NOTES

AMERICAN HYPOCRISY: HOW THE UNITED STATES' SYSTEM OF MASS INCARCERATION AND POLICE BRUTALITY FAIL TO COMPLY WITH ITS OBLIGATIONS UNDER THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

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I. INTRODUCTION

With her strong military and large capitalist economy, few have dared challenge America for her spot. Founded as a refuge for the outcasts of England, America quickly became the destination of many seeking shelter from oppressive governments and insurgents. In fact, the words engraved on the Statue of Liberty, America's symbol of freedom, welcome those most in need:

> "Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door!"[1]

Not only does the United States welcome the huddled masses to seek refuge within her borders, she also readily sends forth her military to combat injustice abroad. Yet while she combats injustice abroad, she allows it to fester within her borders.

This is the American Hypocrisy: the ability of the United States to see the inequities of other countries while turning a blind eye to her own. Racial discrimination has been an unfortunate component of American society since its founding. Operating under a system of race-based slavery, the writers of the Declaration of Independence open with the obvious untruth that all men are created equal. Since that time, the American hypocrisy and racial discrimination has continued to affect the lives of minorities. In the 1940s during World War II, the United States joined the fight against the Holocaust while thousands of African–Americans were lynched.[2] In the 1960s, America led the charge to stop the spread of communism in Vietnam while neglecting the struggle for civil rights within the United States. And today, America is working diligently to fight violence abroad while failing to address the domestic violence within her borders.

In the last couple of years the shooting deaths of several African–American males at the hands of law enforcement officers, and the failure to indict the officers responsible, galvanized protesters across the United States to raise awareness and demand changes in policing practices. Beginning in 2014 with the shooting of Michael Brown and continuing through 2016 with the shootings of Alton Brown and Philando Castile, these deaths are

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[1] EMMA LAZARUS, THE NEW COLOSSUS (1883).

[2] Robert A. Gibson, *The Negro Holocaust: Lynching and Race Riots in the United States,1880–1950*, http://teachersinstitute.yale.edu/curriculum/units/1979/2/79.02.04.x.html.

emblematic of a tragic, wider trend with respect to the treatment of African–American males in the U.S. criminal justice system. Sadly, these deaths are nothing new: the abuse, and even murder, of blacks was a historical practice. However, with the advent of camera phones and social media, the incidents are now documented and widely disseminated, thereby bringing the topic into national focus.

The United States has obligated itself to comply with several international treaties designed to rectify and prevent human rights violations and racial discrimination. The stories of Michael Brown and the numerous other victims of police brutality and racial profiling raise serious human rights concerns including "the right to life, the right to security of the person, the right to freedom from discrimination, and the right to equal protection of the law."[3] Moreover, these violations implicate the provisions of Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). The Convention requires States Parties to propose a policy for eliminating all forms of racial discrimination and imposes an obligation to refrain from engaging in any practice of discrimination and to review national and local laws to nullify any discrimination policies.[4] Having ratified the Convention, the United States has a legal obligation to protect and fulfill these human rights and to comply with the Convention's mandates. However, the attachment of several restrictions to enforcement has crippled the Convention, rendering it nearly without force in the United States.

This Note will discuss whether the deaths of African–American males by law enforcement officers, in light of the long history of racial discrimination in the American criminal justice system, violates the duties and obligations set forth in the Convention. The premise of this Note is that the discriminatory policing tactics employed by law enforcement officers and the disparate treatment of African–Americans within the criminal justice system are contrary to the mandates of the Convention, and without more action by the U.S. Congress, these problems will continue to plague racial minorities. Part II will detail the facts of the shooting of Michael Brown and provide a brief history of racial discrimination in the American criminal justice system. Part III will discuss the Convention's history and relevant provisions and will also provide a detailed look at the domestic laws that are designed to address police use of force. Part IV will analyze the United States' obligations to

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[3] AMNESTY INTERNATIONAL, DEADLY FORCE: POLICE USE OF LETHAL FORCE IN THE UNITED STATES 1, http://www.amnestyusa.org/research/reports/deadly-force-police-use-of-lethal-force-in-the-united-states [hereinafter DEADLY FORCE].

[4] International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Sept. 28, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 195 [hereinafter ICERD].

policing and use of force under international law. Lastly, Part V will provide recommendations for complying with international law.

II. THE SHOOTING OF MICHAEL BROWN AND RACIAL DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM

A. Mike Brown + Police Brutality

On August 9, 2014, a surveillance camera captured footage of eighteen-year-old Michael Brown stealing cigarillos from a convenience store in Ferguson, Missouri. Police were dispatched, and Officer Darren Wilson arrived at the scene.[5] An altercation ensued between Wilson and Brown. Brown allegedly reached through the window of the police car Wilson was sitting in and punched Wilson in the face.[6] Brown was standing at the window of Wilson's car when the officer fired two shots—one grazed Brown's thumb, and the other missed him.[7] Brown began to run, and Wilson pursued him on foot.[8] Brown came to a stop and moved toward Wilson, who fired ten more shots at Brown.[9] Brown was hit twice in the head and died shortly thereafter.[10]

Three months later, a St. Louis County, Missouri grand jury voted not to indict Wilson for Brown's death.[11] News of the decision set the city ablaze. Peaceful protests outside the courthouse gave way to violent riots. Rioters looted businesses, threw objects at police officers, and vandalized property.[12] While a dozen buildings burned across the city, police officers used tear gas and smoke to disperse the crowds of demonstrators. Governor Jay Nixon deployed the Missouri National Guard to help quell the unrest.[13]

Fueled by the fatal shooting of Trayvon Martin a year earlier, Brown's death and the failure to indict Wilson sparked a nationwide debate on police brutality, excessive use of force, law enforcement accountability, and the relationship between police officers and the communities they serve.

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[5] Larry Buchanan, Ford Fessenden, K.K. Rebecca Lai, Haeyoun Park, Alicia Parlapiano, Archie Tse, Tim Wallace, Derek Watkins & Karen Yourish, *What Happened in Ferguson?*, N.Y. TIMES (Aug. 10, 2015) http://www.nytimes.com/interactive/2014/08/13/US/ferguson-missouri-town-under-siege-after-police-shooting.html.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

Unfortunately, the deaths of Brown and Martin are not isolated incidents. Hundreds of men and women are killed by police each year, though the exact number is unknown because no uniform, centralized records are kept.[14] Limited information suggests that African–American men are disproportionately affected by use of excessive or deadly force by police officers.[15] According to Amnesty International, the death of Michael Brown and countless others have "highlighted a widespread pattern of racially discriminatory treatment by law enforcement officers,"[16] and led to a call for the reformation of policing practices and the criminal justice system. In response to public outcry surrounding these incidents, President Barack Obama signed an executive order on December 18, 2014, creating the Task Force on 21st Century Policing to create meaningful solutions to help build trust and strengthen collaboration between law enforcement agencies and the communities they serve.[17]

Crista E. Noel and Dr. Olivia Perlow, founder and CEO of Women's All Points Bulletin and assistant professor at Northeastern Illinois University, respectively, state that brutality in the system of policing was first developed in southern slave states when white males were given the authority to "stop, search, detain, beat, rape, and kill" blacks for "[being] insolent, [being] out past curfew, loitering, and not having proper written permission. . . . This state sanctioned violence quickly became a socially accepted standard for interactions between the police and communities of color."[18] After the Civil War ended in 1865, it became common practice for sheriffs and police officers to assist lynch mobs in harassing and murdering blacks.[19] Throughout the 1960s and 1970s, there were countless acts of police misconduct and brutality, especially horrific violence against individuals of color during the Civil Rights Movement.[20]

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[14] DEADLY FORCE, *supra* note 3, at 1.

