

**Shadow Report from Minnesota:
A Human Rights Perspective on
“Prompt and Independent” Investigations
of Law Enforcement Misconduct**

**Regarding Failures to Implement the
Convention Against Torture and
Other Forms of Cruel, Inhuman or
Degrading Treatment or Punishment (CAT)**

**A Response to the
2013 Periodic Report of the United States of America**

**Submitted by
Ad-Hoc Work Group-Minnesota
Re: US Compliance With Human Rights Treaties**

**Co-Sponsored by
Asian Media Access
Communities United Against Police Brutality
Isuroon (Seeking Health and Empowerment for Somali Women)
Maria Iñamagua Campaign for Justice
Minnesota Black Nurses Association
Minnesota Tenants Union**

September 22, 2014

I. Title and Date:

**Local Failure to Provide Prompt and Impartial Investigation of Reports of Cruel or Degrading Treatment or Punishment
September 17, 2014**

II. Reporting Organization

Ad-Hoc Work Group-Minnesota Re: US Compliance With Human Rights Treaties

Co-Sponsored by

Asian Media Access

Communities United Against Police Brutality

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III. Issue Summary



1. One common thread running through national incidents such as the Michael Brown case¹ and local Minnesota examples, Terrance Franklin², Al Flowers³, Chris Lollie⁴, Maria Inamagua⁵ and innumerable other similar but less well-known cases of police misconduct is local officials' failure to provide and, indeed, active interference with a prompt and impartial

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NAACP calls for special prosecutor in Michael Brown shooting case, Washington Post By Mark Berman August 21, 2014 at <http://www.washingtonpost.com/news/post-nation/wp/2014/08/21/naACP-calls-for-special-prosecutor-in-michael-brown-shooting-case/> For more, see Endnote 1.

² See **“What really happened to Terrance Franklin? Three months and counting “** By [Mary Turck](#), [News Day](#), August 15, 2013, at <http://www.tcdailyplanet.net/news/2013/08/15/what-really-happened-terrance-franklin-three-months-and-counting> For more, see Endnote 2.

³ The Al Flowers case raises issues of whether official investigations of police misconduct by local officials are adequate in scope, prompt, and impartial. For more, see Endnote 3.

⁴ **New St. Paul skyway arrest video released by police**, St. Paul Pioneer Press, by [Mara H. Gottfried](#), mgottfried@pioneerpress.com, 09/10/2014 12:01:00 AM CDT, Updated: 09/10/2014 09:24:55 PM CDT http://www.twincities.com/crime/ci_26505612/st-paul-skyway-arrest-video-released-by-police This report includes the surveillance video of Chris Lollie and the confrontation with police in the downtown St. Paul skyway. NOTE: The footage is overlaid with the audio recording from Lollie's cell phone that he uploaded to YouTube.

investigations of reported police misconduct as required under the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Articles 12 and 16.

2. By routinely inserting local police department personnel into the investigation of local police misconduct (gathering and compiling information, controlling the pace of the investigation to a crawl, too often providing selective information to the media during the investigation, and writing the investigation's report) local authorities not only increases the likely public perception of taint, bias, and lack of objectivity, but also violate the critical obligations of promptness and impartiality which, because they stem from the CAT, a treaty which the United States has ratified which as a ratified treaty is the "supreme law of the land" under the US Constitution, Article 6, Section 2.

3. An additional root of police misconduct at the local level, of course, is the failure of the US government to ensure, as required by Article 10 and 16, that

“ education and information regarding the prohibition against torture [and, per Article 16, “**cruel, inhuman or degrading treatment or punishment**”] are fully included in the training of law enforcement personnel, civil or military, medical personnel, **public officials** and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

IV. Link to Previous Concluding Observations

4. When the Committee last reviewed US compliance with the CAT in 2006, it issued the following Concluding Observation relevant to the necessity of prompt, independent, and thorough investigations of brutality and ill-treatment:

Paragraph 37: The Committee is concerned about reports of brutality and use of excessive force by the State party’s law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation which have not been adequately investigated (art. 16 and 12).

The State party should ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law -enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

⁵ The only hearing held in the US Senate to-date regarding US implementation of the Human rights treaties was a hearing conducted on December 16, 2009 by the US. Senate Judiciary Committee’s Subcommittee on Human Rights and The Law. For the hearing, encouragingly entitled “**THE LAW OF THE LAND: U.S. IMPLEMENTATION OF HUMAN RIGHTS TREATIES**”, extensive comments were provided by NGOs across the country, including by the *Maria Iñamagua Campaign for Justice*, whose comments addressed government failures to comply with the “prompt and impartial” investigation requirements of the CAT. .For more, see Endnote 5.

