behavior. *Id.* While exposing the existence of illegal activities conducted by the U.S. government, the Church Committee failed to provide any real remedies for those whose lives were uprooted and destroyed by COINTELPRO. The renewed interest

Torture of individuals in police custody by law enforcement officers in the United States is by no means limited to the Chicago area, or the SF8. For instance, a young man recently died while in the custody of police in Harrison County, Mississippi. Prior to his death, the young man was handcuffed, a covering was placed over his head, and he was pepper sprayed.⁴⁷

3) The Gross Misuse of TASERS by Law Enforcement Officials

The UN Committee Against Torture has recognized that the use of TASERS⁴⁸ can amount to cruel, inhuman, and degrading treatment or punishment.⁴⁹ TASER use by law enforcement agents has become increasingly widespread in the United States. Since June 2001, more than 150 have people died in police custody in the United States after being shocked with TASERS.⁵⁰ There have been hundreds more instances of non-fatal cases of

in prosecuting the SF8 for crimes that are more than 35 years old represents nothing more than a continuation of these policies in a climate of suppression of dissent.

⁴⁷ Personal Communication, Raine Thompson, Esq., ACLU of Mississippi, Dec. 14, 2005.

⁴⁸ "TASERS" or "stun guns" are hand-held dart-firing electro-shock weapons designed to temporarily paralyze a person by delivering a 50,000 volt shock. Mark Sherman, *Report: Stun Gun Deaths Up but Usage Up Too*, ASSOCIATED PRESS, Mar. 27, 2006, [http://www.officer.com/web/online/Top-News-Stories/Report—Stun-Gun-Deaths-Up-But-Usage-Up-Too/1\\$29511](http://www.officer.com/web/online/Top-News-Stories/Report—Stun-Gun-Deaths-Up-But-Usage-Up-Too/1$29511) (last visited Mar. 25, 2008); Amnesty International, *United States of America: Amnesty International's Preliminary Briefing to the Committee Against Torture*, 2005; Amnesty International, *Excessive and Lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of TASERS* 42, AMR 51/139/2004, Nov. 2004, available at http://www.amnestyusa.org/countries/usa/TASER_report.pdf.

⁴⁹ The CAT has acknowledged that "electro-shock instruments, including [T]asers" can "sometimes be used as instruments of torture." U.N. Comm. Against Torture [CAT], *Report of the Committee Against Torture*, ¶64(b)(i), U.N. Doc. A/60/44 (2005), available at [http://www.unhchr.ch/tbs/doc.nsf/0/e576580061be9e11c12572590041297e/\\$FILE/G0544217.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/e576580061be9e11c12572590041297e/$FILE/G0544217.pdf).

⁵⁰ *Sherman*, *supra* note 48.

inappropriate and excessive TASER use, including incidents involving non-violent and unarmed children, elderly persons and pregnant women. Despite the dangerous nature of this weapon, the considerable physical pain it inflicts and the mounting death toll in cases where it has been used, the U.S. government has failed to regulate TASERS at the national level.

With respect to excessive force generally, existing evidence suggests that TASERS are disproportionately used against people of color. For instance, recent reports from Houston, Texas, where 3700 officers have been issued TASERS, indicate that nearly 90% of cases in which they are used involve Latino/as and African Americans.⁵¹ In Minneapolis, Minnesota in 2006, 62% of the people shocked with TASERS by members of the Minneapolis Police Department were Black, in a city where Black people comprise 18% of the population.⁵² In Seattle, Washington, almost half the people shocked with TASERS were African American, in a city where the Blacks represent less than 10% of the population.⁵³

“They [the police officers] could have hurt my unborn fetus. . . . All because of a traffic ticket. Is this what it’s come down to?” — Malaika Brooks, an African American woman who was “TASED” three times by a traffic enforcement officer when 8-months pregnant because she refused to sign a traffic ticket.⁵⁴

⁵¹ Roma Khanna, *Houston Police Used Tasers on Minorities in Nearly 90% of Taser Incidents*, HOUSTON CHRONICLE, Mar. 31, 2005, http://www.chron.com/CDA/archives/archive.mpl?id+2005_3857460.

⁵² Communities United Against Police Brutality, *Analysis of Minneapolis Police Department 2006 Taser Data* (on file with authors).

⁵³ *Excessive and Lethal*, *supra* note 49; U.S. Census Bureau, Census 2000, Summary File 1.

⁵⁴ Hector Castro, *Pregnant Woman ‘Tasered’ by Police is Convicted*, SEATTLE POST-INTELLIGENCER, May 10, 2005, http://seattlepi.nwsourc.com/local/223578_taser10.html (last visited Mar. 25, 2008).

- In 2007, Lillian Fletcher, an unarmed 82-year-old African American grandmother, was shocked with a TASER gun when Chicago Police Officers forced their way into her home and was subsequently hospitalized for five days.⁵⁵
- A 2004 police videotape shows Gwinett County, Georgia police shocking Deacon Frederick Williams, a 31-year-old African American man in handcuffs and leg restraints five times in 43 seconds just four minutes after he was brought into the jail by police who responded to an ambulance call reporting an epileptic seizure. His last words were “Don’t kill me man. Don’t kill me.” No charges have been filed against the officers.⁵⁶

It is also clear that TASERs are used on unarmed children with alarming frequency. Thirty two percent of police departments interviewed by TASER International used TASERs in schools.⁵⁷ Tony Hill, a Florida State Senator, noted that many incidents of TASER use on children in his district were against African American youth.⁵⁸

- Between late 2003 and early 2005, at least 24 Central Florida elementary school students were shocked with TASERs by police officers placed in public schools. Some of the students were as young as 12 years old. A typical scenario involved officers wading in through a crowd to break up a fight and using TASERs to “get them to move.”⁵⁹ In other

⁵⁵ Mary Mitchell, *Cops Would Not Take “No” for an Answer*, CHICAGO SUN TIMES, Nov. 7, 2007, at 3, available at 2007 WLNR 26049689.

⁵⁶ Jerry Carnes, *No Charges in TASER Gun Death*, Apr. 25, 2005, WXIA 11 NEWS, Atlanta, GA, available at http://www.11alive.com/news/news_article.aspx?storyid=62415; see also *Man Tortured to Death in Police Custody* available at http://www.prisonplanet.com/articles/september2007/210907_b_brutality.htm (include video of the incident).

⁵⁷ Anne-Marie Cusac, *The Trouble with Tasers*, THE PROGRESSIVE, Apr. 11, 2005, at 26.

⁵⁸ *Id.*

⁵⁹ David Weber, *Records: Cops Used Tasers Against 24 Students Since 2003*, SUN SENTINEL, Mar. 25, 2005, available at <http://www.saveourcivilliberties.org/en/2005/03/986.shtml>.

cases, police repeatedly shocked students already in handcuffs.⁶⁰

- In October 2004, Miami-Dade police used a TASER to subdue a 55-pound first grade Latino boy, and, just weeks later, shocked a 12-year-old girl who was skipping school.⁶¹

B. The Reality: Shootings and Beatings by Law Enforcement Agents

1) Deadly Excessive Force

Use of excessive force by law enforcement officers all too frequently results in the death of civilians and people of color who are disproportionately killed by law enforcement officials. According to the U.S. Department of Justice, 29.9% of individuals killed by law enforcement officers between 2003 and 2005 were Black or African American and 20.2% were Latino/a.⁶²

The following cases are illustrative of persistent patterns of deadly use of excessive force against people of color. In far too many cases, people of color have been unjustifiably shot and killed when unarmed, non-violent and law-abiding. In most incidents, despite the egregious nature of the use of force, the culpable police officers have not been brought to justice.

- On November 26, 2006, on the eve of his wedding, members of the New York City Police Department (NYPD) killed Sean Bell, a 23-year-old African American man, in a hail of 50 bullets as he left his bachelor party.⁶³ Two other

⁶⁰ *Id.*

⁶¹ *Police Review Policy After Tasers Used On Kids*, CNN.com, Nov. 13, 2004, available at <http://www.cnn.com/2004/US/11/14/children.tasers>.

⁶² Christopher J. Mumola, *Arrests-Related Deaths in the United States, 2003-2005*, Bureau of Justice Statistics, app. 4 (Oct. 2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ardus05.pdf>.

⁶³ See, e.g. Michael Wilson, *Queens: Delay In Police Shooting Trial*, N.Y. TIMES, Nov. 15, 2007, at B6, <http://www.nytimes.com/2007/11/15/nyregion/15mbrfs-trial.html?scp=1&sq=Queens%3A+Delay+In+Police+Shooting+Trial>

African American men were severely wounded.⁶⁴ The police contended that they fired into the car that Bell and his friends had entered after leaving the club because they believed they had a weapon.⁶⁵ However, no weapons were recovered from the scene.⁶⁶

- On June 29, 2004, Gus Rugley, a 21-year-old African American youth, was shot approximately 35 times after an alleged high speed chase with the police.⁶⁷ The San Francisco Police Department claimed that Rugley opened fire at a police car.⁶⁸ Autopsy results, however, revealed no gun powder traces on his skin or clothing, and a toxicological screen confirmed that Rugley was not under the influence of alcohol or drugs at the time of his death.⁶⁹
- In July 2003, Cau Bich Tran, a 25-year-old Vietnamese woman, was shot to death by police responding to a call for help opening a locked door at her San Jose home.⁷⁰ Police claimed that they mistook the vegetable peeler she was using to try to open the door for a weapon.⁷¹
- On March 8, 2003, Michael Pleasance, a 23-year-old unarmed African American man, was unjustifiably shot in the head and killed by Chicago Police Officer Alvin Weems.⁷²

&st=nyt. Two of the officers involved have been indicted on manslaughter charges, and one has been charged with reckless endangerment.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Jaxon Van Derbeken, *San Francisco: Officer honored for valor named in probe, 5 other police also accused of breaking rules in pursuit*, SAN FRANCISCO CHRONICLE, Feb. 25, 2006, at B3.

⁶⁸ *Id.*

⁶⁹ *Id.*; see BERKELEY COPWATCH, *The Network of Victims' Families Grows*, COPWATCH REPORT, Winter 2006.

⁷⁰ G. Chui, *More than 100 People March in Protest of S. J. Shooting*, MERCURY NEWS, Jul. 16, 2003.

⁷¹ *Id.*

⁷² John Conroy, *Killed on Camera*, CHICAGO READER, Apr. 20, 2007, <http://www.chicagoreader.com/features/stories/killedoncamera> (last visited Nov. 20, 2007) (includes the video of the incident as well).

Officer Weems falsely alleged that Pleasance attacked him to justify the shooting, although video footage refutes the allegation and police reports completed by other officers provide contradictory accounts of the alleged attack.⁷³ Although Officer Weems was suspended for 30 days, he was subsequently promoted to detective.⁷⁴

People of color with mental and physical disabilities are often killed by police, at times due to the impacts their disabilities have upon their ability to comply with police orders, as well as their ability to survive excessive force. For instance:

- On December 7, 2005, Rigoberto Alpizar, a 44-year-old Costa Rican man, was shot and killed by undercover air marshals after running off a plane onto a jetway at Miami International Airport.⁷⁵ After having an argument with his wife, Alpizar ran towards the exit of the plane wearing a backpack.⁷⁶ His wife pursued, yelling that her husband was suffering from bipolar disorder and had not taken his medication.⁷⁷ The air marshals ordered him to the ground but when he did not comply, they shot him several times.⁷⁸ While crucial aspects of the marshals' action have been criticized,⁷⁹ an official investigation concluded in May 2006,

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Abby Goodnough & Matthew L. Wald, *Marshals Shoot and Kill Passenger in Bomb Threat*, N.Y. TIMES, Dec. 8, 2005, at A1, <http://www.nytimes.com/2005/12/08/national/08plane.html?scp=1&sq=Marshals+Shoot+and+Kill+Passenger+in+Bomb+Threat&st=nyt> (last visited Mar. 25, 2008); Siobhan Morrissey, *Eyewitness: "I Never Heard the Word 'Bomb,'"* TIME MAGAZINE, Dec. 8, 2005, <http://www.time.com/time/nation/article/0,8599,1138965,00.html> (last visited Apr. 10, 2008).

⁷⁶ Abby Goodnough & Matthew L. Wald, *Marshals Shoot and Kill Passenger in Bomb Threat*, N.Y. TIMES, Dec. 8, 2005, at A1; Siobhan Morrissey, *Eyewitness: "I Never Heard the Word 'Bomb,'"* TIME MAGAZINE, Dec. 8, 2005.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Morrissey, *Eyewitness*, *supra* note 76.

that the use of lethal force was justified and declined to press charges against the marshals.⁸⁰

- On April 16, 2002, Santiago “Chago” Villanueva was experiencing an epileptic episode at work, prompting his co-workers to call for an ambulance.⁸¹ Instead of paramedics, police responded first to the scene, handcuffed Villanueva, shouted profanities at him, claimed he was a drug addict, and forced him to the ground.⁸² When police arrived on the scene they saw a Black man with dreads seizing on the ground and assumed he was on drugs.⁸³ Officers harassed Villanueva and insisted that he speak English.⁸⁴ They threw him on the ground and one officer put his knee on Villanueva’s neck while another officer put a knee on his back.⁸⁵ Although the officers were subsequently indicted for reckless manslaughter and a medical examiner ruled the cause of death “mechanical asphyxiation,” the charges were later dropped.⁸⁶
- In 2002, Jihad Akbar, a 28-year-old Black gay man who suffered from a mental disability, entered a café in Oakland, CA while in the midst of a mental health crisis.⁸⁷ He picked

⁸⁰ Memorandum from Staffing/Review Team to Katherine Fernandez Rundle, Miami Dade County State Attorney 1 (May 23, 2006); <http://www.miamisao.com/pdfs/airmarshals shooting.pdf>.