[15] *Id*.

[16] *Id*.

[17] *See* PRESIDENT'S TASK FORCE, THE FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), http://www.cops.usdoj.gov/pdf/taskforce/TaskForceFinalReport.pdf.

[18] CRISTA E. NOEL & DR. OLIVIA PERLOW, AMERICAN POLICE AGAINST AFRICAN WOMEN AND WOMEN OF COLOR 1 (2014).

[19] *Id*.

[20] THE LEADERSHIP CONFERENCE EDUCATION FUND, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, & THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, FALLING FURTHER BEHIND: COMBATING RACIAL DISCRIMINATION IN AMERICA 1, 7 (2014), http://www.civilrightsdocs.info/pdf/reports/CERD_Report.pdf [hereinafter COMBATING RACIAL DISCRIMINATION].

In 1991, the eighty-one-second dash cam video of the beating of Rodney King brought the reality of police brutality into national focus once again.[21] The video showed four white police officers beating unarmed King.[22] One of the officers twice tased King, who was prostrate on the ground, while the other officers kicked and smashed him with their truncheons.[23] As a result, King suffered eleven skull fractures, a crushed cheekbone, a broken ankle, internal injuries, a burn on his chest, and brain damage.[24]

On New Year's Day 2009, Oscar Grant died as the result of white police officers' excessive use of force. Cellphone videos captured Grant and his companions being questioned about a fight that took place on the train while Grant was on board.[25] Although he was not resisting and was even attempting to get his fellow detainees to cooperate with the officers, the officers maneuvered Grant into a facedown position.[26] They were handcuffing him when suddenly one of the officers reached for his gun and shot Grant in the back.[27]

Most recently in July 2016, within two days of each other, Alton Sterling and Philando Castile were shot and killed by police officers. Sterling was shot in the chest outside a convenience store where he was selling CDs.[28] Castile was shot four to five times at close range in front of his four-year-old daughter and girlfriend after police pulled him over for a broken taillight.[29] Castile had informed officers that he was a concealed carry permit holder and was reaching for his permit when an officer reached into the window and fired into the car.[30]

Police continue to use deadly force disproportionately against people of color. The National Police Misconduct Statistics and Reporting Project, founded to identify polices that uphold high standards for police, has reported that in 2010, the most recent year for which data exists, there were 4,861 unique reports of police misconduct, involving 6,613 sworn law

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[21] Nkechi Taifa, Codification or Castration? The Applicability of the International Convention on the Elimination of All Forms of Racial Discrimination, 40 How. L.J. 641, 671 (1997).

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] Dolores Jones-Brown, *The Right to Life? Policing, Race, and Criminal Injustice*, 36 HUM. RTS. 1, 6 (2009).

[26] *Id*.

[27] *Id*.

[28] Joshua Berlinger, Nick Valencia & Steve Almasy, *Alton Sterling Shooting: Homeless Man Made 911 Call, Source Says*, CNN (July 8, 2016), http://www.cnn.com/2016/07/07/us/baton-rouge-alton-sterling-shooting/index.html.

[29] Elliot C. McLaughlin, *Woman Streams Aftermath of Fatal Officer-Involved Shooting*, CNN (July 8, 2016), http://www.cnn.com/2016/07/07/us/falcon-heights-shooting-minnesota/.

[30] *Id*.

enforcement officers and 6,826 complainants.[31] Of the 4,861 incidents of misconduct, 23.8% involved excessive use of force.[32] According to the Center for Disease Control, from 1999 to 2013, 26.7% of 6,338 police-related deaths involved African–Americans, who comprised only 13.2% of the overall United States population.[33]

B. Racial Discrimination

In addition to police brutality, other forms of racial discrimination and disparate treatment exist at every level of the criminal justice system, from arrest to sentencing.[34] Nkechi Taifa, professor at Howard University School of Law and senior policy analyst for civil and criminal justice reform at the Open Society Foundation, wrote that such discrimination includes the selective deployment of law enforcement personnel in communities of color, police and prosecutorial misconduct and corruption, racially-motivated stops and arrests, lack of diversity in jury pools, and racial disparity in mandatory minimums and death penalty sentencing.[35] Moreover, the United States incarcerates more people than any other country, with 2.2 million people behind bars more than 60% of whom are African–American or Latino.[36]

1. Racial Profiling

Law enforcement officers exercise substantial discretion in determining whether an individual's behavior is suspicious enough to warrant further investigation.[37] This invites police officers to use biases in making decisions about which communities to patrol and which traffic stops to make.[38] Police choose which neighborhoods to patrol and use their discretion to determine

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[31] The Cato Institute's National Police Misconduct Reporting Project, *Police Misconduct Statistical Report* (2010), http://www.policemisconduct.net/statistics/2010-annual-report/ [hereinafter *Police Misconduct*].

[32] *Id.*

[33] Center for Disease Control, WISQUARS database, Fatal Injury Reports, 1999–2013, for National, Regional, and States, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html. *See also* U.S. CENSUS, STATE AND COUNTY QUICKFACTS, http://quickfacts.census.gov/qfd/states/00000.html.

[34] COMBATING RACIAL DISCRIMINATION, *supra* note 20, at 2.

[35] Taifa, *supra* note 21, at 655–56.

[36] *Racial Disparity*, THE SENTENCING PROJECT, http://www.sentencingproject.org/template/page.cfm?id=122.

[37] COMBATING RACIAL DISCRIMINATION, *supra* note 20, at 6.

[38] Maria V. Morris, *Racial Profiling and International Human Rights Law: Illegal Discrimination in the United States*, 15 EMORY INT'L REV. 207, 211 (2001).

who should be stopped based on profiles about racial groups.[39] The Leadership Conference on Civil and Human Rights, a national civil rights advocacy organization, found that although some crimes are brought to the attention of the police by the circumstances or bystanders who witness them, police most often seek to uncover criminal activity by investigation.[40]

Statistical evidence demonstrates that African–American motorists are disproportionately stopped for minor traffic offenses because the police assume that they are more likely to be engaged in criminal activity, a phenomenon called "Driving While Black."[41] This has three deleterious effects: first, a large number of innocent minority drivers are subjected to the hassle and humiliation of police questioning; second, these stops are more likely to take longer and to result in a search or violence; and third, a disproportional number of minorities are arrested for nonviolent drug crimes, offenses that would not come to the attention of authorities but for the racially motivated traffic stops and patrols.[42] The rationale behind racial profiling is that the profiles represent a compilation of the experience and knowledge of many law enforcement officers gathered through years to help determine who officers will stop.[43] However, these profiles are so broad and vague that they may be used as justification for stopping any person, especially drivers of color.[44] The U.S. Supreme Court in *Whren v. United States* held that "the Constitution prohibits selective enforcement of the law based on considerations such as race."[45] The Leadership Conference stated in its 2011 report, "Notwithstanding the fact that racial profiling is unconstitutional, and despite the emphatic declaration from the federal government that the practice is 'invidious,' 'wrong,' 'ineffective,' and 'harmful to our rich and diverse democracy,' quantitative and qualitative evidence collected at the federal, state, and local levels confirms that racial profiling persists."[46] Racial profiling, although unconstitutional, is yet

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[39] *Id*.

[40] THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS AND THE LEADERSHIP CONFERENCE ON EDUCATION, JUSTICE ON TRIAL, Chapter One: Race and the Police, 1 [hereinafter JUSTICE ON TRIAL].

[41] *See* David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265 (1999).

[42] JUSTICE ON TRIAL, *supra* note 40, at 1. Morris, *supra* note 38, at 210.

