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PRESIDENT'S TASK FORCE ON POLICING IN THE 21ST CENTURY

LISTENING SESSION: BUILDING TRUST & LEGITIMACY

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We thank you for holding this timely listening session on building trust and legitimacy between law enforcement agencies and the communities they serve. This discussion comes at a critical time for many communities across the country. The recent deaths of Michael Brown, Eric Garner, Ezell Ford, Tamir Rice and others at the hands of police set off a long-overdue conversation on race, policing and justice as well as protests around the country that are ongoing. The human rights impacted range from the right to life, to freedom from discrimination and equality before the law, to freedom of expression and assembly. These incidents of lethal force have demonstrated the need to take a deeper look at policing tactics and biased policing involving communities of color on a national level. Law enforcement policies on the use of force vary widely from agency to agency and state to state and may not meet international standards. 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 use firearms as a last resort – when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”ⁱ

Many departments now have policies which broadly meet international standards. Despite this, some officers still use firearms in unwarranted circumstances, and officers involved in controversial shootings are often shown to have been inadequately monitored or disciplined. Unarmed suspects have been shot while fleeing from minor crime scenes; mentally ill people have been shot when they could have been subdued by other means; victims have been shot many times, sometimes after they had already been apprehended or disabled. Police officers are often in difficult situations where they may believe that their lives or those of others are in danger. However, controversial shootings occur with alarming regularity in certain common sets of circumstances. A lack of clear standards and training cannot excuse a lack of accountability for human rights violations committed by police officers.

Disturbingly, there is no accurate, national data on the number of people fatally shot or injured by police officers — data which is essential for meaningful policy-making at both national and local levels. Hundreds of individuals may be shot and killed by law enforcement annually. Due to the failure of the Department of Justice (DOJ) 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, it is impossible to truly understand the enormity of the issue across the country. It is imperative that the DOJ begin collecting and publishing this data (disaggregated on the basis of race, ethnicity and gender) annually, in accordance with the Violent Crime Control and Enforcement Act (1994). The DOJ should play a key role in collecting and publishing data

on police shootings in order to determine whether shootings are indicative of trends for individual officers or law enforcement agencies. Federal funding to state and local law enforcement agencies should be contingent upon reporting of these statistics to the DOJ.

Furthermore, the President and Congress have a duty to comprehensively examine and produce recommendations on policing tactics, including use of force and lethal force, discriminatory policing, the militarization of police and the policing of protests, and ensure adherence of all law enforcement agencies to human rights standards for law enforcement. These recommendations should come with scalable measures and implementation strategies.

There is a widespread and persistent problem of unnecessary or excessive force by police across the USA. Thousands of individual complaints about police abuse are reported each year and local authorities pay out millions of dollars to victims in damages after lawsuits. Internal investigations into such incidents, when they do happen, often lack transparency. Police officers have beaten and shot unresisting suspects; they have misused batons, chemical sprays and electro-shock weapons; they have injured or killed people by placing them in dangerous restraint holds. The overwhelming majority of victims in many areas are members of racial or ethnic minorities, while most police departments remain predominantly white. Relations between the police and members of minority communities — especially young black and Latino males in inner city areas — are often tense, and racial bias is reported or indicated as a factor in many instances of police abuses. In 2014, the United Nations Committee on the Elimination of Racial Discrimination reviewed and criticized the United States' record on racial profiling and excessive use of force by law enforcement, noting the specific impact on communities of color, and urged the US government to take concrete steps to address these issues.ⁱⁱ

Police officers are responsible for upholding the law and protecting the rights of all members of society. Their job is often difficult and sometimes dangerous. Experience from around the world shows that constant vigilance is required to ensure the highest standards of conduct — standards necessary to maintain public confidence and to meet national and international obligations. In the USA, despite reform programs in several major police departments, the authorities still fail to deal effectively with police officers who have committed abuses. The disciplinary sanctions imposed on officers found guilty of abuses are frequently inadequate, and officers are rarely prosecuted for excessive force. The “code of silence” — in which officers fail to report or cover up abuses — commands widespread loyalty, contributing to a climate of impunity. Although there has been pressure on police departments to become more publicly accountable in recent years through independent oversight mechanisms, these remain inadequate or wholly absent in many areas. There is no reliable national data on the excessive use of force by police, and local reporting systems are patchy and often unreliable. Such data is essential to enable the authorities to take effective action. Amnesty International believes that police forces throughout the USA must be made more accountable for their actions through the establishment of effective monitoring mechanisms. National, state and local police authorities should ensure that unnecessary or excessive force and other abuses are not tolerated: all allegations of police abuse should be promptly, fairly and independently investigated and those responsible brought to justice. Instead of simply paying compensation to victims, emphasis should be placed on stopping and preventing the abuses.

