

**Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights**

Hearing on the State of Civil and Human Rights in the United States

Tuesday, December 9, 2014

Testimony by: Organization for Black Struggle, HandsUpUnited, Members of the
Ferguson to Geneva Delegation

The failure to acknowledge and reform racial profiling and police impunity has damaged the United States' international reputation. The U.S. has traditionally sought to position itself as a beacon of human rights and democracy for the rest of the world to emulate. However, the failure to hold Officer Darren Wilson responsible for killing Mike Brown served as a lodestar of a different tenor.

On this the occasion of the State of Civil and Human Rights in the United States hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, the undersigned organizations and individual members of the Ferguson to Geneva delegation submit this testimony in the hopes of addressing this crisis before it further damages America's standing in the global community. In the wake of the police killing of Michael Brown, Jr. in Ferguson, Missouri on August 9, 2014, we have deemed it necessary to employ all possible forums to expose the serious human rights concerns surrounding that killing, the militarized police response to ensuing demonstrations, as well as the deep structural racism and discrimination inherent in a justice system that systematically refuses to hold the police departments accountable for their racial profiling and targeted police violence against black communities across the country.

Why human rights? This is a question of asserting our human dignity. The decisions not to indict the police officers involved in the Mike Brown and Eric Garner cases have demonstrated that there is impunity for the taking of black lives and profit to be made off the misery of state-sanctioned killings of black people. We have taken this fight to the local, state and federal levels, with no result. Therefore our appeal to the United Nations and the international community is meant to be an indictment of the U.S. legal system. Only a full redress of our concerns can begin to repair the damage done on a local, national, and international level.

In the hopes that the moral outrage of the global community would further move our government towards justice, we submitted a shadow report on the circumstances surrounding Mike Brown's killing and the excessive use of force against those participating in demonstrations in Ferguson to the United Nations Committee Against Torture this past October. We traveled to Geneva, Switzerland with the parents of Mike Brown in mid-November to present the facts and the recommendations in that report. Among the information we presented,

we noted how Mike Brown's body was left laying in the street for over four hours after his killing, with his parents forced to stand and helplessly watch medical aid refused to him; the mishandling of the grand jury process by Prosecutor McCulloch, the long-standing problem of racial profiling and targeted violence against the black community in Ferguson and surrounding areas of St. Louis County, and the pattern of impunity around police brutality. We also raised serious human rights concerns around the militarized police response to the demonstrations that erupted in the weeks following the killing, which involved indiscriminate use of tear gas and other painful implements while denying demonstrators egress, intimidation by pointing loaded weapons at demonstrators, and excessive force used without distinction against crowds including children, the elderly, and handicapped people as collective punishment for participating in the demonstrations.

The Committee heard our recommendations and posed difficult questions to the U.S. government delegation on the discriminatory treatment of black people by the justice system, its abysmal record as regards police accountability and enforcing restrictions on police use of force, and the disturbing use of militarized force against its own people, reminiscent of a "civil war," as one Committee member put it. The Committee's recently released Concluding Observations expresses "deep concern at the frequent and recurrent police shootings or fatal pursuits of unarmed black individuals"¹ and regrets the government's failure to detail the result of prosecutions against police officers or investigations of police departments for rights abuses.

In the days leading up to the Ferguson grand jury announcement, we again reached out to a group of UN Special Rapporteurs, alerting them to be vigilant to the recurrence of the same human rights violations we had seen in the weeks following Mike Brown's murder. Some of them responded with concern, and even released a public statement following the announcements of the grand jury decisions not to indict the police officers involved in the killings of both Mike Brown and more recently, Eric Garner. One UN expert stated, "Michael Brown and Eric Garner's cases have added to our existing concerns over the longstanding prevalence of racial discrimination faced by African-Americans, particularly in relation to access to justice and discriminatory police practices."² The Special Rapporteur on contemporary forms of racism noted the targeting of African Americans by racial profiling and disproportionate police force, which is often lethal. The recent tragic killings of Akai Gurley and Tamir Rice, a 12-year old shot to death for carrying a toy gun, are further evidence of these concerns.