[43] Morris, *supra* note 38, at 236.

[44] *Id*.

[45] Whren v. United States, 517 U.S. 806, 813 (1996). *See also* THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, RESTORING A NATIONAL CONSENSUS: THE NEED TO END RACIAL PROFILING IN AMERICA 9 (2011) [hereinafter RESTORING A NATIONAL CONSENSUS].

[46] RESTORING A NATIONAL CONSENSUS, *supra* note 45, at 9.

another way that African–Americans are discriminated against in the criminal justice system.

2. Disparate Incarceration and Sentencing

Racial minorities are incarcerated at a disproportionately higher rate than other defendants and are also more likely to be sentenced more harshly than white defendants for similar crimes.[47] According to the Bureau of Justice Statistics, in 2005, the most recent year for which data is available, African–American drivers were twice as likely, at 4.5%, to be arrested during a stop than white drivers, at 2.1%.[48] State and local data demonstrate similar trends. For example, in New York City in 2001, at the height of the New York Police Department's stop and frisk program, police made 685,724 stops, 53% of which involved African–Americans.[49] These groups constituted only 25.5% and 28.6% of New York's population, respectively.[50]

The war on drugs exacerbated racial inequalities in the criminal justice system through discriminatory law enforcement practices and disparities in sentencing laws, including harsh mandatory minimum sentences.[51] Since 1980 more than 25.4 million Americans have been arrested on drug charges, one-third of them African–American.[52] Thus, Michelle Alexander, civil rights attorney, advocate, and law professor, has dubbed this system of mass incarceration the "new Jim Crow," arguing that it serves the same purpose as pre-Civil War slavery and post-Civil War Jim Crow laws: to maintain a racial caste system by which African–Americans are locked into an inferior position by law and custom.[53] This practice has led to the disproportionate representation of African–American and Latino men in America's prisons. Although based on the 2010 census, African–American and Latinos made up only 13% and 16% of the overall population respectively, they constituted

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[47] THE SENTENCING PROJECT, SHADOW REPORT OF THE SENTENCING PROJECT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM 1 (2014) [hereinafter RACIAL DISPARITIES].

[48] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, *Contacts Between Police and the Public* (2005), http://bjs.ojp.usdoj.gov/content/pub/ascii/cpp05.txt.

[49] DEADLY FORCE, *supra* note 3, at 10.

[50] *Id.*

[51] RACIAL DISPARITIES, *supra* note 47, at 1.

[52] Erik Kain, *The War on Drugs is a War on Minorities and the Poor*, FORBES (June 28, 2011), https://www.forbes.com/sites/erikkain/2011/06/28/the-war-on-drugs-is-a-war-on-minorities-and-the-poor/#113e43o4624c.

[53] *See* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE COLORBLINDNESS (2010).

more than 60% of the prison population.[54] Whites comprise 64% of the overall population yet make up only 39% of those incarcerated.[55] Among males born in 2001, one in three African–American men is expected to go to prison at some point in their lives, compared to only one in seventeen white men.[56] Despite using drugs at the same rate as white people, people of color represent 72% of those in federal prison for drug offenses.[57]

Mandatory minimum sentences also reflect this inequity. As a part of the war on drugs, federal law established a mandatory minimum sentence for the possession of crystallized cocaine, or crack, one hundred times higher than the mandatory minimum sentence for the possession of the same amount of powdered cocaine, or coke.[58] Thus, possession of only five grams of crystallized cocaine carried the same sentence as possession of 500 grams of powdered cocaine.[59] This is commonly referred to as the "100-to-1 ratio."[60] There is no evidence that crystalized cocaine is more addictive or dangerous than powdered cocaine, and there is no medical or scientific distinction between the two.[61] Statistically, most cocaine users are white, at more than 66%; however, most of those sentenced for cocaine offenses are non-white.[62] In 2010, Congress passed the Fair Sentencing Act, which reduced the disparity to an 18-to-1 ratio; however, sentencing differences still linger, and the law was not applied retroactively.[63] According to the Sentencing Project, a sentencing reform research and advocacy organization, "[b]ecause African–Americans constitute 80% of those sentenced under federal crack cocaine laws each year, the disparity in sentencing laws leads to harsher sentences for black defendants for committing similar offenses to those of their white and Latino counterparts convicted of possessing powder cocaine."[64]

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[54] Jamal Hagler, *8 Facts You Should Know About the Criminal Justice System and People of Color*, CENTER FOR AMERICAN PROGRESS (May 28, 2015), https://www.americanprogress.org/issues/race/news/2015/05/28/113436/8-facts-you-should-know-about-the-criminal-justice-system-and-people-of-color/.

[55] *Id*.

[56] *Id*.

[57] *Id*.

[58] Taifa, *supra* note 21, at 659.

[59] *Id*.

[60] *Id*.

[61] *Id*.

[62] *Bill to End 100:1 Crack/Powder Cocaine Sentencing Disparity Will Soon Go Before The Full House of Representatives*, NAACP (Oct. 23, 2009), http:naacp.org/latest/bill-to-end-100-1-crack-powder-cocain-sentencing-disparity-will-soon-go/ [hereinafter NAACP].

[63] RACIAL DISPARITIES, *supra* note 47, at 15.

[64] *Id*.

C. Failure to Indict Police

Criminal prosecution of police officers accused of misconduct is very rare. The National Police Misconduct Statistics and Reporting Project found that from April 2009 to December 2010, there were 8,300 credible reports of police misconduct.[65] Only 3,238 of those reports resulted in criminal charges, and just 1,063 resulted in a conviction.[66] A mere 382 of those convictions actually ended with the incarceration of the officer, and the average sentence for such misconduct was just 34.6 months.[67] Furthermore, the number of convictions and incarcerations is also much lower when an officer kills someone while on duty compared to those for the general public when charged with murder.[68] Sixty-eight percent of the general public is convicted when charged with murder and 48% are ultimately incarcerated; in contrast, only 33% of law enforcement officers are convicted, and a mere 12% actually serve time.[69]

On the federal level, 18 U.S.C. §§ 241–242 are the "principal tools that the United States Department of Justice uses to prosecute police officers who abuse their authority."[70] The Conspiracy Against Rights statute, 18 U.S.C. § 241, provides that:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . . [t]hey shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section . . . they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.[71]

The Deprivation of Rights Under Color of Law statute, 18 U.S.C. § 242 states that

> [w]hoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person . . . to the

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[65] *Police Misconduct*, *supra* note 31.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] U.S. COMM'N ON CIVIL RIGHTS, REVISITING WHO IS GUARDING THE GUARDIANS? (2000), http://www.usccr.gov/pubs/guard/ch5.htm [hereinafter USCCR].
[71] 18 U.S.C. § 241 (West 1996).

> deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, . . . shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section . . . shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.[72]

Usually only very high-profile cases are prosecuted.[73] In both state and federal prosecutions, the so-called "code of silence," by which police officers either cover up evidence or refuse to testify, makes investigation and prosecution difficult.[74] These difficulties are also partly due to lack of resources and the evidentiary requirement where the accused officer's specific intent to violate a federally protected right must be proven beyond a reasonable doubt.[75]

The challenges to obtaining a conviction for an officer for the killing further exacerbate the pain felt by the families of victims. They are unable to obtain relief, and failure to indict, convict, and ultimately punish police feeds into the idea that black lives are not valued and are unimportant. If officers are not punished for their behavior, it does nothing to deter the officers from repeating the same behavior.

Racial discrimination plagues every level of the criminal justice system from police interaction to sentencing. The discriminatory practices coupled with the use of excessive, disproportionate force are proof of noncompliance with international law and show that there is a dire need for reformation of the criminal justice system.

