



Submission to the United Nations Committee Against Torture on the List of Issues Prior to Reporting for the United States of America (6th Periodic Report)

Submitted by:

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Dream Defenders, an uprising of communities in struggle, shifting culture through transformational organizing;

Mothers Against Police Brutality (MAPB), a national organization based in Dallas, Texas, which organizes and voices the concerns of families impacted by police violence; advocates policies to prevent, investigate, and prosecute police brutality and police homicide; and works in coalition with other groups to end unjust police use of excessive and deadly force; and

Families of Israel “Reefa” Hernandez-Llach, Sebastian Gregory, Clinton R. Allen, and Juan May

I. Introduction

We submit this shadow report to the Committee Against Torture (“the Committee”) to shed light on the ongoing abuses perpetrated by United States (U.S.) law enforcement officials and lack of accountability or redress for victims available under the present U.S. justice system. Together, police brutality and the failure for the U.S. government to hold its actors accountable, particularly for misconduct towards people of color, amount to violations of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”). While many of the issues on the Committee’s List of Issues for the 3rd to 5th periodic reports continue to be relevant, we offer additional information to assist the Committee in formulating its List of Issues Prior to Reporting for the 6th periodic report of the United States of America.

There are three specific areas of concern that the submitting organizations wish to provide additional information on:

1. Police Brutality and Excessive Use of Force
2. Lack of Prompt, Impartial Investigations and Adequate Remedies for Victims of Police Abuse
3. Use of Electro-Shock Devices or “Tasers”

II. Police Brutality and Excessive Use of Force

In its 2014 “Concluding Observations on the combined Third to Fifth Periodic Reports of the United States of America,” the Committee expressed deep concern on the subject of excessive use of force, discriminatory policing and lack of accountability for police misconduct.ⁱ Unfortunately, while there has been much attention on this issue, there continue to be a high number of police-involved deaths, particularly of people of color and members of the LGBTI community, and little to no accountability for the police officers responsible for those deaths.ⁱⁱ

In its follow-up report to the Committee, as well as its reports to other treaty bodies, the U.S. government argues that its mechanisms for holding police departments across the country are adequate.ⁱⁱⁱ This is simply not true. Only 0.12% of police departments in the U.S. have faced any sort of Department of Justice (hereinafter “DOJ”) investigation since 2010.^{iv} As the Committee itself noted, the U.S. government has no way of monitoring state and local compliance with the treaty because it does not centrally collect data from the almost 18,000 police departments that receive significant levels of funding and support from the federal government.^v Even in those cases where the DOJ has signed a consent decree with a local police department following an investigation, as in the case of the City of Seattle, the investigation has done little to reduce excessive use of force by police.

Furthermore, as we are still concerned about the widespread use of less lethal weapons by police, including tear gas, pepper spray, wooden and rubber bullets, stun guns, electro-shock devices (Tasers), and violent police baton beatings to subdue civil demonstrations related to the issues of police brutality and lack of accountability. As the frequency of these demonstrations has increased, the level of force, targeting and surveillance of certain leaders has also intensified. Though, as former Special Rapporteur on Torture Theo van Boven noted, the misuse of these weapons can amount to “torture or other forms of ill-treatment,” these implements remain severely under regulated by the U.S. government.^{vi}

Recommended Questions:

1. Please detail any steps the U.S. government is taking to assemble an annual reporting system and central database of statistics across all law enforcement agencies to track compliance with best practices, including data on rates of stops, frisks, searches, summonses, excessive use of force, civilian complaints about the police and arrests by race, age, and gender.
2. Please detail any comprehensive, central and open civilian complaint procedure regarding police contacts with the community.
3. Please indicate whether the U.S. government has reduced federal funding to any police department as a result of finding discrimination, systematic excessive use of force or other patterns of misconduct.
4. What steps is the U.S. government taking to ensure that police responses to civil demonstrations do not violate the strict international standards of necessity and proportionality?
5. Please detail any measures that have been taken to eliminate the disproportionate levels of police brutality suffered by LGBTI people, particularly LGBTI people of color.

