

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

A report prepared for the United Nations Human Rights Committee

on the occasion of its review of the

The United States of America's Second and Third Periodic Report to the Human
Rights Committee

May 2006

Executive Summary

This report was prepared by U.S. non-governmental organizations in response to the USA's Second and Third Periodic Report to the Human Rights Committee (the "Committee") regarding its compliance with the International Covenant on Civil and Political Rights (the "ICCPR" or "Covenant"). It focuses on ongoing and pervasive police brutality and abuse in communities of color across the U.S. which, despite this Committee's previous expression of concern about this issue, continues to take place, in violation of Articles 2, 3, 6, 7, 9, 10, 17, 20, 25, and 26 of the Covenant.

This report focuses exclusively on issues relating to policing in order to highlight the widespread violations of human rights guaranteed by the Covenant which take place *outside* of courts and prisons, on the streets, in patrol cars, and in police precincts across the U.S. Additionally, we emphasize how the persistent and pervasive police abuse and misconduct in the U.S. interferes with the enjoyment of other rights guaranteed by the Covenant. We refer the Committee to reports submitted on "Domestic Criminal Justice Issues and the ICCPR" and the administration of the death penalty for more information on criminal justice issues and violations arising in courts and prisons.

The organizations participating in the preparation of this report are deeply concerned about the torture and cruel, inhuman, and degrading treatment perpetrated and condoned by the U.S. government overseas in the context of the "war on terror" and U.S. occupations of Iraq Afghanistan, and Guantanamo Bay in Cuba, as well as the lack of effective remedies for such abuses.

However, we wish to specifically call the Committee's attention to ongoing and pervasive violations of the Covenant which continue to take place on U.S. soil, in the shadows of the U.S. government's extraterritorial activities, at the hands of local, state, and federal law enforcement agents. We urge the Committee to focus significant attention on abuses of human rights on U.S. soil during its review of the U.S. government's report. We believe that there are significant similarities – in practices, personnel, targets, and rationales – between the U.S. government's human rights abuses overseas and at home. The U.S. government's recent practices overseas did not spring from whole cloth, but rather are rooted in pervasive and systemic patterns of human rights abuses in the U.S.

The overall climate of the U.S. government's "war on terror" has led to considerable abridgment of civil liberties in the US.¹ It has fostered torture and abuse of individuals detained by local and federal law enforcement agencies in the wake of the events of September 11th,² as well as ongoing targeting of Arab and Muslim populations in the U.S.³ It has also created a generalized climate of impunity for law enforcement officers, and contributed to the erosion of what few accountability mechanisms exist for civilian control over law enforcement agencies. As a result, police brutality and abuse persist unabated and undeterred across the country.

The U.S. government refers this Committee the two reports it has submitted to the UN Committee Against Torture (CAT)⁴ for information concerning its compliance with Article 7 of the ICCPR⁵. In its report to the CAT, the U.S. government concedes that complaints of police violence and abuse continue to be made, but states

In a country of some 280 million people with a prison population of over 2 million people it is perhaps unavoidable, albeit unfortunate, that there are cases of abuse.⁶

The organizations who participated in the preparation of this report take issue with the notion that such abuse is unavoidable. Rather, the U.S. lacks both the requisite legislation and the political will to enforce existing laws to prevent such abuse and provide adequate redress to the individuals and communities affected. This report seeks to provide the Committee with a glimpse of the prevalence of police brutality in the U.S., as well as the profound limitations of the remedies cited by the U.S. government in its report to the Committee.

Principal Areas of Concern & Recommendations

- Persistent and pervasive use of excessive force by police, often with impunity, in violation of Articles 6, 7, 9, 10, 14, 17 and 26;

Recommendations

- Enact a federal crime of torture and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state, and federal law enforcement officers;
 - Adopt national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents;
 - Develop and mandate national training standards for federal, state and local law enforcement agents.
- The U.S. government's failure to regulate the use of electroshock weapons (TASERs) by law enforcement agents, in violation of Articles 6, 7, 10, and 26;

Recommendation

- Impose an immediate moratorium on TASER use by law enforcement officers pending 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.
- The prevalence, as yet undocumented by the U.S. government, of rape and sexual abuse of women, including transgender women, by law enforcement officers outside of prisons and jails, in violation of Articles 3, 7, 10 and 26;

Recommendations

- Take immediate steps to document, systemically review, and prevent rape, sexual assault, and abusive and unlawful strip searches by law enforcement officers;
- Failure to collect data on a national level to document, monitor and prevent violations of the Covenant, to provide for thorough and impartial investigation of allegations of violations, to punish officers who commit acts of torture or cruel, inhuman and degrading treatment, and to provide for adequate remedies and redress, in violation of Articles 3, 7, and 25;

Recommendations

- Provide adequate funding to allow the U.S. Department of Justice to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody, use of force during street encounters as well as traffic stops, and

incidents of rape, sexual harassment, and unlawful searches of persons). The reporting should also include comprehensive details of disciplinary actions and prosecutions of excessive force by police officers;

- Provide adequate resources to the U.S. Department of Justice in order that it effectively and comprehensively pursue and enforce “pattern and practice” actions against police departments engaging in widespread or systematic abuses.
- Persistent racial and gender profiling by law enforcement officers, in violation of Articles 2, 3, 7, 10 and 25.

Recommendations

- Take affirmative steps beyond creating remedies at law at both the federal and state levels to address police brutality and other custodial torture and other cruel, inhuman and degrading treatment that is shown to be occurring in a racially discriminatory manner or in a manner evidencing discrimination based on gender, gender identity, sexual orientation, or some combination of all of these factors;
- Increase its use of Title VI of the Civil Rights Act of 1964 to eliminate racially discriminatory practices by law enforcement agencies;
- Enact the End Racial Profiling Act, with amendments providing for tracking and analysis of data by gender and race.

Additionally, throughout this report, we highlight the disproportionate numbers of people of color, immigrants, women, lesbian, gay, bisexual and transgender people, sex workers, and youth who are subjected to violations of civil and political rights and freedoms by law enforcement officers in the U.S., in violation of the Covenant’s non-discrimination provisions.

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I. Introduction

Since the advent of the first state sponsored police forces in the U.S. – slave patrols⁷ - the use of violence by law enforcement agents has been a feature of the American landscape. *We Charge Genocide*, a petition submitted to the United Nations by the Civil Rights Congress in 1951, documented thousands of incidents of police violence against African Americans alone. Police brutality against Native Americans has also been a constant of colonial culture in the U.S.⁸ 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.⁹

Increased national and international attention was brought to bear on the issue of police brutality in the U.S. 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. NGOs, including the National Association for the Advancement of Colored People (NAACP), Human Rights Watch, and Amnesty International documented widespread abuses by law enforcement agents across the country. In 2000, the U.S. Civil Rights 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...”¹⁰

In 1995, the Human Rights Committee expressed concern regarding “the reportedly large number of persons killed, wounded or subjected to ill-treatment by members of the police force in the purported discharge of their duties.”¹¹

Now, in the wake of September 11, 2001, and subsequent dramatic increases in law enforcement powers in the name of waging the “war on terror,” public attention to the conduct of law enforcement agents beyond the confines of the “war on terror” has waned. However, as noted by one domestic NGO which documents killings by law enforcement agents, “police brutality did not die on September 11th [2001].”¹² In fact, a representative of the National Association for the Advancement of Colored People (NAACP) stated in 2004 that “the degree to which police brutality occurs...is the worst I’ve seen in 50 years.”¹³

II. Use of Excessive Force (Articles 6 & 7)

The U.S. government has failed to address the concerns raised and recommendations made by the Committee in its Concluding Observations to the U.S.' First Periodic Report regarding police brutality and abuse in the U.S.¹⁴

During its review of the U.S. government's Initial Report, the Committee specifically expressed concern regarding the "large number of persons killed by the police in the purported discharge of their duties."¹⁵ It also stated that the U.S. "should indicate whether it subscribed to international rules on the use of firearms by security forces and whether the rules on the use of minimum force by policemen varied from state to state."¹⁶ The Committee recommended that the U.S. "[t]ake all necessary measures to prevent any excessive use of force by the police; that rules and regulations governing the use of weapons by the police and security forces be in full conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; that any violations of these rules be systematically investigated in order to bring those found to have committed such acts before the courts; and that those found guilty be punished and the victims be compensated."¹⁷ Recently the UN Committee Against Torture (CAT) expressed continuing concern regarding "reports of brutality and use of excessive force by law enforcement personnel in the US, noting numerous allegations of the ill-treatment of racial minorities, migrants and persons of different sexual orientation which have not been adequately investigated."¹⁸

Despite these recommendations, use of excessive force by law enforcement officers against unarmed individuals, often leading to death or serious injury, remains endemic across the U.S. 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 Covenant and that "the United States, at the state and federal level, prohibits and punishes excessive use of force by government officials."¹⁹

In reality, investigations at the local and state level are often conducted by the very same law enforcement agencies which employ the officers responsible for acts of torture or cruel, inhuman or degrading treatment, or by civilian review agencies with little or no authority to discipline officers.²⁰ Criminal charges are seldom brought against offending officers, and convictions are rarely sought or obtained.²¹ The Federal Department of Justice, limited by the high standard of intent imposed by the legislation cited to by the U.S. in its report,²² as well as the limited resources devoted to investigation and prosecution of law enforcement misconduct,²³ is often unable or unwilling to bring federal criminal charges against law enforcement officers who commit torture or abuse, or to initiate civil actions where a pattern and practice of such abuse exists.

A. *The Reality: Beatings and Shootings by Law Enforcement Agents*

Reports received by U.S. NGOs indicate that law enforcement officers in the U.S. continue to violate individuals' rights under the Covenant with alarming regularity and often with impunity. Violations include beatings, use of painful physical restraints, use of electro-shock weapons ("TASERS"), killings by law enforcement agencies, and abusive searches. Police brutality is particularly common in the context of law enforcement strategies used in the "war on drugs," the "war on terror," "quality of life" policing initiatives, and policing of protests.²⁴

Statistics

However, few official statistics regarding the incidence and nature of the use of excessive force by police exist. In 2000, the U.S. Commission on Civil Rights commented that "[e]xperts cite the lack of reliable national statistics on police brutality as a problem when developing policies to prevent police misconduct."²⁵ In 1999, a National Institute of Justice report concluded that "[t]he incidence of wrongful use of force by police is unknown. Research is critically needed to determine reliably, validly, and precisely how often transgressions of use-of-force powers occur."²⁶

Notwithstanding this mandate from a division of the U.S. Department of Justice, as well as direction given in General Comment 21 to the ICCPR,²⁷ the U.S. government has yet to institute a federal data collection system documenting complaints, incidents, investigations, and prosecutions, as well as trends and patterns, of use of excessive force by law enforcement officers. As a result, there is no official assessment of the number of violations of the Covenant committed by law enforcement officers in the U.S.

The CAT recently called on the U.S. to create a federal database to facilitate the collection of "detailed statistical data, disaggregated by sex, ethnicity and conduct, on complaints related to torture and ill-treatment allegedly committed by law enforcement officials, investigations, prosecutions, penalties and disciplinary action relating to such complaints." The CAT believes the matter to be of such urgency that it has asked the U.S. government to report back on this recommendation within one year.²⁸

What statistics do exist confirm that racial minorities are disproportionately at risk of police misconduct and abuse. For instance, a study recently released by the U.S. government concludes that African Americans and Latino/as are more likely to report that they were searched by an officer following a traffic stop, or that force was used/or threatened by police.²⁹ In *Rights For All*, a 1998 survey of human rights abuses in the U.S., Amnesty International concluded that

Members of racial minorities 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.³⁰

Although national debates on policing of communities of color have focused primarily on impacts in African American and Latino communities, police abuse of Native Americans is also pervasive. As Amnesty International reported in *Rights for All*,

There have been complaints of brutality and discriminatory treatment of Native Americans both in urban areas and on reservations. Complaints include indiscriminate brutal treatment of [N]ative

people, including elders and children, during mass police sweeps of tribal areas following specific incidents, and failure to respond to crimes committed against Native Americans on reservations.³¹

That same year, the U.N. Special Rapporteur on Racism, Racial Discrimination, Xenophobia and other Related Intolerances concluded that law enforcement officers disproportionately used excessive force against people of color in the U.S.

In 2000, the U.S. Commission on Civil Rights revisited the findings of its seminal 1981 report on police practices and civil rights, *Who is Guarding the Guardians?*,³² and concluded:

Reports 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, which compounds the other injustices that they may suffer as a result of discrimination against their racial, ethnic, gender or economic status.³³

Deadly Excessive Force

Article 6 of the ICCPR provides that “[n]o one shall be arbitrarily deprived of his life.”

Uses of excessive force by law enforcement officers all too frequently result in the death of civilians. In New York and New Jersey alone, close to 150 people have been killed by law enforcement officers since September 11th, 2001, the majority of whom were people of color.³⁴ The following cases are illustrative of persistent patterns of deadly uses of excessive force in the U.S.:

- On June 29, 2004, Gus Rugley, a 21 year-old African American youth, was shot more than one hundred times after an alleged high speed chase with the police . The San Fransco Police Department claimed that Rugley opened fire at a police car. 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.³⁵
- Two African American men died in police custody as a result of excessive force inflicted by local law enforcement officers following their arrest for misdemeanor (i.e. relatively minor) offenses in Jacksonville, Florida in 2004.³⁶
- Nathaniel Jones died in police custody after he was severely beaten with metal nightsticks by the Cincinnati police in 2003. Police videotape showed officers repeatedly jabbing Mr. Jones after he had fallen to the ground.³⁷
- 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. Police claimed that they mistook the vegetable peeler she was using to try to open the door for a weapon.³⁸
- 19 year-old African American Timothy Jones, wanted on misdemeanor charges, was shot to death as he fled from police in 2001.³⁹
- In 1999, La Tanya Haggerty, an unarmed 19 year-old African American woman who was a passenger in a car pulled over by police, was killed by Chicago police officers who claimed to have mistaken her cell phone for a gun.⁴⁰

People 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 April 16, 2002, Santiago “Chago” Villanueva was experiencing an epileptic episode at work, and his co-workers called for an ambulance. Instead of paramedics, police responded first to the scene, handcuffed Mr. Villanueva, shouted profanities at him, claimed he was a drug addict, and forced him to the ground.⁴¹ “When police arrived on the scene they saw a Black man with dreads seizing on the ground and assumed he was on drugs. Officers harassed Mr. Villanueva and insisted that he speak English. They threw him on the ground and one officer put his knee on Mr. Villanueva’s neck while another placed a knee on his back.”⁴² 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.⁴³
- According to the Portland Independent Media Center, “[o]n April 1, 2001 Jose Mejia Poot, a 29 year old Mexican laborer who spoke little English, was shot and killed by Portland police officers at Pacific Gateway Hospital. Mejia had been taken to the psychiatric center after being arrested and beaten at a bus stop on 82nd Avenue in Portland. The TriMet bus driver called police after Mejia attempted to board the No. 72 bus twenty cents short on his fare. Numerous eyewitnesses described the excessive force used against Mejia during his arrest at the bus stop. Days after the shooting at the hospital, a grand jury acquitted Mejia’s killers of wrongdoing.”⁴⁴
- In 2000, Detroit police shot and killed Errol Shaw, Sr. an African American man who was both deaf and mute, alleging that he was threatening them with a garden rake. Mr. Shaw was 15 feet away from the officers at the time he was shot. Police further alleged that he refused to comply with their orders to drop the rake. Relatives and neighbors report that they attempted to warn the police that Mr. Shaw was deaf, to no avail.⁴⁵ The officer responsible was acquitted of manslaughter.⁴⁶

On October 8, 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. He picked up two knives and began smiling and dancing in the street. Police responded to the scene, ran up to him, and shouted and pointed their guns at him. Two minutes later, Mr. Akbar was dead. At no time did Mr. Akbar threaten anyone with the knives he was holding. A year later, no action had been taken against the officers involved.⁴⁷

In a subsequent letter to the editor, Mr. Akbar’s partner, a San Francisco District Attorney, asked “Why didn’t the police take steps to de-escalate the situation, rather than shouting and pointing their guns at him after running right up on someone clearly in a mental health crisis? Why the immediate use of lethal force? What about pepper spray, a stun gun or shooting to disable? Many different things could have been done to stabilize the situation while protecting Jihad, the police and the public.” He described Mr. Akbar as “an extraordinary person,” and as an “A” student, football captain at Berkeley High, and UC Berkley graduate. He was also a student leader, mentor to kids from the community and volunteered as a Big Brother and a Senior Companion. He worked in juvenile justice and AIDS prevention and was deeply committed to the struggle for human rights. However, “Jihad struggled with his demons too: major depression and addiction to methamphetamine. He was working to overcome both illnesses and, at the time of his killing, trying desperately to get into a residential treatment program.”