5. In the course of expressing concern for a particular situation in Chicago, the Committee reiterated the importance of prompt, thorough, and impartial investigations of **all** allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12. The Committee properly linked the concern for proper investigation with concern for law enforcement officials;’ sense of impunity. Concluding Observations 2006, Paragraph 25.

Paragraph 25. The Committee is concerned at allegations of impunity of some of the State party’s law-enforcement personnel in respect of acts of torture or cruel, inhuman or degrading treatment or punishment.

The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department (art. 12). The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law -enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above mentioned case

6. The Committee also called for systematic collection and reporting regarding ill-treatment allegedly committed by law -enforcement officials.

Paragraph 42: The Committee requests the State party to provide 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 Committee encourages the State party to create a federal database to facilitate the collection of such statistics and information which assist in the assessment of the implementation of the provisions of the Convent ion and the practical enjoyment of the rights it provides.

V. Legal Framework

7. The CAT articles relevant to this concern are: Articles 10, 12 and 16.

VI. The CAT Committee List of Issues to the US for the Current Review of Particular Relevance to the Issues Raised in this Shadow Report

8. Issue 27: In light of the Committee’s previous Concluding Observations, please provide information on:

- (a) Steps taken to ensure that all forms of torture and **ill-treatment of detainees** by its military or **civilian personnel**, in any territory under its de facto and de jure jurisdiction, as well as in any other place under its effective control, **is promptly, impartially, and thoroughly investigated**, and that all those responsible, including senior military and civilian officials authorizing, acquiescing or consenting in any way to such acts committed by their subordinates are prosecuted and appropriately punished, in accordance with the seriousness of the crime (para. 26) Are all suspects in prima facie cases of torture and ill-treatment as a rule suspended or reassigned during the process of investigation?

9. Issue 42: [In its previous Concluding Observations 2006] the Committee expressed its concern about reports of brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation (para. 37) Such concerns have also been voiced by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee (CERD/C/USA/CO/6, para. 25 and CCPR/USA/CO/3/Rev.1, para. 30). Please:

- (a) Describe steps taken to address this concern. Do these steps include establishing adequate systems for monitoring police abuses and developing adequate training for law enforcement officials? Furthermore, please **indicate steps taken by the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.** Information should also be provided on the impact and effectiveness of these measures in reducing cases of police brutality and excessive use of force.
- (b) Provide information on **measures taken by the State party to put an end to racial profiling used by federal and state law enforcement officials.** Have the federal Government and state governments adopted comprehensive legislation prohibiting racial profiling? Statistical data should also be provided on the extent to which such practices persist, as well as on complaints, prosecutions and sentences in such matters.

VII. Previous UN Body Recommendations



10. Concern for brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation has also been expressed by the Committee on the Elimination of Racial Discrimination (CERD), the body monitoring US compliance with its obligations under the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD),⁶ and by the Human Rights Committee (HRC), the body monitoring US compliance with the International Convention on Civil and Political Rights (ICCPR).⁷

⁶ See the CERD's 2008 Concluding Observations at CERD/C/USA/CO/6, para. 25.

⁷ See the HRC's 2006 Concluding Observations at CCPR/USA/CO/3/Rev.1, para. 30. Of particular relevance to the experience of Chris Lollie (St. Paul, Minnesota), the Human Rights Committee stated:

11. Most recently, the CERD renewed the concern for prompt, thorough, and independent investigation of reported police ill-treatment in Paragraphs 17(a) and 17(b) of its August 29, 2014 Concluding Observations.⁸ To emphasize this concern, the CERD invoked Article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure to request the US to provide an progress report on Paragraphs 17(a) and 17(b) within one year. See CERD 2014 Concluding Observations, Paragraph 33

VIII. Recommended Questions to the US

12. Nearly 20 years after the US ratified the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), what evidence have you produced for the record of this review to document 1) that the existence of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is known by local officials and law enforcement officers throughout the US, 2) that its provisions are accepted by them; and 3) that they have been incorporated into law enforcement oversight and daily operations at the state and local level in the United States?