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[72] 18 U.S.C. § 242 (West 1986).
[73] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 70.
[74] *Id.*
[75] *Id.*

III. INTERNATIONAL AND DOMESTIC LAW

A. The International Convention on the Elimination of All Forms of Racial Discrimination

1. History and Ratification

In 1965, the United Nations adopted the Convention on the Elimination of All Forms of Racial Discrimination. Professor Taifa described the treaty as "the most comprehensive and unambiguous codification in treaty form of the idea of the equality of the races."[76] Following adoption by the U.N. General Assembly and subsequent ratification by 177 states parties, the Convention was entered into force in 1969.[77] The United States signed the treaty in 1966 but did not ratify it until 1996, attaching several restrictions to enforcement and implementation.

The Convention consists of a preamble and twenty-five articles, which are divided into three parts: the first part sets out the definition and scope of prohibited racial discrimination by the Convention (Art. 1) and States Parties' obligations (Arts. 2–7); the second part establishes a monitoring body, the Committee on the Elimination of Racial Discrimination (Arts. 8–16); and the third part handles other technical matters (Arts. 17–25).[78]

The Convention was established in response to the civil rights and anti-colonialism movements of the 1960s.[79] In the winter of 1959 to 1960, a series of anti-Semitic incidents worldwide created demand for an international convention aimed at eliminating discrimination.[80] As the United Nations' membership grew to include countries in the global South, the organization promulgated instruments such as the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 and the Declaration on the Elimination of All Forms Racial Discrimination of 1963.[81] In 1964, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities began drafting the language of the Convention, motivated by the desire to put an immediate end to discrimination against black and other

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[76] Taifa, *supra* note 21, at 648.

[77] THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM, ICERD AND CERD: A GUIDE FOR CIVIL ACTORS 1, 1 (2011) [hereinafter IMADR].

[78] *Id.*

[79] *Id.*

[80] Audrey Daniel, *The Intent Doctrine and CERD: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence*, 4 DEPAUL J. FOR SOC. JUST. 263, 266 (2011).

[81] IMADR, *supra* note 77, at 1.

nonwhite people.[82] In 1965, the U.N. General Assembly passed a resolution entitled Manifestations of Racial Prejudice and National and Religious Intolerance, by which signatory states would be required to impose affirmative measures to alleviate and eventually eliminate discriminatory acts and practices.[83] This instrument was the precursor to the 1965 Convention.[84] The widespread condemnation of apartheid in South Africa led to an important leap forward in the fight against racial discrimination—the belief that the racist practices of one State could be a legitimate concern to others.[85] The Convention was ratified by a unanimous vote.[86]

2. Relevant Provisions

a. Scope and Definitions of Racial Discrimination

Article 1, ¶ 1 of the Convention defines racial discrimination as:

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[87]

There is no hierarchy among the five grounds of racial discrimination listed in the definition.[88] Sometimes a state will argue that racial discrimination does not exist in its territory; however, the Committee has taken the default position that no country can claim that racial discrimination is non-existent within its territory.[89] In 2009 the Committee stated:

> While the denial of the existence of formal racial discrimination might be acceptable, the Committee wishes to

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[82] Daniel, *supra* note 80, at 266–67.

[83] *Id.* at 267. Full text of the resolution can be found here: United Nations High Commissioner, *Manifestations of Racial Prejudice and National and Religious Intolerance*, REFWORLD (Nov. 11, 2015, 4:20PM), http://www.refworld.org/docid/3b00f05c70.html.

[84] *Id*.

[85] IMADR, *supra* note 77, at 1.

[86] Daniel, *supra* note 80, at 268.

[87] ICERD, *supra* note 4, art. 1.

[88] IMADR, *supra* note 77, at 2.

[89] *See* Committee on the Elimination of Racial Discrimination, Twentieth Periodic Reports of States Parties Due in 2008, Addendum Philippines, CERD/C/PHL/20, pp. 6–7, ¶¶ 6–13.

> note that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination. The Committee reiterates its observations that no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination.[90]

The Convention is designed to cover all forms of discrimination—whether intentional or unintentional—that have the effect of restricting or limiting the enjoyment of human rights.[91] In seeking to determine whether an action has an effect contrary to the Convention, in its General Recommendation 14 of 1993, the Committee stated that "it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."[92] It is important to note that the Committee's disparate impact standard focuses not on the discriminatory motives of a state actor, but rather on the discriminatory effects of a law or policy without regard to the purposes behind it.[93] Thus, if a state enacts a law for an entirely non-discriminatory purpose, it still may be in violation of the Convention if it creates a racially disparate impact.[94] This means that although many of the racially discriminatory practices used by police or laws like as mandatory minimum sentences seem neutral on their face, the disparate impact of these instruments could still result in a violation of the Convention.

b. State Obligations under the Convention

Article 2 requires State parties "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races."[95] Additional state obligations under Article 2 include the following: not to engage in any act or practice of racial discrimination; not to sponsor, defend, or support racial discrimination by any person or organization; to take effective measures to review governmental, national, and local policies and to amend, rescind, or nullify any

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[90] Committee on the Elimination of Racial Discrimination, Annual Report 2009, A/64/18, p. 81, ¶ 13.
[91] ICERD, *supra* note 4, art. 1.
[92] Committee on the Elimination of Racial Discrimination, General Recommendation 14, ¶ 2 (1993).
[93] Daniel, *supra* note 80, at 270.
[94] *Id*.
[95] ICERD, *supra* note 4, art. 2.

discriminatory policies; to prohibit racial discrimination by appropriate means; and to encourage integrationist multiracial organizations.[96]

Article 3 of the Convention expressly prohibits racial segregation and apartheid. Initially, this article was interpreted as being directed exclusively at South Africa due to its history of apartheid and de jure segregation.[97] But the Committee, in its General Recommendation No. 19 issued in 1995, asserted that Article 3 prohibits all forms of racial discrimination, including unintended segregation.[98]

Moreover, the Committee has repeatedly emphasized the "paramount importance" of Article 4, which limits the freedom of expression of discriminatory ideas through the issuance of three General Recommendations on the subject.[99] This article requires States parties "condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form . . . ."[100] States parties also must declare the following offenses punishable by law under Article 4: the dissemination of ideas based upon racial superiority or hatred; incitement of racial discrimination; acts of violence or incitements to such acts against any race or group of another color or ethnic origin; provisions of any assistance to racist activities, including their financing.[101] These requirements clash with many states' freedom of speech laws, and several states have sought to use this as a justification for noncompliance with Article 4.[102]

Article 5 provides a non-exhaustive list of rights that States parties must ensure their citizens can enjoy. A few of the most relevant rights for purposes of this Note are:

> the right to equal treatment before the tribunals and all other organs administering justice; the right to security of person and protection by the State against violence or bodily harm,

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[96] *Id*.
[97] IMADR, *supra* note 77, at 8.
[98] Committee on the Elimination of Racial Discrimination, General Recommendation No. 19 (1995).
[99] Committee on the Elimination of Racial Discrimination, General Recommendations No. 1 (1972); Committee on the Elimination of Racial Discrimination, General Recommendation No. 7 (1935); Committee on the Elimination of Racial Discrimination, General Recommendation No. 15 (1993).
[100] ICERD, *supra* note 4, art. 4.
[101] *Id*.
[102] *Id*.