Violations of standards

Standards of conduct for police officers are set out under the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These provide, among other things, that law enforcement officers should use force only as a last resort and that the amount of force must be proportionate to the threat encountered and designed to minimize damage and injury. Many US police departments have guidelines which broadly conform to these standards. Most large departments set out a scale of force levels, ranging from verbal persuasion and hands-on force, to the use of non-lethal weapons, impact weapons and deadly force. However, in many instances these guidelines are disregarded and police officers have used levels of force entirely disproportionate to the threat faced.ⁱⁱⁱ

Patterns of abuse

Most complaints of police abuse involve unnecessary or excessive physical force by patrol officers during the course of arrests, searches, traffic stops, the issuing of warrants, or street incidents. Common forms of ill-treatment are repeated kicks, punches or blows with batons or other weapons, sometimes after a suspect has already been restrained or rendered helpless. There are also complaints involving various types of restraint holds, pepper (OC) spray, electro-shock weapons and firearms. Inquiries have consistently found a tolerance of abuse among patrol officers and supervisors in certain high crime areas. They have also found that victims include not only criminal suspects but also bystanders and people who questioned police actions or were involved in minor disputes or confrontations.^{iv}

Reports of discriminatory treatment by police toward racial and ethnic minorities are common. One of the most persistent claims is that African Americans and other minorities are far more likely than whites to be stopped and searched without cause.^v Black people who are arrested for minor offences appear particularly liable to suffer police brutality. Another persistent claim is that black drivers are targeted as suspected drugs offenders on the basis of so-called “race-based police profiles”— a practice so common that it is widely known as “driving while black”. In a number of cases, young black men have been shot by police who believed them to be armed, revealing an apparent readiness to stereotype black people as potential criminals and to disregard their right to life.

Less-than-lethal weapons

The police have a variety of so-called “less-than-lethal” weapons at their disposal, including chemical sprays (such OC-spray), electro-shock weapons and batons. These devices are designed to stun or temporarily disable, although the risk of death is not totally eliminated. International standards encourage the development of non-lethal incapacitating weapons, in order to decrease the risk of death or injury. However, the standards also state that these should be “carefully evaluated” and that “the use of such weapons should be carefully controlled”.^{vi} While most large police departments have guidelines and reporting procedures for the use of such weapons, many smaller departments do not. Where police departments do have guidelines, they vary widely. Many authorize the use of less than lethal weapons if officers face a serious physical threat, but others allow them to be used more widely.

Recommendations

Federal, state and local authorities should take immediate action to halt human rights violations by police officers. They should make clear that abuses including unnecessary or excessive force, torture or other ill-treatment by police officers will not be tolerated; that officers will be held accountable for their actions; and that those responsible for abuses will be brought to justice. Victims of abuse by police officers should be guaranteed effective and timely reparation. International human rights standards should be fully incorporated into police codes of conduct and training.

1. The administration should seek, and Congress should provide, adequate funding to enable the Justice Department to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994. The Justice Department should compile and regularly publish detailed national data on police use of force (including all police fatal shootings and deaths in custody), with analysis of patterns of concern and policy recommendations.
2. The federal government should increase its use of Title VI of the Civil Rights Act of 1964 to seek to eliminate racially discriminatory treatment by law enforcement agencies. Funding should be contingent upon agencies which engage in discriminatory practices taking effective steps to eliminate them.
3. Congress should pass the End Racial Profiling Act, the National Criminal Justice Commission Act, the Stop Militarizing Law Enforcement Act, and the Law Enforcement Torture Prevention Act.
4. All allegations of human rights violations and other police misconduct should be fully and impartially investigated, in line with best practice for such investigations. All officers responsible for abuses should be adequately disciplined, and, where appropriate, prosecuted.
5. There should be greater transparency in the investigation of complaints of human rights violations. Complainants should be kept informed of the progress of these investigations. The outcome of all criminal, disciplinary and administrative investigations into alleged violations, and into all disputed shootings and deaths in police custody, should be made public promptly after the completion of the investigation.
6. Police departments should provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action. They should also publish regular statistics on the number of people shot and killed or injured by police officers and other deaths in custody.
7. City and county authorities should be required to forward information on civil lawsuits alleging police misconduct to the police department and to relevant oversight bodies. They should regularly make public information on the number of lawsuits filed, and judgments and settlements.
8. Police departments should ensure that their policies on the use of force and firearms conform to international standards.
9. The federal authorities should establish an independent review of the use of OC (pepper) spray by law enforcement agencies. Police departments which continue to authorize the spray should introduce strict guidelines and limitations on its use, with clear monitoring procedures.
10. Strict national guidelines on police use of Tasers and similar stun weapons – also known as Conducted Energy Devices (CEDs) – should be developed. Law enforcement and