13. What statistics do you rely on to demonstrate whether racial profiling and degrading treatment (ill-treatment) by law enforcement officials is on the decline?

14. Given the on-going number of complaints of police brutality and misconduct, does it appear to you that the current process of administrative complaint and civil lawsuit is adequate to adequately address the roots of these complaints?

30. The Committee reiterates its concern about reports of police brutality and excessive use of force by law enforcement officials. The Committee is concerned in particular by the use of so-called less lethal restraint devices, such as electro-muscular disruption devices (EMDs), in situations where lethal or other serious force would not otherwise have been used. It is concerned about information according to which police have used tasers against . . . people who argue with officers or simply fail to comply with police commands, without in most cases the responsible officers being found to have violated their departments' policies. (articles 6 and 7)

The State party should increase significantly its efforts towards the elimination of police brutality and excessive use of force by law enforcement officials. The State party should ensure that EMDs and other restraint devices are only used in situations where greater or lethal force would otherwise have been justified, and in particular that they are never used against vulnerable persons. The State party should bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁸ Specifically in Paragraph 17(a), the CERD urged the US to “ensure that each allegation of excessive use of force by law enforcement officials is **promptly and effectively investigated**; that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation.”

15. In light of the general failure by the current alignment of federal agencies to achieve national awareness of the CAT and to implement its provisions, especially at the state and local levels where most law enforcement activity occurs, what is the US objection to formation of an independent national human rights institution to develop a national plan of action and comprehensively coordinate and advance implementation of the CAT (and the other ratified human rights treaties) at all levels of US government – federal, state, and local?

IX. Suggested Recommendations

16. We respectfully request that the Committee find 1) no significant improvement in the US in the awareness and implementation of the CAT at the state and local level and 2) that the US has failed to demonstrate that it has taken effective measures pursuant to the CAT to reduce the overall incidence of cruel, inhuman, and degrading treatment by law enforcement officials experienced particularly by vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation.

17. Specific recommendations, therefore, include the following:

1. Reissuance of the recommendations made in the Committee’s previous review relating to cruel, inhuman, and degrading treatment and punishment.
2. Reinforcement of the recommendations relating to cruel, inhuman, and degrading treatment and punishment made by other human rights monitoring bodies (the CERD and the Human Rights Committee) that have addressed these conditions in terms relevant to their particular treaties.
3. Recommendation that the US authorize an independent national human rights institution to develop a national plan of action and comprehensively coordinate and advance implementation of the CAT (and the other ratified human rights treaties) at all levels of US government – federal, state, and local

ENDNOTES

“Prompt and Impartial” Investigation

Endnote 1. Michael Brown

NAACP calls for special prosecutor in Michael Brown shooting case, Washington Post By Mark Berman August 21, 2014 at <http://www.washingtonpost.com/news/post-nation/wp/2014/08/21/naACP-calls-for-special-prosecutor-in-michael-brown-shooting-case/> “We need to talk about justice for Michael Brown,” Cornell William Brooks, the organization’s new president and chief executive, said in a statement sent out on Thursday afternoon. “Justice

rests in the hands of one person: St. Louis County Prosecutor Bob McCulloch, a man with deep personal, family, and professional ties to the local police department.”

See also <http://www.yourblackworld.net/naacp-wants-ferguson-prosecutor-gone-he-says-no-way/> “Reportedly, McCulloch said during a radio interview, Wednesday that he has “absolutely no intention” of recusing himself. During the same interview, he stated that prosecutors, who began presenting evidence to a grand jury on Wednesday, could possibly need **another two months.**”

The call for an independent prosecutor continues to be raised as grand jury process and investigation fails to meet “prompt and impartial” standard: “McCulloch has said previously that the investigation is expected to last into mid-October. A spokesman for McCulloch was out of the office this week and didn’t respond to calls from The Associated Press seeking an update on the status of the investigation.” ∴ Ferguson protesters call anew to remove prosecutor, by Alan Scher Zagier, Associated Press, September 16, 2014 at <http://www.newsobserver.com/2014/09/16/4157549/ferguson-protesters-call-anew.htm>.

Critics have noted that the use of a grand jury by a County Attorney, such as is being used in the Michael Brown case and others, such as Terrance Franklin (see below), is no assurance of an “impartial” investigation or process for reviewing complaints of police misconduct. As Minnesota civil and human rights attorney, Jordan Kushner explains at <http://www.tcdailyplanet.net/news/2013/09/20/e-democracy-terrance-franklin-mike-feeman-and-grand-jury-scam> :

For those concerned, it is important to realize that the grand jury process is completely a political tool to avoid political responsibility and transparency.