III. Lack of Prompt, Impartial Investigations and Adequate Remedy for Victims

Families of victims of police violence and advocates are deeply concerned by the lack of transparency, inadequacy of process, as well as the presence of bias and conflicts of interest in investigations for police-inflicted death or serious injury. While the Committee called upon states to provide an enforceable right to fair and adequate compensation for victims of torture and ill-treatment, rehabilitation and redress cannot be accomplished by money alone, particularly when the process is shrouded in secrecy, legal inconsistencies, and double standards that effectively allow police officers to absolve themselves of any responsibility for their acts. Even a recent federal court of appeals judge noted that the current system does not offer adequate avenues for redress, because of qualified immunity and certain obstacles that make it difficult for juries to convict, or even indict, police officers.^{vii} Moreover, police officers responsible for killing an individual while on duty rarely get disciplined even internally and often work the same “beat,” despite the fear, intimidation and eroded trust this could cause. Families are completely left out of the process and are met with hostility or disregard when seeking more information about the deaths of their loved ones at the hands of the police.

A. Supporting Examples:

There are countless examples of how police departments and prosecutors regularly operate to disenfranchise families, dehumanize victims and protect themselves, to the detriment of families seeking truth and justice for the loved ones they lose to police force. As the cases of Israel “Reefa” Hernandez, Sebastian Gregory and others have been highlighted in previous reports,^{viii} we focus on additional examples that demonstrate this recurring and troubling dynamic.

1. Case of Clinton Allen

The case of Clinton Allen offers a vivid example of the types of prosecutorial misconduct, bias and victim-slandering that prevent victims’ families from receiving justice and holding police officers accountable. Mr. Allen, an unarmed 25 year-old black male, was shot and killed by Dallas police officer Clark Staller on March 10, 2013.^{ix} Even before the murder of Mr. Allen, Staller had a preexisting record of using excessive force and falsifying police reports.^x Despite this pattern of misconduct and abuse on the part of Staller, the Dallas Police Department and District Attorney’s Office collaborated to fully exonerate him while simultaneously blocking all efforts by Mr. Allen’s family to hold Staller accountable.

Immediately following the killing of Mr. Allen, the Dallas Police Department began issuing statements defaming his character and victim-blaming the young man; an extremely troubling and dehumanizing public relations tactic that is regularly deployed by police departments in the wake of high profile brutality cases.^{xi} The police accused Mr. Allen of PCP consumption, and claimed that Staller “feared for his life,” despite the fact that multiple witnesses signed affidavits attesting that Mr. Allen was complying with Staller’s orders and had his hands up when he was shot.^{xii} The prosecutorial misconduct occurred when these same witnesses were not allowed to testify before the grand jury investigating the killing--a strategic move on the part of the District Attorney’s office to ensure that Staller was “no billed,” or not indicted.^{xiii} Furthermore, Mr. Allen’s family was never once contacted by the Police Department to discuss the case, precluding effective redress and accountability while making the family feel further alienated and marginalized.

Despite the prosecutorial misconduct and blatant unethical collusion between the District Attorney’s Office and the Dallas Police Department, Staller was allowed to resume his patrol on the streets of Dallas, leaving the victim’s family and community additionally disrespected and vulnerable to retaliatory over-policing and additional instances of brutality.^{xiv} This outcome is consistent with the general pattern of police impunity in a city like Dallas, which did not indict a single police officer for killing an unarmed or mentally ill citizen between 1973 and 2014.^{xv}

2. Case of Juan May

Juan May’s case represents another example of prosecutorial bias and the refusal to hold police accountable for excessive uses of force. Mr. May, a 45 year-old unarmed black man, was shot and killed on June 21, 2014 by off-duty Arlington, Texas police officer Thedrick Andres. Andres killed May after an argument at a party. All of the witnesses attested that Andres was knocked down during an altercation, retreated to his car, retrieved his service firearm, and shot Juan May in the chest, killing him.^{xvi}