⁸¹ Robert Hanley, *4 New Jersey Officers Charged in Man’s Death*, N.Y. TIMES, Apr. 16, 2003, at D8, <http://query.nytimes.com/gst/fullpage.html?res=980DE5D71E3BF935A25757C0A9659C8B63&scp=1&sq=4+New+Jersey+Officers+Charged+in+Man%92s+Death&st=nyt>.

⁸² *Id.*; Amnesty Int’l USA Domestic Human Rights Program, *Threat & Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States* 7 (Oct. 2004), available at http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf [hereinafter *Threat & Humiliation*].

⁸³ *Threat & Humiliation*, *supra* note 82, at 7.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See *Threat & Humiliation*, *supra* note 82; Leslie Kasimir, *Cops Boo Choke-Death Widow*, N.Y. DAILY NEWS, May 15, 2003.

⁸⁷ Tim Silard, *Bagdad Café Killing: A Year Later the Cops’ Wall of Silence Remains. Death at the Hands of the SFPD*, SAN FRANCISCO CHRONICLE, Oct.

up two knives and began smiling and dancing in the street.⁸⁸ Police responded to the scene, ran up to him, and shouted and pointed their guns at him.⁸⁹ Two minutes later, Akbar was dead.⁹⁰ At no time did Akbar threaten anyone with the knives he was holding.⁹¹ A year later, no action had been taken against the officers involved.⁹²

2) Physical Beatings

As suggested by available national data concerning traffic stops, excessive force is disproportionately used against people of color across the United States.⁹³ For instance, a recent investigation revealed that use of force by officers in San Francisco police department—defined as any physical restraint causing injury up to shooting a person to death—was alarmingly high, and that 40% of cases in which force was used involved African

12. 2003, <http://www.sfgate.com/cgi-bin/article.cgi?f=/C/a/2003/10/12/INGP527QSM1.DTL&hw=Bagdad+Cafe+Killing&sn=001&sc=1000> (last visited Mar. 25, 2008).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Recent U.S. Department of Justice Bureau of Justice Statistics reports demonstrate that racial profiling by law enforcement officials continues to be a problem in the U.S. Drivers of color reported being searched, subjected to force or threat of force, and issued tickets at higher rates than white drivers in 2002. Matthew R. Derosé, et. al., *Contacts Between Police and the Public: Findings from the 2002 Survey*, U.S. Dept. of Justice Doc. NCJ 207845 (Apr. 2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp02.pdf>. Similar to the situation in 2002, Blacks and Latino/as in 2005 experienced use of excessive force at higher rates than whites. Matthew R. Derosé, et. al., *Contacts between the Police and the Public, 2005*, U.S. Dept. of Justice., Doc. NCJ 215243 (Apr. 2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp05.pdf>. A 2007 follow up report found that African American and Hispanic drivers continued to be searched at higher rates than white drivers and that Black drivers were twice as likely as white drivers to be arrested rather than receive a ticket.

Americans, who make up less than 8% of the City's population.⁹⁴

The following cases of excessive force are representative of hundreds of similar cases, many unreported by the media. In most incidents, the culpable police officers have not been brought to justice.

- In 2006, CB, a Haitian man was sitting in his car when Minneapolis Police Officer Mark Beaupre approached him with his gun drawn. CB asked why he was being stopped and Beaupre ordered him to put his hands behind his back. CB informed Beaupre that he was having shoulder surgery the next day and could not put one of his arms behind his back. Beaupre threw him to the ground, jumped on his back and put his fingers in both of his eyes, scratching them severely. CB begged him to stop, to which he replied, "Nigger I'll put your eye out." Beaupre's partner, Kristin Sturgis, hit CB at least 25 to 30 times with a nightstick and ripped dreadlocks from his head. At the precinct Sturgis told him, "We Rodney Kinged you." Although obviously injured, he was refused medical care in the jail. He was charged with felony assault on a police officer and had to go to trial to defend himself. He was ultimately acquitted of all charges.⁹⁵
- In July 2005, St. Paul, Minnesota police arrived at the home of DS, a Native American woman, asking for her husband. She asked if they had a warrant, and when they indicated

⁹⁴ Susan Sward, et al., *The Use of Force: When SFPD Officers Resort to Violence*, SAN FRANCISCO CHRONICLE, Feb. 5, 2006, <http://www.sfgate.com/cgi-bin/article.cgi?f=/C/a/2006/02/05/MNUFMAIN.DTL> (last visited Mar. 25, 2008).

⁹⁵ CB are the initials of a man who reported this incident to Communities United Against Police Brutality (CUAPB) in Minneapolis, Minnesota. CUAPB is an all-volunteer social justice organization that provides advocacy and support to people dealing with the effects of police brutality, engages in political and legal actions to address the underlying causes of police brutality, and educates the community on their rights and police accountability issues. Additional information at <http://www.cuapb.org/HomePage.asp>.

they did not, she refused them entry explaining she was not dressed. The police pushed the door in, knocked her down and injured her 12-year-old daughter. They screamed and swore at her and would not allow her to call an ambulance. One of the officers threatened her, stating, "I will call downtown and get a welfare worker. I guarantee you will never receive another benefit in your life." Police eventually called an ambulance. DS spent four hours in the hospital being treated for injuries to her neck, back, shoulder and arm. While there, she was visited in the hospital by a police officer who took pictures "for our records." DS left the hospital uncharged.⁹⁶

- In December 2004, an African American transgender woman was thrown against a wall and to the floor, breaking her wrist, by a Chicago police officer responding to a domestic dispute. Although the officer was aware that the woman's wrist was injured, he nevertheless twisted her hands in order to place them in handcuffs. She reports that she was denied medical treatment for her injury while in police custody.⁹⁷
- In January 2003, a police car pulled into the parking lot of a public housing project in Minneapolis, Minnesota, and police officers dragged two American Indians, a man and a woman, out of the squad car. The officers physically abused them both, beating the man until he lay unconscious, and then left them outside in the parking lot in sub-zero weather. Witnesses reported that the man's chest and head had been urinated on during the incident.⁹⁸

⁹⁶ This incident was reported to CUAPB.

⁹⁷ Amnesty Int'l, *Stonewalled: Police Brutality and Abuse Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 45 (2005), available at <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>. [hereinafter *Stonewalled*].

⁹⁸ Claire NiiSka, *Police Brutality in Minneapolis*, NATIVE AMERICAN PRESS/OJIBWE NEWS, Jan. 31, 2003, <http://www.maqueah.net/clara/Press-ON/03-01-31.html> (last visited Mar. 25, 2008).

The presence of armed police officers and security guards in public schools discussed in the Reports of the Working Groups on Education and Juvenile Justice⁹⁹ has led to increased police brutality against young people in their schools. According to the National Economic and Social Rights Initiative:

[s]tudents, parents and teachers reported that police and safety officers have used inappropriate physical force to subdue and intimidate students, often when dispersing crowds or breaking up fights.¹⁰⁰ Students complained of police and even some safety officers using the tactic of ‘slamming’ students against the walls or on the ground.¹⁰¹ In Los Angeles, several students and teachers described incidents when police used mace on students.¹⁰² Police and safety officers also conduct searches that violate students’ privacy and cause emotional harm.¹⁰³

- In September 2007, school security guards at Knight High School in Palmdale, California were caught on camera as-

⁹⁹ USHRN WORKING GROUP ON JUVENILE JUSTICE, JUVENILE JUSTICE, CHILDREN IN CONFLICT WITH THE LAW: JUVENILE JUSTICE & THE U.S. FAILURE TO COMPLY WITH OBLIGATIONS UNDER THE CONVENTION FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination (2007), http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/8_Juvenile%20Justice.pdf; U.S. HUMAN RIGHTS NETWORK EDUCATION CAUCUS, EDUCATION, Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination (2008), *available at* http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/20_Education.pdf.

¹⁰⁰ ELIZABETH SULLIVAN, DEPRIVED OF DIGNITY: DEGRADING TREATMENT AND ABUSIVE DISCIPLINE IN NEW YORK CITY AND LOS ANGELES PUBLIC SCHOOLS, National Economic and Social Rights Initiative Report, V (2007), *available at* <http://www.nesri.org/Deprived%20of%20Dignity%2007.pdf>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

saulting a 16-year-old African American girl, pushing her over a table and breaking her wrist after she spilled some cake on the floor of the cafeteria.¹⁰⁴ The security guard yelled “hold still nappy-head” during the assault.¹⁰⁵

According to a report by Amnesty International, Lesbian, Gay, Bisexual and Transgendered (LGBT) people of color and immigrants, experienced a heightened risk of misconduct in the hands of state authorities.¹⁰⁶ Similarly, LGBT people of color in New York City have reported excessively harsh treatment in their interactions with police authorities, including verbal and physical abuse.¹⁰⁷

Such incidents are not isolated, but merely illustrative of systemic patterns of police abuse observed by NGOs across the United States, disproportionately impacting people of color, including immigrants, women, LGBT people, youth, homeless people, and sex workers of color. The number, nature, and frequency of cases of excessive force by law enforcement officers against people of color reported to domestic NGOs, as well as the patterns of disproportionate abuse reflecting systemic inequalities, undermine the U.S. government’s apparent position that abuses by law enforcement officers are limited to exceptional cases involving a few officers who are subsequently duly punished.

¹⁰⁴ Ann Simmons, *Mothers seek action from Palmdale school; They protest when their children are suspended after allegedly tussling with a security guard*, L.A. TIMES, Sept. 29, 2007, at B.4; Steve Watson, *School Guard Breaks Child’s Arm and Arrest Her For Dropping Cake: Pandemic of police and security violence continues unabated*, infowars.net, Sep. 28, 2007, <http://www.infowars.net/articles/september2007/280907Cake.htm> (last visited Apr. 13, 2008).

¹⁰⁵ Steve Watson, *School Guard Breaks Child’s Arm and Arrest Her For Dropping Cake: Pandemic of police and security violence continues unabated*, infowars.net, Sept. 28, 2007.

¹⁰⁶ *Stonewalled*, *supra* note 97, at 112.

¹⁰⁷ Sylvia Rivera Law Project, *“It’s War in Here”: A Report on the Treatment of Transgendered and Intersex People in New York State Men’s Prisons 33* (2007), available at <http://www.srlp.org/documents/warinhere.pdf>.

C. Lack of Nationwide Statistics Concerning Use of Force by Law Enforcement Officials

The U.S. Government has failed to comply with article 5(a), which, as interpreted by General Recommendation XXXI, requires state parties both to collect and have access to “comprehensive statistical or other information on complaints, prosecutions, and convictions relating to acts of racism and xenophobia as well as compensation awarded to the victims,” including those committed by law enforcement officials.¹⁰⁸ It is no surprise that the U.S. government fails to reference any statistics pertaining to racial disparities and discrimination in misconduct by law enforcement officials, because it fails to collect such any “comprehensive statistical information” with respect to acts of excessive force, racial profiling, or false arrests and wrongful prosecutions.¹⁰⁹

¹⁰⁸ General Recommendation XXXI, *supra* note 9, at section 1(A)(1)(2), (3). Similarly, the Durban Declaration “[u]rges States to establish regular monitoring of acts of racism, racial discrimination, xenophobia and related intolerance in the public and private sectors, including those committed by law enforcement officials.” *Durban Declaration*, *supra* note 8, at ¶ 95.

¹⁰⁹ In 2006, The U.S. Department of Justice’s Bureau of Justice Statistics released a report entitled *Citizen Complaints About Use of Force* tracking the number of excessive force complaints filed with a police disciplinary agency for approximately 59% of law enforcement officers in the United States in 2002. The report failed to collect or analyze the number of excessive force complaints against *all* law enforcement officers *nationwide*, or to include information regarding the racial demographics of complainants and officers, or regarding whether any of the officers faced any criminal investigation, prosecution or sanctions for any misconduct. The report also indicated that less than 8% of the 26,556 complaints of excessive force filed against 59% of officers in the United States in 2002 were sustained. Importantly, it also acknowledged that the number of complaints represented are a *mere subset of all force events in the nation*, in light of the fact that only an estimated 10% of individuals report allegations of excessive force to police disciplinary agencies and 1% filed a complaint with a civilian complaint review board. Matthew J. Hickman, *Citizen Complaints About Police Use of Force*, BUREAU OF JUSTICE STATISTICS, NCJ 210296, p. 4, June 2006. The authors of this report were unable to retrieve any national statistics pertaining to stops, detentions, arrests, rapes or other misconduct committed by law enforcement agencies.