> whether inflicted by government officials or by any individual group or institution; political rights; and other civil rights.[103]

Article 6 mandates that States parties assure that everyone within their jurisdiction has effective protection and remedies against any acts of racial discrimination along with the right to seek reparation or satisfaction of any damage suffered as a result of such discrimination.[104] The Committee has recognized that many claims for remedies are not taken seriously. In its General Recommendation No. 26, the Committee stated that the rights embodied in Article 6 are "not necessarily secured solely by the punishment of the perpetrator of the discrimination" and that "the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim."[105] Lastly, Article 7 requires States "to adopt immediate and effective measures, particularly in the fields of teaching, education, and culture" to combat prejudice and to promote understanding, tolerance, and friendship among States.[106]

c. The Committee and Its Work

The Committee on the Elimination of Racial Discrimination was established in 1970 as an independent body to monitor State parties' implementation of the Convention.[107] Eighteen independent experts comprise the Committee; each is nominated by a State party and elected to a term of four years.[108] The Committee meets twice a year in Geneva, Switzerland, with sessions lasting three to four weeks.[109] During this time, the Committee considers State party reports in an open meeting.[110] Article 9 requires that States parties submit reports "on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of [the] Convention."[111] The initial report is due within one year of ratification, with each subsequent periodic report due every two years.[112] In addition to these public sessions, the Committee also

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[103] *Id.* art. 5.
[104] IMADR, *supra* note 77, at 10.
[105] Committee on the Elimination of Racial Discrimination, General Recommendation No. 26 (2008).
[106] ICERD, *supra* note 4, art. 7.
[107] IMADR, *supra* note 77, at 12.
[108] *Id*.
[109] *Id*.
[110] *Id*.
[111] ICERD, *supra* note 4, art. 9.
[112] *Id*.

holds closed meetings in which it considers its concluding observations, individual communications, and situations in which early warning or early action procedures are requested.[113]

To assist state parties with their implementation of their Convention obligations, the Committee also issues a series of General Recommendations; these explain the Committee's interpretation of the various provisions of the Convention and make suggestions to States parties.[114]

In the context of police misconduct and standards for law enforcement entities, the Committee and the U.N. General Assembly issued several comments, most notably the U.N. Basic Principles on the Use of Firearms,[115] Code of Conduct by Law Enforcement Officials,[116] General Recommendation No. 13 on the Training of Law Enforcement Officials in the Protection of Human Rights,[117] and General Recommendation No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System.[118]

In its General Recommendation No. 31, the Committee developed several suggestions for better State party compliance with the Convention in the realm of criminal justice. The Recommendation begins with "[s]teps to be taken in order to better gauge the existence and extent of racial discrimination."[119] Such indicators of racial discrimination include:

> - "The number and percentage of persons belonging to" racial groups discriminated against because of their descent "who are victims of aggression or other offences, especially when they are committed by police officers."[120]
> - "Insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to" racial groups discriminated against because of their descent.[121]

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[113] IMADR, *supra* note 77, at 12.
[114] *Id.* at 13.
[115] United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Aug. 27, 1990 to Sept. 7, 1990) [hereinafter *U.N. Basic Principles*].
[116] UN General Assembly, *Code of Conduct for Law Enforcement Officials*, 5 February 1980, A/RES/34/169.
[117] Committee on the Elimination of Racial Discrimination, General Recommendation No. 13 (1993).
[118] Committee on the Elimination of Racial Discrimination, General Recommendation 31 (2005) [hereinafter Gen. Rec. 31].
[119] *Id*.
[120] *Id*.
[121] *Id*.

> • "The proportionately higher crime" and incarceration rates and harsher sentencing of racial groups discriminated against because of their descent, particularly as regarding offenses related to drugs.[122]
> • "Any gaps in domestic legislation on racial discrimination. In this regard, States parties should fully comply with the requirements of [A]rticle 4 of the Convention and criminalize all acts of racism as provided by that article"[123]

The U.N. Basic Principles, promulgated in 1990, provides guidelines for the use of firearms by law enforcement officials, including provisions on policing unlawful assemblies; policing persons in custody or detention; and qualifications, training, and counseling.[124] Generally, the Principles state that officers should apply nonviolent means before resorting to the use of force and firearms, and further that such force should only be used if all other means remain ineffective.[125] The Principles also state that officers should only use firearms in cases of self-defense against threats of violence, and that when such force is necessary, that force should be applied in a way that minimizes injury.[126]

3. Enforcement Mechanisms

In addition to the Committee's mandatory reporting procedures and recommendations on compliance, the Convention authorizes three other enforcement mechanisms for enforcing its provisions. Articles 11 through 13 establish a procedure for resolutions of disputes in the event that one State party contends that another is not in compliance with the Convention's obligations.[127] Article 14 provides that any state party may "declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in this Convention."[128] Any State that makes such a

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[122] *Id.* at 3.
[123] *Id.*
[124] United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *supra* note 115.
[125] *Id.* at 2.
[126] *Id.*
[127] Daniel, *supra* note 80, at 272.
[128] ICERD, *supra* note 4, art. 14.

contention may designate a governmental body to receive and consider similar petitions made by its residents or advocacy groups who have exhausted other available remedies.[129] Lastly, Article 22 permits states parties to recognize the jurisdiction of the International Court of Justice to hear interstate-party disputes over the interpretation or application of the Convention.[130]

B. Domestic Law

1. Federal Law

Federal statutes 18 U.S.C. §§ 241–242 make it a crime for any person or group of people acting under color of law to deprive another of any right protected by the Constitution or federal law. "Color of law" is defined as the use of power given by a governmental agency at the local, state, or federal level.[131] The statute is aimed at law enforcement misconduct, including use of excessive force, sexual assault, intentional false arrest, and intentional fabrication of evidence resulting in loss of liberty. Enforcement of these provisions does not require discriminatory motive,[132] and violation of these statutes results in punishment by fine or imprisonment.[133]

Under 42 U.S.C. § 14141, the government may bring a civil right of action against any person acting under government authority who deprives another person of rights, privileges, or immunities secured or protected by the Constitution or by federal law. The types of misconduct covered by this law include excessive force; discriminatory harassment; false arrests; coercive sexual conduct; and unlawful stops, searches, and arrests.[134] This law requires that the conduct be a "pattern or practice" and not simply an isolated incident.[135] The Supreme Court has interpreted this pattern or practice standard to mean the plaintiff "ultimately has to prove more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts."[136] As the plaintiff, the Attorney General must be able to point to an

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[129] *Id*.
[130] Daniel, *supra* note 80, at 272.
[131] United States v. Classic, 313 U.S. 299, 326 (1941) ("Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law.").
[132] *Addressing Police Misconduct Laws Enforced by the Department of Justice*, UNITED STATES DEPARTMENT OF JUSTICE (Aug. 6, 2015), http://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice.
[133] 18 U.S.C. §§ 241–242 (1996).
[134] 42 U.S.C. § 14141 (1994).
[135] *Id*.
[136] Int'l Bd. of Teamsters v. United States, 431 U.S. 324, 337 (1977).

unlawful policy instituted by the law enforcement agency or that the agency has a pattern of discriminatory behavior and misconduct.[137] The remedies available under this law do not provide for monetary relief; rather, only injunctive relief is available to enjoin the misconduct.[138] There is no private right of action under this statute, and only the Attorney General, acting under the Department of Justice, can bring claims.[139]

Most federal actions for police misconduct are initiated under 42 U.S.C. § 1983, which provides that every person, under color of law, who deprives another person of his or her constitutional rights shall be liable to the injured party.[140] Neither a state government nor the federal government may be a "person" liable for damages under § 1983, but a state can be sued for declaratory or injunctive relief.[141] However, municipalities and local governments are persons that may be sued for damages and prospective relief.[142] Individual federal, state, and local government officers and employees may also be sued in their individual capacities for damages and declaratory or injunctive relief.[143]