Despite the fact that Andres has an alleged history of using excessive violence and brutality, both as an officer for the Dallas Police Department as well as at his previous post with the New Orleans Police Department, all evidence against him was ignored by the District Attorney’s Office. It is believed that personal relationships created a bias which caused the prosecution to refuse to introduce the behavioral

evidence that m have demonstrated a pattern of abuse of power and excessive force. The apparent collusion between police departments and district attorneys’ offices prevented the victim’s family from receiving any sort of closure or justice. Furthermore, just as in the case of Clinton Allen and the other Dallas County policemen that have enjoyed almost total impunity since 1973, officer Andres was “no billed” by the grand jury, and currently works as a detective in the Arlington Police Department.^{xvii}

Recommended Questions:

1. What measures has the U.S. government taken to reduce and deter prosecutorial misconduct and assure impartiality in investigations involving law enforcement officers?
2. Please describe how the U.S. government ensures that police officers who have violated internal policies, acted discriminatorily or have a history of misconduct are properly disciplined or removed from the force.

B. City of Seattle: Ineffective DOJ Settlement and Differing Legal/Procedural Standards

In terms of the relationship between local police departments and the US government, police departments can be categorized according to whether they operate under a consent decree to eliminate unconstitutional policing (an agreement between the DOJ and the police department), or not. However this only operates as a *de jure* distinction, since law enforcement continues to use excessive use of force against people of color regardless of whether a consent decree exists. The City of Seattle, Washington, serves as one example of this. Though Seattle entered a consent decree with DOJ in 2011, we continue to document incidences of excessive use of lethal or brutal force. The case of Che Taylor illustrates the way in which the substantial differences between the investigative procedures for homicide by law enforcement and criminal referral procedures for homicide by ordinary citizens exacerbate the problem of inadequate remedies for victims and their families while shielding police officers from punishment.

On February 21, 2016, in Seattle, Washington, Seattle Police Department officers in civilian clothing or “plain clothes” (devoid of law enforcement insignias, medallions, badges or symbols typically utilized to inform the citizen of the actor’s identity and governmental affiliation) conducted an undercover investigation into alleged drug activity. During the investigation, police officers covertly monitored and followed Mr. Taylor before moving in on him loudly and rapidly, and subsequently shooting and killing him.^{xviii} Officers repeatedly used Mr. Taylor’s prior contacts with the criminal justice system as justification for their “swift” action.

Although four months have passed since officers killed Mr. Taylor, the prosecuting attorney has not considered filing criminal charges, which would have been filed much more readily in a case of homicide committed by a civilian.^{xix} However, in Washington State, criminal laws and procedures differ substantially depending on whether the actor is a civilian or a law enforcement officer.^{xx} Police-involved killings are diverted to an inquest process that includes a jury, but prohibits a finding on the issue of guilt or innocence. Prior to the conclusion of the inquest, the prosecutor has no discretion to file a criminal case against the officers involved. Thus, Mr. Taylor’s case is demonstrative of the double standard regarding investigation and accountability measures for law enforcement.^{xxi} This case is also concerning in that it shows that no national or local system exists to provide systematic review, monitoring or regulation of the officer conducting police activities in civilian clothing.

Recommended Questions:

1. Please provide detailed information regarding the systemic monitoring, documentation and regulation of the use of officers in civilian clothing conducting covert operations in civilian neighborhoods;
2. Please provide detailed information regarding the systemic monitoring, documentation and regulation of the use of information, previously gathered by law enforcement through arrest and interrogation, to ensure the prevention of retaliation by law enforcement officers (in uniform and in civilian clothing) acting under color of and protection of law;
3. Please provide detailed information regarding the number of extrajudicial killings by law enforcement officers in uniform, organized by state and year;
4. Please provide detailed information regarding the systemic monitoring and documentation of the number of criminal cases filed and the number of cases declined for filing, against law enforcement officers using lethal or excessive force, organized by state and year;
5. Please provide an accounting of the number of criminal cases filed against law enforcement officers using lethal or excessive force, where government officials awarded financial compensation from the same factual conduct to survivors or victims either by settlement, insurance claim, verdict, court order, law or other agreement.