III. RACIAL PROFILING (ARTICLES 1, 2, AND 5)

The U.S. government report maintains that racially discriminatory actions by law enforcement agents are prohibited by domestic law.¹¹⁰ However, in reality, no federal legislation binding on federal, state and local law enforcement officers monitors or prohibits racial profiling by law enforcement agents.¹¹¹ The federal guidelines cited by the U.S. government are neither mandatory nor applicable to the vast majority of law enforcement agents in the country. Moreover, remedies for racial discrimination by law enforcement under existing legislation cited by the United States require proof of intent to discriminate, and, for the most part, do not prevent or redress law enforcement practices with racially discriminatory effects.¹¹²

As recently noted by the UN Human Rights Committee,¹¹³ the U.S. government does not monitor or collect comprehensive data concerning the racial distribution of individuals stopped, searched, and arrested by law enforcement agents across the country. However, existing data demonstrates ongoing racial profiling by law enforcement agents across the United States.

¹¹⁰ Sixth Periodic Report of the United States to the Committee on the Elimination of All Forms of Racial Discrimination, ¶¶ 153, 324, CERD/C/USA/6 (Apr. 24, 2007), *available at* www.bayefsky.com/reports/usa_cerd_c_usa_6_2007.pdf.

¹¹¹ Although the End Racial Profiling Act, which would have prohibited the use of race, ethnicity, national origin or religion in making routine spontaneous law enforcement decisions and required data collection to monitor compliance with its terms was introduced in a number of legislative sessions since the U.S. government's last report to the Committee, it was not enacted by the U.S. Congress. Currently 26 states have no law explicitly prohibiting racial profiling by law enforcement agents. AMNESTY INT'L USA DOMESTIC HUMAN RIGHTS PROGRAM, THREAT AND HUMILIATION: RACIAL PROFILING, DOMESTIC SECURITY AND HUMAN RIGHTS IN THE UNITED STATES, http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf. The "Guidance" cited in ¶¶ 111 and 112 of the *U.S. Report* is not mandatory, nor does it cover the vast majority of law enforcement officers in the U.S.

¹¹² *Id.* at 32.

¹¹³ UNHRC Concluding Observations, *supra* note 12, ¶ 24.

The disproportionate rates at which people of color are stopped, searched, and arrested by police, along with the concentration of law enforcement efforts in communities of color, make a significant contribution to the disproportionate representation of minorities in the prison population, a concern this Committee expressed in its 2001 Concluding Observations and Recommendations.¹¹⁴

Under article 2(1)(a) of the Convention, “[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”¹¹⁵ The Committee has interpreted this obligation to require signatory states to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.”¹¹⁶ The Durban Declaration “[u]rges States to design, implement and enforce effective measures to eliminate the phenomenon popularly known as “racial profiling” and comprising the practice of police and other law enforcement officers relying, to any degree, on race, color, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”¹¹⁷

The U.S. government has failed to take any meaningful action to address discriminatory effects of law enforcement practices in the United States, in violation of its obligations under the Convention.

¹¹⁴ *Id.*

¹¹⁵ Int’l Convention on the Elimination of Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

¹¹⁶ *General Recommendation XXXI*, *supra* note 9, ¶ 20.

¹¹⁷ *Durban Declaration*, *supra* note 8, ¶ 72.

Consistent with General Recommendation XXV,¹¹⁸ we wish to provide the Committee with information on the gendered nature and impacts of racial profiling. We also seek to complement the information provided by the American Civil Liberties Union, as well as Amnesty International's recent report, *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States*,¹¹⁹ with specific information for both States the U.S. government reported on and localities in which there are significant concentrations of people of color.

A. Racial Profiling of Women of Color

Contrary to the Committee's General Recommendation XXV, the U.S. report fails to provide information on the gender-specific impacts of racial profiling and race-based policing practices in its Report. Although racial profiling data reported by federal and state governments is rarely, if ever, disaggregated by race *and* sex, racial profiling studies which do analyze the experiences of women of color separately from those of men of color conclude that "for both men and women there is an identical pattern of stops by race/ethnicity."¹²⁰

Racial profiling not only impacts African American and Latina women but also Native American women as documented at an October 2003 Amnesty International hearing on racial profiling held in Tulsa, Oklahoma.¹²¹ Additionally, the experiences of Arab, Middle Eastern, South Asian, and Muslim women perceived to be members of these groups, have been noticeably absent from discourse regarding the impacts of the "war on terror"

¹¹⁸ General Recommendation XXXI, *supra* note 9, ¶ 21.

¹¹⁹ *Threat and Humiliation*, *supra* note 82.

¹²⁰ R. Lundman and R. Kaufman, *Driving While Black: Effects of Race, Ethnicity and Gender on Citizen Reports of Traffic Stops and Police Action*, 4 CRIMINOLOGY 195, 215 (2003).

¹²¹ Geneva Horse Chief, *Amnesty International Hears Testimony on Racial Profiling*, INDIAN COUNTRY TODAY, Oct. 16, 2003, available at <http://www.indiancountry.com/content.cfm?id=1066315734>.

on communities of color in the United States. Since 9/11, Arab, Middle Eastern, and Muslim women, and particularly women who wear the hijab, have also been routinely subject to street and airport profiling.

- In December 2001, a Muslim woman wearing a veil was stopped by police for driving with suspended plates. Rather than simply write her a ticket upon production of a valid driver's license and registration, the officer arrested her, shoved her into the patrol car, and made inappropriate comments about her religion and her veil.¹²²
- In November 2001, a Muslim woman was asked to remove her headscarf at an airport and taken to a room for a full body search even though the metal detector had not gone off when she went through it.¹²³

Women of color also experience gender specific impacts of current law enforcement policies and practices. For instance, women of color are routinely profiled as drug couriers by law enforcement officers in the context of the "war on drugs," leading to arbitrary stops, strip searches, and detentions. While the use of this practice at the nation's airports is well documented by a 2000 General Accounting Office study,¹²⁴ it also extends into streets and homes across the country. Moreover, women of color's experiences of traffic and street stops are often uniquely gendered, as sexual harassment and assault and rape of women stopped by police for traffic offenses is reported with alarming regularity. For instance:

¹²² *Id.* at 22-23.

¹²³ Report from Leadership Conference on Civil Rights Education Fund, *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001* 28, (Washington, DC 2003), http://www.civilrights.org/publications/reports/racial_profiling/.

¹²⁴ U.S. General Accounting Office, *Better Targeting of Passengers for Personal Searches Could Produce Better Results* (Washington D.C. U.S. General Accounting Office 2000).

- A 2002 report, *Driving While Female*, documented more than 400 cases of sexual harassment and abuse by law enforcement officers in the context of traffic stops across the United States. Only 100 of these cases resulted in any kind of sanction. The authors of the report concluded, “[T]here is good reason to believe that these cases represent only the tip of the iceberg. Many victims do not come forward because of humiliation and fear of reprisal. And . . . some police departments do not accept and investigate complaints from many victims who do come forward.”¹²⁵
- In 2001, a rash of traffic stops of Latina women in a low-income community in Suffolk County, Long Island, during which women were forced to perform sexual acts and/or strip in public, came to light.¹²⁶ In one case, instead of being issued a traffic citation, a woman was forced to walk home in her underwear.¹²⁷ In two others, officers were alleged to have forced women to have sex with them after pulling them over for traffic infractions.¹²⁸
- In 2005, two New York City police officers followed a 35-year-old Latina woman home after stopping her for a traffic offense, and subsequently forced her to perform oral sex on them in her apartment while her three children slept nearby.¹²⁹

¹²⁵ Samuel Walker & Dawn Irlbeck, Police Prof'l Initiative, Dep't of Criminal Justice, Univ. of Nebraska at Omaha *Driving While Female: A National Problem in Police Misconduct* (2002), <http://www.policeaccountability.org/drivingfemale.htm>; Press Release, *Driving While Female Report Launches UNO Police Professionalism Program*, <http://www.unomaha.edu/uac/releases/2002may29ppi.html>.

¹²⁶ Shelly Feuer Domash, *A Few Bad Cops, or a Problem with the System?*, N.Y. TIMES, Feb. 11, 2001 § 14LI, at 1.

¹²⁷ Andy Newman, *Suffolk County Officer Is Charged in Abuse of Female Drivers*, N.Y. TIMES, Mar. 29, 2002, at B5.

¹²⁸ Domash, *supra* note 126, at 1.

¹²⁹ Al Baker, *Two Officers Are Charged in Sex Attack*, N.Y. TIMES, Nov. 22, 2005; *Woman Says Officers Sexually Abused Her*, N.Y. TIMES, Nov. 21, 2005, available at <http://www.nytimes.com/2005/11/22/nyregion/22cops.html>.

While racial profiling of women of color takes many of the same forms as it does with men of color, it also takes place in gender-specific contexts. For instance, implementation of policies requiring officers to make an arrest when responding to domestic violence often results in disproportionate arrests of women of color, who are more likely to be perceived by police to be perpetrators of domestic violence rather than survivors. Of survivors in the New York City (NYC) study who had been arrested along with their abusers (dual arrest cases) or arrested as a result of a complaint lodged by their abuser (retaliatory arrest cases), a significant majority (66%) were African American or Latina.¹³⁰ Forty-three percent were living below the poverty line, and 19% percent were receiving public assistance at the time.¹³¹

Racial profiling also takes gender-specific forms. Women of color, and particularly African American and Latina transgender women, are routinely profiled on the streets and in their homes as sex workers by police, regardless of whether they are engaged in sex work at the time, or whether they are involved in the trade at all, and subjected to stops, strip searches, and arbitrary arrest and detention on a regular basis.¹³² Additionally, racial profiling of women of color as drug users has permeated delivery rooms across the nation, where drug-testing of pregnant women fitting the “profile” of drug users – young, poor, and Black – has given rise to a new race-based policing phenomenon: “giving birth while Black.”¹³³ Similarly, “mothering while Black” gives rise to more frequent allegations of child abuse and

¹³⁰ Mary Haviland et al., Report of the Family Violence Project of the Urban Justice Center, *The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City* (2001), available at http://www.connectnyc.org/cnyc_pdf/Mandatory_Arrest_Report.pdf.

¹³¹ *Id.*

¹³² Andrea Ritchie, *Law Enforcement Violence Against Women of Color*, in *Color of Violence: The INCITE! Anthology* (South End Press 2005).

¹³³ See generally, Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1419-87 (1991); Lynn M. Paltrow, National Advocates for Preg-

neglect against Black women, be it for perceived neglect resulting from poverty or for alleged failure to protect their children from witnessing abuse against them in the home.¹³⁴

The U.S. government's failure to keep racial profiling and police brutality statistics according to both race and gender is inconsistent with General Recommendation XXV, and precludes a full assessment of the breadth and depth of the gender specific impacts of racial profiling and police brutality.

B. Racial Profiling in Selected States and Large Metropolitan Areas

1) Illinois

Although Annex 1 to the U.S. report provides information on compliance with the Convention in the State of Illinois, none of the legislation cited therein provides protection from racial discrimination on the part of law enforcement officers. Due to the lack of effective legislation, racial profiling resulting in unwarranted stops, searches, arrests and harassment continues to occur unabated. Pursuant to the Illinois Racial Profiling Law, local police departments are required to report the race of drivers stopped by law enforcement agents.¹³⁵ These statistics indicate that between 2004 and 2006, minorities were overrepresented by 12 to 15% in the population of drivers stopped by police across the state. In the City of Chicago, the figures reported by the Chicago Police Department (CPD) indicate that minority drivers were stopped by police at a rate 11% greater than their representation in the driving population.¹³⁶

nant Women, *Background Concerning Ferguson et. al*, available at http://www.advocatesforpregnantwomen.org/issues/ferguson_history.htm.

¹³⁴ Roberts, *Punishing Drug Addicts*, *supra* note 133.

¹³⁵ Illinois Dept. of Transportation, *Understanding the Illinois Racial Profiling law*, available at <http://www.dot.state.il.us/trafficstop/rp-palmcard.pdf>.

¹³⁶ Illinois Dept. of Transportation, *2006 Illinois Traffic Stop Study*, available at <http://www.dot.state.il.us/trafficstop/2006Report.pdf>.