[The County Attorney] has no legal obligation to have a grand jury make the decision. A grand jury is only required in Minnesota to charge cases of first degree murder and certain career sex offender cases that carry mandatory life imprisonment. This case does not fit first degree murder (premeditated or other inapplicable circumstances). It is at most a second degree murder case if an officer intentionally shot Terrance Franklin without justification. The county attorney almost never uses a grand jury if he does not have to do so. It is a needless expenditure of time and money. The office just makes its own decision. The only exception is when a police officer is accused of criminal conduct, or other rare politically sensitive cases where the county attorney wants to avoid accountability for the decision whether to bring criminal charges.

The next thing to realize is that if a grand jury "decides" not to return an indictment (criminal charge) because the county attorney does not want it to. In the secret grand jury proceedings, the county attorney exclusively decides what testimony and evidence to present to the grand jury. The oft-repeated saying/cliche in the field is "you can indict a ham sandwich." The only time you hear about a grand jury not returning an indictment is

when the case involves a police officer. It is just a convenient way for the county attorney to avoid ownership of the decision.

It is also a convenient way for the county attorney to avoid having to explain his decision and keep the public in the dark. The other politically convenient aspect of the grand jury is that the law requires proceedings to be secret. The identity of the grand jurors is secret so we don't get to hear from the people who decided not to indict why they made the decision. Since the witnesses and evidence presented to the grand jury is also secret (at least the county attorney is not allowed to reveal it), Freeman can avoid disclosing what evidence he (or his prosecutors) presented. He therefore gets to hide behind a legal wall that he has chosen to erect.

The straightforward, honest and open way to handle the matter would be for [the County Attorney] to just decide himself whether or not to charge any police officers (like he would do in any other case), share the evidence developed and explain his interpretation. Members of the public could then make their evaluations. Given the smoke-and-mirror approach of the grand jury process, it is understandable and arguably justifiable to conclude that the [County Attorney] and the system are engaged in a cover-up. I personally have no way of knowing what happened, and it is an open question how much we can ever find out since the only witness other than the cops is dead. However, thanks to [the County Attorney]. we don't get to find out what there is to know.

Endnote 2. Terrence Franklin

“What really happened to Terrance Franklin? Three months and counting “ By [Mary Turck, News Day](#), August 15, 2013, at <http://www.tcdailyplanet.net/news/2013/08/15/what-really-happened-terrance-franklin-three-months-and-counting>

“Terrance Franklin was shot to death by Minneapolis police on May 10. He was shot after a police chase, in a basement laundry room, where the only people present were Minneapolis police officers, their dog, and Terrance Franklin. Since then, demonstrations and demands for action and information have been met with the standard "we're investigating" line from MPD and promises of a grand jury investigation. But no information. Not from the police. Not from the coroner. Not from the county attorney.

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But what's taking so long? This is not a case with dozens of witnesses or boxes full of complicated documents. This is not a case with a long timeline, or wiretaps that need to be transcribed.

How long does it take for an autopsy? How long does it take to gather the evidence of what happened in that basement laundry room where Terrance Franklin was shot to death? How long does it take to get statements from the police officers who were present — or to acknowledge that they are "taking the Fifth" and refusing to testify because they might incriminate themselves? How long does it take to get the case to a grand jury? In May, writing in the Minnesota Spokesman-Recorder, Mel Reeves quoted police spokesperson Cindy Barrington as saying, “We don’t anticipate hearing anything for four

weeks. As soon as we have confirmed data that's public, we will present it.”
That was May. This is August. “

Endnote 3. Al Flowers

The Al Flowers case raises issues of whether official investigations of police misconduct by local officials are adequate in scope, prompt, and impartial.

See **Al Flowers files excessive force complaint against Minneapolis police**, Minnesota Public Radio, **Brandt Williams** · Minneapolis, Sep 10, 2014, <http://www.mprnews.org/story/2014/09/10/al-flowers-files-excessive-force-complaint>

“Flowers alleges he was beaten by police officers who came to arrest his teenage daughter July 25. Police arrested Flowers on suspicion that he assaulted an officer. Flowers' booking photo showed him with cuts on his face. {No criminal charges have been brought against Flowers.} “The force used was excessive and unnecessary,” said [Flowers' attorney, State Senator Bobby Joe] Champion. The complaint was filed with the city's Office of Police Conduct Review. People who file complaints with the Office may request that a civilian or a police investigator look at their cases. Champion said he requested an 'independent' investigator look at what happened that night in July.