Even when use of excessive force does not result in death, it often leads to severe physical and mental pain and suffering, thereby violating Article 7 of the Covenant.

- Almost 15 years after the Rodney King case, a strikingly similar beating took place, in which a Los Angeles Police officer beat Stanley Miller 11 times about the head with a flashlight, causing substantial injury.⁴⁸ After a five month investigation, prosecutors declined to file charges against the officers responsible.⁴⁹

- In November 2004, Mrs. Afaf Saudi, a 68 year-old Egyptian U.S. permanent resident, was forcibly removed from a store in Greensboro, South Carolina after being accused of shoplifting. She was subsequently hog-tied and forcefully thrown into a police cruiser, breaking her shoulder and rib and causing a mild heart attack.⁵⁰
- 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 until she was released from police custody.⁵¹
- In 2003, Margarita Acosta, a 62 year-old Puerto Rican grandmother, was slapped and beaten by New York City police officers responding to a noise complaint during a Fourth of July picnic. She was then shoved into a police van without her shirt or shoes.⁵²
- In 2002, in a videotaped incident, sixteen-year old African American special education student Donovan Jackson was severely beaten by officers of the Inglewood Police Department while his hands were handcuffed behind his back.⁵³ State assault charges against one of the officers responsible were dropped after two trials in which jurors were unable to reach a verdict.⁵⁴

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 subzero weather. Witnesses reported that the man's chest and head had been urinated on during the incident.⁵⁵

Such incidents are not isolated, but merely illustrative of systemic patterns of abuse observed by NGOs across the U.S., disproportionately impacting people of color, immigrants, women, lesbian, gay, bisexual, and transgender people, youth, homeless people, sex workers, and other vulnerable groups, in violation of the non-discrimination provisions of the Covenant. 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 Americans, who make up less than 8% of the population of that city.⁵⁶
- In Chicago, from 2001-2003, 7,610 brutality complaints were lodged against Chicago police officers, yet meaningful discipline was only meted out in .08% of the cases: 6 officers were fired and 7 were suspended for 30 days or more. ⁵⁷ From 1998 to 2003, the City of Chicago received approximately 8,000 to 10,000 official misconduct complaints against police officers, of which 2,500 to 3,000 involved allegations of police brutality. Only one case in which police brutality was alleged resulted in a criminal prosecution.⁵⁸
- Close to 30% of outdoor sex workers and 14% of indoor sex workers who participated in studies conducted by the Sex Workers' Project of the Urban Justice Center in New York City reported experiencing physical abuse at the hands of police officers.⁵⁹ Similarly, a 2002 study of female sex workers found that police officers were identified as perpetrators of violence in a “substantial” number of cases.⁶⁰
- *Stonewalled: Police Misconduct and Abuse of Lesbian, Gay, Bisexual and Transgender People in the US* by Amnesty International, documents numerous cases of physical abuse based on gender identity and sexual orientation by law enforcement officers.⁶¹

The number, nature, and frequency of cases of excessive force by law enforcement officers 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.

"An [SFPD] officer who fatally shot a 17-year-old girl riding in a car driven by a wanted parolee testified that he had more than 20 citizen complaints about excessive use of force but had never been counseled. He was promoted 2 ½ years after the shooting and more than six months before the city paid \$505,000 to settle a lawsuit brought by the girl's family.

Another [SFPD] officer built a record as one of the department's most frequent users of force in his first year on the job but was picked to train new recruits even before his one-year probation period was complete. He was acting in that role when he broke a war protester's arm with his baton and then lied, claiming she had threatened him. That cost taxpayers a legal settlement of \$835,000."⁶²

Former Chicago Police Officer Rex Hayes, a well known "repeater beater" - as officers who repeatedly engage in use of excessive force are known - amassed over 65 official misconduct complaints and ten lawsuits, including cracking a man's skull causing permanent brain damage, breaking a woman's arm, and administering beatings causing severe pain and suffering. Instead of disciplining Hayes, the City of Chicago expended considerable funds defending him against these civil suits and paid over \$2 million to the victims of his crimes. After 20 years of abuse, from 1979 to 1999, he was ultimately terminated from the Department.⁶³

None of these police officers were ever prosecuted for their misconduct.

We urge this Committee to find the U.S. in violation of Articles 2, 6, 7, 10 and 25 of the Covenant and to recommend that the U.S. collect national statistics of allegations, disciplinary actions and prosecutions of excessive force by police officers, take preventative action at the national level that is informed by the data collected, and ensure that all law enforcement officers responsible for violating the rights guaranteed by the Covenant are duly investigated, prosecuted, and punished.

B. *The Reality: Unregulated Use of Electroshock Weapons (TASERs)*

Since June 2001 over 150 have people died in police custody in the U.S. after being shocked with TASERs.⁶⁴ There have been hundreds more instances of non-fatal cases of inappropriate and excessive TASER use, including incidents involving non-violent and unarmed children, elderly persons, and pregnant women, reported across the country.

During the July 2005 review of Canada's periodic report, the Human Rights Committee expressed concern regarding use of TASERs in Canada, and asked for the government of Canada to "indicate what the regulations are for the use of TASER guns by police" and also to "provide information on the results of any investigations conducted" into deaths that occurred due to TASER use.⁶⁵ The UN Committee Against Torture (CAT) recently expressed concerns about the "extensive use" of electroshock weapons in the U.S., and recommended that the U.S. government regulate them, restricting their use to instances in which they serve as a substitute for lethal force.⁶⁶ The CAT has previously acknowledged that "electro-shock instruments, including [T]asers" can "sometimes be used as instruments of torture."⁶⁷ During the CAT's 2000 review of the U.S., the Country Rapporteur inquired how "the administration, however brief, of an electric shock of 50,000 volts did not constitute cruel, inhuman, and degrading treatment."⁶⁸ Moreover, the Special Rapporteur on Torture noted that, while the use of TASERs can be legitimate in appropriate circumstances, their misuse constitutes torture or cruel, inhuman, or degrading treatment.⁶⁹

The U.S. government has previously acknowledged continuing allegations of "police abuse, brutality and unnecessary or excessive use of force, including inappropriate use of devices and techniques such as tear gas and chemical (pepper) spray, [T]asers or 'stun guns,' stun belts, police dogs, handcuffs and leg shackles."⁷⁰ Although its current report to this Committee refers to two cases in which officers were prosecuted for imposing "cruel and unusual" punishment using electro-shock weapons,⁷¹ in the vast majority of cases in which TASER abuse is alleged, officers are not even found to have violated departmental policies, much less prosecuted.⁷²

There are currently no federal or state standards limiting how and when TASERs can be used by law enforcement agents, and no national prohibitions on the use of TASERs against children, the elderly, pregnant women, or other individuals for whom a 50,000 Volt shock may be medically contraindicated.

We urge the Committee to find that U.S. government's failure to regulate the use of TASERs violates the Covenant and recommend the U.S. impose a moratorium on their use pending further research into their safety, or, at a minimum, develop and enforce appropriate national standards for their use.

"It is the most profound pain I have ever felt." – Firearms consultant describing the experience of being shot with a "TASER," quoted in The Associated Press, 12 August 2003.

"I felt this excruciating pain, and I was immobilized...you can't think or move...I fell to the floor and I crumbled up in the fetal position." – 68 year-old great grandmother shot with a TASER while sitting on a bench in a police precinct waiting room.

"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. The use of these weapons by law enforcement agents has become increasingly widespread in the U.S. since their invention in the 1970s.⁷³ According to TASER International,

the main manufacturer of the devices, currently, over 7,000 U.S. law enforcement agencies in 49 U.S. states use TASERS.⁷⁴ As of July 2005, 1,735 law enforcement agencies in the country were at “full deployment,” meaning that every patrol officer on the force carried a TASER.⁷⁵

TASERS can strike a person from a distance of up to 25 feet, or can be applied directly to the skin.⁷⁶ They fire two fish-hook like barbed darts that remain attached to the gun by wires, and are made to penetrate up to two inches of the a person’s clothing or skin.⁷⁷ These darts deliver a high-voltage, low amperage, electroshock along insulated copper wires for approximately five seconds.⁷⁸

Notwithstanding the manufacturer’s claims that there is no risk of death or serious physical injury as a result of TASER use, experience has proven otherwise. TASERS have caused or contributed to over 150 deaths. While cardiac arrest and drug intoxication appear to be the most commonly listed causes of death following TASER shock, many medical authorities have conceded that cardiac arrest can be induced by TASER shock. For instance, in a letter published in *The New England Journal of Medicine* in September of 2005, physicians reported that a TASER caused a teenager in Chicago to go into ventricular fibrillation, a fatal heart disturbance,⁷⁹ and medical examiners have cited TASERS as a cause or contributing factor in 27 deaths.⁸⁰ A member of a team at the University of Wisconsin currently conducting the first U.S. government study on TASER safety concedes that electric shock near the heart can contribute to ventricular fibrillation, particularly in individuals who have used cocaine.⁸¹ A recent study published in the peer-reviewed *Journal of the National Academy of Forensic Engineers*, concluded that TASER shocks were 39 times stronger than claimed by the manufacturer, and could cause fatal heart arrhythmias.⁸² This study represents one of the few conducted to date in which no representatives of the TASER manufacturer were involved.⁸³

Severe and sometimes permanent non-fatal injuries have also resulted from TASER use. In fact, a number of police officers who “volunteered” to be shocked during training in TASER use have suffered spinal fractures, ruptured discs, burns, dislocations and soft tissue injuries.⁸⁴

In the absence of national standards and regulations, many law enforcement agencies rely on training materials produced by TASER International.⁸⁵ These materials have been characterized as exaggerating TASER safety and misrepresenting research on the risks associated with TASER use, particularly where individuals under the influence of controlled substances are concerned. They also encourage multiple uses of the weapon.⁸⁶

“Subject was given several commands, but did not comply.” – statement used by a Palm Beach, Florida Sheriff’s deputy to obtain supervisory approval to use a TASER on a 115 pound 15 year old girl.⁸⁷

The failure of the U.S. government to control the use of TASERS is indefensible, not only because of the severe pain inflicted by the weapon and the dangers associated with its use, but also because of numerous reports pointing to pervasive police abuse connected to the use of TASERS. These reports suggest that TASERS are commonly used to secure compliance in routine arrest and non-life-threatening situations.⁸⁸ TASER International itself found that 76.9% of circumstances in which TASERS were used involved suspects who were unarmed, and that the most common reason given for their use was “verbal non-compliance” – or, in other words, arguing with the police.⁸⁹ A Florida newspaper which reviewed 1000 police reports in a study on TASER use by South Florida police found that “[o]ne out of every four suspects shocked with TASERS was unarmed, nonviolent, and not posing any apparent immediate threat,” and almost half were being arrested on misdemeanor charges.⁹⁰

Twenty-six year old Jeremy J. Miljour was “accidentally” shot in the genitals with a TASER by a Florida police officer after he failed to comply with an order to stop when approached by a group of officers responding to complaints that a man was breaking windows and exposing himself to women.⁹¹

Multiple Shocks

Officers often shock individuals with TASERs not once, but multiple times, in many instances even after they have already been restrained with handcuffs.⁹² For instance, Andrew Washington of Vallejo, California was shocked 17 times in three minutes with a TASER by police because he fled after hitting a parked car. Officers only stopped shocking him when he noticed that he was having trouble breathing. Washington, 21 and a father of one, died after being transported to the hospital.⁹³

TASER use on Pregnant Women and Elderly People

“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.⁹⁴

There have been a number of reports from around the country indicating that TASERs are being used against pregnant women, as well as unarmed elderly persons, children – some as young as one year old - and mentally disturbed or intoxicated individuals.⁹⁵ In one case, a woman who was 12 weeks pregnant who refused to undergo a strip search in a Florida jail was shocked with a TASER and later suffered a miscarriage.⁹⁶ While some departments have policies limiting the use of TASERS against pregnant women, children, and the elderly, many others do not.⁹⁷

- Police shot a 71-year-old blind woman four times in the back and once on her right breast with a TASER on June 9, 2003 in Portland, Oregon. At the time she was shocked, Eunice Crowder was trying to retrieve her possessions, which had been taken from her property and placed on a truck by a city official. The Portland police admitted no wrongdoing, but in 2004 Ms. Crowder received a \$145,000 settlement from the city.⁹⁸
- 75-year-old grandmother Margaret Kimbrell was shot in the back with a TASER by a North Carolina police officer, knocking her to the ground, when she refused to leave a nursing home where she was visiting a friend in 2005.⁹⁹
- Louise Jones, an unarmed 66 year-old African American woman, was shocked twice with a TASER in her home because she protested when an officer came to her door to issue her a traffic ticket for honking her car horn at a police vehicle earlier in the day in Kansas City in 2004.¹⁰⁰

TASER use on Schoolchildren

TASERs are used on unarmed children with alarming frequency in the U.S. Thirty two percent of police departments interviewed by TASER International used TASERs in schools.¹⁰¹

- 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.”¹⁰² In other cases, police repeatedly shocked students already in handcuffs.¹⁰³
- On March 1, 2005, a 15 year-old girl who had been suspended from her Minnesota high school was TASED by a police officer when she refused to leave the school premises.¹⁰⁴
- 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.¹⁰⁵

- In May of 2004, a nine-year old runaway was shocked with a TASER when she was already handcuffed, subdued, and sitting in a police vehicle because she began to kick at the car and bang her head. No charges were brought against the officer involved, as the state prosecutor believed that the use of a TASER was justified under the circumstances.¹⁰⁶

“I was hearing reports of Tasing for jaywalking, a 75-year old woman, a 5 foot, 100 pound high school girl by a 200 pound officer...I know she may have a big mouth, but was it necessary to Tase her?” – Florida State Senator Gary Siplin, whose bill proposing to limit TASER use to violent or threatening criminals died in committee¹⁰⁷

Disproportionate Use Against People of Color

There is also evidence suggesting that TASERs are disproportionately used against people of color. For instance, recent reports from Houston, Texas, where 3,700 officers have been issued TASERs, indicate that nearly 90% of cases in which they are used involve Latino/as and African Americans.¹⁰⁸ 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.¹⁰⁹ Tony Hill, a Florida State Senator, noted that many incidents of TASER use on children in his district were against African American youth.¹¹⁰

Calls for Regulation and Restrictions on the Use of TASERs

The International Association of Police Chiefs recently called for the development of policies providing for medical protocols following TASER use and comprehensive officer training and reporting systems, and recommended that TASERs not be issued to every officer.¹¹¹ In October 2005, the Police Executive Research Forum, composed of police chiefs and academics, recommended restrictions on TASER use, limiting them to situations where a subject is “aggressively resisting arrest,” and proposed policy and training guidelines.¹¹² The Federal Law Enforcement Training Center (FLETC) has recommended a standardized training program on the use of TASERs to ensure that TASERs are appropriately located on the use-of-force continuum developed by the Center,¹¹³ just below use of lethal force, rather than at the same level as use of pepper spray or even worse, when an individual is passively resisting an officer’s verbal commands. The FLETC also recommends additional independent research into TASER safety and deployment.¹¹⁴

In light of the often deadly consequences of TASERs, some police departments have stopped expansion of TASER use, including the City of Chicago, which cancelled an order for additional TASERs after a 14 year-old boy went into cardiac arrest and a 54 year old man died in the same week after being shocked with TASERs.¹¹⁵ Several departments have filed lawsuits against the manufacturer, claiming they were misled about the weapon’s safety.¹¹⁶ Blacks in Government, representing 10,000 African American federal, state and local government employees, recently passed a resolution calling for a moratorium on TASER use pending further independent study.

But perhaps the most damning statement on TASER safety comes from the U.S. Army, which has banned TASERs from certain facilities,¹¹⁷ and concluded last year that TASERs could cause seizures and ventricular fibrillation, and that shocking soldiers with “stun guns” during training exercises was not recommended.¹¹⁸

Violations of the Covenant

The inappropriate use of TASERs violates Articles 6 & 7 of the Covenant, which state that “[n]o one shall be arbitrarily deprived of ... life,” and that “no one shall be subjected to torture or cruel, inhuman and degrading treatment or punishment.” The U.S. government’s failure to regulate TASER use at the federal level and

mandate training and supervision of officers to whom TASERs are distributed, represents a failure to "...take necessary steps . . .to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant" as required by Article 2(2) of the Covenant. Indeed, the U.S. government is not merely failing to take *necessary steps*; it is not taking *any steps* at all to prevent these acts of torture or cruel, inhuman or degrading treatment.

The disproportionate use of TASERs on people of color and people with physical and mental disabilities violates Article 2 (1) that states, "[e]ach State Party to the Covenant undertakes to respect and to ensure to all individuals...the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex...or other status," as well as Article 26, which prohibits discrimination of any kind.