Racial disparities are further exacerbated when figures for searches conducted during traffic stops are considered. Between 2004 and 2006, minority drivers made up 88 to 90% of the population searched following a traffic stop. Although the Chicago Police made only 12% of traffic stops in the state, they conducted 37% of searches, suggesting that racial disparities in searches of motorists are particularly concentrated in Chicago.¹³⁷

Although the Illinois Racial Profiling Law is touted nationally as a model for other states to follow in monitoring and addressing racial profiling, it is clear that the mere collection of statistics has neither stemmed nor deterred racial profiling in the state. The law itself is also significantly flawed. As an initial matter, it focuses exclusively on traffic stops, thereby leaving pedestrian stops and other law enforcement practices contributing to racial disparities in stops and arrests unmonitored. In large urban settings like Chicago, a majority of the contacts between police and citizens take place independent of a vehicular setting. Moreover, the CPD has increasingly focused on “hot spots” policing, targeting “gang policing” and drug enforcement efforts in neighborhoods with a high concentration of people of color.¹³⁸ The racial disparities in populations subject to increased surveillance, stops, frisks, and arrests through these practices are not captured by statutory reporting requirements under existing legislation. Additionally, the law relies on law enforcement agencies to police themselves – the data are based exclusively on reports generated by police officers themselves, who are well aware that the information they submit will be used to assess the

¹³⁷ *Id.*

¹³⁸ For instance, residents of Chicago public housing units, who are overwhelmingly African American have documented constant daily harassment of residents, warrantless searches of their homes and public strip searches of their persons, and have routinely been rounded up and charged with trespassing - in some cases in their own apartment complexes. *Unit 5: Police Looking Into Officers' Actions At Ickes Housing Complex*, WMAQ-TV, Oct. 5, 2007, <http://www.nbc5.com/news/14281653/detail.html>.

degree to which they engage in racial profiling. This reality motivates officers to find ways to circumvent the reporting requirements and manipulate the statistics. In addition, numerous smaller cities throughout the State do not even report under the statute.

2) Departments under Consent Decrees

Notwithstanding the existence of a consent decree instituted by the U.S. Department of Justice (U.S. DOJ) under the provisions cited in ¶¶ 153- 154 of the U.S. Report as evidence of its compliance with the Convention, an analysis of data from these areas indicates that these decrees are not effective in deterring racial profiling.¹³⁹ Data from the Los Angeles Police Department indicates that between July and November 2002, African American drivers stopped by police were three times more likely than whites to be asked to step out of their cars, and more likely to be subjected to a search of their person than white drivers.¹⁴⁰ In the state of Maryland, 70% of drivers stopped and searched by police were African American, despite the fact that only 17% of drivers, and of drivers found to be speeding, were African American.¹⁴¹

3) New York City (NYC)

The most recent New York City Police Department (NYPD) data reveals that the police continue to disproportionately target New Yorkers of color for stops and frisks. In 2006 alone, the NYPD stopped, questioned and/or frisked more than 508,540

¹³⁹ U.S. Report, *supra* note 13, ¶¶ 153-154.

¹⁴⁰ African Americans in Opportunity from *State of Opportunity in America* http://www.opportunityagenda.org/site/c.mwL5KkN0LvH/b.1629379/k.996D/African_Americans.htm.

¹⁴¹ Leadership Conference on Civil Rights (LCCR), *Justice on Trial: Racial Disparities in the American Criminal Justice System*, Oct. 2005, www.lccr.org.

people, a 500% increase over the previous year.¹⁴² Over 80% of those stopped and frisked were Black or Latino/a,¹⁴³ even though these groups make up only 53.6 % of the NYC population.¹⁴⁴ Only 10% of stops led to summonses or arrests,¹⁴⁵ undermining the U.S. government's contention that racial disparities in the criminal justice system are the result of differential rates of involvement in criminal activity rather than race-based policing practices.¹⁴⁶

The RAND Corporation recently released the results of an independent analysis of the NYPD's stop and frisk data based on the NYPD's electronic database which is not available to the public. The racial disparities uncovered by the RAND study are even more substantial than those based on publicly reported figures - the overwhelming majority (89%) of people stopped by police in 2006 were people of color.¹⁴⁷ According to the report 53% of those stopped were Black, 29% Latino/as, 11% white and 3% Asian.¹⁴⁸ When stopped, 45% of Blacks and Latino/as were frisked, compared to 29% of white suspects, even though white suspects were 70% more likely than Black suspects to have a weapon.¹⁴⁹

A recent study by the NYU Wagner School of Social policy revealed that Black and Hispanic women made up over 80% of

¹⁴² Press Release, New York Civil Liberties Union, NYCLU SAYS NEW NYPD STOP-AND-FRISK DATABASE RAISES MAJOR PRIVACY CONCERNS, <http://www.aclu.org/police/searchseizure/28315prs20070205.html>.

¹⁴³ *Id.*

¹⁴⁴ U.S. Census Bureau, State and County Quick Facts, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Apr. 21, 2008).

¹⁴⁵ New York Civil Liberties Union, *Rand Report Glosses Over Racial Disparities in NYPD's Stop-and-Frisk Practices*, November 20, 2007 press release, <http://www.nyclu.org/node/1507> (last visited Apr. 21, 2008).

¹⁴⁶ *U.S. Report*, *supra* note 13, ¶¶ 165, 327.

¹⁴⁷ Greg Ridgeway, RAND CORP., *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices* (2007), available at http://rand.org/pubs/technical_reports/2007/RAND_TR534.sum.pdf.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

women arrested in NYC, a gross overrepresentation in comparison to the general population.¹⁵⁰

The Malcolm X Grassroots Movement, a local human rights organization in NYC engaged in regular monitoring of police activity in two predominantly Black communities in Brooklyn, reports that the systematic use of racial profiling in stops, frisks and arrests is a daily occurrence for people of color, and particularly for African American and Latino/a youth, in New York City.

For example:

- In October 2006, NYPD Captain Michael Vanchieri, ordered his officers to stop and frisk “all Black males” at a Brooklyn subway station. His rationale for doing so was simply: “they have no reason being there.”¹⁵¹ The fact that an NYPD Captain felt empowered to issue such a command demonstrates that the NYPD, while claiming that it is the only police department nationally to have banned racial profiling,¹⁵² continues to not only implicitly tolerate the practice but mandate that its officers use race as a determinant supporting conducting stops and frisks.
- Thirty-two young men and women of color ranging in age from 13 to 22 were arrested while en route to a wake in Bushwick, Brooklyn in May 2007. The students, who were accompanied by some parents and teachers, had obtained permission to attend a memorial for a friend who was murdered. The police stopped, searched, cursed at and pushed the students to the ground and against fences, then proceeded to arrest and put them in police vans. No drugs or

¹⁵⁰ Stafford and Diana Salas, *WOMEN OF COLOR IN NEW YORK CITY: STILL INVISIBLE IN POLICY*, Roundtable of Institutions of People of Color, Second Annual Report (2003).

¹⁵¹ Michael Saul and Alison Gendar, *Cops: We were told to Profile*, N.Y. DAILY NEWS, Oct. 10, 2006, <http://www.nydailynews.com/index.html>. The NYPD later claimed the incident was a “misunderstanding.” *Id.*

¹⁵² *Id.*

weapons were found on the students and the parents, teachers and community members present maintained that the youth were not engaging in any unlawful activity. The police claim, though their version of events is uncorroborated, that the students were blocking traffic, were dressed in matching “gang” t-shirts, and were engaging in unlawful assembly.¹⁵³ When some of the adults present questioned the police as to the basis for the arrests, they too were threatened with arrest. The students were charged with disorderly conduct and unlawful assembly, and some of the students spent the night in jail. The police commissioner responded with unequivocal support for the actions of the police officers. Such en masse arrest of youth without any suspicion of individualized criminal activity is a practice often repeated in communities of color.¹⁵⁴

C. Racial Profiling of Immigrants

Racial profiling of Latino/as as undocumented immigrants is also pervasive across the country, particularly in the states along the U.S. Mexico border, in violation of the Convention and General Recommendation XXX.¹⁵⁵ Human rights advocates in Wisconsin also report that it is a local police and sheriff’s deputy practice to stop individuals who they perceive as immigrants, who are almost exclusively Latino/a, inquire about their immigration status and notify immigration officials of alleged violations of immigration laws. Almost all violations of immigration law are civil, rather than criminal, and enforcement of civil im-

¹⁵³ Bob Herbert, *Arrested While Grieving*, N.Y. TIMES, May 26, 2007, at A6.

¹⁵⁴ *Id.*

¹⁵⁵ CERD, *General Recommendation No. 30: Discrimination Against Non Citizens*, Gen. Rec. No. 30. (General Comments) (2004), ¶ 21.

migration law may exceed the authority of local law enforcement.¹⁵⁶

D. Behavioral Profiling as a Proxy For Racial Profiling

Moreover, the practice of “behavioral profiling,” which is increasingly serving as a proxy for racial profiling and has similarly racially disparate impacts, has become more widespread among law enforcement agencies in the United States since 9/11. Federal agencies,¹⁵⁷ state law enforcement bodies¹⁵⁸ and police membership organizations¹⁵⁹ have issued guidance to officers, private security companies and citizens regarding what constitutes “suspicious” behavior. A representative list of “suspicious” behavior contained in the Department of Homeland Security’s “Indicative Behaviors of Suicide Bombers” includes such characteristics as “loose” clothing – which encompasses a wide range of culturally specific attire, having a “[p]ale face from recent shaving of beard,” – which necessarily requires having darker skin to begin with, and “carrying heavy luggage, bag, or wearing a backpack” and “walking with deliberation but not running.”¹⁶⁰ In addition to the racial predicates of some of these criteria, use of such vague or widely applicable characteristics also allows officers to exercise the considerable discretion afforded them to

¹⁵⁶ Police Chiefs Guide to Immigration Issues, A Project Response Publication of Chiefs of Police, July 2007, at 13, available at <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.

¹⁵⁷ See, e.g., U.S. Dep’t of Homeland Security Advisory: *Maintaining Awareness Regarding Al-Qaeda’s Possible Threats to the Homeland* (2003), http://www.dps.state.vt.us/homeland/library_aware.htm (last visited Oct. 8, 2007).

¹⁵⁸ See, e.g., San Diego Police Dep’t, *Terrorism Preparedness and Prevention: Reporting Suspicious Persons, Activities, Vehicles etc* (2005), available at <http://www.sandiego.gov/police/pdf/terrorism-prevention.pdf>.

¹⁵⁹ See, e.g., International Association of Chiefs of Police (IACP), *Training Key 581: Suicide (Homicide) Bombers: Part I* (2005), available at <http://www.theiacp.org/pubinfo/IACP581SuicideBombersPart1.pdf> (identifying a behavioral ‘Suicide Bomber Profile’ for detecting and preventing suicide attacks using deadly force).

¹⁶⁰ U.S. Dep’t of Homeland Security Advisory, *supra* note 157.

act on racial bias or race-based preconceptions as to which racial groups are more likely to represent a “terrorist” threat.¹⁶¹ Moreover, in some cases behavioral profiles make explicit reference to religion, classifying it as suspicious if an individual “[e]xpends energy to not stand out as a Muslim, despite professed Islamic beliefs.”¹⁶² Other characteristics identified as indicative of a potential terrorist threat are disproportionately manifested in certain communities. For instance, reliance on “unwillingness to make eye contact”¹⁶³ as a basis for suspicion will disproportionately impact certain groups, including some Asians and Arabs, who consider making eye contact to be rude or disrespectful.¹⁶⁴ Similarly, officers are more likely to interpret “nervous behavior”¹⁶⁵ exhibited by minorities as evidence of criminal intent, when in fact for many people of color and immigrants, ill-treatment by police in their home countries and/or uneasy relations with the police in the United States¹⁶⁶ may make them nervous around law enforcement.¹⁶⁷

Such “behavioral profiling” measures, with the propensity to act as proxies for racial profiling, are neither effective nor proportionate means of pursuing the aim of protecting national security, as they, *inter alia*, result in a significantly overinclusive pool of “terrorist suspects” based on race, ethnicity, religion or other status, diverting law enforcement resources from identify-

¹⁶¹ Center for Human Rights and Global Justice, *Irreversible Consequences: Racial Profiling and Lethal Force in the “War on Terror”* (New York: NYU School of Law, 2006), <http://www.icj.org/IMG/CHRGJRacialProfilingReport.pdf> [hereinafter *Irreversible Consequences*].

¹⁶² Temple Terrace Police Dep’t, *Homeland Security Terrorist Indicators*, <http://www.templeterrace.com/police/terrorist.htm> (last visited Oct. 4, 2007).

¹⁶³ IACP, *Training Key 581*, *supra* note 160, at 4; and see Miami-Dade Police, *Signs of Terrorism – Recognizing Suspicious Activity*, available at: <http://www.miamidade.gov/mdpd/library/HLS/Signs%20of%20Terrorism.pdf>.

¹⁶⁴ *Irreversible Consequences*, *supra* note 161, at 30.

¹⁶⁵ IACP, *Training Key 581*, *supra* note 159, at 5; see also Temple Terrace Police Dep’t, *supra* note 10.

¹⁶⁶ *Irreversible Consequences*, *supra* note 161, at 30.

¹⁶⁷ *Id.*

ing genuine threats to security and institutionalizing prejudice.¹⁶⁸ Accordingly, they constitute illegal discrimination contrary to article 2(1)(a) of the Convention.¹⁶⁹ To the extent that the United States seeks to incorporate behavioral profiling or related initiatives in its domestic legislation, its obligations under article 5(a) of the Convention are also implicated.¹⁷⁰ The Committee has interpreted the obligations of State Parties under article 5(a) of the Convention to include ensuring that “measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin,”¹⁷¹ and monitoring the “potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism. . . . States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application.”¹⁷²

IV. RAPE & SEXUAL ASSAULT (ARTICLES 1, 2 AND 5)

It is well established that sexual abuse committed by members of security forces, whether as a result of a deliberate practice promoted by the State or as a result the State’s failure to pre-

¹⁶⁸ *Id.* at 31-35.