And yet, we continue to see egregious violations of rights happening on the ground in St. Louis now, and indeed in protests across the country denouncing police violence, racial profiling and the devaluing of black life in the U.S. In a

¹http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en

²<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E#sthash.jZzsb3J.dpuf>

letter we are submitting to the Special Rapporteurs to update them on the situation on the ground, we note the continued harassment of vocal leaders of movement for their involvement in actions calling for justice and an overhaul of a justice system that denies their basic humanity. We detail arbitrary arrests, excessive force, and racial slurs like the N-word used by the police against people engaged in their right to peaceably assemble and speak their mind. We note the use of implements like tear gas and pepper spray to chill free speech and intimidate community members from participating in demonstrations. Fifty years after the great gains in the U.S. Civil Rights Movement, this is not where we should be.

We strongly endorse the 12-point platform put forth by the national Ferguson Action Network. We hope that we can collectively aspire to the visionary platform that not only seeks to end state-sponsored assaults on black and brown communities' rights to liberty and security of person, but also realizes the importance of assuring economic and social rights to education, health, gainful employment and decent housing. We further recommend certain local changes that must happen to (1) hold accountable authorities responsible for their recklessness and indifference in handling the Mike Brown murder and endorsing the repressive response to the protests that ensued, and (2) address the root causes of inequality, racism and marginalization of the black community in St. Louis.

Local authorities had the power to respond differently to the Mike Brown killing, and could have avoided the fallout that ensued. The fact that they chose not to take these alternative steps can only register as a callous indifference to the grievances of the black community in St. Louis. They further demonstrate a lack of political will to remedy the structural issues that reproduce and perpetuate inequality in St. Louis. If the U.S. plans to start a new tradition of accountability for racial profiling and state sponsored violence, it should begin with the actors who oversaw, sanctioned and facilitated the human rights abuses against Mike Brown, the Ferguson community and surrounding areas by issuing a letter condemning those abuses and calling for those in power to be held accountable.

St. Louis County Police Chief Jon Belmar - Chief Belmar's record in addressing the community in the aftermath of the shooting of Mike Brown illustrates a lack of control and irresponsible leadership. Officers from multiple municipalities 'self deployed' with no accountability during periods of heightened unrest (such as the St. Ann police officer who threatened to kill demonstrators).³ Chief Belmar made the call to fire tear gas in August protests with no regard for crowds of peaceful protestors that included children, pregnant women, and elderly or residents safety. He publicly defended military equipment and officers behavior stating they police very 'urban communities'. He has not expressed regrets for using certain implements against demonstrators, and inaccurately stated there are no long lasting effects from tear gas, despite reports that it has

³http://www.stlameric.com/news/local_news/article_747fce3a-6d05-11e4-a5e0-9b8aa0946089.html

contribute to reduced lung functioning or miscarriage.⁴ “I felt like after 20 years of law enforcement experience -- I’ve been tear-gassed perhaps two dozen times. It’s a chemical agent, it’s not pleasant, but at the end of the day there aren’t any long-lasting effects.”⁵

Prosecutor Robert McCulloch – Prosecutor McCulloch grossly mishandled the grand jury process, from start to finish. The ways in which he favored the defendant are many, not least of which is the fact that his prosecution team provided the grand jury with an outdated and unconstitutional law on the use of force by police and only half-heartedly attempted to correct the error at the very end of the process.⁶ This is not surprising given his connections to the police and his history of failing to prosecute police for their misconduct (with the exception of one black police officer⁷). It is now being reported that certain pieces of evidence, including the interview with key witness Dorian Johnson, was not among documents provided to the press after the announcement was made.

City of Ferguson Police Chief Thomas Jackson – His response to the Mike Brown murder was appallingly deficient. Before releasing Officer Wilson’s name, Chief Jackson chose to taint the image of the victim by releasing edited video footage which was illegally obtained by the Ferguson PD, before they had gotten a warrant for it. Mike Brown’s deceased body was left on display in the street that runs through the densely populated Canfield Green apartments for 4.5 hours. Medical examiners were not allowed to approach Mike Brown’s body during this time period. In the demonstrations that follow, overly aggressive policing was employed by the Ferguson police, as showcased in a specific incident in which Chief Jackson attempted to march with protesters while one of his officers punched a pregnant woman, hogtied her, and flung her body into a police caravan.