IV. Use of Electro-Shock Devices or “Tasers”

In its Concluding Observations on the 2014 periodic report of the United States, the Committee reiterated concern over the lack of regulation or under-regulation of electrical discharge weapons (“Tasers”). The Committee’s Concluding Observations from 2014 on the usage of electrical discharge weapons build on more than a decade of Committee reports that consistently call for the abolition or strict regulation of tasers. The United States government has never complied with a recommendation from the Committee in this regard, even in the face of widespread and consistent reports of abusive usage of Tasers, as in the Israel “Reefa” Hernandez-Llach and Dominique Franklin cases brought before the Committee in the last review.

The lack of uniform regulations and guidance for electro-shock devices makes it almost impossible for affected citizens, particularly from Black and Brown communities, makes for confusion and difficulty in holding officers accountable for misuse. The Committee previously addressed the specific case of Israel ‘Reefa’ Hernandez Llach, an unarmed, Colombian asylee who was tasered to death by officer Jorge Mercado of the Miami Beach Police Department after he was caught writing his name on the outside wall of a shuttered and inoperative McDonald’s franchise. On July 23, 2015, the Miami-Dade State Attorney’s Office announced that it would not press charges against Officer Mercado, since tasers are categorized as “non-lethal” weapons, which can be deployed even in situations where there is no threat of immediate loss of life or bodily injury.^{xxii, xxiii} In 2015, the Miami Beach Police Department announced what it claimed were sweeping changes to its electro-shock use policy,^{xxiv} but upon further investigation has failed to update its policies and now claims to have adopted the Taser Corporation’s use of force policies wholesale. Such duplicitous and disingenuous attempts at reform fly in the face of this Committee’s previous recommendations. Whatever the policies that govern use of these devices, they will do little to curb police brutality, insofar as they are simply overlaid onto a system where police officers can break their own rules and not be held accountable for it. Given this background lack of accountability and regulatory mechanisms, there is very little incentive for police officers to refrain from using Tasers, or using them in only the most extreme of circumstances.

Recommended Questions:

1. Please provide information on any U.S. government guidelines regulating and monitoring the indiscriminate use of electro-shock or Taser weapons.
2. Please describe any steps the U.S. government is taking to produce and implement specific guidelines on the level of force counts as excessive in the context of “less lethal” weapons.

V. Conclusion

While we have detailed certain cases here, it is clear that the issues we raise in this report are applicable to hundreds of cases across the country. Even in those high-profile cases, like that of Freddie Gray^{xxv}, or in cases where video footage exists, as in Eric Garner's case^{xxvi} or the case of Dajerria Becton, the young woman who was body-slammed^{xxvii} by a police officer while attending a pool party in McKinney, TX, the officers involved are systematically let off the hook. This dynamic raises questions about the extent to which the US government has adequate mechanisms to hold its officers accountable or offer redress to victims of police violence.

The submitting organizations and families therefore urge the Committee to incorporate into its upcoming List of Issues the questions raised regarding police brutality, lack of accountability or redress to victims and use of “less lethal” weapons. The core issues raised in previous periodic reviews of the United States have not been addressed or dealt with by the State party in the interim years. In the present system, it continues to be a near impossible task to hold police officers and departments accountable for their excessive use of force, particularly against marginalized communities of color, continues to prove an almost impossible task, and there remain severe lacunae in the regulatory and reporting systems for use of force by police officers.

ⁱ The Committee highlighted as specific areas of concern “the numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals,” and “the alleged difficulties of holding police officers and their employees accountable for abuses.” United Nations Committee Against Torture, “Concluding Observations on the combined third to Fifth Periodic Reports of the United States of America,” (December 19, 2014) (CAT/C/USA/CO/3-5).

ⁱⁱ The transgender community has also been uniquely vulnerable to police violence. In 2013, for instance, transgender people were 3.7 times more likely to be on the receiving end of police brutality than their cisgender counterparts, and transgender people of color had a 600% higher likelihood of experiencing physical violence at the hands of police than their cisgender peers. National Coalition of Anti-Violence Programs, “Hate Violence Against Transgender Communities,” The Anti-Violence Project, 2013 (accessed June 27, 2016), available at: http://www.avp.org/storage/documents/ncavp_transhvfactsheet.pdf.