¹⁶⁹ *Irreversible Consequences*, *supra* note 161 at 19-21 (outlining the test of discrimination under international law) and 26-39 (applying the test to the issue of behavioral profiling); International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(a), Jan. 4, 1969.

¹⁷⁰ The Committee has interpreted the obligations of States parties under article 5(a) of the Convention to include monitoring the “potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism. . . . States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application.” See *General Recommendation XXXI*, *supra* note 9, ¶ 4(b).

¹⁷¹ U.N. Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland*, ¶ 17, U.N. Doc. CERD/C/63/CO/11 (Dec. 10, 2003).

¹⁷² *General Recommendation XXXI*, *supra* note 9, ¶ 4(b).

vent these crimes, violates the human right to physical and mental integrity.¹⁷³ Notwithstanding its obligation under the Committee's General Recommendation XXV to report on gendered manifestations of racial discrimination,¹⁷⁴ the U.S. government's report did not address this gender specific experience of police brutality.¹⁷⁵ Moreover, the federal government currently has no measures in place to systematically document, monitor and prevent rape and sexual abuse by law enforcement officers.¹⁷⁶

Credible evidence exists to suggest that rape, sexual assault and sexual harassment of women, as well as of transgender and gender non-conforming individuals, by on-duty law enforcement officers is a serious problem. Such evidence suggests that officers target women who are vulnerable and unlikely to be believed should they attempt to report the abuse, including women of color, immigrant women, transgender women, domestic violence survivors, women who use controlled substances, homeless women, sex workers and women labeled as mentally ill. Latina immigrants, both documented and undocumented, report routine rapes by local law enforcement and Border Patrol in the borderlands between Mexico and the United States.¹⁷⁷

¹⁷³ *Raquel Martin de Mejia v. Peru*, Case 10.970, (Inter-American Comm'n on Human Rights 1996), available at <http://www1.umn.edu/humanrts/cases/1996/peru5-96.htm>. See also Special Rapporteur on Violence against Women, *its Causes and Consequences*, E/CN.4/2005/72 (Jan. 17, 2005) (prepared by Yakin Ertürk).

¹⁷⁴ General Recommendation No. 25: Gender related dimensions of racial discrimination, ¶ 6, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?OpenDocument).

¹⁷⁵ *U.S. Report*, *supra* note 13.

¹⁷⁶ *Id.*

¹⁷⁷ See Press Release, Coalicion de Derechos Humanos/Alianza Indigena Sin Fronteras, *Violence on the Border*, (Feb. 25, 2004), available at <http://www.derechoshumanosaz.net/images/pdfs/violence%20on%20the%20border%202-25-04.pdf>; Border Action Network, *Justice on the Line: The Unequal Impacts of Border Enforcement in Arizona Border Communities* (2003), available at http://www.borderaction.org/PDFs/justice_on_the_line.pdf;; Valley Movement for Human Rights, *In Our Own Backyard: A Community Re-*

While several high profile criminal prosecutions of officers charged with sexual assaults or rapes of women have taken place, reports indicate that such abuses are far more pervasive than the limited number of prosecutions would suggest, and take place with impunity in many instances. Yet the U.S. government has failed to even acknowledge or take steps to monitor or address this issue at the federal level as would seem to be required under General Recommendation XXXI, which states, with respect to the questioning or arrests of persons, "State parties should bear in mind the special precautions to be taken when dealing with women or minors because of their particular vulnerability."¹⁷⁸

A. Rape, Sexual Assault and the Absence of Documentation or Systemic Review

No official data is currently available regarding the number of rapes and sexual assaults committed by law enforcement officers. Data currently gathered by federal and state governments regarding the use of excessive force by law enforcement officers does not include information on the number of allegations, complaints, or incidents of rape, sexual assault or coerced sexual conduct by police officers. Similarly, data gathered by the federal government on rape and sexual assault does not include information about rapes committed by police officers and other law enforcement agents. However, reports received by NGOs across the United States suggest that sexual abuse by local, state and federal law enforcement officers remains one of the United States' dirty little secrets.

port on Human Rights Abuses in Texas' Rio Grande Valley (2004), available at http://www.nnirr.org/news/reports/vmhr_report_esp.pdf; Human Rights Watch/Americas, "Crossing the Line: Human Rights Abuses Along the U.S. Border with Mexico Persist Amid Climate of Impunity," *A Human Rights Watch Short Report*, vol. 7, no. 4 (Apr. 1995).

¹⁷⁸ General Recommendation XXXI, *supra* note 9, ¶ 25.

Ernest Marsalis had an openly abhorrent record of abusing women while serving as a Chicago police officer.¹⁷⁹ Prior to kidnapping and raping a 19-year-old African American woman he arrested while on duty, which led to his termination from the force, he had been accused of violent or threatening behavior in more than 20 cases, with most of the charges lodged by women. Despite these vicious crimes, he was never prosecuted.¹⁸⁰

It is by no means surprising that there is very little information regarding sexual assaults and rapes of women of color by law enforcement officers in light of the fact that it is estimated that overall, only one-third of rapes and sexual assaults are reported to the authorities.¹⁸¹ One can only imagine that the reporting rate is far lower among women who are raped or sexually assaulted by the very law enforcement agents who are charged with protecting them. As Penny Harrington, former Portland Chief of Police and founder of the National Center for Women and Policing, has pointed out, “The women are terrified. Who are they going to call? It’s the police who are abusing them.”¹⁸² Moreover, threats of retribution and retaliation against women who report sexual assault by officers are commonplace, while prosecutions of law enforcement officers are rare.

- In 2001, two young, Latina transgender women reported that they were approached and questioned by police officers in a patrol car, and then threatened with arrest unless

¹⁷⁹ Tori Marlan, *Armed and Dangerous*, CHI. READER, (Aug. 31, 2001), <http://securesite.chireader.com/cgi-bin/Archive/abridged2.bat?path=2001/010831/MARSALIS&search=>.

¹⁸⁰ *Id.*

¹⁸¹ See Bureau of Justice Statistics, *2004 Criminal Victimization*, US Department of Justice, Office of Justice Programs, NCJ 210674, Sept. 2005; Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, US Department of Justice, Office of Justice Programs, NCJ 194530, Aug. 2002 (stating that 74% of completed and attempted sexual assaults against women were not reported to the police).

¹⁸² Craig R. McCoy and Nancy Phillips, *Extorting Sex With a Badge*, PHILADELPHIA INQUIRER (Aug. 13, 2006) at A01.

they had sex with the officers. The women performed oral sex on the officers before being allowed to go free. They did not report the incident to authorities because of their undocumented immigration status and the officers' threats of retaliation.¹⁸³

- In one rare case in which criminal charges were brought and a conviction obtained, in February of 2004, a Los Angeles Police Department (LAPD) officer was convicted of criminal sexual battery in connection with an incident in which an undocumented Latina woman called the police for help because a man was beating her in her home. When the officer responded to the 911 call, rather than protecting the woman from harm, he took her into a bedroom, sexually battered her, and then arrested her, falsely accusing her of a crime.¹⁸⁴
- In 2003, a Native American transgender woman reported that two LAPD officers pulled her over at 4 a.m. and told her they were going to take her to jail for "prostitution." The officers then handcuffed her, put her in the patrol car and drove her to an alley. One of the officers pulled her out of the car and hit her across the face, saying "[Y]ou fucking whore, you fucking faggot." The officer threw her down on the back of the patrol car, ripped off her miniskirt and underwear and raped her. Although she contacted 911 immediately after the rape, the responding paramedics did not believe her.¹⁸⁵

Additionally, the high prison sentences meted out for drug-related offenses in the United States provide law enforcement officers with increased leverage for extortion schemes such as

¹⁸³ *Id.*

¹⁸⁴ Press Release, issued by survivor's attorney in preparation for officer's sentencing (Mar. 16, 2005) (on file with authors).

¹⁸⁵ *Stonewalled*, *supra* note 97, at 62-63.

those in which officers routinely demand sexual acts in exchange for leniency.¹⁸⁶

Women working in the sex trades in particular report rampant sexual abuse by law enforcement officers.¹⁸⁷ For instance, a 2002 Chicago-based study found that 30% of exotic dancers and 24% of street-based sex workers who had been raped identified a police officer as the rapist.¹⁸⁸ Approximately 20% of other acts of sexual violence were also committed by the police.¹⁸⁹ According to two studies released by the Sex Workers' Project of the Urban Justice Center in NYC, for which participants were predominantly women of color, up to 17% of sex workers interviewed reported rape, sexual harassment and abuse by law enforcement officers.¹⁹⁰

Officer Roger Magaña of the Eugene, Oregon police department was convicted in 2004 of sexually abusing more than a dozen women over an eight-year period.¹⁹¹ Magaña preyed on

¹⁸⁶ See, e.g., M. Weiss, *Crooked-Cop Cases Surge*, N.Y. POST, Oct. 22, 2007 (reporting on cases in which officers were found to have extorted sexual acts from women in exchange for leniency).

¹⁸⁷ *Stonewalled*, *supra* note 97, at 40.

¹⁸⁸ JODY RAPHAEL AND DEBORAH L. SHAPIRO, *SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO* (Center for Impact Research), Aug. 2002, available at <http://www.impactresearch.org/documents/sistersspeakout.pdf>.

¹⁸⁹ *Id.*

¹⁹⁰ BEHIND CLOSED DOORS: AN ANALYSIS OF INDOORS SEX WORK IN NEW YORK CITY (The Urban Justice Center, Sex Workers Project) 2005; JUHU THUKRAL AND MELISSA DITMORE, *REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY* (The Urban Justice Center, Sex Workers Project) 2003.

¹⁹¹ *Eugene, Oregon Settles Two Suits With Women Abused by Cops*, ASSOCIATED PRESS, Aug. 12, 2005; C. Stephens, *Magana Verdict*, KVAL 13 NEWS, June 30, 2004; *Trial Begins For Perverted Eugene Cop Roger Magana: Media is Shut Out*, PORTLAND INDEPENDENT MEDIA CENTER, June 4, 2004, <http://www.publish.portland.indymedia.org/en/2004/06/290053.shtml> (last visited Aug. 25, 2005); C. Stephens, *Victim Speaks Out About Perverted Eugene Cop*, KVAL 13 NEWS, Mar. 13, 2004; C. Stephens, *Magana Records Revealed*, KVAL 13 NEWS, Mar. 4, 2004; *Four More Women Accuse Eugene Officer of Abuse*, KATU 2 NEWS, Dec. 11, 2003.

domestic violence survivors as well as women who were involved in the sex trade, who use controlled substances, and who are labeled as mentally ill, threatening arrest and then trading leniency for sexual acts.¹⁹² In some cases, he used the pretext of conducting “welfare checks” (where officers gain entry into residences by simply stating that they believe a person’s well being is at risk) in order to rape women.¹⁹³ In others, he conducted inappropriate and abusive searches of women on the side of the road.¹⁹⁴ Magaña’s threats of retaliation to women he assaulted if they reported allowed him to engage in such conduct with impunity for almost a decade before he was investigated by his department.¹⁹⁵ One woman described Magaña putting his service weapon against her genitals and saying he would “blow her insides out” if she told anyone.¹⁹⁶ Many of the women who eventually came forward said they initially did not report the abuse because they feared they would not be believed.¹⁹⁷ Indeed, police files indicate that at least half a dozen officers and supervisors heard complaints over the years from women who said that they had been raped or sexually assaulted by Magaña.¹⁹⁸ These complaints were dismissed as the “grumbings of junkies and prostitutes.”¹⁹⁹

While rape and sexual abuse by police are primarily reported by women of color, racialized sexual abuse of men of color also takes place:

- In 2002, Freddie Mason, an African American gay man, was sodomized with a broomstick covered in cleaning fluid

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

while being called a “faggot ass nigger” in a Chicago police station.²⁰⁰

- Within the past year, two young Black men have complained of being sodomized with sharp objects by officers in the Minneapolis jail.²⁰¹
- In 2004, Coprez Coffie, a 23-year-old African American man was handcuffed by Chicago police officers, placed against a car in an alley, and told to spread his buttocks. The officers then inserted a screwdriver into his rectum, ostensibly to assist in a search for drugs.²⁰²

B. Abusive Searches

Individuals and advocates also report that searches of women and transgender individuals by law enforcement officials are often conducted in a violent or abusive fashion amounting to sexual assault or cruel, inhuman and degrading treatment. For instance, strip searches conducted on the street in full public view or in police precincts in view of other detainees and officers, often by officers of a different gender, have been reported in several jurisdictions.²⁰³ Transgender women and gender nonconforming individuals also report frequent unwarranted, invasive and abusive searches, including strip searches, often for the sole purpose of ascertaining their genital status.²⁰⁴

The American Friends Service Committee reports that Native American women detained in a Maine jail were routinely subjected to visual body cavity searches as a matter of policy

²⁰⁰ Police Brutality Website, http://police-brutality-dwb.net/police_brutality.htm.

²⁰¹ Personal communication, Michele Gross, Communities United Against Police Brutality (2007).

