

Human Rights Briefing: Ferguson Missouri

Executive Summary

“Every day that Michael Brown doesn’t receive justice, we are reminded that it’s open season on black lives in Ferguson. How are we supposed to live everyday knowing that and not go crazy?” – Anonymous protester

On August 9, 2014 Michael Brown, an 18-year old unarmed African American man, was fatally shot by a white Police Officer, Darren Wilson, in Ferguson, Missouri. Brown’s death set off protests which, as of this publication, are ongoing, as well as a long-overdue conversation on race, policing and justice. The events in Ferguson have also raised a range of human rights concerns, including the right to life, the use of lethal force by law enforcement, the right to freedom from discrimination, and the rights to freedom of expression and assembly.

Following the initial protests, Amnesty International USA sent a delegation to Ferguson from Aug. 14-22. The delegation was composed of staff working with the community and protesters on non-direct action and de-escalation tactics in protests and other staff who were there strictly to observe and monitor the protests and police response. While gaining first hand testimony in the midst of the protests and marches proved difficult, the following findings rely on observations made by staff during this mission and is supplemented by information from media reports.

This briefing document outlines some of the human rights concerns witnessed by Amnesty International and a series of recommendations that need to be implemented with regards to the use of lethal force by law enforcement officers and the policing of protests.

Use of lethal force: Death of Michael Brown

On Saturday August 9, 2014, 18-year old Michael Brown and a friend were walking down Canfield Drive in Ferguson, MO when they were confronted by Officer Darren Wilson. Moments later, Brown was fatally shot by Police Officer Wilson. Michael Brown’s body then lay on the street for at least four hours. According to the autopsy conducted by both the family and the County Medical Examiner’s Office, Michael Brown was shot six times.

Due to conflicting reports, what happened between Brown and Wilson remains uncertain. According to one witness, Brown and his friend attempted to walk away when the officer fired his weapon, shooting the unarmed Brown, whose hands were in the air. According to police statements, a physical confrontation between the officer and Brown resulted in the officer shooting the unarmed Brown.

Regardless, international standards provide that law enforcement officers should only use force as a last resort and that the amount of force must be proportionate to the threat encountered and designed to minimize damage and injury. Officers may only use firearms when strictly necessary to protect

themselves or others against the imminent threat of death or serious injury. Even then, the intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”

Irrespective of whether there was some sort of physical confrontation between Michael Brown and the police officer, Michael Brown was unarmed and thus unlikely to have presented a serious threat to the life of the police officer. As such, this calls into question whether the use of lethal force was justified, and the circumstances of the killing must be urgently clarified.

Also troubling is Missouri’s broad statute on the use of deadly force. Amnesty International is very concerned that the statute may be unconstitutional and is clearly out of line with international standards on the intentional use of lethal force as it goes well beyond the doctrine that lethal force only be used to protect life.

Racial discrimination and excessive use of police force nationwide

The shooting of Michael Brown highlighted on a national level the persistent and widespread pattern of racially discriminatory treatment by law enforcement officers across the United States, including unjustified stops and searches, ill treatment and excessive, and sometimes lethal, use of force.

Indeed, just days after Michael Brown was fatally shot, St. Louis police officers shot and killed a young African American man, Kajieme Powell, 25, who was reportedly holding a knife; police claims that he was brandishing a knife were not borne out by the available video footage of the shooting. On Aug. 11 Ezell Ford, 25, an unarmed black man with a history of mental illness was shot and killed by Los Angeles police officers; and on Jul. 17 Eric Garner, 43, died after being placed in a chokehold by New York Police Department officers after being approached by an officer who attempted to arrest him for selling loose, untaxed cigarettes.

The United States government must to do much more to address systemic racial discrimination and ensure policing practices nationwide are brought into line with international human rights standards. For years, the monitoring of police conduct and excessive use of force has been hampered by the failure of the Department of Justice to collect accurate, comprehensive national data on police use of force, including the numbers of people killed or injured through police shootings or other types of force. Because this data is not being consistently collated at a national level, no one currently knows how many people are shot and killed by police officers in the United States.