ⁱⁱⁱ The reports claim that the Department of Justice has increased the number of investigations into police brutality since the 2010 Concluding Observations: “the Department of Justice has taken... action in the past six years, opening 22 investigations into police departments in every corner of the nation, and has reached 19 agreements to correct unconstitutional policing.” United Nations Committee Against Torture, “Information Received From the United States of America on Follow-Up to the Concluding Observations,” (January 14, 2016) (CAT/C/USA/CO/3-5/Add.1).

^{iv} If there was a total of 22 investigations in six years, then that means that there was an average of 3.6 police departments investigated per year between 2009 and 2013. According to the Bureau of Justice Statistics’ 2008 Census of State and Local Law Enforcement Agencies, there are 17,985 state and local police departments in the United States. Therefore, even after the apparent increase in accountability and investigations discussed in the 2015 U.S. follow-up report, only 0.03% of police departments in the United States face any sort of Department of Justice investigation of systematic violations each year. Bureau of Justice Statistics, “Local Police,” U.S. Department of Justice (accessed June 25, 2016), available at: <http://www.bjs.gov/index.cfm?ty=tp&tid=71>.

^v As noted in the Committee’s Concluding Observations, the “lack of statistical data on allegations of police brutality, as well as a lack of information on the results of the investigation undertaken” makes it impossible to even begin to assess the adequacy of the few DOJ investigations that have been undertaken.

^{vi} United Nations Commission on Human Rights, “Report of the Special Rapporteur Theo Van Boven,” (December 23, 2003) (E/CN.4/2004/56).

^{vii} Jon O. Newman (Second Circuit U.S. Court of Appeals Judge), “Here’s a Better Way to Punish the Police: Sue Them for Money,” The Washington Post (June 23, 2016) (accessed on June 26, 2016), available at: https://www.washingtonpost.com/opinions/heres-a-better-way-to-punish-the-police-sue-them-for-money/2016/06/23/c608ad4-3959-11e6-9ccd-d6005beac8b3_story.html.