The Department of Justice provides guidelines to all federal law enforcement officers on the use of deadly force. These state that deadly force is to be used only when necessary; that is, when the officer has a reasonable belief that the person poses an imminent threat of death or serious injury to another person.[144] Additionally, these guidelines list three permissible circumstances under which deadly force may be used: fleeing felons, escaping prisoners, and prison unrest.[145] Further, they require a verbal warning be given, if feasible, before employing deadly force.[146] Lastly, these guidelines prohibit both warning shots (except in the prison context) and firing on a vehicle.[147] Weapons may be fired at a driver or passenger only when there is reasonable belief of imminent danger or if

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[137] *Addressing Police Misconduct, supra* note 132.
[138] *Id*.
[139] *Id*.
[140] 42 U.S.C. § 1983 (West 1996).
[141] Ian D. Forsythe, *A Guide to Civil Rights Liability Under 42 U.S.C. § 1983: An Overview of Supreme Court And Eleventh Circuit Precedent*, CONSTITUTIONAL SOCIETY, http://www.constitution.org/brief/forsythe_42-1983.htm.
[142] *Id*.
[143] *Id*.
[144] *Attorney General October 17, 1995 Memorandum on Resolution 14, "Policy Statement Use of Deadly Force,"* DEP'T OF JUSTICE, http://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment.
[145] *Id*.
[146] *Id*.
[147] *Id*.

public safety outweighs the risk of harm to the officers.[148] Most importantly, the guidelines state, "If other force than deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary."[149]

2. State Law

Federal statute 42 U.S.C. § 3789d(a) prohibits federal control over state and local law enforcement and criminal justice agencies.[150] While states within the United States retain the autonomy to develop their own policing regimes, these subnational units are still subject to the duties provided in international treaties and conventions. The Supremacy Clause of the U.S. Constitution states, "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."[151] The Department of Justice has established guidelines for the fifty states to follow. This is the perfect opportunity for states to use their discretion to expand their laws to better comply with the Convention, yet none of the fifty states have aligned their laws on police use of force with the Convention. State laws on deadly force vary considerably: some states include their use of force laws within a larger use of force statute; some states have separate deadly force laws statutes; and other states have labeled the use of deadly force as justifiable homicide.[152] Nine U.S. states, plus the District of Columbia, have failed to enact any laws on police use of lethal force.[153]

Application of the principle of proportionality may help to set the maximum force that is necessary to achieve a particular objective.[154] Specifically, proportionality refers to the amount of force necessary to respond to a perceived threat. There are no state law's currently on the books limiting the use of deadly force to situations where the officer is faced with imminent threat of death or serious bodily injury.[155] While just two states limit the use of lethal force to cases where the officer faces a threat of death or serious bodily injury, the laws do not require that the threat be imminent.[156]

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[148] *Id.*
[149] *Id*.
[150] 42 U.S.C. § 3789d(a) (Westlaw Pub. L. 114-38).
[151] U.S. CONST. art. VI, ¶ 2.
[152] DEADLY FORCE, *supra* note 3, at 21.
[153] *Id*.
[154] *Id*. at 23.
[155] *Id*.
[156] *Id*.

3. United States Supreme Court Rulings

No federal statute governs the use of lethal force by law enforcement officials.[157] That standard is set by individual states and federal court decisions.[158] In *Tennessee v. Garner*, decided in 1985, the Supreme Court ruled that lethal force may not be used unless necessary to prevent the escape of someone whom the officer has probable cause to believe "poses a significant threat of death or serious physical injury to the officers or others."[159] The Court stated,

> It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. . . . A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.[160]

The Court delved further and described a situation where deadly force may be justified. It wrote that if

> the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.[161]

In the 1989 decision *Graham v. Connor*, the Court developed the standard for determining the reasonableness of the amount of force used in a seizure by police, ruling that such a determination requires "careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake."[162] This standard is one of present reasonableness—whether the officers' actions were objectively reasonable in light of the facts and circumstances confronting them on the scene—rather than hindsight analysis, which

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[157] *Id.* at 17.
[158] *Id.*
[159] Tennessee v. Garner, 471 U.S. 1, 3 (1985).
[160] *Id.* at 11.
[161] *Id.* at 11–12.
[162] Graham v. Connor, 490 U.S. 386, 396 (1989).

concerns their underlying intent or motive.[163] The Court also stated that "Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."[164]

In the 1978 decision *Monell v. Department of Social Services of the City of New York*, the Court made it possible for victims of police misconduct to sue police departments and impose liability on the municipalities themselves for the actions of their employees.[165] The Court in *Monell* held that civil rights violations committed by public employees might impose liability on the government if the plaintiff meets his or her burden of proof, showing that the violation resulted from poor training or poor supervision.[166] The Court said that a "municipality cannot be held liable *solely* because it employs a tortfeaser—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."[167] Rather, "it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983. The judge presiding over such a case, therefore, can only impose liability if the municipality caused the injury.[168]

In the 1983 case *City of Los Angeles v. Lyons*, the Court held that the fact that the plaintiff had been choked once did "not establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer who would illegally choke him into unconsciousness without any provocation."[169] The Court found the claim moot, thus setting a standard that would make it difficult for a victim of police misconduct to bring a claim under either of the aforementioned statutes.

IV. APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION TO UNITED STATES FEDERAL AND STATE LAW

A. Indicators of Racial Discrimination

To aid States parties in complying with the Convention, the Committee promulgated General Recommendation No. 31, which suggests steps that States parties should take "in order to better gauge the existence and extent

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[163] *Id*. at 396–97.
[164] *Id*. at 396.
[165] Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658, 690 (1978).
[166] *Id*. at 690–91.
[167] *Id*. at 691.
[168] *Id*. at 694.
[169] City of Los Angeles v. Lyons, 461 U.S. 95, 96 (1983).

of racial discrimination" and offers strategies to prevent discrimination within States' criminal justice systems.[170] The Recommendation pinpoints several factual indicators of racial discrimination, designed to help States parties identify whatever racial discrimination may be present within their borders. The factual indicator of racial discrimination is the number and percentage of persons in groups that are traditionally discriminated against who are victims of aggression committed by law enforcement.[171] The National Police Misconduct Reporting Project and the Uniform Crime Reporting Program attempt to make a record of credible allegations against police officers and provide reliable statistics on crime in the United States, respectively, but the data is incomplete. First, neither report provides the demographics of the victims of such encounters with police.[172] Second, the FBI's reporting system is on a voluntary basis.[173] Only 6,328 law enforcement entities out of 18,000 in the United States report to the Uniform Crime Report.[174] Moreover, the Uniform Crime Report provides only the number of "justifiable homicides" caused by firearms, without specifying how the other deaths are caused, classifying them as "other."[175] What is more, the report does not include cases where the victim is not a suspected felon or in which the killing was deemed unjustified.[176] The Center for Disease Control has made an effort to collect and report this data. Unfortunately, the insufficiency of the information available on this subject make it difficult to assess the number of victims of police aggression.