Law Enforcement Response to Protests in Ferguson

“I condemn the excessive use of force by the police [in Ferguson] and call for the right of protest to be respected. These scenes are familiar to me and privately I was thinking that there are many parts of the United States where apartheid is flourishing.” - the United Nation’s High Commissioner for Human Rights, Navi Pillay, on the police response to Ferguson protests.

The rights of peaceful assembly, freedom of association and freedom of expression are basic human rights. These rights are also guaranteed under the Constitution of the United States and the laws of the state of Missouri. The vast majority of those participating in the demonstrations in Ferguson that spontaneously grew in the days and weeks following the shooting Michael Brown have been peaceful – as noted by government officials such as the President of the United States, the Governor of Missouri and Attorney General along with the Missouri Highway Patrol. However, the responses by state officials and law enforcement to the violent actions of a limited number of protestors have impacted the rights of all participating in peaceful protests.

I. Imposition of restrictions on the rights to protest – curfews, designated protest areas and other restrictions

International law does allow the restriction of the right to freedom of peaceful assembly if it is carried out for a legitimate aim, such as the protection of public safety, order, health or morals or the fundamental rights and freedoms of others. Restrictions should be proportionate and necessary to meet that aim. Law enforcement in Ferguson and the Missouri government employed several tactics of concern to Amnesty International, including the imposition of a curfew for the entire city of Ferguson which limited the rights of those demonstrating peacefully but also the freedom of movement of the general public and requirements for those protestors on West Florissant Avenue to “keep walking” under threat of arrest, impeded protestors from exercising their right to freely assemble. Law enforcement also impeded protestors’ right to assemble by closing and occupying the QuikTrip gas station on West Florissant, where many gathered daily, instead, setting up an “approved” assembly area in the parking lot of a car dealership that was no longer in business and set back from the main road. After the “keep walking” rule was imposed on Aug. 18, arrests of protestors for “refusal to disperse” escalated as 85 protestors were arrested under that charge on the nights of Aug. 18 and 19. A number of activists remarked to Amnesty International that they believed the rule was imposed to tire out the protestors in hopes of getting the protests to end earlier in the night. Overall, during the 12 days following the death of Michael Brown, 172 arrests were made in the Ferguson protest zone with 132 people charged solely with the crime of refusal to disperse.

II. Intimidation of protestors

In the days following Michael Brown’s death, the St. Louis County Police Department initially took over the responsibility for providing security in Ferguson. The St. Louis County officers lined the march routes on West Florissant on Aug. 13 with officers outfitted in riot gear and armed with semi-automatic weapons that were pointed at demonstrators.

The change in responsibility from the County Police to the Missouri Highway Patrol on Aug. 14 helped de-escalate the tension between residents/protestors and police in Ferguson. However, the resumption of violence by some protestors in the late night hours of Aug. 15 brought a response where, the Highway Patrol, with assistance from the County Police as well as smaller law enforcement agencies from across the state, confronted protestors in riot gear of helmets and vests along with carrying shields and batons, some were armed with semi-automatic weapons, and leashed police dogs.

Late in the evening on Aug. 18, following the use of tear gas and stun grenades, often known as flash bangs or concussion grenades, to disperse the crowds on the south end of W. Florissant Avenue, Amnesty International decided to leave the scene for the purpose of securing delegation members' safety. The delegation needed to cross a police line in order to reach their automobiles on the other side and approached the police line next to the media staging area with their hands up and clearly wearing shirts which identified them as human rights observers. One officer directly in front of the delegation pointed his weapon at the delegation and shouted "get on the ground!" A staff member at the front of the delegation knelt on the ground and informed the officer, "We are human rights observers." A St. Louis County commanding officer immediately waved the delegation through the police line with his gun in hand. As the police line parted, officers nearest the delegation kept their guns trained on the delegation until they passed through.

