

Police Abuse

As spotlighted by the 1991 beating of Rodney King, police abuse is one of the most pressing human rights issues facing the United States. The persistent use of excessive force, often exacerbated by racism, violates the Article 7 prohibition on "cruel, inhuman and degrading treatment or punishment." These continuing abuses by state and local law enforcement agencies violate Article 7, notwithstanding the reservation attached to this article at the time the United States ratified the ICCPR.

The discriminatory impact of police abuse on members of minority groups, particularly African Americans, violates the Article 2 and Article 26 prohibitions on discrimination. This is true regardless of whether discriminatory policies and acts are intentionally motivated by race or not. Under Article 2 of the ICCPR the United States must take "the necessary steps" to "ensure" that the rights guaranteed in Article 7 are respected by all law enforcement agencies in the United States. Those steps must include legislation giving the federal government the necessary authority to intervene to prevent and remedy police abuse by state and local law enforcement authorities.

Since the March 3, 1991, beating of motorist Rodney King by Los Angeles Police Department (LAPD) officers the issue of police brutality and other forms of abuse by law enforcement officers has gained a new prominence in the United States. In the aftermath of the King beating a number of inquiries into police abuse were undertaken in Los Angeles and at the national level.¹ In

¹ These inquiries include the Report of the Independent Commission on the Los Angeles Police Department (1991) (Christopher Commission Report). The Independent Commission was chaired by Secretary of State Warren Christopher and is commonly referred to as the Christopher Commission. See also "Beyond the Rodney King Story: NAACP Report on Police Conduct and Community Relations" (1993) (Beyond Rodney King); "On The Line: Police Brutality and its Remedies," American Civil Liberties Union (1991)(On The Line); Paul Hoffman, *The Feds, Lies and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 So. Cal. L. Rev. 1453 (1993); Jerome Skolnick & James Fyfe, *Above the Law: Police & the Excessive Use of Force* (1993).

addition, international human rights monitoring organizations, including Human Rights Watch, reported on the problem of police abuse in the United States in the context of the events in Los Angeles.²

² Human Rights Watch, "Police Brutality in the United States: A Policy Statement on the Need for Federal Oversight" (1991); Amnesty International, "United States of America: Torture, Ill Treatment and Excessive Force by Police in Los Angeles, California" (1992).

These investigations found that the problem of police abuse is a serious human rights problem in modern American society. As the police chiefs from ten major American cities stated at a summit conference after the King beating, "the problem of excessive force in American policing is real."³

This chapter provides a general description of the problem of police abuse in America. This description is drawn from many of the recent investigations into police abuse in Los Angeles and other parts of the country and is based on the ACLU's historical experience in responding to police abuse throughout the country.

The chapter also recommends some of the steps that should be taken by the federal government to respond to the reality of police abuse in America to fulfill this country's obligations under the ICCPR.

Article 7 is the main provision of the Covenant bearing on the problem of police abuse in the United States.⁴ The prohibition against "cruel, inhuman and degrading treatment or punishment" is broader than the provisions of the U.S. Constitution restraining police abuse. This is because Article 7 prohibits a range of "inhuman" or "degrading" treatment or punishment that goes beyond U.S. constitutional standards. These terms have not been defined comprehensively by the Human Rights Committee created under the ICCPR,⁵ but it is likely that at least some forms of police harassment would fall within these broader international standards.⁶ As noted in chapter five concerning prison conditions, the United

³ This chapter focuses on police abuse by state and local law enforcement agencies. There have been many instances of abuse by federal law enforcement agencies, including, for example, the Border Patrol abuses discussed in chapter four. Under the ICCPR, the federal government must address these abuses and create the legal and administrative framework necessary to ensure that such abuses are prevented and redressed.

⁴ Other provisions of the ICCPR are also violated by the police abuse that occurs in the United States each year. In particular, the articles in the ICCPR providing for equal rights and freedom from discrimination are violated by police practices that discriminate against racial minorities, especially the African-American community in the country.

⁵ See generally Dominic McGoldrick, *The Human Rights Committee*, at 367-380 (1991).

⁶ An example would be the practice of "proning out" young minority youths. This practice involves stopping young minority males for minor infractions and forcing them to kneel on the street for long periods of time in uncomfortable positions, often in full view of passersby. A pattern of police conduct of this kind might well be considered "degrading"

States has submitted a reservation to Article 7 limiting the binding nature of Article 7 to the cruel and unusual punishment prohibited by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution. The ACLU and Human Rights Watch urge the Clinton Administration to remove this reservation so that all persons in the United States are protected from all forms of cruel, inhuman and degrading treatment or punishment prohibited under the ICCPR.