The second factual indicator provided by the Committee is insufficient or lack of information on law enforcement behavior regarding people of traditionally discriminated groups.[177] The U.N. Basic Principles further provide that "Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents" where injury or death is caused by the use of force by law enforcement officials."[178] The Principles also state that "[i]n cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."[179] In a 2015 press conference, Attorney General Loretta Lynch reinforced the need

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[170] Gen. Rec. 31, *supra* note 118, at 2, 3.
[171] *Id.* at 2.
[172] DEADLY FORCE, *supra* note 3, at 9.
[173] *Id*.
[174] *Id*.
[175] *Id*.
[176] *Id*.
[177] Gen. Rec. 31, *supra* note 118, at 2.
[178] *U.N. Basic Principles*, *supra* note 115.
[179] *Id*.

for such detailed reporting, stating that "national, consistent data on law enforcement interactions with the communities they serve is necessary and useful because it helps us see trends and, it helps us promote accountability and transparency."[180] The Department of Justice is now required to ensure the collection and publication of nationwide statistics on police use of force and deaths in custody since the passage of the Violent Crime Control and Enforcement Act of 1994. However, it has failed to do so.[181] Furthermore, there is no automatic independent judicial review triggered by such deaths. Accordingly, the lack of uniform data on all law enforcement entities' use of force and deaths in custody are factual indicators of the presence of racial discrimination in the United States.

The third factor set forth by the Committee is proportionately higher crime and incarceration rates and harsher sentencing for members of groups that are traditionally discriminated against.[182] African–American males are more than six times more likely to go to prison than white males.[183] Although minorities and whites use drugs at the same rate, 72.1% arrested for drug-related offenses are African–American or Latino.[184] These individuals also typically receive harsher sentences.[185] The disparate incarceration and sentencing rates are the result of disproportionate targeting of African–American and Latino communities by law enforcement. Thus, because African–Americans and Latinos are targeted more frequently, arrested more often, and receive harsher sentences than their white counterparts, this factual indicator is present in the United States criminal justice system.

Lastly, the presence of gaps in legislation to address racial discrimination is listed as a factual indicator by the Committee. Although there is a federal law designed to address allegations of police misconduct, police officers and other law enforcement officials are rarely indicted or charged for such claims.[186] In addition to the obstacles of litigation, immunity and the code of silence, make investigation and prosecution difficult.[187] Thus, while the United States has such a law on its books designed to deter and punish police officers for their misconduct, gaps remain in the legislation.

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[180] Office of the Attorney General, *Attorney General Lynch: Use-of-Force Data is Vital for Transparency and Accountability*, DEP'T OF JUSTICE (Oct. 5, 2015), http://www.justice.gov/opa/pr/attorney-general-lynchuse-force-data-vital-transparency-and-accountability.

[181] DEADLY FORCE, *supra* note 3, at 8.

[182] Gen. Rec. 31, *supra* note 118, at 2.

[183] Hagler, *supra* note 54.

[184] *Id.*; *see also* COMBATTING RACIAL DISCRIMINATION, *supra* note 20, at 6.

[185] *See* Taifa, *supra* note 21, at 659.

[186] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 70.

[187] *Id*.

Federal law also provides a civil cause of action for police misconduct via 42 U.S.C. § 14141.[188] However, as discussed above, this law places the burden on the plaintiff to prove a "pattern or practice" of misconduct, making it very difficult for a plaintiff to state a claim under the statute.[189] Additionally, monetary relief is not available under this statute, only injunctive relief to enjoin the discriminatory conduct is available,[190] so any victims of such misconduct receive no real redress after experiencing such trauma. Finally, there is not a private right of action under the statute; only the Attorney General, not a private citizen, can pursue claims under § 14141, further adding to the ineffectiveness of this statute.

Alternatively, 42 U.S.C. § 1983 allows for a private right of action, and claims under this statue have monetary relief available as a remedy. It is difficult to survive on a § 1983 claim against police officers, so the claims does not necessarily result in changes in policing practices.[191] Officers usually are indemnified by their cities, municipalities, or unions, giving them very little incentive to change their behavior.[192] Because police departments and the cities they serve are attempting to avoid embarrassment, claims under this statute that do survive usually settle quickly and quietly, and without any acknowledgment by the police department of the officer's wrongdoing.[193] Settlements are insufficient because they do not address the flawed management, policies, or patterns of abuse, nor do they hold an individual officer responsible for his conduct.[194]

In addition to the gaps in federal legislation, legislation within the fifty states of the United States falls short as well. Despite the opportunity to supplement the gaps left by federal legislation, nine states and the District of Columbia have failed to enact any sort of legislation on the use of force.[195] Amnesty International conducted a review of state laws and found that those states that have use of force laws either explicitly allow the use of lethal force, in violation of international law, or their laws are so vague that they are essentially void of any real standards.[196] The organization found:

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[188] 42 U.S.C. § 14141.
[189] *Id.*
[190] *Id*.
[191] USCCR, *supra* note 70.
[192] *Id*.
[193] HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES (June 1998), https://www.hrw.org/legacy/reports98/police/uspo30.htm.
[194] *Id*.
[195] DEADLY FORCE, *supra* note 3, at 21.
[196] *Id*.

> All state laws fail to meet international law and standards. None of the laws establish the requirement that lethal force may only be used as a last resort with non-violent means and less harmful means to be tried first. The vast majority of the laws do not require officers to give a warning of their intent to use firearms. None of the laws include provisions requiring reporting when an officer uses firearms or when someone dies as a result of other use of force by police, and all laws fail to include measures for accountability.[197]

Furthermore, state laws are deficient in the twin aims of deadly force statutes—necessity and proportionality. Both the U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials state that law enforcement officials may use force only when necessary as a last resort, after non-violent means have been employed.[198] Both also require that the use of force be in proportion to the seriousness of the offense and to the objective.[199] None of the fifty states include such a standard in their laws, and only four suggest that any other means should be used before resorting to lethal force.[200] The Basic Principles also provide that law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms.[201] Only eight states within the United States have a provision requiring that a warning be given before resorting to lethal force, but these state statutes allow this warning to be permissive, as opposed to restrictive, in that the warning should be given "if feasible," thereby effectively negating the requirement.[202] While the Basic Principles require that law enforcement officials minimize damage, injury, and preserve human life, no states have laws that require officers to minimize injury when employing deadly force. Finally, the Basic Principles state that officers shall ensure that emergency medical assistance is rendered at the earliest moment possible and that relatives of the injured or deceased person are notified as soon as possible. Again, all fifty states fail to include such a provision in their laws, and police officers fail to comply with these rules. In fact, in the Michael Brown case, homicide detectives reportedly were not called for forty minutes after the

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197 *Id*.
198 *U.N. Basic Principles*, *supra* note 115, at 2.
199 *See id.*; Code of Conduct, *supra* p. 589.
200 DEADLY FORCE, *supra* note 3, at 21.
201 *U.N. Basic Principles*, *supra* note 115, at 2.
202 DEADLY FORCE, *supra* note 3, at 22–23.

shooting occurred. Brown's body laid in the street for four hours before it was taken to the morgue.[203]

Despite the gaps between state law and the Convention, many state laws do comply with the some of the standards set forth in the Basic Principles, which provide that law enforcement officials should only use firearms in self-defense or defense of another, or to prevent the escape of a dangerous felon.[204] Although state laws tend to contain this provision, the laws are not applied to the situations they were designed to address. The majority of these laws state that homicide by police officer is justified when the suspect is reasonably believed to have been involved in a violent felony or the suspect poses a substantial threat of death or bodily injury to the officers, a third party, or the public if the suspect is not apprehended without delay. Many of the recent police killings have involved suspects who were neither felons nor were they involved in violent or felonious crimes. For example, Michael Brown was stealing cigarillos; Oscar Grant was suspected of starting a fight; Alton Sterling was selling CDs, and Philando Castile, was in lawful possession of a firearm, informed officers, and attempted to produce his permit. In short, none of the officers involved could have held a reasonable belief that the victim would be a danger to the public if not immediately apprehended.