Additionally the pervasive use of TASERs to secure compliance in routine arrest and non-life threatening situations violates Article 10, which mandates that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

U.S. Government's Refusal to Regulate TASER Use

During the CAT's review of the U.S. government's compliance with the Convention Against Torture in May, 2006 the U.S. government asserted that TASER use is consistent with the 8th Amendment of the U.S. Constitution, and therefore permissible under U.S. law.¹¹⁹ The U.S. government also maintained that TASERs obviate the need to use more deadly force, thereby saving lives, but offered no data to support this claim.

In response to the CAT's call for the U.S. government to regulate TASER use, the U.S. government responded that it does not regulate the activities of local law enforcement agencies, preferring to leave such regulation to local authorities. This assertion is belied by the fact that the federal government *already* regulates local law enforcement agencies under existing statutes, including:

- The Violent Crime Control and Law Enforcement Act of 1994, which imposes a number of obligations on local law enforcement agencies as a condition of receiving federal funding, including implementation of a registration program for sex offenders;
- The Omnibus Crime Control and Safe Streets Act of 1968,¹²⁰ which prohibits discrimination based on, *inter alia*, race or gender by law enforcement agencies receiving federal funds under the statute.
- The U.S. government also recently considered passage of the CLEAR Act (H.R. 3137, S. 1362), which would have required local law enforcement agencies to assist federal authorities in the enforcement of federal immigration laws.

We urge the Committee to conclude that the U.S. government's failure to regulate or control the use of TASERs clearly violates Articles 2, 7 and 10 the Covenant and to recommend an immediate moratorium on TASER use by law enforcement officers pending a rigorous, independent and impartial inquiry into their use and effects, or, at a minimum, federal regulation of TASERs restricting their use to instances in which they would substitute for lethal force.

C. *The Reality: Torture and Cruel, Inhuman, and Degrading Treatment During Interrogations*

Existing research reveals that the extraction of false confessions by law enforcement officers through infliction of physical or mental suffering remains persistent throughout the U.S. Courts, social science researchers, legal scholars, and journalists have discovered and documented numerous instances in the U.S. in which confessions have been coerced through the use of excessive force by law enforcement officers over the past decade.¹²¹ For example, it is well established that between 1972 and 1991, 135 African American men in the City of Chicago, Illinois were tortured by former Police Commander Jon Burge and detectives under his command at Area 2 and 3 Police Headquarters. The torture included the use of electric shocks to genitals, suffocations with plastic bags, mock executions, and physical beatings to extract confessions from suspects.¹²² Authorities have yet to bring the perpetrators to justice, including the torturers and the officials who continually covered up these crimes, or to implement measures that would prevent such conduct in the future.¹²³

Article 14 of the Covenant guarantees the right “[n]ot to be compelled to testify against [one]self or to confess guilt.” In General Comment 20 to the ICCPR, this Committee made it clear that “statements or confessions obtained through torture or other prohibited treatment”¹²⁴ are not permissible. The Committee went on to describe safeguards that signatory States should implement to prevent such incidences, including, “keeping under systematic review interrogation rules, instructions, methods and practices,” and, noting that “the time and place of all interrogations should be recorded, together with the names of all those present.”¹²⁵

While the recent U.S. report to the CAT references legislation enacted by the State of Illinois in 2003 requiring videotaped interrogations of homicide suspects, as well as similar legislation adopted by the states of Alaska and Minnesota, the federal government has taken no similar or additional steps to prevent the use of torture in police interrogations, nor has it taken any steps to remedy violations in the past.¹²⁶ Moreover, the U.S. government does not engage in any systemic review at the federal level or local law enforcement agents’ interrogation practices.

We urge this Committee to find the U.S. government in violation of Articles 2, 7, 10, and 14 of the Covenant, and to recommend that the U.S. government take immediate steps at the national level, including mandating videotaping of interrogations in all cases, to prevent and punish the extraction of coerced confessions.

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,¹²⁷ 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.”

While it has perhaps receded from public view in light of the egregious abuses committed in these other contexts, torture and cruel, inhuman or degrading treatment by law enforcement agents during interrogations and in police custody continues to take place with alarming frequency within the U.S. This should come as no surprise, as some of the military personnel responsible for U.S. treaty violations overseas are former law enforcement and/or corrections officers who were alleged to have engaged in cruel, inhuman, and degrading treatment at the police station or prison where they were employed in the U.S. prior to being deployed overseas. For instance, one of the military personnel cited for perpetrating human rights violations

at Abu Ghraib, Charles Graner, was a former corrections officer in the U.S.¹²⁸ During his 7 year tenure as a correctional officer (1994-2000), ending in his termination in 2000, numerous allegations that he engaged in cruel, inhuman, and degrading treatment were made by both fellow staff and prisoners.¹²⁹ However, such links between torture by U.S. soldiers overseas and ongoing torture by U.S. law enforcement agents on American soil are rarely made in public discourse.

While it is true that as a matter of law, the Fifth and Fourteenth Amendments of the U.S. Constitution prohibit the use of coerced confessions at trial, as a matter of practice such confessions are routinely elicited and used against individuals in criminal proceedings. In the vast majority of criminal cases where allegations of torture or coercion by law enforcement officers are made, attorneys acting on the behalf of the State choose to discredit the allegations of physical abuse by the victim/defendant in order to admit the illegally obtained statements to successfully prosecute and convict the defendant, rather than investigating the defendants' allegations and prosecuting the police officers culpable for the torture. In most cases, the criminal defendant shoulders the burden of proving that his or her confession was coerced through torture or use of excessive force, and is often unsuccessful when in a swearing match against a law enforcement official. As a result, in far too many criminal cases confessions are admitted.

Moreover, law enforcement officers who have engaged in torture for the purpose of extracting confessions in the U.S. continue to escape prosecution while individuals from whom the confessions were coerced continue to languish in prison.

The Burge Torture Cases – One Illustrative example

From 1972 to 1991, approximately 135 African Americans were tortured by former Police Commander Jon Burge and detectives under his command at Area 2 and 3 Police Headquarters in Chicago, Illinois. The torture was intentionally inflicted to extract confessions, and the techniques included electrically shocking men's genitals, ears and lips with cattle prods or an electric shock box, suffocating individuals with plastic bags, mock executions, and beatings with telephone books and rubber hoses about the head and body.

A wealth of evidence, numerous judicial decisions,¹³⁰ and several admissions by the City of Chicago¹³¹ 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 of the Chicago Police Department concluded after reviewing 50 different cases in 1990 that:

As to the matter of alleged physical abuse, the preponderance of the evidence is that abuse did occur and that it was systematic. The time span involved covers more than ten years. The type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture. . . . The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular 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. This conclusion is also supported by the number of incidents in which Area 2 offices are named, as well as the location of the abuse.

Although there is no doubt that these officers committed torture proscribed by Article 7 of the Covenant,¹³² not a single officer or member of the chain of command has been prosecuted for the torture or conspiracy to obstruct justice by covering up these crimes. In fact, most of the officers involved have never been sanctioned in any manner whatsoever and continue to enjoy impunity. While Burge was ultimately fired

from the Police Department in February of 1993, he continues to receive his police pension. No other officer involved was terminated. In fact, many of the officers were promoted and allowed to retire with their full pensions.

The victims, on the other hand, continue to suffer the lasting effects of the torture. At least 24 individuals are still incarcerated as a result of convictions based in whole or in part upon coerced confessions. Other individuals have served their sentences, but continue to suffer the stigma of their wrongful convictions. While most of the victims continue to suffer the psychological effects of torture and have been diagnosed with post-traumatic stress disorder and other forms of mental anguish, they are without resources to obtain any treatment.

For the past thirty years the U.S. has failed to take effective measures to stop torture by members of the Chicago Police Department. Throughout Burge's command, governmental officials were repeatedly provided concrete and credible information of the torture and asked to take action. Although numerous investigations into this matter have taken place to date, none have resulted in a criminal prosecution. Most notably, Richard M. Daley, then a 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 at the hands of Burge and his men as early as 1982.¹³³ Instead of initiating an investigation, Daley prosecuted the individual who was tortured for the murders of two police officers, explicitly relying on his coerced confession elicited by torture. As a result of Daley's failure to take any action in 1982, Burge and his men, unpunished and undeterred, tortured and abused an additional sixty-eight known victims with impunity at Chicago's police headquarters. Moreover, as Mayor of Chicago, Richard Daley has taken no action to address this serious pattern and practice of torture. Instead, he has continually sought to suppress information. Daley, on behalf of the City, continues to expend large sums of money to defend the police officers involved against allegations of torture and to support their denials that any torture ever took place.¹³⁴

In recent hearings before the CAT, the U.S. Government responded to concerns raised about these cases by referring to the appointment of a Special Prosecutor to investigate the Burge torture cases. Although this Special Prosecutor was appointed over four years ago, not a single officer has been indicted or prosecuted to date. It is apparent that this Special Prosecutor will not indict, and has implied in pleadings filed on April 29, 2006 that the statute of limitations is an impediment to prosecution.¹³⁵

Torture victims, their family members, members of the African American community, and activists continue to seek justice in this case.

Torture of individuals in police custody by law enforcement officers in the U.S. is by no means limited to the Chicago area, or to the period over which the Chicago torture cases took place. 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.¹³⁶ It is estimated by legal scholars that psychologically coercive interrogations have led to at least 125 false confessions and wrongful convictions nationwide in the last 20 years.¹³⁷

We urge the Committee to conclude that the U.S. government is in violation of Articles 2, 7, 9, and 10, of the Covenant, and to recommend that a federal criminal prosecution be initiated to fully hold Chicago Police officers and officials who have engaged in or condoned torture responsible. Further, we ask the Committee to recommend that the U.S. government take action to provide a relief to the Chicago torture victims who remain behind bars due to their

wrongful convictions. Finally, we urge the Committee to recommend that the U.S. institute national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents contributing to the extraction of coerced confessions.

III. Rape & Sexual Assault

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 of failure by the State to prevent the occurrence of this crime, violates the human right to physical and mental integrity.¹³⁸

To date the U.S. government has not explicitly recognized rape and sexual assault by law enforcement officers as forms of torture.¹³⁹ Moreover, the federal government currently has no measures in place to systematically document, monitor and prevent rape and sexual abuse by law enforcement officers, as required by Articles 2 and 7 of the Covenant.

Credible evidence exists 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 in the U.S. Sex workers and homeless people in particular report endemic extortion of sexual favors by police officers in exchange for leniency or to avoid routine police violence against them, as well as frequent rapes and sexual assaults.

Sexual harassment and assault of women subjected to traffic stops has also been reported in a number of jurisdictions. Latina immigrants, both documented and undocumented, are routinely raped by local law enforcement and Border Patrol in the borderlands between Mexico and the U.S. While several high profile criminal prosecutions of officers charged with sexual assaults or rapes of women have taken place, including those cited in Paragraph 131 of the U.S.'s report to the Committee, reports indicate it is far more pervasive than the limited number of prosecutions suggest, and takes 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.

"The police are not here to serve; they are here to get served... Every night I'm taken into an alley and given the choice between having sex or going to jail."¹⁴⁰

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 in the U.S. 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 U.S. suggest that such misconduct and abuse is far more prevalent than acknowledged by the U.S. government, suggesting that sexual abuse by local, state, and federal law enforcement officers remains one of the U.S.'s "dirty little secrets."

Ernest Marsalis had an openly abhorrent record of abusing women while serving as a Chicago police officer. 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.¹⁴¹

In the absence of State information gathering mechanisms regarding this particular form of torture, much of the publicly available information about rape and sexual assault of women by law enforcement agents concerns cases in which criminal charges were brought against the abusers. Yet these cases appear to represent merely the tip of the iceberg. Such incidents are in fact rarely reported, much less prosecuted. For instance, Amnesty International recently documented numerous cases of rape and sexual assault and abuse of lesbian, gay, bisexual and transgender people by law enforcement officers in numerous cities across the U.S.¹⁴² Yet many of the survivors who courageously came forward to report these human rights violations to Amnesty International had never reported the incidents to the authorities for fear that they would not be believed, would be subject to exposure of their sexual orientation or gender identity, would suffer retaliation by police officers, would be deported because they were undocumented, or because they were involved in sex work or use of controlled substances they feared that they would be charged with a crime if they lodged a complaint against the police.¹⁴³

Similarly, rape and sexual violence by law enforcement officers on the border between the U.S. and Mexico is reported to be rampant, yet many new immigrants and undocumented women are unaware that complaint mechanisms exist, or don't report the abuse for fear of deportation.¹⁴⁴

This is by no means surprising in light of the fact that it is estimated that overall only a little over a third of rapes and sexual assaults are reported to the authorities.¹⁴⁵ One can only imagine that this rate is far lower among women who are raped or sexually assaulted by the very law enforcement agents who are charged with protecting them from violence. Threats of retribution and retaliation against women who report sexual assault by police officers are commonplace, while prosecutions of law enforcement officers for criminal acts are rare. Moreover, law enforcement officers tend to target women who are criminalized, marginalized or otherwise vulnerable, thereby further reducing the likelihood that their conduct will be reported. Sexual assault in the context of police responses to domestic violence has also been reported across the country. For instance, in another rare case in which criminal charges were brought and a conviction obtained, in February of 2004, an 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.¹⁴⁶

Given the fear of retaliation many women who have experienced sexual assault at the hands of law enforcement officers report, and the general reluctance of prosecutors, who work closely with police, to bring charges against them, complaint-based accountability mechanisms such as criminal prosecutions of police officers provide an inadequate remedy for such abuses. Yet, in its recent report to the CAT, as well as its responses to questioning by Committee members, the U.S. relies exclusively on its record of prosecutions of law enforcement officers for sexual misconduct – less than 30 prosecutions over a period of almost 7 years – as evidence of its compliance with the prohibition against torture and cruel, inhuman or degrading treatment.¹⁴⁷ In light of the information available to NGOs in the U.S., this record suggests an appalling lack of concern or action on an issue which appears to give rise to widespread and endemic violations of individuals' rights under the Covenant.

Rape and Sexual Assault of Sex Workers

Women working in the sex trade in particular report rampant sexual abuse by law enforcement officers.¹⁴⁸ For instance, a 2002 Chicago-based study of women in the sex trade found that 30% of exotic dancers and 24% of street-based sex workers who had been raped identified a police officer as the rapist. Approximately 20 percent of other acts of sexual violence reported by study participants were committed by the police.¹⁴⁹

According to two studies released by the Sex Workers' Project of the Urban Justice Center in New York City, up to 17% of sex workers interviewed reported sexual harassment and abuse, including rape, by law enforcement officers.¹⁵⁰ For more information concerning the results of these studies, and ongoing and pervasive violations of the human rights of sex workers in New York City, please see the submission of the Sex Workers' Project to the Committee attached as Appendix A to this report.

Officer Roger Magaña of the Eugene, Oregon police department was convicted in 2004 of sexually abusing more than a dozen women over a period of eight years. Officer Magaña preyed on 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. 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. In others, he conducted inappropriate and abusive searches of women on the side of the road. Magaña's threats of retaliation in the event any of the women he assaulted reported him allowed him to engage in such conduct with impunity for almost a decade before he was investigated by his department. One woman told of Magaña putting his service weapon up against her genitals and saying he would "blow her insides out" if she told anyone. Many of the women who eventually came forward said they initially did not report the abuse because they feared they would not be believed. 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 and one of his fellow officers, and that the complaints were dismissed as the "grumbings of junkies and prostitutes."¹⁵¹

Sexual Violence Against Transgender Women

Transgender women and gender non-conforming individuals are also disproportionately subject to rape and sexual abuse by law enforcement officers. For instance:

- A Native American transgender woman reported to Amnesty International that, in October 2003, at around 4 a.m, two LAPD officers pulled over and told her they were going to take her to jail for "prostitution." She told the officers she was just walking and not engaged in sex work. The officers handcuffed her, put her in the patrol car and drove her to an alley. One of the officers pulled her out of the car, still handcuffed and began hitting her across the face, saying "you fucking whore, you fucking faggot." Then grabbed her by the mouth, covering it while he continued hitting her. 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.¹⁵²
- 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 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.¹⁵³

Sexual Assaults and Rapes in the Context of Traffic Stops

Sexual assault and rape of women stopped by police for traffic offenses is also reported with alarming regularity. For instance:

- A 2002 report, *Driving While Female*, documented over 400 cases of sexual harassment and abuse by law enforcement officers in the context of traffic stops across the U.S. Only 100 of these cases resulted in

any kind of sanction. The authors of the report concluded “there 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.”¹⁵⁴

- In 2001, a rash of cases came to light in which law enforcement officers in Suffolk and Nassau Counties in New York State were found to have forced women to perform sexual acts and/or strip in public.¹⁵⁵ In two cases, officers were alleged to have forced women to have sex with them after pulling them over for traffic infractions. In another, instead of issuing a traffic citation, an officer forced a woman to walk home in her underwear.¹⁵⁶
- In 2005, two New York City police officers followed a 35 year-old 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.¹⁵⁷

Abusive Searches

Moreover, individuals and advocates 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 than the person being searched, have been reported in several jurisdictions. Officers at Brooklyn, New York’s Central Booking facility are reported to frequently humiliate detainees by having them remove their clothing in front of groups of other prisoners, including those of a different gender. One woman reports that an officer grabbed her bra and pulled it up in a location where she could see cells holding both men and women, many of whom were laughing at her.¹⁵⁸ Transgender women and gender nonconforming individuals in particular report frequent invasive and abusive searches, including strip searches, performed under circumstances that do not warrant a search under U.S. or international law, such as for the sole purpose of ascertaining their genital status.