Whether or not the United States withdraws its reservation to Article 7, this country has assumed an international obligation to eliminate the police abuse in violation of Article 7 as the United States has accepted it. The United States has agreed in Article 2 of the ICCPR to "ensure" that all of the rights recognized in the ICCPR, including the protections embodied in Article 7, are respected without discrimination of any kind. If existing U.S. law is not sufficient to "ensure" these rights the United States has agreed to take "the necessary steps" to give effect to these rights. These obligations have been assumed by the United States without reservation and must be fulfilled without delay.

The nature of the problem

The problem of police abuse in the United States is not a new phenomenon. Police abuse has been a feature of the American civil liberties landscape for much of the country's history.⁷ In this century thousands of African-Americans were lynched by or with the support or acquiescence of law enforcement officials in many parts of the country.⁸

Though the United States has largely overcome this particularly egregious form of repression, the problem of racially-discriminatory violence against members of minority communities and other vulnerable groups by law enforcement officials and private hate groups remains a significant problem in America.

under Article 7.

⁷ See, e.g., Gunnar Myrdal, "An American Dilemma 535-46 (1944); U.S. Commission on Civil Rights, "Justice" 26 (1961)("police brutality is a serious and continuing problem in many parts of the country."); and National Advisory Commission on Civil Disorders, "Report of the National Advisory Commission on Civil Disorders 293-307 (1968).

⁸ Between 1889 and 1940, 3,833 lynchings took place in the United States; 80% of these lynchings were of African-Americans. Myrdal at 560.

Today, the problem of police abuse, especially in minority communities, is one of the most pressing civil liberties issues in this country. The reality of this problem was brought into the living rooms of tens of millions of Americans by the videotape of the Rodney King beating.⁹ The Rodney King beating was not an aberration. The use of excessive force⁹ by state and local police agencies has become a common feature of American policing.

It is impossible to provide a comprehensive account of police abuse in this context; however, some intractable problems may be identified.

Excessive Force

On the streets of inner cities in America excessive police force goes by a variety of names. Often it is called "street justice" or "attitude adjustments." The common feature of these practices is that police inflict physical beatings, varying in severity, to impose a form of punishment beyond the minimum amount of force necessary to subdue a suspect.

The public investigations into police abuse in Los Angeles after the Rodney King beating revealed the depth of the problem of excessive force in the LAPD.¹⁰ A study of police abuse by the NAACP confirmed that the problem of police abuse is national in scope.¹¹ As Hubert Williams, the President of the Police Foundation and former Chief of Police of Newark, stated "police use of excessive force is a significant problem in this country, particularly in our inner cities."

Often, the routine use of excessive force is part of a "hardnosed," military style of policing fostered by the management of the police department in the "wars"

⁹ "Excessive force" in U.S. constitutional terms is force that exceeds what is objectively reasonable in the circumstances confronting the officer to subdue a person. *Graham v Connor*, 490 U.S. 386 (1989).

¹⁰ A similar investigation was conducted in 1991 and 1992 by retired Los Angeles Superior Court Judge Kolts concerning claims that the Los Angeles County Sheriff's Department (LASD) engaged in systematic abuses. Judge Kolts report, issued in 1992, made findings very similar to the findings of the Christopher Commission.

¹¹ See generally *Beyond Rodney King*, *supra*.

against drugs, crime and gangs.¹² As the Christopher Commission was told by a high-ranking LAPD officer, excessive force was treated leniently by LAPD managers because it did not violate the internal LAPD "moral code" that permits "some thumping" as a matter of course.¹³

The Christopher Commission identified some common patterns of excessive force in the LAPD, patterns that are common in many other police departments. Many of the incidents involved "contempt of cop," where beatings occurred because suspects did not obey police commands, or did not obey them rapidly enough, or because a suspect insulted the officer in the course of an arrest. Another common scenario for excessive force was the context of the Rodney King beating: "street justice" imposed after a high speed chase or other form of police pursuit. The investigations into LAPD and LASD (Los Angeles County Sheriff's Department) abuse both found that beatings, or in some cases police shootings, often occurred at the end of pursuits.¹⁴ The most extreme form of excessive force, of course, are police shootings, and there is substantial evidence of numerous unjustified police shootings, often resulting in death or serious injury to the suspects.¹⁵

¹² Christopher Commission Report, at 97-100.

¹³ *Id.* at 166.

¹⁴ A radio transcript recorded a police dispatcher referring to Rodney King in a way that not only suggested that King was beaten for this reason but that this practice was widespread: "He pissed us off, so I guess he needs an ambulance." Richard Serrano, "Officers Beat King Out of Anger, Transcript Suggests," *Los Angeles Times*, January 24, 1992, at A1, A23. Christopher Commission Report at 56; Kolts Report at 35-50.

