

This report is an assessment by human rights defenders of actions undertaken by the United States one year after its review by the Committee Against Torture and responds to the U.S.’s one-year report (“U.S. report”) describing its efforts to comply with the Committee’s recommendations in Concluding Observation 26(c) to provide effective remedies and rehabilitation to victims of police brutality and excessive use of force by law enforcement.

Submitting Organizations

Freedom, Inc. Based in Wisconsin, Freedom, Inc.’s mission is to end violence within and against low-income communities of color. Freedom, Inc. couples leadership development and community organizing with direct services to build the power of Black, Khmer and Hmong, women, queer folks and youth to bring about social, political, cultural, and economic change.

Organization for Black Struggle (OBS). Based in Missouri, OBS’s mission is to build a movement that fights for political empowerment, economic justice and the cultural dignity of the African-American community, especially the Black working class. Our program is based upon the Black Freedom Agenda that was introduced at the founding of the Black Radical Congress.

Power U Center for Social Change. Based in Miami, Florida, Power U organizes and develops the leadership of Black and Brown youth and Black women in South Florida so that they may help lead the struggle to liberate all oppressed people on such issues as the school to prison pipeline and reproductive justice.

Dream Defenders. Based in Florida, Dream Defenders is a statewide organization led by Black and Brown young people aiming to shift culture through transformational organizing.

Assessment of U.S. report:

Recommendation 26(c): B2 (Initial action taken, but additional information and measures required)

In December 2014, the Committee Against Torture released concluding observations following its review of the United States, calling on the U.S. to address, among other issues, the use of excessive force by law enforcement officials. The Committee’s observations were released at a time when uprisings were taking place in Black communities across the country following police killings of Mike Brown in Ferguson, Missouri and Eric Garner in Staten Island, New York, and the announcement of grand jury decisions not to prosecute their killers. As reported to the Committee in October that year, the world first watched live-stream footage in August 2014 showing law enforcement officials, donned in riot gear, tanks, armored vehicles and other military-style armaments, placing the town of Ferguson under siege in response to largely peaceful protests.ⁱ Law enforcement officials engaged in brutal repression of protestors, using intimidation tactics, brandishing their guns, threatening protestors, and firing tear gas and less lethal bullets onto crowds.ⁱⁱ In the early days of the protests, over 200 individuals were arrested and taken into custody.ⁱⁱⁱ These repressive tactics were replicated at hundreds of demonstrations in response to continued police killings of unarmed Black people since the Committee’s most recent review of the United States – from Baltimore, Maryland in response to the killing of

Freddie Gray to Madison, Wisconsin, where unarmed Tony Robinson was killed, and dozens of other cities across the country.

In its concluding observations, the Committee directed the U.S. to provide a one-year follow-up report describing its efforts to provide effective remedies and rehabilitation to victims of police brutality and excessive use of force by law enforcement. The U.S. report demonstrates how its efforts to comply with the Committee's recommendation have fallen woefully short.

A. The U.S. report reflects efforts to remedy only a small fraction of excessive use of force by law enforcement against Black communities

According to an investigation by The Guardian, 1,140 people had been killed by law enforcement in 2015, with Black people killed at more than twice the rate of other racial groups.^{iv} In the St. Louis region alone where 18-year-old Mike Brown had been killed in August 2014, law enforcement shot and killed 18-year-old Antonio Martin, on December 24, 2014, and critically wounded another Black teenager, Tyrone Harris, on the anniversary of Mike Brown's death. Despite these staggering numbers, the U.S. report describes prosecutions of merely a half dozen cases of police violence. And these are just cases that result in death; an emphasis on these cases mask more systematic, daily indignities suffered by Black communities at the hands of police. The UN Working Group of Experts on People of African Descent recently raised its "deep[] concern[s] about the low number of cases where police officers have been held accountable."^v

Similarly, while there are nearly 18,000 police departments across the U.S. carrying out these brutalities, the U.S. report describes investigations and/or reform efforts with only a handful of these. While a start, these efforts simply cannot be considered comprehensive or adequate to address the systematic and widespread violations that pervade law enforcement departments across the country.