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 “bitch.”
- Two weeks later, while standing in the stairway outside her apartment Chicago police officers grabbed Ms. Bonds and smacked in her face which caused her to urinate on herself. She was then forced into her home, and forced to watch the officers conduct an illegal and destructive search. The officers then forced her 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 apartment building, grabbing her by the throat, and threatening to beat her “motherfucking ass.”
- Approximately, one year later, on March 29, 2004, Ms. Bonds was once again attacked by the Chicago police, who sprained her arm.

None of the officers have been disciplined or prosecuted for their continuous torture and terror of Ms. Bonds.¹⁵⁹

Rape, sexual abuse, coerced sexualized conduct, or violations of bodily integrity through inappropriate or abusive strip searches, violate not only prohibitions against torture and cruel, inhuman and degrading treatment, but also prohibitions against violations of the Covenant committed based on “distinctions of any kind.”

We urge the Committee to find the U.S. government in violation of Articles 2, 3, 7, 17 and 24 and to recommend that the U.S. government take immediate steps to document, systemically review, prevent and punish rape, sexual assault and abusive strip searches by law enforcement officers.

IV. Police Brutality in the Wake of Hurricanes Katrina & Rita

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 individuals struggling to survive under the horrifying conditions that prevailed in the city in the days following the hurricane.

The conduct of law enforcement and military personnel stationed in New Orleans since Hurricanes Katrina and Rita devastated the Gulf Coast of the U.S. violated Article 4 of the Covenant, which provides that in times of national emergencies, the rights guaranteed by the Covenant shall not be violated in a manner involving “discrimination solely on the ground of race, colour, sex, language, religion or social origin.” In many instances, the U.S. government also violated *The Guiding Principles on Internal Displacement* issued by the Secretary General of the United Nations, which outlines internationally recognized rights and guarantees of persons who have been forcibly displaced from their homes due to natural disaster.¹⁶⁰ These principles mandate, *inter alia*, that “[i]nternally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.”¹⁶¹

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.’s Second and Third Periodic Reports to the Committee, even though the events in question took place approximately three months before the report was submitted, and are considered one of the worst disasters in U.S. history. Nevertheless, we urge the Committee to take this opportunity address the conduct of military and law enforcement officers and agencies in the days and weeks following Hurricane Katrina during its review of the U.S. Report.

“They have M-16s and are locked and loaded. These troops know how to shoot and kill and I expect they will.” – Louisiana Governor Kathleen Blanco.¹⁶²

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 individuals desperate for food and water 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.

Such conduct violates the Committee’s mandate in General Comment 29 that, “[i]f States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, ... they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation.”¹⁶³ In some cases, conduct by law enforcement agents violated several articles of the Covenant, including the prohibition against torture and cruel, inhuman and degrading treatment contained in Article 7 which can never be violated, even during a natural catastrophe.¹⁶⁴ For instance:

- In one incident, three days after Katrina struck, “officers 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.”¹⁶⁵

- 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.”¹⁶⁶
- Police told a relief worker as he was being taken into custody for carrying a penknife that they “could just shoot him and throw him in the river, no one would know.”¹⁶⁷
- 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.¹⁶⁸

Additionally, police officers and soldiers charged with evacuating areas of the Gulf Coast often discharged their duties in an abusive fashion, using excessive force. In one case, an armed officer was reported to have pointed a rifle at children in an evacuation shelter and ordered them to settle down. In another an African American transgender woman was arrested for taking a shower.

Ronald Madison, 40, was mentally disabled and lived at home with his mother in New Orleans. He had no criminal record. He was shot five times when police responded to a report of gunfire on a bridge over the flooded Industrial Canal on Sunday, September 4, 2005, six days after Katrina. The Police Department said Ronald Madison “was confronted by a New Orleans Police Officer. The suspect reached into his waist and turned toward the officer who fired one shot fatally wounding him.” No weapon, however, was found on or near Ronald Madison’s body, and autopsy results contradict the police account, documenting five separate gunshot wounds in Ronald Madison’s back. Three went through the body and exited in front. There were two other wounds in his right shoulder. None of the shots entered his body from the front. “Clearly he was shot from behind,” said New York pathologist Dr. Michael Baden.¹⁶⁹

In the days following Katrina, makeshift outdoor detention areas were established in New Orleans behind a bus terminal and on a highway overpass. Arrestees were held by law enforcement and military personnel for days in open-air cages surrounded by chain-link fencing topped by razor wire, in an area extending from a concrete train platform to an overhang about 15 feet high.¹⁷⁰ Nearly all the individuals detained in the baking sun with no shelter, no place to sit other than the concrete, and minimal toilet facilities, were arrested for offenses related to seeking water, food and other necessities.

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 world renown Bourbon Street looking to buy a pack of cigarettes, as numerous white revelers were stumbling around carrying cocktail glasses around him, 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. Mr. Davis was subsequently charged with public intoxication, resisting arrest, battery on a police officer, and public intimidation. The charges against him were later dropped. Mr. Davis maintains he hasn’t had a drink for over 25 years.¹⁷¹

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, armored Humvees, Black Hawks, and Chinooks.”¹⁷² At a recent City Council hearing, a newly formed group, Safe Streets/Strong Communities, testified about ongoing police misconduct and abuse, including cases of public strip searches and incidents in which individuals’ heads were slammed against hard surfaces by law enforcement officers. Many of those experienced such violations were poor, Black, or Latino/a. One speaker testified that he had been attacked by officers in early March, 2006 who punched and kicked his face and side, detained him for four hours in a police car, and destroyed his truck, during which time one officer said “[t]his is what I joined the Police Department for: to put black people away.”¹⁷³

On Tuesday, 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 haematoma on her 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 is calling for a federal investigation, noting that incidents of this type were common in New Orleans even before Hurricane Katrina struck.¹⁷⁴

The brutality of law enforcement in the wake of Hurricane Katrina is not only limited to the streets of the Gulf Coast region, it also manifests in jails and prisons in the area. Immediately following Hurricane Katrina, NGOs began documenting abuses such as prisoners being left to drown in their cells. “As Hurricane Katrina began pounding New Orleans, the sheriff’s department abandoned hundreds of people imprisoned in the city’s jail. Inmates in Templeman III, one of several buildings in the Orleans Parish Prison compound, reported that as of Monday, August 29 [one day before the hurricane] there were no correctional officers in the building, which held more than 600 inmates. These inmates, including some who were locked in ground-floor cells, were not evacuated until Thursday, September 1, four days after flood waters in the jail had reached chest-level.”¹⁷⁵

Abuses were not limited to those detainees who were not evacuated from New Orleans. Some 450 inmates from the Jefferson Parish Prison were taken to the correctional facility in Jena, Louisiana. Formerly a facility for juveniles, Jena had been shut down as a result of serious abuse of the juveniles who had been held there, but was re-opened to house inmates evacuated because of the hurricane. According to inmates, they were locked into dorms at Jena and not allowed to use any telephones, even though they had no idea what had happened to their families and their families did not know where they were. When some inmates began yelling at the guards demanding to use the phones, the guards responded with abuse.”

“Inmates at Jena claim that correctional officers have beaten, kicked and hit them while they were shackled. In addition, they claim that officers have forced inmates to stay kneeling for several hours at a stretch, and then hit them if they fell. They also say that officers sprayed the walls with chemical spray that inmates believed was mace and forced inmates to hold their faces against the sprayed walls. When some inmates became ill and vomited, officers wiped their faces and hair in the vomit, they said.”¹⁷⁶

We urge the Committee to request that the U.S. government 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.

V. Race and Gender-Based Policing

Racial Profiling

We refer the Committee to the submission of 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*¹⁷⁷ for more information on persistent and pervasive racial profiling in the U.S. In addition to the issues raised therein, we wish to call the Committee's attention to a particular instance in which the racial profiling practices inherent in the "war on drugs" and the "war on terror" converged in the lives of a South Asian community in the state of Georgia, as well as to the particular impacts of racial profiling on women of color.

Operation Meth Merchant

South Asian convenience store owners and store clerks in northwest Georgia were discriminated against on the basis of race, national origin, ethnicity, and lack of English proficiency, in violation of Articles 26, 23, 18, and 27 in a recent law enforcement sting dubbed "Operation Meth Merchant."

In the summer of 2005, federal and Georgia state law enforcement agencies targeted South Asian convenience store operators for selling household products with the alleged knowledge that the buyers would use those items to produce the illegal drug methamphetamine ("meth"). Even though only 19.3% of stores in the pertinent area were South Asian owned and operated, 23 out of 24 businesses indicted were South Asian owned and 44 of 49 individuals prosecuted were South Asians.¹⁷⁸ South Asian owned stores were therefore 95% more likely to be targeted than similarly situated non-South Asian owned stores.¹⁷⁹

Law enforcement officials used criminal informants to conduct controlled buys in convenience stores to gather evidence in this operation. The criminal informants were mostly white men already charged with using, producing, or selling meth. They were either paid or promised reductions in sentences for cooperation in the sting operation. The government ignored the informants' leads to white owned stores, and instead sent the informants to conduct buys at the South Asian owned stores.¹⁸⁰ These actions not only violate Article 26 of the ICCPR, but also violate the U.S. Constitution's equal protection and due process standards.

The South Asian store operators' limited English ability made them easy targets for government discrimination, possibly violating U.S. law requiring law enforcement to ensure potential suspects in criminal investigations are presented with linguistically accurate information,¹⁸¹ as well as Article 26's protection against violations of due process of law. For example, when buying the products (including matches, lighter fluid, and cold medicine), the informants would mention they were "finishing up a cook." Due to limited English proficiency, however, most of the clerks at South Asian owned stores did not understand the informants' reference to the preparation of methamphetamine.

The South Asian store owners and clerks also experienced violations of Articles 7, 18, and 27 of the Covenant while in government custody. Many defendants, as practicing Hindus, are strict vegetarians. They repeatedly asked jail authorities for meals complying with their religious restrictions, but were consistently served meat. In violation of Article 7, Bharat Kumar Patel had by-pass surgery prior to the Operation Meth Merchant arrests, and he was not given his heart medication for over five days following his arrest. As a result of this medical negligence, he underwent another heart surgery and now requires a pacemaker. The wife of one of the men arrested gave premature birth due to the stress and anxiety related to the imprisonment of her husband. The mother-in-law of one South Asian store clerk collapsed in a neighbor's convenience store and burst a blood vessel in her eye due to elevated blood pressure after learning of her son's arrest.

The effects of the Article 26 violations have led to violations of Article 23 because family units have been disrupted by law enforcement conduct. One South Asian store owner has said, “The operation devastated not only 44 individuals, but ruined the lives of hundreds of community members.” The criminal convictions of non-citizens in these cases are likely to result in lengthy civil detention in jails far from their families and subsequent deportation to India despite long-standing ties to the community and U.S. citizen children. At least 5 South Asian men are being detained in facilities over 500 miles away from their families while awaiting deportation. One father has never held his newborn child.

Racial Profiling of Women of Color

Frankie Perkins, mother of three daughters, aged four, six, and sixteen, was on her way home one evening, crossing an empty lot, when she was stopped by Chicago police, who later claimed that they had seen her swallowing drugs, and tried to get her to spit them up. Witnesses state that the officers simply killed her, strangling her to death. Autopsy photos reveal bruises on her face and rib cage, and show her eyes swollen shut, and the hospital listed the cause of death as strangulation.¹⁸²

Women of color experience particular impacts of current law enforcement policies and practices across the U.S. For instance, women are routinely profiled as drug couriers by law enforcement officers in the context of the U.S. government’s “war on drugs,” leading to arbitrary stops, strip searches, and detentions. The high prison sentences meted out for drug-related offenses in the U.S. also provide law enforcement officers with increased leverage for extortion schemes such as those in which officers routinely demand sexual acts in exchange for leniency.

Lori Penner, a Native Woman living in Oklahoma, testified at a 2003 Amnesty International hearing on racial profiling that her house was raided in August of that year by law enforcement officers claiming to be searching for drugs. During the raid, she stated that her 15-year-old daughter “was jerked out of the shower and forced to stand naked in front of three male officers. She was taken to her room to put some clothes on where she had to get dressed in front of three officers... The police laughed and smirked at us when no drugs were found. One police officer had the audacity to tell my daughter she cleaned up nice and looks good for a 15-year-old girl.”¹⁸³

The experiences of Arab, Middle Eastern, South Asian and Muslim women – and women perceived to be members of these groups - have been noticeably absent from discourse regarding the impacts of the “war on terror” on communities of color in the U.S. Since September 11, 2001, Arab, Middle Eastern, and Muslim women, and particularly women who wear the hijab, have also been routinely subject to street and airport profiling by law enforcement agents.

- 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.¹⁸⁴
- In November 2001, a Muslim woman was asked to remove her headscarf at an airport – even though the metal detector had not gone off when she went through it – and taken to a room for a full body search.¹⁸⁵

Transgender women also report increased profiling as potential terrorists based on assumptions that they are men “disguised” as women.

Sixteen-year old Tashnuba Hayder, a South Asian Muslim living in Queens, New York, was recently the subject of the first terrorism investigation involving a minor. FBI agents who had monitored her visits to an Internet chat room where sermons by an Islamic cleric in London were posted showed up at her home one day, pretending to follow up on a missing persons report filed five months earlier when Tashnuba briefly left home with a friend. The agents immediately began going through her diary, papers, and home schooling materials, focusing on one essay discussing the positions taken on suicide by various religions and another about the Department of Homeland Security, in which she stated that she felt that Muslims were being targeted and “outcasted” by the state since 9/11. Three weeks later, based on a “secret” declaration, a dozen federal agents raided her home at dawn, citing the expiration of her mother’s immigration papers as justification for taking the daughter into custody. Without providing her parents with any information as to her whereabouts for two weeks, Tashnuba was transferred to a juvenile detention center in Pennsylvania where she was interrogated, without a parent or a lawyer present, by the members of the FBI Joint Terrorism Task Force, and released only upon her mother’s agreement to a “voluntary departure” to Bangladesh. Another Muslim girl, Adama Bah, was also detained as part of the investigation.¹⁸⁶

While racial profiling and use of force against women of color takes many of the same forms as it does with men of color, racial profiling takes place in gender-specific contexts – such as implementation of mandatory arrest policies, in which women of color are disproportionately perceived to be perpetrators of domestic violence rather than survivors – and takes gender-specific forms. Women of color, and particularly African American and Latina transgender women, are routinely profiled on the streets as sex workers by police, regardless of whether they are actually engaging 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. Additionally, racial profiling of women of color has branched out from streets and airport lounges to more gender-specific contexts, including 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.”¹⁸⁷ Similarly, “mothering while Black” gives rise to more frequent allegations of child abuse and 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.¹⁸⁸

Gender Profiling

“The reality of why I was arrested was as cold as the cell’s cement floor: I am considered a masculine female. That’s a gender violation. . . even where the laws are not written down, police. . . are empowered to carry out merciless punishment for sex and gender ‘difference.’”¹⁸⁹ – Leslie Fineberg, author of Trans Liberation: Beyond Pink or Blue.

From historical enforcement of laws prohibiting wearing apparel associated with the opposite gender,¹⁹⁰ to present day police enforcement of social expectations regarding use of restrooms,¹⁹¹ police have explicitly enforced gender roles and expectations. Additionally, reports of police misconduct and abuse suggest that police officers engage in gender policing:¹⁹² “someone who is disrupting the gender code is perceived as disorderly, implicating notions of who is perceived as a ‘good citizen’ and who is perceived as problematic.”¹⁹³ Such perceptions may be further complicated by presumptions of criminality based on race or socioeconomic status.