Shortly before midnight on Aug. 19, Amnesty International witnessed an officer with the St. Ann Police Department in Missouri point his AR-15 semi-automatic rifle at a group of journalists and threatened to kill them. The incident was filmed by a journalist and went viral on Aug. 20. The video shows the officer walking toward a group of protestors with his rifle raised. Voices can be heard telling him to put his gun down. The video shows the officer approaching the crowd with his rifle raised yelling, "I'm going to fucking kill you! Get back, get back." A voice in the crowd asks, "What's your name, sir?" To which the officer responds, "Go fuck yourself!" Another officer quickly approaches and escorts the officer away from the crowd. The officer was immediately placed on indefinite, unpaid suspension and resigned several days later.

The use of heavy-duty riot gear and military-grade weapons and equipment to police largely peaceful demonstrations intimidates protesters who are practicing their right to peaceful assembly and can actually lead to an escalation in violence. Equipping officers in a manner more appropriate for a battlefield may put them in the mindset that confrontation and conflict is inevitable rather than possible, escalating tensions between protesters and police.

III. Dispersal of protests

The enforced dispersal of a public assembly should only take place as a measure of last resort, when violence occurs or there is an imminent threat of violence. The police should not intervene aggressively simply in response to the actions of a small number of participants. Assemblies are always diverse gatherings, and participants do not lose their individual rights simply because a small number of people are behaving violently.

The methods used by law enforcement in Ferguson to disperse crowds often employ the use of police in riot gear – equipped with helmets, vests and carrying shields and batons – and has led to the repeated use of "chemical irritants" (tear gas/pepper spray) and "kinetic impact projectiles" (rubber/plastic bullets) against demonstrators. Oftentimes it is unclear whether an order to disperse was given, whether that order was in fact lawful, and whether that was made clear to the protesters before law enforcement forcibly ended the protests.

The type of equipment used for the purpose of dispersing an assembly must be carefully considered and used only when necessary, proportional and lawful. Policing and security equipment – such as kinetic impact projectiles (e.g. rubber/plastic bullets), chemical irritants (e.g. tear gas/pepper spray) and stun grenades, often described as “less-lethal” weapons – can result in serious injury and even death. Toxic chemical irritants, such as tear gas, should not be fired directly at an individual, used in confined spaces against unarmed people, or in situations in which exits and ventilation points are restricted.

Use of tear gas and rubber bullets to disperse protests: Though not directly witnessed by members of Amnesty International’s delegation, law enforcement often resorted to the use of tear gas and the firing of rubber bullets at protesters in Ferguson. On the initial nights of protests shortly following the death of Michael Brown, tear gas and rubber bullets were reportedly used on the nights of Aug. 11 and 12. On Aug. 13, Renita Lamkin, an African Methodist Episcopal church pastor, was shot by a rubber bullet while attempting to mediate between police and protestors. Lamkin was among protestors calling for the release of Antonio French, a St. Louis alderman who was previously arrested later released. According to *media reports*, Lamkin was protesting calmly while repeating “Jesus, Jesus, Jesus.” When police arrived in armored vehicles, Lamkin stood in front of the protestors, attempting to mediate, telling the police, “They’re moving, they’re leaving.” Lamkin heard a “pop” and was hit by a rubber bullet in the stomach. The bullet left a large, bloody bruise approximately four to five inches in diameter. After what had largely been a day of peaceful protests, on Aug. 15, police again used tear gas to disperse the crowds late in the night, as members of the crowd grew more confrontational with police and some individuals engaged in looting and vandalism of local establishments, despite the efforts of other residents to prevent the destruction. Following the imposition of a curfew and after it went into effect on the nights of Aug. 16 and 17, police fired tear gas at those protesters who defied the curfew and the order to disperse which was given at midnight on each night. Due to the large number of families who participated in protests on Sunday, August 17, at least two children were treated for exposure to tear gas at area hospitals and later released. Police later used tear gas to disperse crowds which had defied the recently imposed rule that protesters must keep walking, unless they were in an approved protest area on Aug. 18 and 19.