Lewis was chosen by Mayor Betsy Hodges to lead the city's probe of the same incident. However, Champion said the scope of that investigation is too narrow because Lewis will [only] examine if police violated department policies. The investigation should determine whether or not the use of force by officers and if Flowers' arrest were justified, Champion said.

Activist Al Flowers files complaint alleging police misconduct, alleges misconduct by officers during arrest at his home in July, by Libor Jany, Star Tribune, September 9, 2014 - 9:28 PM
<http://www.startribune.com/local/minneapolis/274532951.html>

Flowers' lawyer, [State Senator] Bobby Joe Champion, said Tuesday that his client is still recovering from eye and rib injuries sustained in the altercation with police. Champion said he was pleased with Lewis' appointment, but said he would prefer a broader inquiry “to reassure not just Mr. Flowers, but the public, that we can trust our leadership, that they're going to do what's in the best interests of the public.” Champion said he would prefer that the police department not be involved in the investigation. “We believe that it should not be the police department gathering and compiling that information, because it has the perception of being tainted or biased, or lacking objectivity,” Champion said.

Endnote 4. Chris Lollie

The You Tube Video and Audio of Chris Lollie's Tasing and Arrest
<https://www.youtube.com/watch?v=UWH578nAasM&feature=youtu.be>

St. Paul Police Tase And Arrest Black Man Sitting In Skyway [VIDEO]

[Aug 29, 2014](#), by [Hannington Dia](#), <http://newsone.com/3049340/chris-lollie-arrest>

New St. Paul skyway arrest video released by police

St. Paul Pioneer Press, by [Mara H. Gottfried](mailto:mgottfried@pioneerpress.com), mgottfried@pioneerpress.com, 09/10/2014 12:01:00 AM CDT, Updated: 09/10/2014 09:24:55 PM CDT

http://www.twincities.com/crime/ci_26505612/st-paul-skyway-arrest-video-released-by-police

This report includes the surveillance video of Chris Lollie and the confrontation with police in the downtown St. Paul skyway. **NOTE:** The footage is overlaid with the audio recording from Lollie's cell phone that he uploaded to YouTube. The man seen standing close by the arrest is a plain-clothes officer.

St. Paul stun gun arrest: Police release skyway surveillance video

[Curtis Gilbert](#) · St. Paul, Minn. · Sep 10, 2014

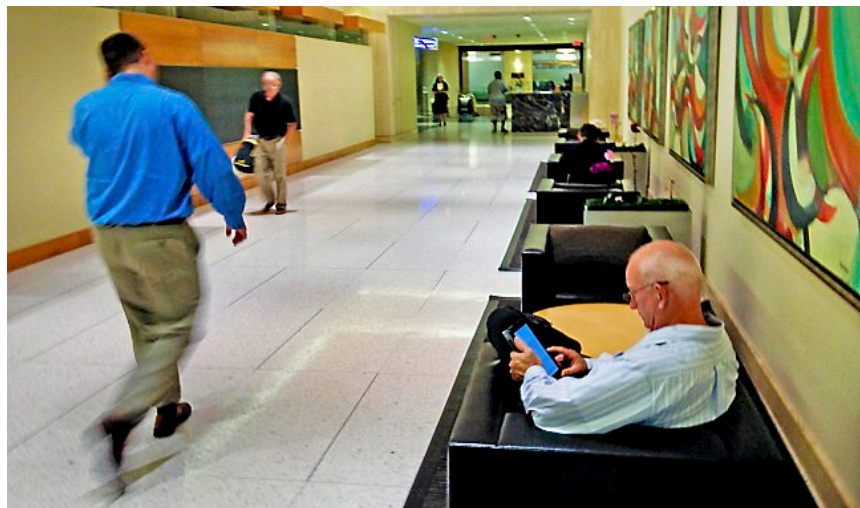
St. Paul police have released surveillance videos that provide new details on the Jan. 31 arrest of Christopher Lollie. The department's Internal Affairs Unit is reviewing the arrest. [Mayor Chris Coleman ordered the review](#) after Lollie's cell phone video documenting the incident went viral, garnering more than 1 million views.