As a result, “gender transgressing” individuals are subject to arbitrary stops and detentions by law enforcement, be they transgender women suspected of involvement in sex work, “masculine” women believed to be potentially violent or predatory, or men displaying “feminine” qualities assumed to be engaging in “lewd conduct.” Where identification documents proffered do not match officers’ expectations

regarding a person's gender, individuals are further framed as fraudulent or deceitful. Deviation from gendered expectations also often give rise to presumptions of mental instability by law enforcement officers. Interactions with law enforcement officers can be marked by insistence on gender conformity and in many instances, perceived departures from gendered expectations and norms are met with violence by law enforcement officers.¹⁹⁴

Of particular concern is a widespread pattern, documented extensively in Amnesty International's recently released report, *Stonewalled: Police Abuse and Misconduct by Lesbian, Gay, Bisexual and Transgender People in the U.S.*, of profiling and arbitrary arrest and detention of transgender women based on the presumption that they are engaged in sex work

Such discriminatory conduct on the part of law enforcement officials clearly violates Articles 2, 3, 9, and 26 of the Covenant. We urge the Committee to recommend that the U.S. government take prompt and effective national action to address racial and gender-based profiling and arbitrary arrest and detention.

VI. Interference with Enjoyment of Civil and Political Rights

In addition to direct violations of Articles 2, 3, 6, 7, and 10 of the Covenant, law enforcement agents in the U.S. interfere with the enjoyment of other civil and political rights guaranteed by the Covenant, including voting rights and the rights to freedom of expression and dissent. We refer the Committee to the submission of the National Lawyers' Guild for more information regarding the policing of protest and to that of the Malcolm X Grassroots Movement for more information regarding the policing of dissent and political prisoners in the U.S.

Police Intimidation at the Polls

During both the 2000 and 2004 Presidential elections, heightened law enforcement presence and intimidation was reported at polling stations across the country, primarily in predominantly African American districts.

The U. S. Commission on Civil Rights investigated the disenfranchisement of voters during the 2000 election, and found several instances of voter intimidation by the police, particularly in the state of Florida, where current President George W. Bush was elected with less than a 1,000 votes. As indicated in their report, *Voting Irregularities in Florida During the 2000 Presidential Election*.¹⁹⁵

Several Florida voters reported seeing Florida Highway Patrol (FHP) troopers in and around polling places. Troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominantly African American neighborhood. In another area, trooper vehicles were reportedly parked within sight of at least two polling places, which one resident characterized as "unusual." The FHP reported that troopers only visited polling places to vote on Election Day. In light of the high voter turnout that was expected during the 2000 presidential election, particularly among communities of color that may have a strained relationship with law enforcement, some Floridians questioned the timing of and the motivation for the FHP's actions.

Yet, in its report to the Committee, the U.S. government maintains that, "subsequent investigations by the U.S. Department of Justice revealed no evidence in support of these allegations, nor any violations of federal voting rights violations that affected the outcome of the election."¹⁹⁶

However, the National Association for the Advancement of Colored People (NAACP) documented hundreds of complaints of police intimidation and harassment of voters.¹⁹⁷

"When John Nelson, an African American resident of Jefferson County in Tallahassee, went to his assigned polling place, Precinct 6, to vote, he saw an unoccupied FHP vehicle parked across the street. He considered this to be "unusual" because he has voted a number of times at the same precinct, but was not accustomed to seeing a law enforcement vehicle at the precinct. Moreover, Mr. Nelson stated he did not see any FHP troopers voting inside the precinct or leaving the precinct. Mr. Nelson added that his precinct is usually frequented by a large number of African American voters. The FHP vehicle's presence piqued Mr. Nelson's curiosity, and after voting, he drove to a precinct in the downtown area on North Washington Street and saw another FHP vehicle parked outside the precinct."¹⁹⁸

The U.S. Commission on Civil Rights heard testimony from voters in Tallahassee regarding their reaction to the FHP's actions on Election Day. Roberta Tucker, an African American woman and a longtime resident of Tallahassee, was driving along Oak Ridge Road on her way to vote. Before Ms. Tucker could reach her

polling place, she was stopped at an FHP vehicle checkpoint conducted by approximately five white troopers. According to Ms. Tucker, the checkpoint was located at the only main road leading to her assigned polling place. One of the troopers approached Ms. Tucker's car, asked for her driver's license, and after looking at it, returned it to her and allowed her to proceed. Ms. Tucker considered the trooper's actions to be "suspicious" because "nothing was checked, my lights, signals, or anything that [the state patrol] usually check."¹⁹⁹ She also recalled being "curious" about the checkpoint because she had never seen a checkpoint at this location. Ms. Tucker added that she felt "intimidated" because "it was an Election Day and it was a big election and there were only white officers there and like I said, they didn't ask me for anything else, so I was suspicious at that."²⁰⁰

Regardless of the motivation for the Florida Highway Patrol's actions on Election Day, it appears that a number of voters perceived, at minimum, that they were negatively affected by the proximity of law enforcement officers to the precincts around Tallahassee.

We urge the Committee to inquire as to additional measures the U.S. government is taking to prevent and protect individuals from intimidation by law enforcement agents at polling places.

VII. Limitations of US Definitions and Remedies, Prevention, Education, Investigation and Redress (Articles 2, 3, 7 and 10).

Notwithstanding the Committee's recommendation, upon review of the U.S.'s First Periodic Report in 1994, that the U.S. "review its reservations, declarations and understandings with a view to withdrawing them, in particular reservations to ... Article 7 of the Covenant,"²⁰¹ the U.S. government persists in its adherence to a substantially more limited definition of torture and of cruel, inhuman and degrading treatment than those governing the Covenant.

U.S. limits its recognition of "cruel, inhuman and degrading treatment" to conduct prohibited by the U.S. Constitution as interpreted by the U.S. Supreme Court.²⁰² Specifically, the U.S. ratified the Covenant with the reservation:

[t]hat the United States considers itself bound by article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means the "cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."²⁰³

Moreover, when it ratified the Convention Against Torture, the U.S. limited its definition of mental pain or suffering to "prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."²⁰⁴

No comparable limitation exists in the Covenant, nor, to our knowledge, has any been imposed by the Committee's subsequent jurisprudence interpreting and applying its terms.

The U.S. insists that the existing U.S. law prohibits all conduct which violates the ICCPR and that all allegations of violations of the rights guaranteed by the Covenant are investigated, and, if circumstances warrant, the individuals responsible are brought to justice. However, the experience of the NGOs participating in the preparation of this report indicates that this is simply not the case. We urge the Committee to renew its recommendation that the U.S. withdraw all of its reservations and declarations to the Covenant in order that it comply with Article 7.

A. U.S. Law

Fourth Amendment

The Fourth Amendment prohibits "unreasonable" searches and seizures by government agents, and serves as the primary source of protection for individuals detained or arrested by law enforcement officers. It does not provide absolute protection against torture or cruel, inhuman and degrading treatment. Instead, the standard under the Fourth Amendment asks whether a law enforcement officer's conduct – regardless of whether "severe pain or suffering, whether physical or mental, is intentionally inflicted"²⁰⁵ – was "reasonable" in light of all the circumstances.²⁰⁶ When making this determination, courts adopt "the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight."²⁰⁷ Further,

courts balance individuals' rights against "the countervailing governmental interests at stake," taking account of "the facts and circumstances of each particular case."²⁰⁸ As a result, conduct which meets the definition of torture or cruel, inhuman or degrading treatment enshrined in the Covenant may be deemed "reasonable" under certain circumstances and therefore not run afoul of the U.S. Constitution. For instance, as will be discussed in greater detail later in this section, use of a TASER, which indisputably inflicts severe pain and suffering, or use of considerable physical force causing substantial injury, may be found by U.S. courts to be completely lawful under the U.S. Constitution.

Also, U.S. courts consider some force and abuse to be "*de minimus*" such that it does not rise to the level of a Fourth Amendment violation. Thus, in Houston v. Tucker,²⁰⁹ the court refused to hear the excessive force claim of a homeowner arising from an incident in which a police officer allegedly struck her, grabbed her shoulders, and threw her against the wall of her house. Similarly, in Sullivan v. City of Pembroke Pines,²¹⁰ the court denied relief to a woman when a police officer grabbed her arm, pulled her arms behind her back, forced her to the ground, placed his knee on her back, and handcuffed her during the course of her arrest. Unfortunately, U.S. NGOs receive reports indicating that such treatment is virtually a daily occurrence in jurisdictions across the U.S. Nevertheless, the U.S. government does not deem such conduct to violate its obligations under the Covenant under its restrictive interpretation of its terms.

Fifth Amendment

With respect to coerced statements, the protections of the Fifth Amendment do not appear to extend to all cases of torture or cruel or inhuman or degrading treatment for the purposes of obtaining a statement or confession. In a recent case, an individual was undergoing medical treatment for injuries sustained during a police shooting that left him permanently blind and paralyzed from the waist down. While awaiting treatment in a hospital, he was aggressively questioned by police despite his repeated statements that "I am dying," "I am choking," and "I am not telling you anything until they treat me,"²¹¹ the U.S. Supreme Court cast doubt on whether torture leading to a coerced confession violates the Fifth Amendment unless the coerced statement is introduced against the individual at trial.²¹²

In the days following September 11, 2001, Abdallah Higazy was arrested and taken into FBI custody for his alleged ownership of a walkie-talkie found at a hotel near the World Trade Center. During interrogation, a FBI agent repeatedly banged on the table and accused Higazy of lying. At trial, Higazy testified that "during the polygraph examination [the agent] screamed at him and was so enraged at one point that his face turned red; (2) Higazy feared [the agent] would hit him; (3) [the agent] informed [him] that he was facing thirty years of imprisonment; and ... [that the agent] threatened Higazy that the 'FBI [would] make [Higazy's] brother upstate live in scrutiny and otherwise threatened his family.'"²¹³ As a result of the mental anguish caused by the agent's actions, Higazy confessed to ownership of the device. Fortunately, the actual owner appeared several days later and Higazy was released from custody.

When Higazy subsequently sought redress for the FBI's agent's conduct using the very provisions relied on by the United States' as sufficient substitutes for the Covenant's protections against torture, his claim was denied. According to the Court, the Fifth Amendment did not apply as the coerced statement was not used against him in a criminal court. The Fourth Amendment did not preclude this conduct because the initial arrest was valid, and the substantive due process provision of the Fourteenth Amendment did not apply because the officers' conduct did not "shock the conscience."²¹⁴

Eighth Amendment

The U.S. government asserts that the protections provided by the Eighth Amendment are sufficient to meet its obligations under Article 7 of the Covenant.²¹⁵ However, the Eighth Amendment offers no protection to individuals who suffer abuses at the hands of law enforcement officers, but have not yet been convicted of a crime.²¹⁶ In such cases, the Fourth Amendment applies, yet the U.S. government maintains in its report that “mere violations of the Fourth Amendment do not fall within the scope” of its obligations under Article 7.

Dethorne Graham, a diabetic, was on his way to purchase orange juice to counteract the effects of an insulin reaction when he was stopped by a law enforcement officer. While the officer questioned him, Graham briefly lost consciousness. In the ensuing confusion, a number of police officers arrived on the scene in response to a request for backup. One of the officers rolled Graham over on the sidewalk and cuffed his hands tightly behind his back, ignoring his friend's pleas to get him some sugar. In response to the friend's pleas to assist Graham, an officer was quoted as saying: "I've seen a lot of people with sugar diabetes that never acted like this. Ain't nothing wrong with the M. F. but drunk. Lock the S. B. up."²¹⁷ Several officers then lifted Graham up from behind, carried him over to his friend's car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal. In response, one of the officers told him to "shut up" and shoved Graham's face down against the hood of the car. Four officers then grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to give it to him. When the officers ascertained that Graham had done nothing wrong at the convenience store where he was first stopped, they drove him home and released him. As a result of the officers' actions, Graham sustained a broken foot, cuts on his wrists, a bruised forehead, an injured shoulder and a persistent loud ringing in his right ear. Graham subsequent claim against the officers was rejected on the grounds that the Eighth Amendment only affords protection from cruel and inhuman treatment as punishment for a crime, after conviction thereof.²¹⁸

Moreover, while the U.S. government maintains in its report to the Committee that even “misconduct”²¹⁹ which may not rise to the level of a constitutional violation, is unlawful in the U.S. pursuant to state and federal criminal provisions,²²⁰ it is virtually unheard of that a prosecution for even simple assault will be brought against a law enforcement officer if no constitutional violation is found. Similarly, the civil remedies cited by the U.S. government in its report to the Committee remain inaccessible or fail to provide redress to many survivors of police brutality for reasons discussed in greater detail below.

We urge the Committee to once again press the U.S. government to remove its reservations to the Covenant, enact a federal crime of torture, and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state, and federal law enforcement officers.

B. Prevention of Torture & Systemic Review (Article 7)

The Covenant requires each Signatory State to take “legislative, administrative, judicial and other measures...to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction,”²²¹ and to engage in “systematic review [of] interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment.”²²²

The U.S. government has not enacted a federal law creating a crime of torture which governs acts committed within U.S. jurisdiction. Instead, the U.S. claims that its existing federal and state laws satisfy the Covenant's requirements, and that the prospect of criminal prosecution acts as a sufficient deterrent to the commission of acts of torture.

Nor does the U.S. government engage in a proactive, systemic review of law enforcement policies, procedures, and practices at the federal, state or local level regarding the treatment of individuals in police custody. In fact neither the Initial or current Report make reference to any efforts made by the U.S. government to address this critical failure to undertake even this preliminary prerequisite to systemic review of allegations of torture and cruel, inhuman and degrading treatment. However the U.S. concedes in its Initial Report to the CAT²²³ that "the absence of reliable national statistics precludes an accurate statistical description of the frequency with which incidents of abuse and brutality by law enforcement officers take place."²²⁴

Moreover, as evidenced by the cases cited in this report, despite existing evidence of their necessity, the U.S. government has failed to take effective action to prevent torture by regulating the use of TASERS, nationally mandating practices which would reduce the likelihood of torture in police custody such as videotaping during traffic stops, street encounters, and police interrogations, taking affirmative steps to address rape and sexual assault by law enforcement officers, and ensuring that enforcement of laws is carried out without distinctions of any kind. The persistence of widespread violence and abuse by federal, state and local law enforcement across the U.S. effectively undermines the U.S. government's claims that measures currently in place, including those implemented by the severely under-resourced pattern and practice investigation branch of the Department of Justice Civil Rights Division, are sufficient to meet its obligations under the Covenant.²²⁵

C. *Education and Information (Article 10)*

This Committee mandates that every State party educate its officers as to the prohibitions of the Covenant, requiring that "[e]nforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment . . . receive appropriate instruction and training."²²⁶ The Committee also mandates that every State party advise the Committee of its educational programs: "States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons." The U.S. fails to both provide this education to its law enforcement personnel nor does it provide this Committee with any information as to its educational programs, or lack thereof.

The U.S. suffers from a complete lack of national standards for training of law enforcement officers. Instead, 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 and pepper spray and the conduct of strip searches are concerned.²²⁷ Moreover, the prevalence of police abuse and misconduct in the U.S., as well as the cases referenced in this report, appear to suggest that what training measures are in place are not effective.

We urge the Committee to recommend that the U.S. government adopt, in consultation with NGOs, national standards for training of law enforcement officers that will meet its obligations under the Covenant.

D. *Prompt Investigation (Articles 2 and 7)*

General Comment 20 to the ICCPR mandates that “[c]omplaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”²²⁸

The U.S. does not mention complaints against law enforcement in its report to this Committee, however, in its Initial Report to the CAT, the U.S. government acknowledged allegations of “lack of police accountability, including failure to discipline, prosecute and punish police misconduct,”²²⁹ as well as allegations regarding “racial bias and discrimination against members of minorities, as reflected, *inter alia*, in statistical disparities in instances (as well as allegations) of harassment and abuse.”²³⁰

The European Commission on Human Rights held in *Mentese and others v Turkey*²³¹ that “the obligation to protect the right to life ... also required, by implication, that there should be some form of effective official investigation when individuals had been killed as a result of the use of force.” Similarly, in *Tepe v Turkey*,²³² the Commission stated that

Where an individual had an arguable claim that he had been tortured or subjected to serious ill-treatment by agents of the State, the notion of an effective remedy entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and included effective access for the complainant to the investigatory procedure. For an investigation into alleged torture or ill treatment by State officials to be effective, it would generally be regarded as necessary for the persons responsible for, and carrying out, the investigation to be independent from those implicated in the events. That meant not only a lack of hierarchical or institutional connection but also a practical independence.

In the U.S., investigations into violations of the Covenant are infrequent and discipline is rare and mild. This is particularly true in many rural and suburban communities and particularly for those 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. As a result, 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. For further critique of investigations of allegations of police misconduct in the U.S., we refer the Committee to the comprehensive reports of several NGOs, including *Shielded From Justice* by Human Rights Watch, *Rights for All* by Amnesty International, and *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, by the U.S. Civil Rights Commission, all of which are cited extensively in this Report.

“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, Arizona²³³

E. Right to Complain & Right to Redress and Compensation (Articles 3, 7 and 10)

The U.S. has not enacted a federal law against torture which governs acts committed within U.S. jurisdiction. Instead, the U.S. claims that its existing federal and state criminal laws are sufficient to satisfy its obligations under the Covenant.