correctional agencies should be restricted to those situations where police would otherwise consider using firearms.

11. Federal, state and local authorities, including police departments, should ensure that training programs include: international standards on human rights, particularly the prohibition on torture and other ill-treatment; how to deal with situations which have often led to excessive force, including pursuits and how to cope with disturbed individuals; gender issues; and sensitivity to minority groups.
12. Police departments should establish early warning systems to identify and deal with officers involved in human rights violations. They should establish clear reporting systems and keep detailed records of every officer's conduct. They should conduct regular audits of these records in order to identify, and take remedial action in respect of, any patterns of abuse, including racial bias or other discriminatory treatment. These audits should be open to inspection or view by independent oversight bodies.
13. Police departments should issue clear guidelines requiring officers to report abuses, and officers with chain-of-command control should be held responsible for enforcing those guidelines and strictly enforcing penalties for failing to report, or covering up, abuses.
14. State, local and federal authorities should establish independent and effective oversight bodies for their respective police agencies. In particular, these bodies should:
 - have the authority to investigate or review complaints of human rights violations by the public against the police;
 - be able to conduct regular audits of the police internal complaints and disciplinary process and, where necessary, conduct their own investigations;
 - have the power to require witnesses to appear and to insist on cooperation from police departments and individual officers;
 - require police agencies to provide information on action taken in individual cases, with reasons for inaction;
 - have the authority to review and make recommendations on policy and training;
 - provide detailed public reports, at least annually, giving relevant data, including the type of complaint and the race and gender of the complainant and the accused officer;
 - publicize the complaints procedure within the community and ensure that it is accessible to the public; information about complaints procedures should be prominently displayed in all police stations.

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. We reach almost every country in the world. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

ⁱ Article 3, UN Code of Conduct for Law Enforcement Officials (1979); Principle 9, U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

ⁱⁱ Concluding observations on the combined seventh to ninth periodic reports of United States of America, Committee on the Elimination of Racial Discrimination, 25 September 2014, CERD/C/USA/CO/7-9, available at: <http://www.state.gov/documents/organization/235644.pdf>

ⁱⁱⁱ See Amnesty International reports on this issue, such as Police brutality and excessive force in the New York City Police Department (1996), available at <http://www.amnesty.org/en/library/asset/AMR51/036/1996/en/7b6bf842-eb05-11dd-aad1-ed57e7e5470b/amr510361996en.pdf>; Rights for All (1998), available at: <https://www.amnesty.org/en/library/asset/AMR51/035/1998/en/0440cd04-da99-11dd-80bc-797022e51902/amr510351998en.pdf>, Race, Rights and Police Brutality (1999), available at: <http://www.amnesty.org/en/library/asset/AMR51/147/1999/en/735f2b8c-e038-11dd-865a-d728958ca30a/amr511471999en.pdf>; Stonewalled: Police Abuse and Misconduct against lesbian, gay, bisexual and transgender people in the U.S. (2005), available at: <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>; Less than Lethal?: The Use of Stun Weapons in Law Enforcement (2008), available at: <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf>.

^{iv} For instance, see the the Mollen Commission of Inquiry into corruption in the New York City Police Department (NYPD) in 1994 and the 1991 Christopher Commission of Inquiry into the Los Angeles Police Department (LAPD); For further examples, see Amnesty International, USA: Rights for All, 30 September 1998, AMR 51/035/1998, available at: <http://www.amnesty.org/en/library/asset/AMR51/035/1998/en/0440cd04-da99-11dd-80bc-797022e51902/amr510351998en.pdf>.

^v *Floyd v. City of New York*, No. 13-3088, 2013 WL 5998139, (2d Cir. Nov. 13, 2013).

^{vi} Principles 2 and 3 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.