²⁰² J. Coen, *Man Accuses 2 Officers of Screwdriver Assault: Federal Jury Hears Suspect's Testimony*, CHI. TRIB., Oct. 2, 2007. The officers were recently found liable for their misconduct.

²⁰³ *Stonewalled*, *supra* note 97, at 54-58.

²⁰⁴ *Id.*

whereas similarly situated white women were not,²⁰⁵ and that such searches, which the Seventh Circuit has described as “demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission,”²⁰⁶ requiring women to bend over and expose their genital areas to officers, were routinely accompanied by sexualized and racist verbal abuse.²⁰⁷

Diane Bond, a 50-year-old African American woman was repeatedly attacked by several Chicago police officers at her public housing unit in Chicago, Illinois in 2003 and 2004.

- On April 13, 2003, the officers pointed a loaded gun to her head, forced her into her apartment, and then engaged in an unnecessary and abusive strip search and destructive search of her apartment, during which they broke precious religious belongings while calling her a “cunt” and a “bitch.”
- Two weeks later, while standing in the stairway outside her apartment, Chicago police officers grabbed Bond and smacked her in the face, causing her to urinate on herself. She was then forced into her bedroom where she was forced to undress, bend over, expose her genitalia to the male officers and reach inside her own vagina while the officers threatened to have her teeth removed with a needle nosed pliers unless she complied with their demands.
- Two days later, Chicago Police Officers attacked her in the lobby of her building, grabbing her by the throat and threatening to beat her “motherfucking ass.”

²⁰⁵ *Id.*

²⁰⁶ *Mary Beth G. v. City of Chicago*, 723 F. 2d 1263, 1272 (7th Cir. 1983). The opinion also cites language from dissenting opinions in the U.S. Supreme Court’s decision in *Bell v. Wolfish*, in which Justice Marshall described body cavity searches as “one of the most grievous offenses against personal dignity and common decency,” and Justice Stevens stated “[t]he body cavity search – clearly the greatest personal indignity – may be the least justifiable measure of all.” *Id.*

²⁰⁷ *Id.*

- Approximately one year later, Bond was attacked again by the Chicago police, who sprained her arm.

None of the officers have been disciplined or prosecuted for their continuous torture and terror of Bond.²⁰⁸

Young girls report frequent sexual harassment and inappropriate and overly invasive searches by police and school security guards stationed in schools. For instance, in NYC many girls have reported being ordered to squat for invasive searches with handheld metal detectors. A 14-year-old Chinese girl reported:

The security guard accused me of having a knife. . .

They took me to a room and made me take off my shirt and pants to check my bra. They didn't call my parents or let me talk to a teacher I know. I didn't have a knife just like I told them.²⁰⁹

V. POLICE BRUTALITY IN THE WAKE OF HURRICANES KATRINA & RITA (ARTICLES 1, 2 AND 5)

Images of thousands of New Orleans residents, the majority of whom were low income women of color and their children, elders, and others unable, due to poverty, to leave the city before Hurricane Katrina struck, abandoned to their fate by the U.S. government, were quickly followed by images of law enforcement violence and abuse of African Americans struggling to survive under the horrifying conditions that prevailed in the city in the days following the hurricane. The U.S. government's response to Hurricanes Katrina and Rita and the devastation they wrought in the Gulf States and the city of New Orleans was not addressed in the U.S. Periodic Report to the Committee, notwithstanding the obvious and egregious racial discrimination evidenced at all levels of government, including law enforcement, in the wake of the storms.

²⁰⁸ *Bond v. Utreas*, No. 04-cv-2617, (N.D. Ill. Mar. 23, 2007).

²⁰⁹ Sullivan, *Deprived of Dignity*, *supra* note 100, at iv.

“They have M-16s, and they’re locked and loaded. . . These troops know how to shoot and kill. . . and I expect they will.” – Louisiana Governor Kathleen Blanco.²¹⁰

In the days following Hurricane Katrina, thousands of members of the National Guard and federal troops were mobilized in Louisiana, along with members of local law enforcement agents from across the country who were temporarily deputized by the state. These officers quickly established militarized zones in the area, in which desperate individuals were routinely verbally abused and threatened with use of lethal force for seeking out food, water and clothing from local area businesses, and often violently arrested and detained.²¹¹ The U.S. government recently admitted that, because of the manner in which it collects information regarding allegations of police misconduct, “[I]t is not possible. . . to accurately determine how many allegations of law enforcement misconduct were reported or investigated in the aftermath of Hurricane Katrina.”²¹²

Several incidents that have come to light include:

- Three days after Katrina struck, “[O]fficers from the Gretna Police Department, the Jefferson Parish Sheriff’s Office and the Crescent City Connection Police, fired shots into the air and blocked desperate people . . . from escaping New Orleans,” while one officer shouted, “We don’t want New Orleans garbage on this side of the river.”²¹³

²¹⁰ *Military Due to Move Into New Orleans: Governor Warns Thugs, Troops ‘Know How to Shoot and Kill’*, CNN.COM, Sep. 2, 2005, <http://edition.cnn.com/2005/WEATHER/09/02/katrina.impact/index.html> (last visited Mar. 26, 2008).

²¹¹ Gail Garfield, *Hurricane Katrina: The Making of Unworthy Disaster Victims*, JOURNAL OF AFRICAN-AMERICAN STUDIES, Vol. 10-4, 55-74.

²¹² Comments by the Government of the United States of America to the conclusions and recommendations of the Committee Against Torture, ¶ 42, U.N. Doc. CAT/C/USA/CO/2/Add.1 (Nov. 6, 2007) [hereinafter *U.S. Comments*].

²¹³ Ronnie Thomas, *Escape Into Uncertainty: ‘This is a Family in Crisis’*, DETROIT DAILY, Dec. 18, 2005; Shaun Waterman, *Cops Trapped Survivors in*

- A few weeks later, a New Orleans Police officer pointed a gun at a man assisting soldiers in distributing rations by dropping them over a bridge to hungry and thirsty New Orleans residents, saying “Drop another one and I’ll shoot you in the head.”²¹⁴
- A National Guardsman shoved an M-16 in the chest of a man running to find his family, told him to get down, and directed or allowed his police dog to attack the man, tearing at his legs and body before the officer called the dog off.²¹⁵

Robert Davis, an African American 65-year-old retired school teacher, had just returned to New Orleans and witnessed the devastation that destroyed his home and community. He was on Bourbon Street looking to buy a pack of cigarettes, surrounded by numerous white revelers stumbling around carrying cocktail glasses, when he was approached by New Orleans and federal police officers who can later be seen on news footage slamming his head up against the wall four times, dragging him to the ground, kneeling him and finally punching him twice, leaving him face down on the sidewalk with blood streaming down his arm. Davis was subsequently charged with public intoxication, resisting arrest, battery on a police officer, and public intimidation. The charges were later dropped. Davis maintains he has not had a drink for more than 25 years.²¹⁶

New Orleans, UNITED PRES INT’L, Sep. 9, 2005. The U.S. government recently reported that the Louisiana Attorney General’s Office is conducting an investigation into this incident, and that the U.S. Department of Justice Civil Rights Division intends to review the results of the investigation to “determine whether the fact implicate a violation of any federal statutes.” *U.S. Comments*, *supra* note 213, at ¶ 46.

²¹⁴ Thomas, *Escape Into Uncertainty*, *supra* note 213.

²¹⁵ Tanya Mendis, *Katrina Survivor Alleges Police Brutality*, WVTC, Sept. 6, 2005, http://www.newschannel9.com/news/says_1977__article.html/garner_days.html (last visited Mar. 26, 2008).

²¹⁶ *Police Brutality in New Orleans*, News Hour with Jim Lehrer, PUBLIC BROADCASTING SERVICE, Oct. 12, 2005, http://www.pbs.org/newshour/bb/race_relations/july-dec05/beating_10-12.html (last visited Mar. 26, 2008); Mary Foster, *New Orleans Beating Caught on Tape*, Oct. 9, 2005, <http://www.>

In the months since the devastation that followed Hurricane Katrina, police brutality has continued unabated in New Orleans. Up to today, NGOs describe the city as “a police state encampment, occupied by an estimated 14,000 heavily armed government officers and their machine guns, patrolled by military trucks, up-armored Humvees, Black Hawks, and Chinooks.”²¹⁷ A recent survey by the community based organization Safe Streets/Strong Communities found that 72% of the predominantly (80%) African American respondents who had been stopped by police reported being victimized, be it through verbal abuse, public strip searches, or physical abuse.²¹⁸ At a 2006 City Council hearing, one speaker testified that he had been attacked by officers who punched and kicked his face and side, detained him for four hours, and destroyed his truck, during which time one officer said, “This is what I joined the Police Department for: to put black people away.”²¹⁹

On April 4, 2006, police stopped Jonie Pratt, a Black school teacher and wife and sister of fellow New Orleans police officers, for allegedly running a stop sign two blocks from her house. A witness saw the officers pull Pratt out of the car by her hair, throw her repeatedly against her car, twist her arms behind her, and spray mace in her face. Two more officers arrived on the scene and the three shoved Pratt to the ground and knelt on her back while one of the officers kicked her in the head. Pratt suffered a broken wrist, a black eye, and a hematoma on her

thumperscorner.com/discus/messages/2152/7554.html. The officers involved were recently absolved of any wrongdoing.

²¹⁷ Gerald Smith, *New Orleans: A Police State Encampment*, COPWATCH REPORT, Winter 2006, available at http://www.berkeleycopwatch.org/reports/cwr_winter06.pdf.

²¹⁸ *Crisis of Confidence: Persistent Problems Within the New Orleans Police Department: Voices and Solutions From Communities Most Impacted By Violent Crime*, SAFE STREETS/STRONG COMMUNITIES, Oct. 2006, at 4-5, available at http://www.safestreetsnola.org/pdfs/crisis_of_confidence.pdf.

²¹⁹ Bruce Egger, *Increase in Police Brutality in N.O. Alleged; Residents Say Poor, Minorities Targeted*, NEW ORLEANS TIMES-PICAYNE, Mar. 17, 2006, at 1.

forehead as a result of the incident. The witness said the officers refused to believe that Pratt lived in the house that is her home because it is located in a middle class area of the city. The local NAACP chapter called for a federal investigation, noting that incidents of this type were common in New Orleans even before Hurricane Katrina struck.²²⁰

VI. LACK OF REMEDIES AND REDRESS (ARTICLES 1, 2, 5 AND 6)

As delineated throughout this report, the U.S. government has failed to comply with its obligations to prevent human rights violations committed by law enforcement officials against people of color under article 5(b) of the Convention. The United States has also failed to comply with its obligations to “most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights”²²¹ in conformance with article 5 of the Convention and General Recommendation XXXI. Moreover, the U.S. government has failed to satisfy its obligations to provide victims an adequate tribunal to seek financial compensation for their injuries, as required by article 6 of the Convention.

In the United States, victims of racial profiling and racially discriminatory use of excessive force, violence, abuse and harassment generally have three potential avenues through which to vindicate their rights, only one of which provides for financial compensation. First, victims may request that the appropriate governmental body criminally prosecute the law enforcement officer(s) who violated their rights, but they are wholly reliant on that agency to actually initiate a criminal prosecution. Second, civilians can file a complaint with an internal disciplinary agency or civilian complaint board, if such exists. However, this

²²⁰ See Mary Foster, *Police Chief Promises Swift Investigation Into Allegations that Cops Assaulted Woman*, THE LOUISIANA WEEKLY, Apr. 10, 2006.

²²¹ General Recommendation XXXI, *supra* note 9, ¶ 21.

rarely results in a fair investigation or adequate resolution. Third, civilians may file civil suits under 42 U.S.C. § 1983, cited at ¶ 157 of the U.S. Report as evidence of its compliance with article 6 of the Convention. However, due to restrictive laws, judicial interpretations, and a post-9/11 climate that serves to limit police accountability, such suits are often unsuccessful, and even where successful, rarely lead to individual or systemic changes in police personnel or practices. Overall, these mechanisms are largely ineffective and insufficient to meet the U.S. government's obligations to provide remedies and redress for violations of rights under the Convention.

Further, civil society as a whole is limited in its ability to seek systemic change in law enforcement policies and practices. Due to the existence of state laws and judicial interpretations of privacy rights, much of the information garnered through lawsuits with respect to allegations, policies and patterns of law enforcement misconduct or abuse is deemed confidential and inaccessible to police accountability organizations. Moreover, organizations and individuals attempting to conduct their own oversight and monitoring of police abuse in their communities face retaliation and harassment by law enforcement officials, further curtailing their ability to document and/or expose ongoing abuses.

A. Lack of Criminal Prosecutions

As discussed above, the U.S. government has failed to include any statistics indicating the number of complaints, prosecutions and convictions with respect to law enforcement violations of the Convention in its Report to the Committee, in violation of its obligations under General Recommendation XXXI. The U.S. government's silence with respect to these statistics is not surprising in light of the fact that there is a significant lack of criminal prosecutions of police officers by federal or state agencies.