Successful state criminal prosecutions of police officers for excessive force are 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.²³⁴ 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.²³⁵

In fall 2005, police in Larimer County, Colorado shocked Timothy Mathis between three and seven times with a TASER after responding to call relating to his erratic behavior. Mathis went into a coma, and died three weeks later. Although the coroner ruled the death a homicide, finding the TASER shock to be a cause of death, the local prosecutor declined to press charges, finding that the four officers involved used reasonable force to defend themselves against Mathis, who, at one point, reportedly advanced on them with a rock.²³⁶

In addition to federal and state criminal statutes, the U.S. relies primarily on the provisions of 18 U.S.C. §242²³⁷ and 42 U.S.C. §1983,²³⁸ maintaining that these statutory provisions afford redress and compensation for violations of the Covenant. With respect to 18 U.S.C. § 242, prosecutions cannot be initiated by individual citizens, but must be undertaken by the U.S. Department of Justice Civil Rights Division, thereby requiring individuals to come forward and federal authorities to be willing to prosecute their cases. As noted above, the Civil Rights Division is insufficiently resourced and therefore unable, as a practical matter, to prosecute the number of cases of torture and cruel, inhuman, or degrading treatment committed by law enforcement officers in the U.S. each year. Moreover, consistent with the U.S. government's definition of torture, § 242 requires that a law enforcement agent specifically intend to violate an individual's constitutional rights²³⁹ rather than merely intend to commit the act which results in violation of their rights. "Even 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.'"²⁴⁰ Moreover, an officer's belief that his conduct is reasonable under the circumstances is a sufficient defense to a charge under § 242.²⁴¹ As a result, few prosecutions are successfully brought under this statutory provision.²⁴²

"Federal investigators dropped a civil rights case against Border Patrol agent Cesar Cervantes who shot Ricardo Olivares Martinez, age 22, at least five times in the chest on June 4, 2003." Agent Cervantes alleged that Martinez was throwing rocks at him. The Department of Justice said there was not enough evidence of a civil rights violation,²⁴³ despite a videotape recording of the entire incident.²⁴⁴

Cases of rape and sexual assault by law enforcement officers and other government officials represent one exception to the general rule that the intent standard of 18 USC § 242 severely limits the number of successful prosecutions which can be brought under this provision for police misconduct. The U.S. Supreme Court has held that rape or sexual assault under color of law violates individual rights under the Due Process

Clause of the Fourteenth Amendment of the U.S. Constitution, and that the right to be free of such conduct is sufficiently well established that prosecution under § 242 is warranted.²⁴⁵ This provision could therefore serve as an effective tool in meeting the U.S. government's obligations under the Covenant. However, the Criminal Section of the U.S. Department of Justice Civil Rights Division appears to have only brought a handful of prosecutions against law enforcement officers for rape or sexual assault, thereby failing to address what appears to be a more pervasive practice.

Federal statute 42 U.S.C. §1983 provides a federal civil remedy against state actors for violation of Constitutional and federal rights. It is important to note at the outset that, even though individuals can initiate such 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 initiate and pursue such an action. Plaintiffs who pursue §1983 claims for police abuse shoulder the burden of proving two central elements: 1) the person whose conduct is at issue 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.²⁴⁶

"Four to five years ago my 16-year old cousin was badly beaten by the Border Patrol. Another cousin was shot in the knee while camping. They took the cases to trial and the Border Patrol got off. There was no compensation. – Mexican man from Douglas, Arizona²⁴⁷

Even where individuals are willing and able to come forward and assert claims under § 1983 for torture and cruel, inhuman and degrading treatment, a number of judicial doctrines hamper their ability to assert a successful claim. For instance, the requirement that an officer act "under color of law" when violating an individual's rights has barred redress in a number of cases of rape or sexual assault by police in which courts have held that the officers engaged in unlawful conduct in pursuit of personal "pleasure," rather than as an exercise of state power.²⁴⁸ 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."²⁴⁹ 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 of individual rights by police officers.²⁵⁰ Moreover, even when claims are successful, § 1983 do not always provide adequate remedy or redress for violations of the Covenant.

In 1997, Humbolt County sheriffs used Q-tips to smear liquid pepper spray across the eyelids of non-violent environmental protesters engaged in civil disobedience after they passively refused to obey an order to disperse. The protestors subsequently brought a claim pursuant to 42 USC § 1983 in federal court, claiming that the police conduct caused severe and searing eye pain, gagging, dizziness, hyperventilation, and headaches which, in some cases lasted for days, and impaired vision, which persisted for years, and was therefore tantamount to torture.²⁵¹ Seven years after the incidents took place, a jury verdict was finally rendered in September of 2004, in which each of the plaintiffs was awarded \$8 in damages. The plaintiffs are still seeking a ban on use of pepper spray in this manner by police.²⁵² Clearly, the provisions relied upon by the US government in its submission to the Committee neither rendered the plaintiffs' whole in this case nor served as a deterrent to future similar conduct on the part of the law enforcement officers.

VIII. Recommendations

We urge the Committee to conclude that the U.S. government is in violation of Articles 2, 7, 9, 10, 17, and 20 of the Covenant, and to recommend that the U.S. government:

- Withdraw its reservations to the Covenant;
- Enact a federal crime of torture and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state, and federal law enforcement officers;
- Impose an immediate moratorium on TASER use by law enforcement officers pending a rigorous, independent and impartial inquiry into their use and effects, or, at a minimum, federal regulation of TASERs restricting their use to instances in which they would substitute for lethal force;
- Immediately initiate a federal criminal prosecution to fully hold all officers implicated in torture to secure confessions in the city of Chicago responsible;
- Take action to provide relief to the Chicago torture victims who remain behind bars due to their wrongful convictions;
- Take immediate steps to document, systemically review, and prevent rape, sexual assault and abusive and unlawful strip searches by law enforcement officers;
- Adopt national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents;
- Take affirmative steps beyond creating remedies at law at both the federal and state levels to address police brutality and other custodial torture and CID that is shown to be occurring in a racially discriminatory manner or in a manner evidencing discrimination based on gender, gender identity, sexual orientation, or some combination of all of these factors;
- Provide adequate funding to allow the U.S. Department of Justice to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody, use of force during street encounters as well as traffic stops, and incidents of rape, sexual harassment, and unlawful searches of persons). The reporting should also include comprehensive details of disciplinary actions and prosecutions of excessive force by police officers;
- Provide adequate resources to the U.S. Department of Justice in order that it effectively and comprehensively pursue and enforce “pattern and practice” actions against police departments engaging in widespread or systematic abuses;
- Increase its use of Title VI of the Civil Rights Act of 1964 to seek to eliminate racially discriminatory practices by law enforcement agencies;
- Develop and mandate national training standards for federal, state and local law enforcement agents.
- Increase measures to prevent and protect individuals from intimidation at polling places.

SIGNATORIES

Organizations

Human Rights Clinic, Columbia Law School, New York City

Individuals (organizational affiliation for information only)

Andrea Ritchie, INCITE! Women of Color Against Violence

It should be noted that all of the signatories to this submission strongly believe in the importance of adherence to the ICCPR and share strong concerns about the U.S. government's 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.

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ICCPR SHADOW REPORT

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The Sex Workers Project (SWP) is the first program in New York City and in the country to focus on the provision of legal services, legal training, documentation, and policy advocacy for sex workers. Using a harm reduction and human rights model, the SWP protects the rights and safety of sex workers who by choice, circumstance, or coercion remain in the industry.

We submit this report on violence against sex workers, including police violence and police inattention to violence experienced by sex workers.

Violence Against Sex Workers

Prostitution in any form is illegal in New York City. Women who work on the streets have a great deal of contact with police. Police and sex workers in New York engage in a cat and mouse dynamic, in which the police seek to control the activities of sex workers, and sex workers respond by trying to avoid them. Our 2003 report *Revolving Door* examines the impact of current law enforcement approaches to street-based sex work in New York City.¹ The report is based on interviews conducted with thirty street-based sex workers who were arrested in 2002 or had a high number of arrests. We also released a 2005 report, *Behind Closed Doors*, which is based on interviews of 52 sex workers who worked indoors and examines the effects of current City policies.

Current law enforcement approaches for sex workers take the form of arrests. However, this police strategy often results in harassment and false arrest of sex workers. Furthermore, the vast majority of sex workers whom we interviewed, 98%, received no substantive services as a result of their arrests, meaning that they received more than a two-hour health class or community service. Whatever one thinks of prostitution, it is clear that as a result of these arrest-based policies, most sex workers who have faced violence do not view the police and courts as a resource. This problem is compounded by the fact that police do not always respond to the complaints of sex workers.

Police Violence and Sexual Situations

Respondents in both reports reported harassment including sexual situations, violence and threats of violence, intimidation and false arrests. Sexual situations include inappropriate touching, extortion of sex (sometimes in exchange for not making an arrest) and even rape.

- 30% of street-based sex workers interviewed told researchers that they had been threatened with violence by police officers.
- 27% of street-based sex workers interviewed reported having experienced violence at the hands of police.
- 14% (7 of 51) of indoor sex workers interviewed experienced incidents of police violence, and victims of such violence felt they had no recourse.
- 16% (8 of 51) of indoor sex workers interviewed have been involved in sexual situations with the police.

Street-based sex workers reported more extreme harassment and abuse than those who worked indoors. One of these women reported having been raped by a police officer. Sexual harassment included officers intimating that they would give warnings about police sweeps on the street or cigarettes to arrested women in exchange for sex. “There are times when someone says: ‘It’s hot tonight, it’s a sweep, you should get out of here, now what can you do for me?’” One woman reported stalking behavior by a police officer. Transgender women described similar issues with harassment, but also specific differences relating to officers checking their genitals and making comments about their gender. Some reported that police were frequent clients, but not always harmless clients: “I had a date and got paid, and then the guy pulled out his badge.”

An indoor worker named Leticia¹ said, “Just find a way to help us with the police. You have lots of women that have nobody to help them. We don’t need lawyers, we need somebody to protect us when we get beat up, when police mess with us. Around here, they don’t arrest you, they just mess with you like they own you.”

It is important to note that it is not just women who are involved in sex work and who experience violence. When Bryan was hustling on the street, he was slammed against a wall by police. This happened to him two times—they pulled his hair, sprayed him with mace, and slammed him against a wall.

Violence and Robbery From Customers

- 80% of street-based sex workers interviewed experienced either violence or threats in the course of their work.
- 60% of street-based sex workers interviewed had experiences with clients who became violent or tried to force them to do things they did not want to do. These problems include rape, assault and robbery.
- 46% (24 of 52) of indoor sex workers interviewed have been forced by a client to do something he or she did not want to do.
- 42% (22 of 52) of indoor sex workers interviewed have been threatened or beaten for being a sex worker.
- 31% (16 of 52) of indoor sex workers interviewed have been robbed by a client.

The sex workers described high rates of violence. Violence here means being forced to do something that the respondent did not want to do; having been threatened or beaten because the respondent was a sex worker;

¹ All names have been changed to protect identities of respondents.

and/or having been robbed by a client. For example, Sara described a client “who came in and had a knife... I was cornered and I was about to be attacked and raped...I didn’t go to the police because it would be coming out about what I’ve been doing.”

Reporting Violent Incidents to the Police

- 23% of street-based sex workers interviewed reported that they had positive experiences with police, but only related to domestic violence cases. When they went to the police as sex workers who were victims of violence, they did not receive appropriate help.
- 16% (8 of 51) of indoor sex workers interviewed had gone to the police for help, as a sex worker, and found the police to be helpful.
- 43% percent (22 of 51) of indoor sex workers interviewed stated that they were open to the idea of asking police for assistance. However, many of these same people also worried about how helpful police might be, and ultimately thought of the police as unhelpful and untrustworthy.

Consistent and unpleasant interactions with law enforcement lead sex workers to attempt to avoid the police as much as possible. The desire to do so is so strong that most sex workers interviewed do not report serious and violent crimes committed against them. Even when violence is reported, these crimes usually go unpunished because violence against sex workers is tacitly accepted.

Street-based sex workers described enormous difficulties in their attempts to report prostitution-related violence to the police, including rape, assault and robbery. Many respondents in that report laughed and said ‘no’ or ‘of course not!’ when researchers asked whether they had gone to the police for help. Others who attempted to report violent crimes, including rape, were told by the police that their complaints would not be accepted, that this is what they should expect, and that they deserve all that they get. One person said: “I went to the cops who told me we didn’t have a right being in that area because we know it’s a prostitution area, and whatever came our way, we deserved it.”

Another added: “I went to the police one time when I got raped and they said ‘you shouldn’t have been out there in the first place.’” When these women experienced further violence, they did not turn to the police: “If I call them, they don’t come. If I have a situation in the street, forget it – [they would say] ‘Nobody told you to be in the street’. After a girl was gang-raped, they said ‘Forget it, she works in the street’.”

Tacit acceptance of such violence is not only deplorable in itself but actually encourages such violence. Sixty percent of street-based respondents had experiences with male clients who became violent or tried to force them to do things they did not want to do. Such a percentage among any other population or group would prompt strong public response.

It is critical to note that not all sex worker-police interactions are negative. However, indoor sex workers were more likely to experience these positive interactions. For example, one indoor sex worker reported a good experience with the police following violence at the hands of a client. The woman’s statement was taken seriously and was investigated. She was able to recruit three sex workers who had been attacked by the same person to testify against him, resulting in the conviction of this man who had preyed upon indoor sex workers for more than a decade.

Positive encounters such as this one can help police write guidelines for best practices when assisting sex workers who come to them for help. Police who see sex workers as legitimate

members of society are more likely to be helpful offer the same level of assistance that they would offer another person. They are also more likely to follow through on the steps taken in response to violence against sex workers. Unfortunately, this understanding that a sex worker may be a crime victim appears to be the result of enlightenment or understanding on the part of individual officers, and not the result of training and best practices issued by the police department.

Recommendations

- Experiences that respondents viewed as positive included instances that other civilians would take for granted, such as police taking reports of violent acts and following up on these reports.
- Complaints by sex workers should be met with the same respect and regard that would be given to any other crime victims, and complaints should be addressed and investigated without penalty to these victims of violence. It is critical that police assure sex workers that they will not be investigated or arrested for illegal behavior if they come forward to report violence.
- Special attention must be given to police officers who commit violence or other crimes against sex workers. These acts include sexual assault or abuse, sexual harassment, theft, and offering not to make an arrest in exchange for sex. Police leadership must make it known that they take such exploitation seriously. Police and the courts must aggressively investigate and punish police officers who harass or commit violence of any kind against sex workers.
- It is imperative that proper police training occurs for dealing with violence against sex workers. The involvement of advocates, service providers, and community-based organizations is crucial. Beyond needs assessment and advocacy, they should act as liaisons to place sex workers' complaints. To ensure that sex workers are treated with dignity, it is critical for advocates, service providers, and community-based organizations to become productive partners with police through sensitivity training and awareness campaigns.
- Policymakers should carefully consider the extent to which they make prostitution a criminal justice priority. Sex workers often engage in prostitution earn money for themselves and their families, and sex workers could benefit from substantive services and assistance rather than arrest.
- Local police and government agencies must keep arrest and violence statistics relating to sex workers and make these available, so policymakers and advocates can examine criminal justice trends.

ENDNOTES

¹ American Civil Liberties Union, *Civil Liberties After 9/11: The ACLU Defends Freedom*. October 2002; available at: http://www.aclu.org/FilesPDFs/911_report.pdf

² See, Human Rights Watch, *Witness to Abuse: Human Rights Abuses Under the Material Witness Law Since September 11*, HRW Index No.: G1702, 2005, available at: <http://hrw.org/reports/2005/us0605/us0605.pdf>; U.S. Department of Justice, Office of the Inspector General, *Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York*, New York, December 2003.

³ Amnesty International USA Domestic Human Rights Program, *Threat & Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States*, October 2004.

⁴ Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 128.

⁵ Id.

⁶ Second Periodic Report of the United States of America to the Committee Against Torture, Submitted by the United States of America to the Committee Against Torture, May 6, 2005, 75.

⁷ Coramae Richey Mann, *Unequal Justice: A Question of Color* 165, 195 (1993); *Born in Slavery: Slave Narratives From the Federal Writers' Project, 1936-1938, Georgia Narratives*, Vol. IV, Part 4, Slavery, at 321-329.

⁸ See, e.g., *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, South Dakota Advisory Committee to the United States Commission on Civil Rights, March 2000; *United States of America: Rights for All*, Amnesty International, AMR 51/035/1998.