¹⁵ One investigation into shootings by the LASD published in October 1990 by the Los Angeles Daily News found that there were fifty-six questionable shootings by LASD deputies in the period from January 1, 1985, to August 27, 1990. David Parrish & Beth Barrett, "The Sheriff's Shootings: Minorities Are a Majority," *Daily News*, Oct. 7, 1990, at 1. In 87% of these shootings the victims were African-American, Latino, Asian or Pacific Islander. Twenty-six of the fifty-six people died as a result of the shooting. In none of the cases did the suspects shoot a gun at deputies or anyone else. In only four cases did the suspect have a weapon of any kind and these were a knife, a push broom brush, a sauce pan and a metal pipe. *Id.* at 12. Though this investigation was not conclusive the study raised serious concerns that the LASD had committed what amount to extra-judicial executions.

In Los Angeles, the independent investigations into LAPD and LASD abuse found that the internal discipline systems had not responded effectively to the existence of widespread use of excessive force. The investigations found that in each department there were dozens of "problem" officers with numerous complaints of misconduct who had not been trained, supervised or disciplined in a way that would restrain their abusive conduct.¹⁶

Moreover, the "code of silence" in both departments made it very difficult to hold disciplinary charges or criminal charges against officers for misconduct. The widespread refusal of officers to testify against other officers accused of misconduct makes it very difficult to make officers accountable to constitutional commands.¹⁷ Moreover, the "code of silence" is enforced by threats of retaliation against officers who complain or testify about the misconduct of other officers.¹⁸ The result is that police officers too often act with impunity toward the people they come into contact with, knowing that there is little chance that they will be sanctioned effectively for the use of excessive force.

Race and Police Abuse

The importance of race as a factor in police abuse in the United States is central.¹⁹ Racial minorities are disproportionately represented as victims of

LASD Sheriff Sherman Block declined to disclose if any of the deputies had been disciplined as a result of these shootings; none of the deputies involved faced criminal charges.

¹⁶ These problems are also national in scope. *See generally Beyond Rodney King, supra.*

¹⁷ *Beyond Rodney King*, at 114.

¹⁸ *Beyond Rodney King*, at 122-127. The forms of retaliation include the filing of trumped up charges against officers who break the "code of silence" or the failure to get back-up assistance from fellow officers in the course of duty.

¹⁹ *Beyond Rodney King*, at 10-23. Of course, the problem of police abuse is not limited to minority communities or to urban American. The focus of this chapter is on police abuse in the inner city because this appears to be the most prevalent form of abuse at this time.

excessive force and other forms of police abuse.²⁰ This is attributable to the continuing effects of racism in American society and also to the fact that minority communities in the inner city are the forums in which the "wars" against drugs, crime and gangs are waged.

The racial dimensions of police abuse in America extend beyond the issue of excessive force. Police harassment of young minority men in the inner city is endemic. Race is the key factor leading to police suspicion, stops and searches in a significant percentage of police encounters with members of minority communities. As a Catholic priest testified before the Christopher Commission in Los Angeles: "I don't feel I could find a single person who couldn't tell you a story of police abuse, of humiliation, of degradation at the hands of the [local] Police Division - not a single one."²¹

Perhaps the most graphic illustration of racially-motivated policing is the common LAPD practice of stopping young African-American males for pretextual reasons. Before the Rodney King beating, former Los Angeles Laker basketball star Jamaal Wilkes was stopped and handcuffed by the LAPD not far from downtown Los Angeles on the pretext that his registration was **about** to expire. The real reason was that he was a young African-American male driving a late model car - the prime target of the "war on drugs." The same thing happened to African-American film star Wesley Snipes less than one month after the Rodney King beating in the same area of Los Angeles. Baseball Hall of Famer Joe Morgan won a jury award of \$540,000 for the beating he received by LAPD officers at Los Angeles airport after he was stopped because he fit a "drug courier" profile.²² Even the most prominent members of the African-American community are presumptively suspected of being potential or actual criminals in urban American. The majority of young minority males are the constant targets of police attention and often this attention comes in the form of harassment or illegal stops and searches.

²⁰ Racial minorities, especially young African-American men, are also overrepresented in the criminal justice system generally. *Beyond Rodney King*, at 30-34.

²¹ Christopher Commission Report, at 75.

²² *Morgan v Woessner*, 975 F. 2d 629 (9th Cir. 1992). The Ninth Circuit Court of Appeals sent the case back down for reconsideration of the size of the award but the City of Los Angeles recently agreed to settle the case.