According to the Special Rapporteur on extrajudicial executions:

The low rate of criminal prosecution in cases of police brutality remains the principal cause for the perpetuation of violations of human rights by the police, in particular violations of the right to life. The manner in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights.²²²

The Criminal Section of the U.S. DOJ Civil Rights Division is insufficiently resourced and therefore unable, as a practical matter, to prosecute the number of cases of racial profiling, racially discriminatory use of excessive force, abuse, harassment, and false arrests which take place each year. Moreover, 18 U.S.C. § 242, the primary statutory vehicle for bringing criminal charges against law enforcement officers, requires proof that a law enforcement agent specifically intended to violate an individual's constitutional rights, rather than merely intend to commit the act(s) which results in rights violations.²²³ It provides,

²²² U.N. Econ. & Soc. Council [ECOSOC], Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Mission to the United States of America, ¶ 133, U.N. Doc. E/CN.4/1998/68/Add.3 (Jan. 22, 1998) (prepared by Bacre Waly Ndiaye) [hereinafter *Special Rapporteur on Extrajudicial Executions*]. Similarly, the Durban Declaration, generated at the World Conference Against Racism, Racial Discrimination, Xenophobia & Related Intolerance (Aug. 31-Sept. 8, 2001), “[u]rges States, including their law enforcement agencies, to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance, and to prosecute perpetrators of such misconduct. *Durban Declaration*, *supra* note 8, ¶ 71, Programme of Action, Section A “National Level Recommendations.”

²²³ *Screws v. United States*, 325 U.S. 91 (1945); see also Michael J. Pastor, *A Tragedy and a Crime?: Amadou Diallo, Specific Intent, and the Federal Prose-*

"[e]ven the specific intent to injure, or the reckless use of excessive force, without more, does not satisfy the requirements of § 242 . . . There must exist an intention to 'punish or to prevent the exercise of constitutionally guaranteed rights, such as the right to vote, or to obtain equal protection of the law.'"²²⁴ Moreover, an officer's belief that his or her conduct is reasonable under the circumstances is a sufficient defense to a charge under § 242.²²⁵ The standard of proof of intentional racial discrimination under the statute is particularly high,²²⁶ in contravention of the Convention's definition of racial discrimination, which includes acts which have racially discriminatory effects. As a result, few prosecutions for racially discriminatory law enforcement conduct are successfully brought under this statutory provision.²²⁷

A further impediment to such prosecutions, particularly evidenced in the Chicago Police Torture and San Francisco 8 cases, is the absence of a federal law proscribing torture on U.S. soil. While there are federal and state criminal laws that prohibit acts which fall within the definition of torture, all suffer from narrow statutes of limitations precluding prosecutions in many cases.²²⁸ For example, where law enforcement officials commit acts of torture in order to elicit a confession, the law enforcement officers involved almost never face a criminal investigation, let alone, prosecution for their crimes. In most instances, the pros-

cution of Civil Rights Violations, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 171 (2002-2003).

²²⁴ *United States v. Shafer*, 384 F. Supp. 496, 503 (N.D. Ohio 1974).

²²⁵ *Id.*

²²⁶ See *Special Rapporteur on Extrajudicial executions*, *supra* note 223, at ¶ 138 (characterizing the standard for criminal liability for police as "very high.")

²²⁷ See U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians? A Report on Police Practices and Civil Rights in America*, Chapter 5, November 2000, <http://www.usccr.gov/pubs/guard/ch5.htm> (last visited Apr. 10, 2008).

²²⁸ See generally, President George W. Bush's March 8, 2008 veto of a law that would have prohibited the CIA from using waterboarding techniques.

ecuting authorities choose instead to rely on the coerced confession to prosecute the victim for their alleged crime, rather than pursue the law enforcement officers. Often in such cases, the victim is wrongfully prosecuted and in many cases convicted. By the time the aggrieved individual is acquitted of the charges or exonerated, it is often too late to pursue a criminal or civil action with respect to the torture committed. In light of this reality and the grave nature of the conduct at issue, as well as the importance of deterring others from committing such human rights violations, the U.S. government should sponsor federal legislation enacting a federal crime of torture with no statute of limitations.

As is the case with federal prosecutions, successful state criminal prosecutions of police officers for racial profiling or racially discriminatory use of excessive force are also rare, due in part to the fact that such cases turn on credibility determinations pitting the victim, who may also be charged with a crime, against a police officer trained in providing expert testimony.²²⁹ As one commentator notes:

The characteristics that make the victims vulnerable to police beating are the same characteristics that make them less credible to juries. For example, victims may have been engaging in criminal activity when the police brutality occurred, and from the jury's perspective, are from the wrong race, class, sex or sexual orientation. In addition, the victim may have been drunk, on drugs, have a history of alcoholism or drug addiction, or may be mentally ill.²³⁰

²²⁹ See, e.g., U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?*, *supra* note 192, at Chapter 4-5; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index. No.: 1-56432-183-5, July 1, 1998; *Rights for All*, *supra* note 3, at 43.

²³⁰ U.S. Commission on Civil Rights, *supra* note 229, at X.

State prosecutors are also extremely reluctant to investigate and prosecute law enforcement officials because they work with such officials and rely on their testimony to prosecute crimes on a daily basis. Thus, they fail to seek criminal prosecutions of these same officers to avoid jeopardizing their relationships with their friends and colleagues or their departments.²³¹

B. Ineffectiveness of Internal and Civilian Complaint Mechanisms

Internal and civilian complaint mechanisms are largely ineffectual in deterring or punishing racially discriminatory police misconduct. Such agencies, and particularly internal disciplinary bodies, often fail to take complaints seriously, conduct a reasonable, thorough or impartial investigation or effectively recommend discipline for officers responsible for human rights violations.²³² Often complaints are found to be unsubstantiated based on the mere fact that the officer involved denies that any violation took place.

This is particularly true in many rural and suburban communities and for communities where the population is made up predominantly of people of color. Often police departments in these areas lack any established procedures for addressing complaints about police misconduct. In such a climate, victims of abuse come to understand the ineffectiveness of complaints, so abuse is underreported. For instance, a study recently conducted in Oakland, California found that only 11% of survey respondents who had a negative experience with police filed a complaint with the Citizens' Police Review Board or the police department's Internal Affairs Division.²³³ Sixty-four percent of

²³¹ See *Special Rapporteur on Extrajudicial Executions*, *supra* note 223, at ¶ 137.

²³² *Id.* at ¶ 135.

²³³ Tyron Woods, *Focus: Oakland Policing Survey*, PEOPLE UNITED FOR A BETTER OAKLAND (PUEBLO), Oct. 2006, at 11, available at <http://www.peopleunited.org/woodsfocusoaklandpolicingsurvey.pdf>. Overall, the survey

respondents felt that filing a complaint would not make a difference, and 27% reported that they did not know about or trust the complaint process.²³⁴ Clearly, existing complaint-based mechanisms fail to create a climate in which police officers understand that abuse will not be tolerated and in which individuals believe that the police will treat them fairly.

“They don’t do anything with the complaints. I have seen them laughing about the people and the complaints they receive.” – Hispanic woman from Nogales, Arizona²³⁵

A recently published report by the Mandel Legal Clinic of the University of Chicago, *The Use of Statistical Evidence to Address Supervisory and Disciplinary Patterns: the Chicago Police Department’s Broken System*, demonstrates that the Chicago Police Department’s disciplinary investigations into officer misconduct are shoddy and unprofessional, more often than not resulting in no meaningful discipline whatsoever.²³⁶ Reported incidents are rarely investigated in a timely fashion. Investigators fail to visit the scene, and many witnesses are never contacted or interviewed. In 85% of all cases, the accused officers are not even interviewed.²³⁷ Instead, they are allowed to submit a non-responsive memo containing boilerplate language responding to the complainant’s allegations. Further, investigators review and consider a civilian’s criminal history when considering whether to sustain an allegation, but fail to consider an officer’s complaint history. Thus, Chicago Police officers rarely suffer any repercussions for racially discriminatory misconduct -

also noted that “Blacks were only slightly more likely to have filed a complaint (15%) than were white (10%), Asian-American (8%), or Latino (4%) respondents.”

²³⁴ *Id.* at 12.

²³⁵ *Justice on the Line: The Unequal Impacts of Border Patrol Activities in Arizona Border Communities*, BORDER ACTION NETWORK, 2003, at 8, available at http://www.borderaction.org/PDFs/justice_on_the_line.pdf.

²³⁶ *Futtermann*, *supra* note 20, at 275.

²³⁷ *Id.* at 19.

- only two in 1000 officers will face meaningful discipline as a result of a civilian's abuse complaint. In 2004, only 0.48% of all excessive force complaints were sustained by the CPD. The report further found that complaints of "[a]buse [are] concentrated among certain officers who work together in particular units or teams and who police certain parts of the City—generally lower-income African-American and Latino Communities."²³⁸

Unfortunately, the dismal failure of the CPD's internal disciplinary system is not an isolated instance. Recently released government statistics indicate that in 2004 only 8% of all cases of excessive force complaints in larger metropolitan police departments were sustained.²³⁹

C. *Limitations of Civil Suits*

Federal statute 42 U.S.C. §1983 provides a federal civil remedy against state actors for violation of Constitutional and federal rights.²⁴⁰ Yet, the reality is that such remedies are both limited and ineffectual. Even where individuals are willing and able to come forward and assert claims under § 1983 for racial profiling and racially discriminatory use of excessive force, false arrest, and illegal searches or detentions, a number of judicial doctrines hamper their ability to assert a successful claim. Moreover, the availability of civil suits has failed to deter individual officers from continuing to engage in racially discriminatory acts of police abuse or to remedy systemic patterns and practices of racially discriminatory misconduct.

Plaintiffs who pursue §1983 claims for police misconduct and abuse shoulder the burden of proving two central elements: 1)

²³⁸ *Id.* at 26.

²³⁹ Matthew J. Hickman, *Citizen Complaints About Police Use of Force*, BUREAU OF JUSTICE STATISTICS, June 2006, NCJ 210296, p. 1, <http://www.ojp.usdoj.gov/bjs/abstract/ccpuf.htm>.

²⁴⁰ 8 U.S.C. § 1983 (2008).

the offender must have acted under color of state law, and 2) the conduct must have deprived the plaintiff of a right, privilege, or immunity under the Constitution or federal law.²⁴¹ Additionally, under § 1983 police officers can successfully raise the affirmative defense of qualified immunity so long as a “reasonable official” would not have known that the challenged conduct would violate a constitutional right that was “clearly established” at the time of the incident.”²⁴² Federal courts have so narrowly defined the scope of a “clearly established” constitutional violation that this doctrine often poses an insurmountable burden to redress.²⁴³ Moreover, the right to be free of racial discrimination by law enforcement officers “clearly established” under the Constitution does not include the right to be free of law enforcement conduct with racially discriminatory effects absent a showing of racially discriminatory intent. Finally, while a plaintiff may be successful in asserting a claim against a police officer in their individual capacity, additional barriers may preclude a finding of liability on the part of the municipality that employs them or a grant of injunctive relief, both of which are essential tools for obtaining systemic changes necessary to prevent future violations.²⁴⁴

Victims, organizers and activists are severely limited in attempting to address patterns and practices of racial profiling in the courts. In order to prove such a claim under the U.S. Constitution (Amendment XIV), a party must prove both that people of color are disproportionately stopped, detained, arrested and/or searched (i.e. disparate impact), *and* that the accused officers and/or departments who engaged or condoned in such behavior

²⁴¹ *Parratt v. Taylor*, 451 US 527, 535 (1981).

²⁴² *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

²⁴³ David Rudovsky, *The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights*, 138 U. PA. L. REV. 23 (1989).

²⁴⁴ *Id.*; see also G. Flint Taylor, *Defending Against Municipal Attempts to Nullify Monell Pattern and Practice Claims: Sample Pleadings*, Police Misconduct and Civil Rights Report, Thomson/West (Sept./Oct. 2006).

had a discriminatory intent. Such proof of discriminatory intent often presents an insurmountable obstacle to prevailing in such cases.²⁴⁵

The officers against whom civil suits are brought often continue to act with impunity. More often than not, the municipalities that employ the offending officers not only cover the costs of mounting a defense to any civil action and of any compensation awarded, but also fail to take effective disciplinary action against the offending officers. As a result, officers who regularly engage in excessive force (i.e. “repeater beaters”) continue to abuse and harass people on a daily basis no matter how many civil suits are brought. For example:

- From 1979 through 1999, former Chicago police officer Rex Hayes amassed more than 65 official misconduct complaints, including allegations that he cracked open a man’s skull causing permanent brain damage, broke a woman’s arm and engaged in several severe physical beatings. Instead of disciplining Hayes or removing him from the police force, the City of Chicago defended him in ten different lawsuits costing \$2 million in settlements and damages awards. While he was eventually terminated from the CPD after 20 years, he was never criminally prosecuted for any of the crimes he committed.²⁴⁶
- A San Francisco Police officer who had 20 citizen complaints of excessive force lodged against him had never been disciplined or counseled before fatally shooting a 17-year-old girl. Instead of disciplining the officer, the City chose to promote him and pay \$505,000 to settle the shooting case.²⁴⁷

²⁴⁵ David Rudovksy, *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, 3 U.P.A.J. CONST. L. 296 (2001).

²⁴⁶ See *Bond*, *supra* note 208, at 15.