⁹ See, e.g., Attorney General of New Jersey, Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling (April 1999) ("minority motorists have been treated differently than non-minority motorists on the New Jersey Turnpike."); New York State Office of the Attorney General, *The New York City Police Department's "Stop and Frisk" Practices*, vi – xiv (Dec. 1999) (finding statistically significant disparities in the rates at which African Americans and Latino/as were stopped by police compared to whites); U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Kwame Dixon and Patricia Allard, *Racing the Police: Race, Police Brutality and International Human Rights in the United States of America*, Amnesty International 1999; Amnesty International, *United States of America: Rights for All* 38, October 1998, AMR 51/035/1998; United States Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1995*, at 235 (Washington, D.C., U.S. Government Printing Office, 1996) (revealing that complaints of abuse made by people of color are significantly disproportionate to their representation in the arrest population); Amnesty International, *United States of America: Police Brutality and Excessive Force in the New York City Police Department I*, June 1996, AMR 51/036/1996; National Association for the Advancement of Colored People and Criminal Justice Institute at Harvard Law School, *Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities*, (NAACP 1995); U.S. Civil Rights Commission, *Who is Guarding the Guardians? A Report on Police Practices* (1981).

¹⁰ U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000. Available at: <http://www.usccr.gov/pubs/pubsndx.htm>.

¹¹ *Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. A/50/40, para. 282.*

¹² October 22nd Coalition, *POLICE BRUTALITY DID NOT DIE ON SEPT. 11TH!*, leaflet distributed at April 20, 2004 rally against the US war in Iraq, available at: <http://october22.org/modules.php?op=modload&name=News&file=article&sid=1130>

¹³ *The NAACP Calls for Investigation of Excessive Force by Jacksonville Police Officers*, NAACP Press Release, December 30, 2004.

¹⁴ *Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. A/50/40, para. 282.*

¹⁵ See Comments of Human Rights Committee Member Mavrommatis, *Summary Record of the 1402nd Meeting: United States of America. 17/04/95. CCPR/C/SR.1402 (Summary Record).*

¹⁶ Id.

¹⁷ *Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. A/50/40, para. 297*; Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 461.

¹⁸ *Conclusions and Recommendations of the Committee Against Torture: United States of America. (Advance Unedited Version) 18 May 2006. CAT/C/USA/Co/2 para. 37.*

¹⁹ Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 131.

²⁰ See U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000. Available at: <http://www.usccr.gov/pubs/pubsndx.htm>; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5, July 1, 1998.

²¹ Id.

²² For instance, during a meeting with students at Howard University in Washington DC in November 2000, Bill Lann Lee, Former Assistant Attorney General for Civil Rights, cited to 18 U.S.C. § 242's requirement that a law enforcement officer "willfully" deprive an individual of

their constitutional rights in order for liability to attach as a barrier to prosecution of an officer responsible for the death of Howard University student Prince Jones. *See also* U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000.

²³ U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5, July 1, 1998.

²⁴ *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*, April 2003; Ron Daniels, *The Crisis of Police Brutality and Misconduct in America: The Causes and the Cure*, in *Police Brutality*, Jill Nelson, ed. 248 (New York: Norton, 2000); *Zero Tolerance: Quality of Life and the New Police Brutality in New York City*, A. McCardle and T. Erzen, eds. (New York: New York University, 2001).

²⁵ U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000. The Commission further notes that, while the US Congress has legislation (the 1994 Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141) directing the Department of Justice to collect data on the use of excessive force by police officers, it has failed to provide the necessary funding to carry out this mandate. Furthermore, the legislation mandates that such data not be used for enforcement purposes.

²⁶ *Use of Force by Police: Overview of National and Local Data*, National Institute of Justice and Bureau of Justice Statistics at ix. NCJ 176330. October 1999.

²⁷ General Comment No. 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty (Art. 10): 10/04/92. CCPR General Comment No. 21. (General Comments), at ¶ 6, noting that “it is necessary for reports to specify what concrete measures have been taken by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty.” [regarding its compliance with its obligations under the covenant]

²⁸ Second Periodic Report of the United States of America to the Committee Against Torture, Submitted by the United States of America to the Committee Against Torture, May 6, 2005, 42.

²⁹ *Contacts Between Police and the Public: Findings from the 2002 National Survey* at v. NCJ 207845. Bureau of Justice Statistics. April 2005. Survey results indicate that, 11.4% of Hispanics and 10.4% of Blacks reported a search during a traffic stop, compared to only 3.5% of whites. While only 1.1% of whites who had contact with the police reported use or threat of force, 3.5 % of Blacks and 2.5% of Hispanics reported use or threat of force. 14% of all individuals who experienced a use of force were injured as a result. Less than 20% of those who felt the police acted improperly filed a complaint or law suit against the authorities.

³⁰ Amnesty International, *United States of America: Rights for All* 38, October 1998, AMR 51/35/98.

³¹ *Id.*

³² U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*. November 2000.

³³ *Id.* at vii.

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³⁵ *The Network of Victims’ Families Grows*, Copwatch Report, Berkeley Copwatch, Winter 2006.

³⁶ *The NAACP Calls for Investigation of Excessive Force by Jacksonville Police Officers*, NAACP Press Release, December 30, 2004.

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³⁸ G. Chui, *More than 100 People March in Protest of S. J. Shooting*, Mercury News, July 16, 2003.

³⁹ *NAACP Welcomes Federal Probe of Cincinnati Police*, NAACP Press Release, December 2, 2003.

⁴⁰ Kwame Dixon and Patricia E. Allard, *Police Brutality and International Human Rights in the United States: The Report on Hearings Held in Los Angeles, California, Chicago, Illinois, and Pittsburgh, Pennsylvania, Fall 1999*, Amnesty International U.S.A. 10 February 2000.

⁴¹ Robert Hanley, *4 New Jersey Officers Charged in Man’s Death*, New York Times, April 16, 2003, D8.

⁴² Amnesty International USA Domestic Human Rights Program, *Threat & Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States* 7, October 2004.

⁴³ *See* Leslie Kasimir, *Cops Boo Choke-Death Widow*, New York Daily News, May 15, 2003; Amnesty International USA Domestic Human Rights Program, *Threat & Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States* 7, October 2004.

⁴⁴ *Day of the Dead Honors Jose Mejia*, Portland IndyMedia, available at <http://portland.indymedia.org/en/2002/10/105720.shtml>; *see also* Kara Briggs, *Latino Agencies Address Mental Health Needs*, The Oregonian, November 3, 2003 (noting that Poot was misdiagnosed by mental health professionals who failed to understand that he spoke Mayan and not Spanish).

⁴⁵ *Detroit police brass unveil key policy changes; Dealing with deaf or impaired people covered in revisions*. Detroit News, November 15, 2002, 1D.

⁴⁶ *Id.*

⁴⁷ Tim Silard, *Bagdad Café Killing: A Year Later the Cops’ Wall of Silence Remains. Death at the Hands of the SFPD*, San Francisco Chronicle, October 12, 2003.

⁴⁸ *Video Shows Police Hitting Suspect After Pursuit*. Los Angeles Times. June 23, 2004.

- ⁴⁹ *Police Are Rarely Prosecuted Unless Case Is Bulletproof*, Los Angeles Times, December 9, 2005, B2.
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- ⁵¹ Amnesty International, *Stonewalled: Police Brutality and Abuse Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 45, AMR 51/122/2005, 2005.
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- ⁵⁶ Susan Sward, Bill Wallace and Elizabeth Fernandez, *The Use of Force: When SFPD officers resort to violence*, San Francisco Chronicle, February 5, 2006.
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- ⁶¹ Amnesty International, *Stonewalled: Police Brutality and Abuse Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 45, AMR 51/122/2005, 2005.
- ⁶² Susan Sward, Bill Wallace and Elizabeth Fernandez, *The Use of Force: When SFPD officers resort to violence*, San Francisco Chronicle, February 5, 2006.
- ⁶³ Frank Main, "98 Choking complaint last straw for officer," Chicago Sun Times, June 29, 2002.; Sean Hammil, "City Fires Cop with history of brutality complaints," Chicago Tribune, June 30, 2002.
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¹¹¹ International Association of Police Chiefs, *Electromuscular Disruption Technology: A Nine Step Strategy for Effective Deployment*, available at <http://www.iacp.org/research/CuttingEdge/EMDT9Steps.pdf>; Kevin Johnson, *Police Chiefs Call for Improved Stun-gun Training*, *USA Today*, 2005.

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¹¹⁹ As discussed in greater detail in Section VI of this report, the 8th Amendment does not apply to interactions between law enforcement personnel and individuals not yet convicted of a crime. Rather, the 4th Amendment to the US Constitution, which prohibits "unreasonable" uses of force governs such circumstances.

¹²⁰ 42 U.S.C. 3789d(c).

¹²¹ *The Consequences of False Confessions: Deprivations of Liberty and Miscarriage of Justice in the Age of Psychological Interrogation*, 88 *Journal of Criminology* 429, 1998.

¹²² There have been 12 federal or state court cases which had found torture occurred at Area 2 or 3 Police Headquarters: *Hinton v. Uchtman*, 395 F.3d 810, 822-23 (7th Cir. 2005); *Wilson v. City of Chicago*, 120 F.3d 681, 683-85 (7th Cir. 1997); *U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D.Ill. 1999); *Burge, O'Hara and Yucaitis v. Police Board of the City of Chicago*, No. 1-94-999, 1-94-2462, 1-94-2475 (consolidated) (Ill. App. Ct., December 15, 1995); *People v. Wilson*, 116 Ill.2d 29 (1987); *People v. Cannon*, 293 Ill. App. 3d 634 (1997); *People v. Patterson*, 192 Ill. 2d 93, (2000); *People v. Banks*, 192 Ill. App. 3d 986 (1989); *People v. Bates*, 267 Ill. App. 3d 503, 505 (1994); *People v. King*, 192 Ill. 2d 189 (2000); *People v. Howard*, 84 C 13134. (Ill. Sup. Ct. 6/18/99); *People v. Clemon*, 259 Ill. App.3d 5 (1994). As Judge Diane Wood recently noted in *Hinton*, 395 F.3d at 822-23:

[A] mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department . . . the Office of Professional Standards Investigation of the Police Department looked into the allegations, and it issued a report that concluded that police torture under the command of Lt. Jon Burge. . . had been a regular part of the system for more than ten years. And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the 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." The report detailed specific cases, such as the case of Andrew Wilson, who was taken to Area Two on February 14, 1982. There a group led by Burge beat Wilson, stuffed a bag over his head, handcuffed him to a radiator, and repeatedly administered electric shocks to his ears, nose, and genitals. See *People v. Wilson*, 506 N.E.2d 571 (Ill. 1987). Burge eventually lost his job with the police, though not until 1992. . . . 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 the U.S. is committed to uphold. . . .

¹²³ See Submission to the Committee Against Torture of the Midwest Coalition on Human Rights, September 30, 2005.

¹²⁴ General Comment No. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7) : 10/03/92. CCPR General Comment No. 20. (General Comments), at ¶ 12.

¹²⁵ *Id.* at ¶ 11..

¹²⁶ Second Periodic Report of the United States of America to the Committee Against Torture, submitted to the Committee on May 5, 2005, ¶ 57, page 18, ¶¶ 15-16.

¹²⁷ See "Getting Away with Torture? : Command Responsibility for the U.S. Abuse of Detainees," *A Human Rights Watch Report*, vol. 17, no. 1(G), April 2005; "Still at Risk: Diplomatic Assurances no Safeguard against Torture," *A Human Rights Watch Report*, vol. 17, no. 3(D), April 2005; "The Road to Abu Ghraib," *A Human Rights Watch Briefing Paper*, June 2004; "Empty Promises: Diplomatic Assurances No Safeguard Against Torture," *A Human Rights Watch Report*, vol.16 no.4 (D), April 2004; "Enduring Freedom:" Abuses by U.S. Forces in Afghanistan," *A Human Rights Watch Report*, vol. 16, no. 3(C), March 2004 ; Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq*, (New York: Human Rights Watch, 2003).

¹²⁸ "In 1994, he began working as a guard during the afternoon shift at Fayette County Prison in Pennsylvania. . . . Here Graner played a practical joke on Robert Taje, a new guard, by putting Mace (spray) in his coffee." See: <http://www.washingtonpost.com/wp-dyn/articles/A16832-2004Jun4.html>. No disciplinary action was taken against Graner during his employment at the county jail. In May of 1996 he began working at

the State Correctional Institution-Greene, a maximum-security state prison in Greene County, PA. The facility also houses death row prisoners.

¹²⁹ For example, the first allegation against Graner involved an incident on July 29, 1998. Horatio Nimley, convicted of perjury, was eating mashed potatoes when his mouth started bleeding and he spat out a razor blade. According to a May 1999 federal lawsuit brought by Nimley, Graner first planted the blade in his potatoes, then ignored him when he began to bleed, and finally brought him to the nurse, where they punched, kicked, and slammed Nimley on the floor. Nimley also alleges that when he screamed, "Stop, stop," Graner told him, "Shut up, nigger, before we kill you." Graner denies these allegations. A federal magistrate in Pittsburgh, however, ruled that the charges against Graner have "arguable merit in fact and law." When Nimley was released from prison in 2000, he disappeared, and the case was dismissed, leaving much of what happened still in question." See Christian Davenport and Michael Amon, *3 to be Arraigned in Prison Abuse: Defense to Argue that Military Intelligence Officers were in Charge*, Washington Post, May 19, 2004, Page A01.

¹³⁰ At least eleven decisions in both federal and state courts have found or noted the practice of torture by Burge and his men. In *U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp.2d 1078, 1094 (N.D. Ill. 1999). Judge Shadur found:

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.

See also *Wilson v. City of Chicago*, 120 F.3d 681, 683-85 (7th Cir. 1997); *Burge, O'Hara and Yucaitis v. Police Board of the City of Chicago*, No. 1-94-999, 1-94-2462, 1-94-2475 (consolidated) (Ill. App. Ct., December 15, 1995, unpublished); *People v. Wilson*, 116 Ill.2d 29 (1987); *People v. Cannon*, 293 Ill. App. 3d 634 (1997); *People v. Patterson*, 192 Ill. 2d 93, (2000); *People v. Banks*, 192 Ill. App. 3d 986 (1989); *People v. Baes*, 267 Ill. App. 3d 503, 505 (1994); *People v. King*, 192 Ill. 2d 189 (2000); *People v. Howard*, 84 C 13134 (Ill. Sup. Ct. Order of 6/18/99); *People v. Clemon*, 259 Ill. App.3d 5, (1994).

Further, four victims -- Madison Hogley, Leroy Orange, Stanley Howard and Aaron Patterson -- were granted pardons on the basis of their innocence by the Governor of Illinois in 2003, who stated:

The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is terribly broken about our [Illinois criminal justice] system.

¹³¹ Investigators working with the Office of Professional Standards have sustained the torture allegations of Andrew Wilson, Darrell Cannon, Phillip Adkins, Gregory Banks, Stanley Howard, and Lee Holmes. In addition, attorneys on behalf of the City of Chicago have admitted "an astounding pattern or plan on the part of respondents [Burge, Yucaitis and O'Hara] to torture certain suspects, often with substantial criminal records, into confessing to crimes or to condone such activity." (The City of Chicago's memorandum in Opposition to the Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct filed on January 22, 1992 before the Police Board *In the Matter of Charges Filed Against Respondents Jon Burge, John Yucaitis and Patrick O'Hara*, Cases #1856-58).

¹³² As Judge Wood recently noted in her concurring opinion in *Hinton v. Uchman*, 395 F.3d 810, 822-23 (7th Cir. 2005):

[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 the United States is committed to uphold. . . .

¹³³ Andrew Wilson was suffocated with a plastic bag, shocked on his genitals and ears with a tucker telephone, burned with cigarettes, beaten and handcuffed across a hot radiator while interrogated by Burge, Yucaitis, O'Hara and other detectives. Dr. John Raba, the medical director of Cermak Health Services at Cook County Jail examined Wilson after his interrogation, and he noted Wilson's injuries in a letter he sent to the former Chicago Police Superintendent Richard Brezcek, in which he requested an investigation. (Please see attached exhibit C). Brezcek declined to act on this request, instead referring the investigations to Richard Daley, the lead local prosecutor for the Chicago area at the time (now Mayor of Chicago), who took no action. (Please see attached exhibit D).

¹³⁴ Documents reveal that the City has spent more than \$6 million dollars in legal fees to defend Burge and high ranking officials in civil rights lawsuits brought by the four torture victims pardoned by the Governor in 2003.

¹³⁵ The statute of limitations under US domestic law is an additional reason the US should proscribe torture as a crime as defined in Art. I of the CAT. The crime of torture should have no statute of limitations due to grave nature of the conduct and the importance of deterring others from committing these human rights violations.

¹³⁶ Personal Communication, Raine Thompson, Esq., ACLU of Mississippi, December 14, 2005.

¹³⁷ Steve Drizin and Richard Leo, *The Problems of False Confessions in the Post-DNA World*, 82 N. Car. L. Rev. 891 (March 2004).