- ***Use of Long Range Acoustic Devices:*** On the night of Aug. 18 at approximately 10:00 p.m., following the reported throwing of bottles at police and a group of protesters stopping in front of a police line in defiance of the five second rule, law enforcement activated a Long Range Acoustic Device (LRAD). The LRAD was pointed at group of stationary protestors on the street approximately fifteen feet away. Members of the media and observers were likewise about the same distance from the device. No warning from law enforcement that an LRAD would be used was given to the protesters. After providing earplugs to a member of Amnesty International, a St. Louis County police officer says, “This noise will make you sick.” Several members of the delegation reported feeling nauseous from the noise of the LRAD until it was turned off at approximately 10:15 p.m. LRADs emit high volume sounds at various frequencies, with some ability to target the sound to particular areas. Used at close range, loud volume and/or excessive lengths of time, LRADs can pose a serious health risks which range from temporary

pain, loss of balance and eardrum rupture, to permanent hearing damage. LRADs also target people relatively indiscriminately, and can have markedly different effects on different individuals and in different environments. Further research into the use of LRADs for law enforcement is urgently needed.

- ***Orders to disperse:*** Often dispersal tactics were used without a clear order to disperse, but rather in response to protesters violating the five-second rule. Amnesty International noted a clear lack of consistency and transparency from night to night and officer to officer in policing practices regarding dispersal of protests or arrests of protesters. For example, on the night of Aug. 19, Amnesty International inquired with three different police officers throughout the night about why the crowd was being dispersed and was told "I don't know" or "I can't answer that question" and directed to ask officers at the other end of West Florissant while another officer characterized the protest as "a riot situation." According to Amnesty International observers, on nights such as Aug. 18, the time that elapsed between announcing that a group of people was "unlawfully assembled" and some form of use of force varied enormously, from anywhere between approximately five minutes to approximately half an hour. In the case of formation of police lines and some form of kettling, the police usually only gave an order to disperse just before advancing on protestors and either using force or making arrests, or not at all – withdrawing back and moving out of a formation.

IV. Restrictions on the Media as well as legal and human rights observers at protests

Representatives of civil society organization and other types of monitors have a right to be present at public assemblies and can have a positive role to play in observing compliance with human rights. Similarly, the media have a right to attend and report on peaceful assemblies, and law enforcement officials have a responsibility not to prevent or obstruct their work. However, legal and human rights observers as well as members of the media have repeatedly been obstructed from carrying out their roles and responsibilities by law enforcement in Ferguson. From Aug. 13 through Oct. 2, at least **19** journalists and members of the media have been arrested by law enforcement with others subjected to tear gas and the use of rubber bullets. Reporters for *CNN*, *Al Jazeera America* and other outlets report being harassed or physically threatened. Likewise, legal and human rights observers have also faced arrest for carrying out their roles.

In the early morning hours of Aug. 19, *Intercept* journalist Ryan Devereaux and *Bild* reporter Lukas Hermsmeier were arrested and jailed overnight for allegedly "failing to disperse." Earlier that night, police officers ordered a dispersal of the protest areas. As Devereaux and Hermsmeier were attempting to leave, they stopped to interview one of the peaceful protestors leaving the scene. The police then began firing heated metal canisters of tear gas in their direction, driving the group away from their car. After attempting to return to the safety of their car, armed police officers drove up in armored vehicles and blocked their passage. After coming out behind a cover with their hands in the air, shouting, "Press!" and "Journalists" and "We're media!", the officer allowed them to pass. However, as Devereaux

and Hermsmeier continued walking with their hands in the air, shouting “Press!” the same officer shot rubber bullets at them, hitting both journalists in the back. Out of fear, they dove behind a car. The officers approached with guns pointed and arrested them without reading their rights or notifying them of their charge despite their continuous announcements that they were from the media. Devereaux and Hermsmeier placed in a jail cell with other protestors and were not released until the next morning.

V. ***Failures of accountability for law enforcement in policing protests***

Several times when Amnesty International delegates witnessed actions taken by police officers they requested the name of the officer or attempted to determine which law enforcement agency the officer belonged to when affecting an arrest or issuing an order to protesters. However those requests and questions often went unanswered by law enforcement personnel. Under international law, officers need to be accountable to the public and, in order to facilitate accountability, officers should be identifiable during public order operations.