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- ^{viii} Family of Israel “Reefa” Hernandez-Llach, Dream Defenders, and Community Justice Project, “U.S. Civil Society One Year Follow Up Report” (November, 2014) (accessed June 25, 2016), available at: http://tbineternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_NGS_USA_23372_E.pdf.
- ^{ix} Jihad Hassan Muhammad, “Clinton Allen, Unarmed, Black, Killed by the Dallas Police Department,” The Dallas Weekly (June 14, 2013) (accessed June 27, 2016), available at: http://www.dallasweekly.com/news/metro/article_27b7a6c6-d522-11e2-b9e6-001a4bcf6878.html.
- ^x Tanya Eiserer, “Dallas Police Officer Receives 20-Day Suspension Over Incident Caught on Dash Cam Video,” The Dallas Morning News (April 25, 2012) (accessed June 27, 2016), available at: <http://crimeblog.dallasnews.com/2012/04/a-dallas-police-officer-was-1.html/>.
- ^{xi} Julia Craven and Nick Wing, “What We Lose When Police Blame Victims for Their Own Deaths,” (May 15, 2015) (accessed June 27, 2016), available at: http://www.huffingtonpost.com/2015/05/15/police-shootings-victim-blaming_n_7284792.html.
- ^{xii} Muhammed, “Clinton Allen, Unarmed, Black, Killed by the Dallas Police Department,” (see above, footnote ix).
- ^{xiii} Tanya Eiserer, “Dallas Police Officer Not Indicted in Fatal Shooting,” The Dallas Morning News (October 14, 2013) (accessed June 27, 2016), available at: <http://www.dallasnews.com/news/metro/20131014-dallas-police-officer-not-indicted-in-fatal-shooting.ece>.
- ^{xiv} Ibid.
- ^{xv} Eric Nicholson, “Years Later, Indicted Dallas Police Officers Still Haven’t Gone to Trial,” Dallas Observer (April 11, 2016) (accessed June 27, 2016), available at: <http://www.dallasobserver.com/news/years-later-indicted-dallas-police-officers-still-havent-gone-to-trial-8198502>.
- ^{xvi} Mitch Mitchell, “Off-Duty Arlington Officer Claims Self-Defense in Fatal Shooting,” Star Telegram (June 30, 2014) (accessed June 27, 2016), available at: <http://www.star-telegram.com/news/local/crime/article3863601.html>.
- ^{xvii} Claire Z. Cardona, “Arlington Officer No-Billed in 2014 Shooting,” The Dallas Morning News (August 5, 2015) (accessed June 27, 2016), available at: <http://crimeblog.dallasnews.com/2015/08/arlington-officer-no-billed-in-2014-shooting.html/>.
- ^{xviii} David Kroman, “Seattle’s latest police shooting, 3 dynamics shaping the fallout,” Crosscut (February 25, 2016) (accessed June 25, 2016), available at: <http://crosscut.com/2016/02/seattles-latest-police-shooting-the-3-dynamics-shaping-the-fallout/>.
- ^{xix} Revised Code of Washington 9A.32.010 (accessed June 27, 2016), available at: <http://app.leg.wa.gov/RCW/default.aspx?cite=9A.32.010>.
- ^{xx} Amy Radil, “So Far SPD’s Civilian Watchdog Finds ‘No Basis’ To Refer Che Taylor Shooting to Prosecutors,” KUOW, (March 3, 2016) (accessed on June 25, 2016), available at: <http://kuow.org/post/so-far-spds-civilian-watchdog-finds-no-basis-refer-che-taylor-shooting-prosecutors>.
- ^{xxi} Steve Miletich, Christine Willmsen, Mike Carter, and Justin Mayo, “Shielded By The Law,” The Seattle Times (September 26, 2015) (accessed on June 26, 2016), available at: <http://projects.seattletimes.com/2015/killed-by-police/>.
- ^{xxii} Kyle Munzenrieder, “Miami Beach Cop Won’t Be Charged Over Taser Death of Graffiti Artist Reefa,” Miami New Times (July 23, 2015) (accessed June 25, 2016), available at: <http://www.miaminewtimes.com/news/miami-beach-cop-wont-be-charged-over-taser-death-of-graffiti-artist-reefa-7773371>.
- ^{xxiii} While the standard across the country is for them to be called “less lethal” in light of all the deaths that have occurred through taser use.
- ^{xxiv} Charles Rabin, “Taser death in Miami Beach leads to new policy and stun guns”, Miami Herald, (September 24, 2015) (accessed June 25, 2016), available at: <http://www.miamiherald.com/news/local/crime/article36462477.html#storylink=cpyhttp://www.miamiherald.com/news/local/crime/article36462477.html>.
- ^{xxv} On June 23, 2016, Baltimore police officer Caesar R. Goodson, Jr. became the third officer to escape accountability for the death of Freddie Carlos Gray, Jr., who died after suffering a severe injury that functionally severed his spinal cord while handcuffed inside of a police van on April 19, 2015. Despite massive mobilizations and demonstrations by civil society organizations calling for police accountability, Judge Barry G. Williams acquitted officer Goodson of all charges, just as he had in the earlier case of officer Edward M. Nero, who was tried in relation to the same case one month before. To date, there has not been a single conviction in Mr. Gray’s case. Jess Bidgood and Sheryl Gay Stolberg, “Acquittal in Freddie Gray Case Casts Doubts About Future Trials,” The New York Times (June 23, 2016) (accessed June 26, 2016), available at: <http://www.nytimes.com/2016/06/24/us/verdict-freddie-gray-caesar-goodson-baltimore.html>.
- ^{xxvi} “The Call Blog: One Year Since Eric Garner Non-Indictment,” NY1 (December 2, 2015) (accessed June 25, 2016), available at: <http://www.ny1.com/nyc/all-boroughs/call-blog/2015/12/2/the-call-blog--one-year-since-eric-garner-non-indictment.html>.
- ^{xxvii} Molly Hennessy-Fiske, “Grand Jury Doesn’t Charge Texas Police Officer in Pool Party Incident,” Los Angeles Times (June 23, 2016) (accessed June 25, 2016), available at: <http://www.latimes.com/nation/la-na-texas-police-pool-party-20160623-snap-story.html>.