¹³⁸ Case 10.970. *Raquel Martin de Mejia v. Peru*. Inter-American Commission on Human Rights. Available at: <http://www.cidh.org/women/Peru10970a.eng.htm>.

¹³⁹ While the US government references several cases of rape and sexual assault by law enforcement officers in its report to the Committee, it refers to these cases merely as “mistreatment” and “mere violations of the 4th Amendment,” and does not appear to recognize them as acts of torture. See Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 131.

¹⁴⁰ *Stone Walled, Police Abuse and Misconduct Against Lesbian, gay, Bisexual and Transgender People in the U.S.* 40, Amnesty International, 2005.

¹⁴¹ Tori Marlan, *Armed and Dangerous*, Chicago Reader, 8/31/2001.

¹⁴² *Stone Walled, Police Abuse and Misconduct Against Lesbian, gay, Bisexual and Transgender People in the U.S.* 40, Amnesty International, 2005.

¹⁴³ One of the authors of this report served as an expert consultant to Amnesty International for *Stonewalled*, and as such participated in the vast majority of survivor interviews which formed the basis for the report.

¹⁴⁴ See *Violence on the Border*, Coalicion de Derechos Humanos/Alianza Sin Fronteras Press Release, February 25, 2004; *Justice on the Line: The Unequal Impacts of Border Enforcement in Arizona Border Communities*, Border Action Network; *In Our Own Backyard: A Community Report on Human Rights Abuses in Texas' Rio Grande Valley*, Valley Movement for Human Rights, 2004; 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 (April 1995).

¹⁴⁵ See Bureau of Justice Statistics, *Criminal Victimization, 2004*, US Department of Justice, Office of Justice Programs, NCJ 210674, September 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, August 2002 (74% of completed and attempted sexual assaults against women were not reported to the police)

¹⁴⁶ Press release issued by survivor’s attorney in preparation for officer’s sentencing; March 16, 2005 (on file with authors).

¹⁴⁷ *List of Issues to be Considered During the Examination of the Second Periodic Report of the United States of America: Response of the United States of America*, p. 64; *Oral Statements by the United States Delegation to the Committee Against Torture*, May 8, 2006.

¹⁴⁸ See *Stonewalled, Police Abuse and Misconduct Against Lesbian, gay, Bisexual and Transgender People in the U.S.* 40, Amnesty International, 2005

¹⁴⁹ Raphael Jody and Deborah L. Shapiro, “Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago,” Chicago Coalition for the Homeless, 2002 .

¹⁵⁰ Sex Workers Project, *Behind Closed Doors* (New York City: 2005); Sex Workers Project, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, (New York City: 2003).

¹⁵¹ Eugene, Oregon Settles Two Suits With Women Abused by Cops, Associated Press, August 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 August 25, 2005); C. Stephens, *Victim Speaks Out About Perverted Eugene Cop*, KVAL 13 News, March 13, 2004; C. Stephens, *Magana Records Revealed*, KVAL 13 News, March 4, 2004; *Four More Women Accuse Eugene Officer of Abuse*, KATU 2 News, December 11, 2003.

¹⁵² *Stone Walled, Police Abuse and Misconduct Against Lesbian, gay, Bisexual and Transgender People in the U.S.*, *Amnesty International*, 2005. PP. 40.

¹⁵³ *Id.*

¹⁵⁴ Samuel Walker and Dawn Irlbeck, *Driving While Female: A National Problem in Police Misconduct*, Police Professionalism Initiative, Department of Criminal Justice, University of Nebraska at Omaha, 2002, available at <http://www.policeaccountability.org/drivingfemale.htm>; Press Release, *Driving While Female Report Launches UNO Police Professionalism Program*, available at: <http://www.unomaha.edu/uac/releases/2002may29ppi.html>

¹⁵⁵ *A Few Bad Cops, or a Problem With the System?* New York Times, February 11, 2001.

¹⁵⁶ *Suffolk County Officer Is Charged in Abuse of Female Drivers*, NYT 11/29/02.

¹⁵⁷ Al Baker, *Two Officers Are Charged in Sex Attack*, New York Times, November 22, 2005; *Woman Says Officers Sexually Abused Her*, New York Times, November 21, 2005.

¹⁵⁸ William Glaberson, *Suit Accuses Police in Brooklyn of Strip-searches in Minor Cases*, New York Times, October 30, 2003.

¹⁵⁹ *Bonds v. Utreas*, 04 C 2617 (N.D. Ill. Judge Joan Lefkow).

¹⁶⁰ Statement on Katrina Disaster, National Economic and Social Rights Initiative (NESRI), February 23, 2006, available at http://www.nesri.org/media_updates/index.html#nesri.

¹⁶¹ Principle 12(3) of United Nations Guiding Principles on Internal Displacement.

¹⁶² *Military due to Move Into New Orleans: Governor Warns Thugs, Troops 'Know how to Shoot and Kill'*, CNN.com, Friday, September 2, 2005

¹⁶³ General Comment No. 29: States of Emergency (Article 4) : 3 1/08/2001. *CCPR/C/21/Rev.1/Add.11, General Comment No. 29. (General Comments)*, ¶ 5.

¹⁶⁴ *Id.* at ¶ 5 & 7.

- ¹⁶⁵ Ronnie Thomas, *Escape Into Uncertainty: This is a Family in Crisis*, Decatur Daily, December 18, 2005; Shaun Waterman, *Cops Trapped Survivors in New Orleans*, United Press International, September 9, 2005.
- ¹⁶⁶ Ronnie Thomas, *Escape Into Uncertainty: This is a Family in Crisis*, Decatur Daily, December 18, 2005.
- ¹⁶⁷ Report on file with authors.
- ¹⁶⁸ Tanya Mendis, *Katrina Survivor Alleges Police Brutality*, WCTV, September 9, 2005.
- ¹⁶⁹ James Polk, Drew Griffin and Kate Albright-Hanna, *Katrina Autopsy: Police Shot Mentally Disabled Man in Back*, CNN Monday, May 22, 2006.
- ¹⁷⁰ Komo 4 News, *At the Train Station, New Orleans' Newest Jail is Open for Business*, September 6, 2005.
- ¹⁷¹ *Police Brutality in New Orleans*, News Hour with Jim Lehrer, Public Broadcasting Service, October 12, 2005; Mary Foster, *New Orleans Beating Caught on Tape*, Associated Press, October 9, 2005.
- ¹⁷² Gerald Smith, *New Orleans: A Police State Encampment*, Copwatch Report, Berkeley Cop Watch, Winter 2006.
- ¹⁷³ Bruce Egglar, *Increase in Police Brutality in N.O. Alleged: Residents Say Poor, Minorities Targeted*, New Orleans Times-Picayune, March 17, 2006.
- ¹⁷⁴ Mary Foster, *New Orleans to Probe Brutality Allegations*, Associated Press, April 6, 2006.
- ¹⁷⁵ Human Rights Watch, *New Orleans: Prisoners Abandoned to Floodwaters, Officers Deserted a Jail Building, Leaving Inmates Locked in Cells* (New York, September 22, 2005).
- ¹⁷⁶ *Id.*
- ¹⁷⁷ Amnesty International USA Domestic Human Rights Program, *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States*, available at: http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf
- ¹⁷⁸ See (N.D.Ga.) (J. Murphy) Crim. Indict. Nos. 4:04-CR-018 through 4:05-CR-041.
- ¹⁷⁹ See *United States v. Falgun*, Motion to Dismiss, or in the Alternative, Motion for Discovery Based on Newly Discovered Evidence of Selective Enforcement and Brief in Support Thereof (hereinafter "Motion to Dismiss"), at 15-18 (N.D.Ga.), available at www.stopoperationmethmerchant.org/pdf/ACLU_MotiontoDismiss.pdf.
- ¹⁸⁰ Motion to Dismiss, at 9-14 (citing sworn statements of informants).
- ¹⁸¹ Title VI of the Civil Rights Act of 1964. See, "Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Fed. Reg. Vol. 67, No. 117, June 18, 2002 at 41459).
- ¹⁸² *Stolen Lives*, 2nd Edition, October 22nd Coalition; Amnesty International, *Rights for All* (New York: 1998).
- ¹⁸³ Geneva Horse Chief, "Amnesty International Hears Testimony on Racial Profiling," *Indian Country Today*, October 16, 2003.
- ¹⁸⁴ *Id.* at 22-23.
- ¹⁸⁵ Leadership Conference on Civil Rights Education Fund, *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001* 28, (Washington, DC: 2003).
- ¹⁸⁶ Nina Bernstein, *Questions and Bitterness and Exile for Queens Girl in Terror Case*, New York Times, June 17, 2005; *Guilty Until Proven Innocent*, New York Times, April 12, 2005; Nina Bernstein, *Teachers and Classmates Express Outrage at Arrest of Girl, 16, as a Terrorist Threat*, New York Times, April 9, 2005.
- ¹⁸⁷ See, e.g., Dorothy E. Roberts, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy," *Harvard Law Review* 104(1991): 1419-87; Lynn M. Paltrow, *Background concerning Ferguson et. al. v. City of Charleston et. al.*, National Advocates for Pregnant Women, available at http://www.advocatesforpregnantwomen.org/issues/ferguson_history.htm; Lynn M. Paltrow, *McKnight Background*, National Advocates for Pregnant Women, available at <http://www.advocatesforpregnantwomen.org/issues/mcknightbckrd.htm>.
- ¹⁸⁸ Dorothy E. Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2003).
- ¹⁸⁹ Leslie Fineberg, *Trans Liberation: Beyond Pink or Blue*, 1998.
- ¹⁹⁰ "In the era of Stonewall, laws against cross dressing were common. Indeed, the most recent case of such archaic laws being stuck down was in San Diego, just a handful of years ago. It would not surprise me if there are locales in the United States where such laws are still on the books. Many of them required that a person, if so dressed, had to be wearing three items of their birth gender's clothing. Some were more stringent, with some biological females having to get special licenses in order to wear pants in public." Gwen Smith, *Transsexual Terrorism*, Washington Blade, October 3, 2003; see also Leslie Fineberg, *Trans Liberation: Beyond Pink or Blue*, 1998; Phyllis Frye, http://www.transhistory.org/history/TH_Phyllis_Frye.html (citing Houston Code struck down in 1981).
- ¹⁹¹ Sylvia Rivera Law Project, *Toilet Training* [video], 2003; People in Search of Safe Restrooms, <http://www.pissr.com>.
- ¹⁹² Professor Rebecca Young, presentation at National Drug Research Institute, March 10, 2004.
- ¹⁹³ *Id.*
- ¹⁹⁴ *Id.*
- ¹⁹⁵ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election (June 2001)*.
- ¹⁹⁶ Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 398.
- ¹⁹⁷ News Journal & Guide, 486 Documented Complaints; NAACP to File Lawsuit over Voting Rights Act Violations in Florida Date posted: 12/07/00.

¹⁹⁸ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001). John Nelson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 26–27. Mr. Nelson added that for the first time in his voting experience at his precinct, rather than simply showing his voter registration card, he was asked for two pieces of identification, which he considered to be “unusual.” pp 29.

¹⁹⁹ Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 36–37.

²⁰⁰ *Id.*, at p. 37.

²⁰¹ *Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. A/50/40, para. 292.*

²⁰² Initial Reports of States Parties Due in 1993: United States of America. 24/08/94. CCPR/C/81/Add.4. ¶ 177.

²⁰³ 138 Cong. Rec. s14781-84 (daily ed. April 2, 1992); Vol. 138; also available at http://www.ohchr.org/english/countries/ratification/4_1.htm

²⁰⁴ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>

²⁰⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987, Part I, Article 1.

²⁰⁶ See *Graham v. Connor*, 490 U.S. 386 (1989).

²⁰⁷ *Id.* at , 395.

²⁰⁸ *Abdullahi v. City of Madison*, 423 F.3d 763, 768 (7th Cir. 2005), quoting *Graham* at 396.

²⁰⁹ 137 F.Supp.2d 1326 (N.D. Ga. 2000).

²¹⁰ 2006 WL 63959 (11th Cir. Jan. 12 2006).

²¹¹ *Ibid.*

²¹² *Chavez v. Martinez*, 538 US 760 (2003).

²¹³ 346 F. Supp. 2d 430 (2004).

²¹⁴ *Higazy v. Millennium Hotel & Resorts, CDL L.L.C.*, 346 F. Supp. 2d 430 (2004).

²¹⁵ 138 Cong. Rec. s14781-84 (daily ed. April 2, 1992); Vol. 138; also available at http://www.ohchr.org/english/countries/ratification/4_1.htm

²¹⁶ *Ingraham v. Wright*, 430 U.S. 651 (1977).

²¹⁷ *Id.*

²¹⁸ *Graham v. Connor*, 490 U.S. 386 (1989). The Court returned the case to the appeals court for evaluation of Graham’s claim under the Fourth Amendment. We were unable to locate a published opinion adjudicating a Fourth Amendment claim. However, such claims are frequently decided in favor of the government under a lenient standard which requires examination of whether, under the “totality of circumstances” a law enforcement officer’s conduct was “objectively reasonable” from the point of view of the officer at the time of the conduct in question.

²¹⁹ Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 131.

²²⁰ *Id.* ¶ 13.

²²¹ General Comment No. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7) : . 10/03/92. CCPR General Comment No. 20. (General Comments), at ¶ 8.

²²² *Id.* at ¶ 11.

²²³ Second and Third Periodic Reports of the United States of America to the Human Rights Committee, Submitted by the United States of America to the Human Rights Committee, November 28, 2005, ¶ 128.

²²⁴ Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 86.

²²⁵ For discussions of the consistent lack of funding for pattern and practice investigations by the Department of Justice, see U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5, July 1, 1998.

²²⁶ General Comment No. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7) : . 10/03/92. CCPR General Comment No. 20. (General Comments), at ¶ 10.

²²⁷ 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, November 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.

²²⁸ *Id.* at ¶ 14.

²²⁹ Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 70.

²³⁰ Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 70.

²³¹ ECHR 36217/97 (2005).

²³² ECHR 31247/96 (2004).

²³³ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities* 7, Border Action Network.

²³⁴ See, e.g., U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5, July 1, 1998; *United States of America: Rights for All* 43, Amnesty International, AMR 51/035/1998, 1998.

²³⁵ Tara L. Senkel, *Civilians Often Need Protection From the Police: Let's Handcuff Police Brutality*, 15 N.Y.L. Sch. J. Hum. Rts. 385, 403 (1999).

²³⁶ Mark Sherman, *Amnesty International: US Taser Deaths Up*, Associated Press, March 27, 2006; Pamela Dickman, *Man Dies 2 Weeks After Fight*, Loveland Daily Reporter Herald, October 26, 2005.

²³⁷ 18 USCS §242 states in relevant part:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. (Emphasis added.)

²³⁸ 42 U.S.C. §1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

²³⁹ *Screws v. US*, 325 U.S. 91 (1945); see also Pastor, Michael J., *A Tragedy and a Crime?: Amadou Diallo, Specific Intent, and the Federal Prosecution of Civil Rights Violations*, N.Y.U. J. Legis. & Pub. Pol'y 171

²⁴⁰ *United States v. Shafer*, 384 F. Supp. 496, 503 (N.D. Ill. 1974).

²⁴¹ Id.

²⁴² For instance, during a meeting with students at Howard University in Washington DC in November 2000, Bill Lann Lee, Former Assistant Attorney General for Civil Rights, cited to 18 U.S.C. § 242's requirement that a law enforcement officer "willfully" deprive an individual of their constitutional rights in order for liability to attach as a barrier to prosecution of an officer responsible for the death of Howard University student Prince Jones. See also U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000.

²⁴³ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities* 7, Border Action Network.

²⁴⁴ Id.

²⁴⁵ *United States v. Lanier*, 520 US 259 (1997).

²⁴⁶ *Parratt v. Taylor*, 451 US 527, 535 (1981).

²⁴⁷ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities* 7, Border Action Network.

²⁴⁸ See e.g., *Roe v. Hunke*, 128 F.3d 1213, 1215 (8th Cir. 1997) (sexual assault of 11-year-old girl by police officer who worked at local school was not "under color of law"); *Almand v. DeKalb County*, 103 F.3d 1510, 1514-15 (11th Cir. 1997) (although court acknowledged that officer entered woman's apartment based on his status as a police officer, subsequent forcible entry and rape was a "private act" not taken under authority of state law).

²⁴⁹ *Saucier v. Katz*, 533 U.S. 194 (2001).

²⁵⁰ *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

²⁵¹ Carolyn Marshall, *Pepper-Spray Case Goes to Jury in California*, New York Times, September 22, 2004; *Verdicts & Settlements*, The Recorder, vol. 130(21):5, January 31, 2006.

²⁵² Bob Egelko, *Bid to put limit on pepper spray; 8 Humboldt County activists ask judge to ban use at protests*, The San Francisco Chronicle, MAY 9, 2005.