These Los Angeles examples reflect the broader pattern of police abuse and harassment against members of minority communities throughout the United States.²³ This is not to suggest that all or even a majority of police-community interactions amount to harassment or improper conduct. The challenges facing modern law enforcement agencies in urban America are daunting to say the least. However, there are widespread violations of the Covenant's anti-discrimination norms on a daily basis by police departments across the country.

The Covenant's requirements and existing U.S. law

The kinds of police abuse described above fall squarely within the core meaning of ICCPR provisions fully accepted as binding by the United States when it ratified the ICCPR. Excessive force violates not only the Fourth and Fourteenth Amendments; it is also a violation of Article 7 of the ICCPR. In addition, racially-discriminatory police abuse violates the anti-discrimination norms of the Covenant. None of the reservations, declarations or understandings that limit the U.S. ratification of the ICCPR affect the international obligations the United States has assumed to eradicate these forms of police abuse in order to "ensure" to all persons within U.S. territory the rights provided for in the Covenant.

The primary remedy against police abuse in U.S. law is 42 U.S.C. section 1983. This Reconstruction-era civil rights statute allows for civil rights lawsuits for violations of the Constitution and statutes of the United States and it has been the main weapon against police abuse in U.S. courts.²⁴ The availability of section 1983 remedies goes a long way toward fulfilling the obligation in Article 2(3) of the ICCPR to provide any person whose rights under the Covenant have been violated to "have an effective remedy."

Nevertheless, these civil rights remedies are limited in important respects that undermine their effectiveness in providing a remedy for past violations and in providing protection against future police abuse.²⁵ Under section 1983 a victim of

²³ *Beyond Rodney King*, at 35-58.

²⁴ Most states also provide remedies for police misconduct. These remedies are generally not as generous to civil rights plaintiffs as section 1983.

²⁵ These limitations are discussed in more detail in *Feds, Lies and Videotape*, at 1502-1514. See also Testimony of Drew Days III, "Police Brutality," Hearings Before the SubComm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 102nd

police abuse may not win a damage judgment against a police department unless it can be shown that the injury was caused by a municipal "policy" or "custom."²⁶ This requirement creates a difficult hurdle for any section 1983 plaintiff to meet.

In addition, individual police officers have a qualified good faith immunity from section 1983 liability unless it can be shown that their conduct violated "clearly established" constitutional norms.²⁷ Whatever the alleged policy justifications for these court-created limitations on section 1983 liability, the net effect is that there are cases in which police conduct violates the provisions of the ICCPR in which no remedy is available under section 1983, or any other civil rights statute, because of these limitations. This is in conflict with the obligations of Article 2(3) that impose a requirement that violations of the Covenant be remedied.

The effectiveness of section 1983 is furthered undermined by the sharp limits on the use of civil rights actions to restrain future constitutional violations, especially in the area of police abuse. The *Lyons, v City of Los Angeles*²⁸ case best illustrates this problem.

In *Lyons*, the Supreme Court overturned an injunction issued by a lower federal court prohibiting the use of chokeholds by the LAPD. The use of chokeholds was extremely controversial in large part because more than a dozen people died as a result of the use of chokeholds, most of them African-Americans, between 1975 and 1980.²⁹ The Supreme Court reasoned that *Lyons* had no

Cong., 1st Sess. (1991) (Police Brutality Hearings); Testimony of Judge Jon Newman, "Federal Response to Police Misconduct," Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 102nd Cong., 2nd Sess. (1992).

²⁶ *Monell v Department of Social Services*, 436 U.S. 658 (1978). Punitive damages may not be awarded against municipalities. *City of Newport v Fact Concerts*, 453 U.S. 247 (1981).

²⁷ *Anderson v Creighton*, 483 U.S. 635 (1987).

²⁸ 461 U.S. 95 (1983). See also *Rizzo v Goode*, 423 U.S. 362 (1976)(overturning an injunction issued against the Philadelphia police department).

²⁹ LAPD Chief Daryl Gates created an uproar when he expressed the view that the reason so many African-Americans had died was that they had different necks from "normal" people. Christopher Commission Report, at 203.