MPR News reporter Curtis Gilbert watched the videos, spoke to police officials and reviewed city rules to try to find out what happened and what areas of skyway are open to the public.

Here's his review of what occurred:

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Gilbert: Unlike Minneapolis, the entire St. Paul skyway system is public space. **I spent almost an hour today [September 10, 2014] sitting in the exact same chair where Chris Lollie was, typing on my laptop, and fiddling with my phone. Security never came up and asked me what I was doing there.**



Tevlin: Lessons in Lollie videos, for untrained minds, September 13, 2014 - 10:41 PM, by JON TEVLIN , Minneapolis Star Tribune
<http://www.startribune.com/local/stpaul/275020771.html>

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When I first saw the video of St. Paul Police arresting Chris Lollie, a young black man, in the city's skyways, my gut instinct was it looked like overkill by the officers.

But the video, shot by Lollie, shows only his perspective. I count several cops among my friends, and I've seen how jumping to conclusions based on a single vantage point can be dangerous. So I withheld my opinions on the case until police released a second version of events, culled from video monitors inside First National Bank Building and Securian Center.

The new videos didn't change my mind.

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Faced with the same situation, I likely would have complied and walked away unharmed, save for the small piece of my soul that I left behind.

But because I'm not a young black man, cops don't routinely stop me and ask for identification; Lollie is likely simply tired of it. I mentored a black teen for years, and the only time I was ever followed in a store was when we were together. Enough said.

I'm also pretty sure that if I did assert my rights in such a situation, I wouldn't end up face-planted to the carpet.

The cops say Lollie was resisting arrest, but it's not supported by the videos.

Mayor Coleman requests review of controversial arrest captured on video

[Mukhtar Ibrahim](http://www.mprnews.org/story/2014/08/29/st-paul-arrest-review-requested), Minnesota Public Radio, St. Paul, Minn. · Aug 29, 2014
<http://www.mprnews.org/story/2014/08/29/st-paul-arrest-review-requested>

Lollie said in an interview on Friday that he is convinced that the officers questioned and arrested him because he is black. Lollie said he tried to talk to the officers, but it "it was just color of my skin that made them want to escalate" the situation.

"My demeanor was what really saved me," he said. Lollie said he thinks his video of his encounter with police went viral largely because there is increased attention on police arrests of black men following the death of an 18-year-old by an officer in Ferguson, Missouri.

"This is happening every day, everywhere across the United States of America," Lollie said. "The premise of what happened in Ferguson remains the same

everywhere. We need protection. We need the police. We really do, but we don't need the police we have right now. Not at all."

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St. Paul Police Department Manual: They should not have Tasered Chris Lollie

By [Mary Turck](#), [News Day](#)

September 12, 2014

<http://www.tcdailyplanet.net/blog/mary-turck/st-paul-police-department-manual-they-should-not-have-tasered-chris-lollie>

The St. Paul Police Department Manual states:

- The ECD shall not be used in any interview or interrogation situation unless the physical defense of the officer or others becomes an issue.
- The ECD should not be used as a pain compliance technique including used to escort or prod individuals. ...
- A subject who is simply walking or running away from a scene and not posing assaultive/violent or potentially assaultive/violent behavior should not be exposed to the ECD."

That's what the [St. Paul Police Department Manual](#) says about prohibited use of "Electronic Control Devices," one of which was deployed against Chris Lollie in January. Chris Lollie is the St. Paul man who was waiting for his kids to get out of daycare in downtown St. Paul, and was then shot with the ECD and arrested after he refused to give police his name. (Taser is a registered trademark for one brand of ECD.) All charges against Lollie later were dropped.

There's lots more. Section 246.05 of the police manual says the ECD should be used to control "potentially violent or assaultive subjects." That's definitely not what is shown in either [Chris Lollie's cell phone video](#) or the [downtown building surveillance videos](#) released this week by the police.

The police manual raises another important question: **Why wasn't there a report long before now on the incident?** The manual says, "Officers shall clearly articulate and justify each and every cycle used against a subject in a written report," and also "Each time an officer deploys an ECD they shall file a written police report documenting the use of force and their supervisor will also file a Supervisory ECD Deployment Form." Where are those reports?

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Let's see what the reports have to say. And if there are no reports, that calls for another level of review, not only for misuse of the weapon against a clearly non-threatening civilian, but also for failure to follow departmental procedures that closely regulate the use of this dangerous weapon.