Additionally, the Committee has emphasized that "the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture."^{vi} As Professor Peniel E. Joseph points out, "[c]ounting the dead, while crucial, should not be done at the expense of documenting the much larger number of routine law enforcement incidents involving non-deadly force targeting black civilians."^{vii} For instance, in June 2015, a video of a police officer body-slammng a 14-year-old Black girl for attending a pool party in McKinney, Texas went viral.^{viii} In October, the country watched a video of a police officer in Columbia, South Carolina, putting a Black high school student in a chokehold, slammng her to ground, and throwing her across her classroom.^{ix} These more routine incidents of excessive force expose the systematically violent enforcement of policies and practices shaped by structural racism. It also follows a historical pattern of using excessive force against entire communities of racial minorities in crisis, as the Committee had previously recognized with respect to the violent and abusive response of law enforcement towards minority communities struggling to survive in New Orleans in the aftermath of Hurricanes Katrina and Rita.^x

B. The U.S. Report ignores the violent, disproportionate, and indiscriminate use of force by law enforcement in response to nationwide demonstrations following the killings of unarmed Black people

Since August 2014, Black communities across the United States have risen up in protest hundreds of times in response to state violence against Black people. While these demonstrations brought the very issue of police brutality to the forefront, the U.S. Report completely ignores the violent, disproportionate, and indiscriminate use of force by law enforcement in response to these largely peaceful efforts to defend the human rights of Black communities.

Over the course of 2014 and 2015, demonstrators were confronted by hundreds of police officers, state troopers, and the National Guard, in full riot gear, carrying rifles loaded with rubber and wooden bullets, and accompanied by military-grade equipment, such as Long Range Acoustic Devices and heavily armored trucks designed for war zones.^{xi} They have used batons, rubber bullets, tear gas, pepper spray, and stun guns against protestors, including the elderly and children.^{xii} Many defenders have spoken out about the post-traumatic stress they have experienced as a result of these intense, heavily militarized police encounters.^{xiii} Law enforcement's militarized response to protesters is part of widespread militarization of local police forces across the U.S. permitted, if not encouraged, by the federal government. As the American Civil Liberties Union reported, "Every year, the Departments of Defense, Homeland Security and Justice funnel billions' worth of dollars and military equipment to state and local law enforcement agencies to help them amass arsenals of combat-ready weaponry."^{xiv}

The former U.N. Special Rapporteur on Torture, Theo van Boven, noted that the misuse of weapons, such as batons, stun guns, shields and belts, and tasers, and chemical control substances, such as tear gas, can amount to "torture or other forms of ill-treatment."^{xv} Pursuant to his mandate, the current Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, has investigated excessive use of force against protestors, including "beatings, tear gas, and stun grenades, during and following arrest for peaceful human rights demonstrations."^{xvi}

Furthermore, the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("Basic Principles"), which defines "excessive use of force" by law enforcement, draws from the International Covenant on Civil and Political Rights and the Code of Conduct for Law Enforcement Officials,^{xvii} both of which articulate the universal prohibitions of torture and other cruel, inhuman or degrading treatment.^{xviii} While the Basic Principles provide for conditions under which force may be used against unlawful assemblies, no such provision is made for lawful assemblies. And even when an assembly is deemed "unlawful" but non-violent, the use of force is not permitted except when "not practicable" to avoid it and even then, "shall [be] restrict[ed] [] to the minimum extent necessary."^{xix} As described above, the use of weapons and chemical agents against protestors who did not harm any persons, and the disproportionate use of force in response to sporadic incidents of violence, has, in many instances, amounted to torture or other forms of cruel, inhuman or degrading treatment.

C. The U.S.'s failure to work with organized Black communities directly impacted by excessive use of force by law enforcement in designing and implementing remedies render them ineffective.