"standing" to bring a claim for injunctive relief against future uses of the chokehold because he could not allege that he was likely to be stopped by the LAPD again and subjected to a chokehold for insufficient reasons. Because it would always be difficult for almost any person claiming relief from future police abuse to make such a showing the *Lyons* case has been an insuperable barrier to many suits seeking to challenge ongoing police practices. The damage caused by this ruling was best described by former Justice Thurgood Marshall in his *Lyons* dissent:

Under the view expressed by the majority today, if the police adopt a "shoot to kill" policy or a policy of shooting one out of every ten suspects, the federal courts will be powerless to enjoin its continuation...The federal judicial power is now limited to levying a [money damage] toll for such a systematic constitutional violation.³⁰

In some other areas of U.S. civil rights law this gap would be filled by injunctive suits filed by the federal government to ensure that federal civil rights are vindicated. However, the courts have ruled that the federal government has no statutory or inherent constitutional authority to bring suits even to challenge ongoing patterns of police abuse that violates the U.S. Constitution.³¹

As a result of these rulings, there is a serious gap in U.S. civil rights law that makes it nearly impossible to bring legal action to prevent many ongoing or threatened violations of the Constitution or violations of the ICCPR in the context of police abuse by state and local law enforcement agencies.³² Under existing U.S. law the federal government is powerless to intervene in response to ongoing patterns of police abuse even if the abuse would constitute a violation of the U.S. Constitution or the ICCPR.

The only form of federal intervention now authorized in U.S. law in response to police brutality is contained in federal criminal civil rights statutes that

³⁰ 461 U.S. at 137.

³¹ The main case for this proposition is *United States v City of Philadelphia*, 644 F. 2d 187 (3d Cir. 1980). *Feds, Lies and Videotape*, at 1502-1503.

³² An examination of state and local remedies in response to police abuse is beyond the scope of this chapter. However, these remedies are not sufficient to "ensure" the rights guaranteed by the ICCPR in many cases.

enable the Justice Department to bring criminal charges against law enforcement officials who "wilfully" deprive people of their constitutional rights.³³ The most prominent example of such prosecutions is the recent case brought against the four LAPD officers for the beating of Rodney King.³⁴

The Justice Department brings a small number of civil rights prosecutions each year and the resources devoted to these cases has not increased very much since the 1970s.³⁵ In part, this is due to the "specific intent" requirement in the criminal civil rights statutes that make it very difficult to secure convictions of abusive officers, unless the abuse is egregious.³⁶

Recommendations³⁷

1) Urge Congress to provide the statutory authority for the Justice Department to bring pattern and practice civil suits against state and local law enforcement agencies or officers for violations of the Constitution and the ICCPR.

³³ The main federal statutes are 18 U.S.C. sections 241 and 242. Section 241 is used primarily against private conspiracies to violate constitutional rights. Section 242 is the main statutory basis for federal criminal civil rights prosecutions.

³⁴ In April 1993, defendants Koon and Powell were convicted of violating federal civil rights laws and they are now serving their sentences. Defendants Wind and Briseno were acquitted. In a previous state prosecution, Koon and Powell were acquitted as well.

³⁵ "Police Brutality Hearings," at 31. The personnel responsible for enforcing the criminal civil rights laws remained essentially the same during the 1980s, at a time when the personnel of the Justice Department increased by 55%. See also *Above the Law*, at 211 (noting that only 44 of the 80,747 Justice Department employees are civil rights prosecutors).

³⁶ See, e.g., Edward F. Malone, *Legacy of the Reconstruction: The Vagueness of Federal Criminal Civil Rights Statutes*, 38 UCLA L.Rev. 163 (1990); Frederick M. Laurence, *Civil Rights and Criminal Wrongs: The Mens Rea of Federal Civil Rights Crimes*, 67 Tulane L. Rev. 2113 (1993).

³⁷ Many of these recommendations are discussed in more detail in *Feds, Lies and Videotape*, at 1523-1531.

- 2) Urge Congress to authorize the Justice Department to intervene on behalf of individual victims of police abuse, with their consent, in pending civil rights actions and to bring individual civil rights actions on behalf of victims of police abuse in appropriate cases.
- 3) Urge Congress to amend the existing federal criminal civil rights statutes to make law enforcement officers criminally liable whenever they act under color of law to subject any person to force exceeding that which is reasonably necessary to carry out a law enforcement duty.
- 4) Collect data about the incidence of police abuse at the federal, state and local level and monitor patterns of abuse for the purpose of directing federal resources toward redressing these patterns of abuse.
- 5) Use the federal spending power to insist on adequate accountability procedures at the state and local level to ensure compliance with the ICCPR. These procedures should include the creation of "early warning systems" to identify abusive police officers and provide them with the proper discipline and training; the existence of adequate civilian complaint procedures and internal discipline systems; adequate training programs; and the collection of data concerning civilian complaints and incidents of abuse.
- 6) Provide resources and technical assistance to state and local law enforcement agencies to improve their complaint procedures, internal discipline and training programs.