Endnote 5. Maria Iñamagua

The only hearing held in the US Senate to-date regarding US implementation of the Human rights treaties was a hearing conducted on December 16, 2009 by the US. Senate Judiciary Committee's Subcommittee on Human Rights and The Law. For the hearing, encouragingly entitled "**THE LAW OF THE LAND: U.S. IMPLEMENTATION OF HUMAN RIGHTS TREATIES**", extensive comments were provided by NGOs across the country, including by the *Maria Iñamagua Campaign for Justice*, whose comments addressed government failures to comply with the "prompt and impartial" investigation requirements of the CAT, as follows:

I. Our Request for Human Rights Investigation Under Ratified Human Rights Treaties

In our letter dated July 14, 2006 to the Inspector General for the Department of Homeland Security (**copy attached**), we called for a **prompt and impartial human rights investigation** into Maria's death as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Part I, Articles 12, 13 and 16.

In our letter, we summarized the publicly reported facts surrounding Maria's death which provided a sound basis ("reasonable cause" is the treaty term) to investigate. We also cited seven specific violations of international treaty obligations. Specifying these violations, we stated:

...

- Fourth, the United States has an obligation to ensure that any individual who alleges that he has been subjected to "cruel, inhuman, or degrading treatment" in any territory under its jurisdiction has the right to complain and to have his case promptly and impartially examined as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Articles 13 and 16.
- Fifth, the United States has an obligation to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is a reasonable ground to believe that an act of "cruel, inhuman, or degrading treatment" has been committed in any territory under its jurisdiction as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Articles 12 and 16.

To-date, no prompt and impartial investigation has been made with respect to Maria's death. Hopefully this formal request for an investigation by the Office of Inspector General (a "competent authority") will result in one.

...

While we were eventually promised a thorough investigation in writing by the Inspector General some seven months later (February 28, 2007), the investigation did not actually start until May 2007, and did not issue its Report for more than another year (June 2008). This was hardly the "prompt" investigation we requested as required by the CAT, Part I,

Articles 13 and 16. In addition, the investigation conducted was not at all the thorough and impartial human rights investigation that we requested and is required by the CAT. It was not a thorough human rights investigation because it did not address any of the violations of human rights treaties that we had identified in our July 14, 2006 letter quoted above. It was not impartial either, since its final report was preceded by five months of exclusive closed-door communication (mid-January to mid-June 2008) between the investigating body, the Office of the Inspector General of the Department of Homeland Security, and the subject of the investigation, the DHS's Bureau of Immigration and Customs Enforcement, regarding what the report would ultimately say. Maria's family and community of concern were not permitted to participate in or even to observe these communications.

As a consequence, needless to say, the Report that resulted from this process was not satisfactory. We analyzed that Report in comments to the Inspector General and requested that he complete the investigation. **Copy attached.** Regarding the human rights treaty shortcomings of the investigation, we stated:

V. Shortcomings of the Inspector General's Report

The Inspector General's Report is not the "prompt and impartial" human rights review that the United States promised when it ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992 (Part I, Articles 13 and 16) and the Convention on Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994 (Articles 12 and 16).

Coming more than two years after Maria Iñamagua's death and almost two years after the human rights investigation was formally requested, the Report is hardly "prompt".

And as to the "impartial" requirement, there have been too many structural elements, one-sided aspects of the "editing" phase of this review process, that prevent the Report from meeting that standard. Examples of the Inspector General's one-sided process:

- On January 13, 2008, five months before the Inspector General issued his Report, the Inspector General gave ICE a copy of the Draft Report for its review and comment. No such opportunity was afforded Maria's family or the community groups that had filed the complaint.
- During the five month period (mid-January — mid-June), ICE had access to dialogue with ICE staff members about the substance and wording of the Draft Report. In contrast, under OIG policy and practice, Maria's family and the community groups that had filed the complaint were not allowed a similar opportunity. While the Inspector General and ICE may believe there are benefits to such an uneven process, such a process can hardly be called, fair, even-handed, and impartial.

The ***Maria Iñamagua Campaign for Justice*** recommends that the Inspector General reconsider that policy and practice for future investigations/reviews and publish the guidelines it will follow in conducting its reviews/investigations.

No reply from the Inspector General was received and to the best of our knowledge beyond holding this subcommittee hearing on December 16, 2009, no action regarding implementation of the human rights treaties has been taken by the US Senate.