Communities most affected by excessive use of force by law enforcement – including communities represented by the undersigned organizations – have called for divestment from policing, prisons, and other inherently violent and racially discriminatory structures in the criminal justice system, and for those divested funds to be invested in community-controlled public goods like schools and health care. Communities have also emphasized long-standing calls for reparations for past and ongoing harms inflicted on Black communities – a demand recently supported by the UN Working Group of Experts on People of African Descent.

Instead of heeding these calls for fundamental reforms, the U.S. government has responded in mostly piecemeal and inadequate fashion. Even where the U.S. describes its efforts to reform entire police departments, those reforms often lack community input and fail to address demands to reallocate public resources from policing towards social programs.

International law requires states to remedy human rights violations by taking appropriate measures to prevent further human right violations, including through the protection of human rights defenders.^{xx} The U.S. has not only failed to take appropriate measures to prevent further acts of police violence by maintaining current structures and policies of over-policing in Black communities, but it has also inflicted additional violence against Black communities that have risen up to defend their rights and secure them meaningful redress.

Conclusion

More than one year later, the U.S. government has attempted to address only a small fraction of police killings of Black people in the U.S. and has ignored daily violence suffered by Black communities at the hands of law enforcement. Moreover, through repressive tactics and excessive force, the U.S. has sought to silence the very human rights defenders who compelled international attention and government action on this issue. The U.S. has entirely ignored demands for measures that would constitute effective remedies for Black communities who have long suffered torture and other brutalities at the hands of law enforcement – namely, the divestment from policing institutions and prisons and investment in economic and social institutions driven by and for Black communities. The U.S.'s actions in these regards run directly counter to the Committee's recommendations in its Concluding Observations 26(c).

The United States cannot provide effective remedies and rehabilitation to victims of police brutality and excessive use of force by law enforcement, unless it respects, protects, and listens to those fighting on the front lines for racial justice. It is critical for the U.S. to center the demands of Black communities calling for divestment from the current system of policing and incarceration and investment in communities and community-controlled institutions. It is equally critical for the U.S. to respect the rights of Black human rights defenders in raising these demands. Otherwise, any efforts to remedy excessive use of force by law enforcement will remain ineffective.

The undersigned organizations respectfully request that the Committee call on the U.S. to (1) respect the fundamental human rights of Black communities rising up in protest against systematic police violence; (2) develop a remedial plan for police brutality that systematically seeks input from affected communities and whose stated mission is to reallocate resources from inherently violent policing and criminal justice mechanisms to community-controlled economic and social institutions; and (3) develop a plan to provide reparations to Black communities across the country who have long suffered torture and other forms of cruel, inhuman and degrading treatment at the hands of law enforcement and other state actors and institutions, with input from directly impacted communities.

ⁱ *Written Statement on the Police Shooting of Michael Brown and Ensuing Police Violence Against Protesters in Ferguson, Missouri*, Submitted by the Family of Michael Brown, HandsUp United, Organization for Black Struggle and Missourians Organizing for Reform and Empowerment, to the 53rd Session of the UN Committee Against Torture, Nov. 3-28, 2014, at pp. 4-6, available at <http://fergusontogeneva.org/FergusonReport.pdf>.

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*

^{iv} The Counted: People killed by police in the U.S., THE GUARDIAN, at <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>.

^v Statement to the media by the United Nations' Working Group of Experts on People of African Descent, on the conclusion of its official visit to USA, 19-29 January 2016, available at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/statement_to_the_media_by_the_united_nations_working_group_of_experts_on_people_of_african_descent_on_the_conclusion_of_its_official_visit_to_usa_19-29_january_2016_0.pdf.

^{vi} Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, U.N. Doc. CAT/C/GC/2, para. 20 (Jan. 24, 2008), at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en (hereinafter "CAT Gen. Cmt. 2").

^{vii} Peniel E. Joseph, *The number of times African-Americans were brutalized by police this year? Unknown*, REUTERS, June 11, 2015, at <http://blogs.reuters.com/great-debate/2015/06/11/the-number-times-black-people-were-brutalized-by-police-this-year-unknown/>.