Recommendations on the Use of Lethal Force

1. Federal, state and local authorities should ensure that investigations into the shooting of Michael Brown are thorough, transparent, independent and impartial, and concluded as promptly as possible; Michael Brown’s family must be kept informed throughout the investigation; If the evidence indicates that the killing was unlawful, the police officer responsible should be criminally prosecuted.
2. The Ferguson Police Department should:
 - a. Cooperate fully with the investigation into Michael Brown’s death;
 - b. Undertake a review of its law enforcement policies and training on the use of force and firearms, to ensure that they conform fully to international standards, including those set out under the *U.N. Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms*.
 - c. Undertake a review of its law enforcement policies and training related to race and policing diverse communities.
3. The Missouri Legislature should amend the Missouri statute that authorizes the use of lethal force (Mo. Rev. Stat. § 563.046) to bring the law in line with international standards, by limiting the use of lethal force by law enforcement to those instances in which it is necessary protect life.
4. All states should review and revise their use of lethal force statutes to bring laws in line with international standards and ensure that police departments publish regular statistics on the number of people shot and killed or injured by police officers. Police departments should also provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action.
5. The Department of Justice should:

- a. Conduct an independent, transparent and impartial investigation into the death of Michael Brown;
 - b. Ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994). The data collected should be disaggregated by race, ethnicity and gender;
 - c. Review and update the Department of Justice's Guidance on the Use of Deadly Force by law enforcement officials to ensure compliance with international law and standards, by limiting the use of lethal force by law enforcement to only in those instances where it is needed to protect life and to ensure that sure that firearms are used as a last resort only if other means have failed or are not likely to be efficient, and even where the use of a firearm is unavoidable that this is done in a way that seeks to minimize harm and loss of life.
 - d. Promptly implement a Department of Justice led review of police tactics and practices nationwide;
 - e. champion a national commission to examine and produce recommendations on policing issues, including use of excessive and lethal force; policing of protests and adherence of all law enforcement agencies to human rights standards for law enforcement;
 - f. Update the Department of Justice's *Guidance on the Use of Race* by law enforcement officials, to include a comprehensive ban on racial profiling by federal law enforcement agencies.
6. The United States Congress should:
- a. Pass the End Racial Profiling Act
 - b. Ensure that the Department of Justice is able to fulfil its obligation to ensure adherence to international standards related to policing and the use of force by law enforcement officers.

Recommendations on the Policing of Protests

To Ferguson Police Department, Missouri State Highway Patrol and the Governor of Missouri

- Review and revise all policies and training on policing of protests to ensure that there is compliance at all times with international human rights obligations and with international standards on policing, in particular The *U.N. Code of Conduct for Law Enforcement Officials* and the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* must be the guiding principles underpinning all operations before, during and after demonstrations.
- Ensure that all allegations of human rights violations by police officials during the protests in Ferguson, Missouri are investigated effectively, impartially and promptly, including unlawful use of force, arbitrary arrest and detention; and all those found responsible, including commanding officers, are brought to account through criminal or disciplinary proceedings as appropriate, and provide full redress to victims.

To the Department of Justice

- Review and revise Department of Justice guidelines to law enforcement agencies on the policing of protests to ensure that there is compliance at all times with international human rights obligations and with international standards on policing, in particular *The U.N. Code of Conduct for Law Enforcement Officials* and the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* must be the guiding principles underpinning all operations before, during and after demonstrations.
- The DOJ should ensure that all allegations of human rights violations by police officials during the protests in Ferguson, Missouri are investigated effectively, impartially and promptly, including unlawful use of force, arbitrary arrest and detention; as well as the failure to protect peaceful protesters from counter-protesters. All those found responsible, including commanding officers, must be brought to account through criminal or disciplinary proceedings as appropriate, and victims provided full redress.

To the United States Congress

- Pass the Stop Militarizing Law Enforcement Act.