²⁴⁷ Susan Sward *et al.*, *The Use of Force: When SFPD Officers Resort to Violence*, SFGATE, Feb. 5, 2006

Finally, it is important to note that even though individuals can initiate civil actions without involvement of the state, victims of police abuse are often hesitant to come forward and often do not have access to the resources required to pursue such an action. As noted by the Report of the Working Group on Civil Remedies, the government does not provide access to counsel in such cases.

D. Lack of Transparency

Another extreme obstacle police accountability organizers, victims and attorneys face in seeking vindication for violation of people's rights and systemic changes to law enforcement practices is the lack of transparency and access to disciplinary investigations. Such records are not available to the public and can only be obtained in the course of litigation. Even in the course of litigation, litigants are precluded from access to these materials by state laws that preclude access to records of alleged misconduct by law enforcement officers. For example:

- In California, a complainant must go through a long and arduous process to obtain civilian complaint files against officers who violated the complainant's rights. First, the complainant must file a motion to get a special order granting an *in camera* review of other complaint investigative files. These records are made available to the judge who, in chambers, and in the presence of the law enforcement agent's attorney only, reviews the records. Even if the judge finds the records to be relevant, they are not turned over to the complainant. Rather, only contact information for witnesses – without information about their allegations – is provided. If the witness contact information proves to be outdated, or witnesses refuse to provide information, a second motion is required to obtain the actual records. Ultimately, if a complainant prevails by obtaining past civilian complaint files against the officer, these files remain sealed

and another complainant in a different case must go through the same process.²⁴⁸

- In Texas, records maintained in an internal police department file that reasonably relate to a police officer's employment relationship with the police department are confidential and cannot be released.²⁴⁹
- In Arizona, law enforcement agencies are not required to disclose internal affairs records or personnel evaluations.²⁵⁰
- In Maine, complaints, charges of misconduct and records of an investigation are not available.²⁵¹

In many other states and jurisdictions, plaintiffs and their attorneys are forced to submit to restrictive protective orders prior to gaining access to this information, thereby precluding its public dissemination for review. Transparency of investigations into allegations and investigations of police misconduct is crucial to accountability components embedded in the principles of the Convention.²⁵²

²⁴⁸ CAL. PENAL CODE §§ 832.7, 832.8 (West 2008).

²⁴⁹ TEX. LOC. GOV'T CODE ANN. § 143.089(g) (Vernon 2008); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d, 946, 949 (Tex. App. Ct. 1993).

²⁵⁰ *Bolm v. Custodian of Records of Tucson Police Dep't*, 969 P.2d 200 (Ariz. Ct. App. 1998).

²⁵¹ ME. REV. STAT. ANN. 5, § 707(2)(e); 20-A, § 6101; 30-A, § 503(1)(b); 30-A, § 2702(1)(b) (2008).

²⁵² See Administration of Justice, Rule of Law and Democracy: Discrimination in the Criminal Justice System, Progress Report by Ms. Leïla Zerrougui, Special Rapporteur, E/CN.4/Sub.2/2004/5, ¶ 56 ("When the police have broad discretionary powers and are the only authority empowered to investigate violations ascribed to their officers, when external supervisory mechanisms are non-existent or do not have the power to punish and halt violations, and in particular when lodging a complain entails considerable risks and offers no guarantees of success, abuses are inevitable and impunity is assured since the system makes for it.").

E. Cop Watchers Under Attack

Where the prosecutorial agencies, civilians complaint review boards, internal review processes and civil suits have failed to hold law enforcement agencies accountable for racially discriminatory conduct, community-based human rights organizations have developed mechanisms for documenting and protecting communities of color against police violence such as the “cop watch” programs developed by groups including the Malcolm X Grassroots Movement (MXGM), a human rights organization located in New York City, and complaint lines such as those operated by Communities United Against Police Brutality in Minneapolis, Minnesota and People United for a Better Oakland (PUEBLO) in California. Unfortunately, due to the effectiveness of such programs, law enforcement officers are increasingly engaging in aggressive harassment and intimidation of human rights activists who monitor law enforcement activities. The following three incidents highlight this trend.

- Juanita Young is the mother of Malcolm Ferguson, a young man who was killed by members of the NYPD in March of 2000. Since that time, Young has been an active member of two organizations that combat police brutality. In June of 2003, Juanita Young and her family were illegally evicted from their house. During the eviction, the police assaulted and brutalized Young, causing her to sustain many injuries, and arrested her for trespassing. At the time, a police officer told her, “[N]o rallies for you today.” Young was subsequently acquitted of the false trespassing charges. Activists and lawyers have long maintained that Young’s arrest was retribution for her work against police brutality.²⁵³
- In February 2005, three African American members of MXGM’s “Copwatch” were documenting an incident when they were approached by police officers. The officers ini-

²⁵³ Stephen Millies, *Mother of Police Murder Victim Wins \$10.5 Million Jury Verdict*, SAN FRAN BAY VIEW, June 19, 2007.

tially asked the activists to leave and ordered them to stop using a video camera. When the activists asserted their right to observe without interfering, the officers pushed the organizers, knocked one of them to the ground and arrested them. In 2006, the NYPD dropped all of the charges.²⁵⁴

- In 2007, members of the NYPD assaulted two renowned African American human rights attorneys, Evelyn and Michael Tarif Warren. The Warrens have represented many police brutality victims over a number of years. The Warrens were driving when they noticed the officers physically abusing a young Black man, kicking him in the head and ribs and stomping on his neck until he was bloody. The Warrens observed and documented the attack and asked the officers why the officers were behaving in this fashion. The police responded by attacking the two attorneys, striking Mr. Warren numerous times in the head and face and striking Ms. Warren in the face. Both attorneys were arrested and falsely charged with crimes they did not commit.²⁵⁵

People and communities of color are faced with a vicious circle when confronting police brutality. Clearly, existing remedies have proven inadequate. Yet when people of color and others initiate lawful programs aimed at protecting and eradicating such violations, they too are attacked by law enforcement.

F. Training

Although the United States devotes considerable attention to training in ¶¶ 158-161 of its Report, and particularly to initiatives undertaken to address discrimination by law enforcement

²⁵⁴ Press Release, Center for Constitutional Rights, *CCR Files Lawsuit on Behalf of Three Black Copwatch Activists Arrested While Monitoring Police Activity*, Apr. 2007.

²⁵⁵ Amadi Ajamu, *NYPD Brutalize Human Rights Attorneys*, SAN FRANCISCO, June 26, 2007.

against Muslim and Arab people post 9/11, the United States suffers from a complete lack of national standards for training of law enforcement officers, and the measures cited in the U.S. Report are neither comprehensive nor mandatory. As a result, there is considerable variation in the type and depth of training received by local, state, and federal law enforcement agencies. This is particularly true where the use of force and weapons such as TASERs, as well as sexual harassment and abusive searches, are concerned.²⁵⁶ Moreover, the prevalence of police abuse and misconduct appear to suggest that what training measures are in place are not effective.

VII. RECOMMENDATIONS

In light of the persistent and pervasive violations of the Convention outlined in this report, we respectfully ask the Committee find the U.S. government in violation of articles 1, 2, 5(b) and 6 of the Convention with respect to law enforcement violations enumerated above and to call on the United States to ensure that appropriate state and federal authorities:

- Enact a federal crime of torture with no statute of limitations and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state and federal law enforcement officers;
- Take immediate steps to document, systemically review, and prevent rape, sexual assault and abusive and unlawful strip searches by law enforcement officers;

²⁵⁶ See, e.g., ACLU of Northern California, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, September 2005; United States Government Accountability Office, *TASER WEAPONS: Use of Tasers by Selected Law Enforcement Agencies*, GAO-05-464, May 2005; Amnesty International, *Excessive and lethal force? Amnesty International's Concerns about Deaths and Ill-treatment Involving Police use of TASERs*, AMR 51/139/2004, Nov. 2004; Civilian Complaint Review Board, *Recommendation that the NYPD enhance its training of officers to ensure adherence to Patrol Guide strip search procedures*, May 12, 2004 Memorandum to the NYPD.

- Immediately cease the prosecution and dismiss the criminal charges against the SF8;
- Immediately initiate a federal criminal prosecution to fully hold all officers implicated in Chicago Police Torture cases criminally responsible;
- Take action to provide relief to the Chicago torture victims who remain behind bars due to their wrongful convictions and provide all victims with financial compensation for their torture violations;
- Impose an immediate moratorium on TASER use by law enforcement officers and order a rigorous, independent, and impartial inquiry into their use and effects, or, at a minimum, implement federal regulation of TASERs restricting their use to instances in which they would substitute for lethal force in a manner consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Enact federal legislation that requires the federal government to record complaints of all allegations of police violence, abuse and misconduct (including excessive force, rape and sexual assault, illegal searches, false arrest, wrongful prosecution, and racial profiling) against state and federal law enforcement, and explicitly provide such information also be made available to the public in an on-line database. The information be collected should include the (a) officer name, agency, employment number; (b) complainant name, contact information, allegations and demographic information; (c) witness name, contact information, and allegations; (d) all related agency internal investigation records; (e) all related agency internal disciplinary decisions; (f) all related police reports, such as arrest, incident, or follow-up reports; (g) identification of all related criminal or civil litigation, investigators, witnesses, and attorneys; (h) indication of any criminal investigation, prosecution or convictions of the law enforcement officer;

- Support the elimination of state laws that preclude public access to civilian complaints and investigations against law enforcement officers;
- Provide adequate resources to the U.S. Department of Justice to effectively and comprehensively pursue and enforce “pattern and practice” actions against police departments engaging in widespread or systematic abuses;
- Develop and mandate national training standards for federal, state and local law enforcement agents consistent with the Committee’s General Recommendation XIII;
- Actively address issues of law enforcement violence and abuse in the wake of Katrina and the disastrous response of government authorities in violation of Articles 2, 4, 7 and 10 of the Covenant during the Committee’s formal review of the current report.

SIGNATORIES

Organizations

American Friends Service Committee (AFSC)

Bay Area Sex Workers Advocacy Network (BAYSWAN), San Francisco, California

Bronx Defenders’ Association, New York City, NY

Center for Constitutional Rights, NYC

Champagne-Urbana Citizens for Peace and Justice, IL

Chicago Justice Project

Citizens Alert, Chicago, Illinois

Committee for the Defense of Human Rights (CDHR)

Communities Against Rape and Abuse, Seattle, WA

Communities United Against Police Brutality (CUAPB), Minneapolis, MN

COYOTE

Desiree Alliance, San Francisco, California

Edwin F. Mandel Legal Aid Clinic of the University of Chicago
Law School
Freedom Archives
Global Network of Sex Work Projects
Homies Unidos, Los Angeles, CA
Human Rights Clinic, Columbia Law School, New York City
Idriss Stelley Foundation, San Francisco, CA
International Gender Organization
Jewish Council on Urban Affairs, Chicago, IL
MacArthur Justice Center, Chicago, IL
Malcolm X Grassroots Movement, New York City, NY
Massachusetts Statewide Harm Reduction Coalition
Minnesota Advocates for Human Rights
National Association of Criminal Defense Lawyers
National Black Police Association
National Police Accountability Project
New York University School of Law Center for Human Rights
and Global Justice
NOW (National Organization of Women)
October 22 Coalition to Stop Police Brutality
Penal Reform International
Prostitutes of New York
RFR Researchers
Sex Workers' Outreach Project- USA
Sex Workers Project at the Urban Justice Center, New York
City, NY
South Asian American Leaders of Tomorrow, Silver Spring,
MD
Sylvia Rivera Law Project, New York City
Welfare Warriors, Detroit, Michigan

Individuals (organizational affiliation for information only)

Renee Byrd, director/producer, *System Failure: Violence, Abuse
and Neglect in the California Youth Authority*

Jody Dodd, Leadership and Outreach Coordinator, Women's International League for Peace and Freedom

Linda Evans & Geri Green, Legal Services for Prisoners with Children

Barbara Frey, Director Human Rights Program, University of Minnesota

Nicholas Heyward, Sr., father of Nicholas Heyward, Jr. (Killed by housing police September 1994)

David Holder

Tonya McClary, Esq.

Andrea Ritchie, INCITE! Women of Color Against Violence

Cynthia Soohoo, Esq., Director Bringing Human Rights Home, Human Rights Institute, Columbia Law School

Calvert Stewart, North Carolina October 22nd Coalition to Stop Police Brutality

Bret Thiele, Coordinator - ESC Rights Litigation Programme, Centre on Housing Rights and Evictions (COHRE), Minneapolis, Minnesota

Rev. Harriet Walden, Mothers Against Police Brutality, Seattle, WA

Juanita Young, mother of Malcolm Ferguson (killed by NYPD March 1, 2000)

It should be noted that all of the signatories to this submission strongly believe in the importance of adherence to the CERD and share strong concerns about the United States' failure to comply fully with its international human rights obligations. The issues raised in this report constitute a compilation of the concerns of the various signatories, each of whom has a unique mandate and expertise. However, its contents do not necessarily reflect the precise position of each of these organizations. Finally, it is important to note that the issues identified herein are not exhaustive.