^{viii} Brandon Brooks, *Cops Crash Pool Party*, YOUTUBE, June 6, 2015, at <https://www.youtube.com/watch?v=R46-XTqXkzE&feature=youtu.be>.

^{ix} Samuel Negron, *Officer Ben Fields assaulting a student 10/26/15*, YOUTUBE, Oct. 26, 2015, at <https://www.youtube.com/watch?v=HN966KxyoIU>.

^x Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, UN doc. CAT/C/USA/CO/2, para. 42 (July 25, 2006), at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en (hereinafter "2006 CAT Committee Recommendations").

^{xi} See, e.g., Jason Leopold, *Fearing a 'Catastrophic Incident,' 400 Federal Officers Descended on the Baltimore Protests*, VICE NEWS, June 24, 2015, <https://news.vice.com/article/fearing-a-catastrophic-incident-400-federal-officers-descended-on-the-baltimore-protests>; Amanda Taub, *What was THAT? A guide to the military gear being used against civilians in Ferguson*, VOX, Aug. 18, 2014, <http://www.vox.com/2014/8/18/6003377/ferguson-military-gear>.

^{xii} See, e.g., Alice Spieri, *Ferguson Protesters Win Temporary Restraining Order Against Police Use of Tear Gas*, VICE NEWS, Dec. 12, 2014, <https://news.vice.com/article/ferguson-protesters-win-temporary-restraining-order-against-police-use-of-tear-gas>; Andrew Blake, *Cleveland police pepper-spray protesters at 'Black Lives Matter' rally*, WASHINGTON TIMES, July 27, 2015, <http://www.washingtontimes.com/news/2015/jul/27/police-use-pepper-spray-black-lives-matter-rally/>; Judith Scherr, *Claims filed on behalf of Black Lives Matter Protestors*, SAN JOSE MERCURY NEWS, June 29, 2015, http://www.mercurynews.com/ci_28402342/berkeley-claims-filed-behalf-black-lives-matter-protesters; Daniel Politi, *Police Fire Rubber Bullets, Tear Gas on Berkeley Protesters*, SLATE, Dec. 7, 2014, at http://www.slate.com/blogs/the_slatest/2014/12/07/police_use_rubber_bullets_tear_gas_on_berkeley_protests.html;

Riham Feshir, *Protesters march in support of boy, 10, hit by pepper spray*, MINNESOTA PUBLIC RADIO NEWS, May 15, 2015, at <http://www.mprnews.org/story/2015/05/15/mppls-protest>

^{xiii} See, e.g., Ashley Yates, *Black lives will matter when our tragedies turn to triumph: Let Ferguson be a start*, HUFFINGTON POST, Mar. 2, 2015, at http://www.huffingtonpost.com/ashley-yates/black-lives-will-matter-w_b_6787266.html.

^{xiv} War Comes Home: The Excessive Militarization of American Policing, American Civil Liberties Union (2014), <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rell.pdf>.

^{xv} Report of the Special Rapporteur on the question of torture, Theo van Boven, UN doc. E/CN.4/2005/62, para. 13 (Dec. 15, 2004), at <http://daccess-ods.un.org/TMP/2448323.66704941.html>.

^{xvi} Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN doc. A/HRC/22/53/Add.4, e.g. paras. 6, 10, 21, 77 (Mar. 12 2013), at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.Add.4_Advance_version.pdf.

^{xvii} Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Preamble, adopted by 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27 – Sept. 7, 1990).

^{xviii} International Covenant on Civil and Political Rights, art. 7 (entered into force Mar. 23, 1976); Code of Conduct for Law Enforcement Officials article 5, adopted by G.A. Resolution 34/169 of Dec.17, 1979.

^{xix} Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, art. 12-13, adopted by 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27 – Sept. 7, 1990).

^{xx} Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, arts. 3(a), 22(a), and 23(d), adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.