Governor Jay Nixon – Governor Jay Nixon made several missteps that contributed to the inflamed tensions in the aftermath of Mike Brown’s killing. These include his attempt to place curfews on protests in Ferguson in August (which the police themselves failed to respect, for example, on the evening of August 17, 2014 when they launched tear gas into crowd before the curfew was set to begin); his refusal to support a fair and transparent grand jury process by advocating for a special prosecutor to the Mike Brown case in light of substantial evidence of Prosecutor McCulloch’s ties to police and reticence to hold police accountable; as well as his preemptive declaration of a state of emergency one week before the announcement of the grand jury decision, not only creating a state of fear and anxiety among St. Louis residents but also reinforcing a “false presumption of criminality that so often attaches to African Americans and feeds the excessive force and brutality by police,” as Sherilyn Infill of the NAACP Legal

⁴Physicians for Social Responsibility—Los Angeles, *Tear Gas Clouds and Chronic Health Problems* (June 11, 2001) at <http://www.bvsde.paho.org/bvsacd/cd57/teargas.pdf>

⁵http://www.huffingtonpost.com/2014/08/27/jon-belmar-ferguson-protests_n_5726122.html

⁶<http://www.dailykos.com/story/2014/12/04/1349421/-Missouri-AG-Confirms-Michael-Brown-Grand-Jury-Misled-by-St-Louis-DA>

⁷ <http://www.dailydot.com/politics/ferguson-prosecutor-indicted-cop-for-using-baton/>

Defense Fund put it.⁸

Moving forward, apart from the necessary replacement of these negligent officials from their positions of power, it is important to put into place some structural changes that can help prevent future crises.

1. **Ensure that Use of Force Laws are in accordance with International Human Rights Norms and the United States Constitution.** Missouri's law on the use of force by law enforcement, like many states around the country, satisfies neither Constitutional requirements as articulated by the U.S. Supreme Court in *Tennessee v. Garner*, 471 U.S. 1 (1985), nor international standards on the use of force according to article 9 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. We recommend that the United States, at a minimum, mandate that Missouri bring its laws in compliance with established Supreme Court precedent, and that states may not seek to enforce laws that unconstitutionally create a more permissive use of force standard for police than the Supreme Court has deemed allowable under the Constitution. As a nation seeking to set an example of high human rights standards, the United States should be able to follow the Basic Principles recommended by the United Nations, which advise that law enforcement officers only use deadly force after less extreme measures have been exhausted, and only when strictly unavoidable in order to protect life.
2. **End Militarization of the Policing Culture.** The Ferguson Action 12 point plan properly calls for the end of the 1033 program and the associated provision of military equipment to local police departments by the pentagon. Additionally, local police departments should end the militarization of policing culture by (i) Ending the use of wartime language such as the "war on drugs," (ii) Ending the strategic recruitment of military veterans without addressing PTSD concerns and re-training them to see the communities they police as citizens and not enemies in a warzone (iii) Adoption of community policing tactics instead of militarized "hot spot" policing methods that use military tactics against American citizens as if they were enemy combatants.
3. **Urge accountability for racial profiling, state sponsored violence, and the excessive use of force on protesters by:** (i) issuing a formal letter condemning Ferguson Police Chief Thomas Jackson; (ii) Calling for the placement of the Ferguson Police Department under federal receivership to hold it accountable for systematically targeting and harassing residents of color in a predatory and degrading manner; (iii) Calling upon Missouri Governor Jay Nixon to accept responsibility on behalf of the State of Missouri for the intimidation and excessive force used against protesters following Michael Brown's murder, and calling for the provision of remuneration for damages suffered; and (iv) Calling for

⁸<http://www.naacpldf.org/press-release/statement-sherrilyn-ifill-president-and-director-counsel-naacp-legal-defense-fund-resp>

amnesty for those protesters arrested while protesting the killing of Michael Brown; and (v) implementing systematic accountability mechanisms, such as civilian oversight boards with the power to fire and fine individual officers, or mandatory personal liability insurance with the power to raise premiums on officers based on a pattern of police complaints.

4. **End racial profiling and racially-biased police harassment across the jurisdictions surrounding Ferguson, Missouri (referred to as North County), as documented by statistics compiled by the State of Missouri.** To that end we recommend: (i) ensuring that Missouri police forces are racially integrated and reflective of the communities they police and create a cause of action under Missouri's existing racial profiling law; (ii) establishing a minimum population for a police department; (iii) developing a strategy for creating a community policing culture in Ferguson and the surrounding St. Louis County espousing principles as laid out in the Quality Policing Initiative;⁹ (iv) condition state funding to municipal police departments based on minimum standards regarding use of force and the targeting of racial minorities.

Sincerely,

Ferguson to Geneva Delegation

⁹<http://obs-onthefly.org/featured/quality-policing-initiative/>