The U.S. Supreme Court opinions also contain gaps that make them ineffective for deterring and preventing police brutality. Although the standard for the use of force by police officers articulated in *Garner* and in *Graham* closely parallel the standards in most of the state laws, deadly force is rarely used in the context of an escaping dangerous felon. Instead, it is more often used to subdue the perpetrators of misdemeanors or traffic crimes. The standard of present reasonableness provided in these cases is less stringent than what is required by the U.N. Basic Principles, which clearly say that imminent threat of death or serious injury must exist for deadly force to be employed.[205] Furthermore, the Court's formulation of reasonableness is vague and gives a tremendous amount of discretion to law enforcement officials, making it difficult to hold them accountable.[206] Moreover, the Supreme Court has made it difficult for the victims of such misconduct to prevail on a claim for injunctive relief under the previously mentioned statutes. Monetary relief may be insufficient to redress the

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[203] Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street* (Aug. 23, 2014), http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html.

[204] *U.N. Basic Principles*, *supra* note 115, at 2.

[205] *Id*.

[206] DEADLY FORCE, *supra* note 3, at 18.

plaintiff's harm in such cases. The plaintiff may seek injunctive relief to enjoin the misconduct and change the officers' and departments' practices in addition to monetary relief.

In its 1978 decision, the Court in *Monell* provided a way to circumvent the police immunity that often hinders claims of misconduct, but it did so with two problems: first, many police chiefs see liability as a cost of doing business, and the effect of losing a lawsuit does not have much of an impact on police operations; and second, no one in the police department is made aware of the results of the lawsuit, and none of the policy implications of the lawsuits are acted upon.[207] As a result, settlement or the opportunity for monetary relief does nothing to correct and deter police misconduct.

The Court in *Lyons* unfortunately ruled that the mootness doctrine requires more than past exposure to illegal conduct. Rather the doctrine depends on whether the plaintiff can show that they are likely to suffer future injury from the actions of police officers.[208] Essentially, this holding means that the possibility that another individual will experience the same misconduct is not enough; the plaintiff himself must prove that it will happen to him again by the same police department before he can prevail. Otherwise the case is moot. This standard makes it nearly impossible for a plaintiff to obtain injunctive relief, thus allowing police departments to continue to misapply of their use of force in non-felonious situations. The gaps in federal and state legislation and Supreme Court decisions are present in the United States criminal justice system as a factual indicator of racial discrimination.

B. Violations of the International Convention on the Elimination of All Forms of Racial Discrimination

The Convention defines racial discrimination as any distinction on the basis of race that impairs the enjoyment of human rights and fundamental freedoms on an equal footing.[209] Racial discrimination is present at every stage of the U.S. criminal justice system; including unjustified stops and searches, racial profiling, and deployment of police patrols in majority-minority communities.[210] African–American drivers are twice as likely to be arrested during a traffic stop as white drivers. The increased stop and search and incarceration rates experienced by African–Americans are the result of police officers' discretion to patrol communities they deem to be high crime

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[207] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 70.
[208] City of Los Angeles v. Lyons, 461 U.S. 95, 105 (1983).
[209] ICERD, *supra* note 4, art. 1.
[210] COMBATING RACIAL DISCRIMINATION, *supra* note 20, at 6.

areas and to pull over individuals that they deem to be suspicious or dangerous based on profiles developed from stereotypes about black individuals. The National Institute of Justice reported that "[c]reating a profile about the kinds of people who commit certain types of crimes may lead officers to generalize about a particular group and act according to the generalization rather than specific behavior."[211] The Supreme Court has deemed racial profiling unconstitutional.[212] However, according to The Leadership Conference, "Not withstanding the fact that [the practice] is unconstitutional, and despite the emphatic declaration from the federal government that the practice is 'invidious,' wrong' 'ineffective' and 'harmful to our right and diverse democracy,' quantitative and qualitative evidence collected at the federal, state, and local levels confirms that racial profiling persists."[213] These practices infringe upon the enjoyment of human rights and fundamental freedoms for people of color by impermissibly considering race when determining whether a crime was committed.

Additionally, the Committee in interpreting Article 1 stated that even well-intended or neutral policies may directly or indirectly have negative or undesired effects on race relations.[214] Although some may argue that the war on drugs and policing strategies are neutral policies that are not intended to target one subsection of the population over another, the disparate impact of these policies is clear, as evinced by the disproportionate incarceration rates of racial minorities and whites. Lastly, the Committee has stated that the Convention is designed to cover all forms of discrimination, both intentional and unintentional.[215] The Committee determines if an action is contrary to the Convention by looking at the disparate impact on minorities. However, contrary to this provision of the Convention, the United States still requires that a plaintiff prove that a discriminatory action was done with the specific intent to discriminate on the basis of race.[216] This standard is almost impossible to meet due to the nature of contemporary discrimination which is de facto, subtle, and covert.

Articles 2 and 5 of the Convention provide that States parties should adopt race-neutral policies and secure the equal treatment of all races through the court system.[217] Congress made strides in adopting race neutral policies by

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[211] National Institute of Justice, Racial Profiling (Jan. 10, 2013), http://www.nij.gov/topics/law-enforcement/legitimacy/Pages/racial-profiling.aspx.

[212] United States v. Whren, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.").

[213] RESTORING A NATIONAL CONSENSUS, *supra* note 45, at 9.

[214] IMADR, *supra* note 77, at 2.

[215] *Id*. at 3.

[216] Daniel, *supra* note 80, at 1.

[217] RACIAL DISPARITIES, *supra* note 47, at 15; ICERD, *supra* note 4, arts. 2, 5.

passing the Fair Sentencing Act of 2010, which lessened the differences in sentencing for possession of crack cocaine and powder cocaine from 100:1 to 18:1.[218] In 2011, the U.S. Sentencing Commission voted to apply the law retroactively.[219] Although this is a step in the right direction, it is just that—a step. The 18:1 ratio still reflects outdated and discredited assumptions about crack cocaine.[220] Because police target minorities, minorities will continue to be arrested in greater numbers than white offenders, and because crack use is more prevalent among low-income minorities, people of color will continue to receive harsher sentences than white offenders for possession of a chemically identical drug. These harsher sentences are not the equal treatment in tribunals that state parties are obligated to provide under Article 5 of the Convention. Thus, although the United States has attempted to address this issue, its efforts still fall short of what is required by the Convention.

Additionally, Article 6 requires state parties to provide effective remedies for any racial discrimination through its tribunals.[221] The federal government has three statutes, most notably 42 U.S.C. § 1983, that provide a right of action and remedies for instances of police misconduct or deprivation of rights under color of law. However, because of the nearly insurmountable burdens of proof on the part of the plaintiff, these statutes are mostly ineffective. Federal statutes 18 U.S.C. §§ 241 and 242 provide for criminal punishment, but only a fraction of officers found guilty of such misconduct are actually charged, tried, and sentenced. Federal statute 42 U.S.C. § 14141 provides for injunctive and declaratory relief, but only after the Attorney General has proven that the misconduct is a pattern or practice and not an isolated event. Because few or no records are kept on the number of deaths that occur in police custody or on the excessive use of force, this statute makes it difficult to prove that the misconduct is part of a larger practice. E Despite § 1983 providing for a private right of action and monetary relief, this remedy is also ineffective in cases in which police misconduct was particularly egregious and the pattern or practice was likely to be proven. In these cases, the police department or city is likely to settle the case quickly and quietly without any recognition of wrongdoing and the security of a court order to reform its practices.

Lastly, under Article 7 of the Convention, States parties undertook to provide education and training, combating prejudices which lead to racial

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[218] *Fair Sentencing Act*, ACLU (2017), https://www.aclu.org/feature/fair-sentencing-act.
[219] *Fair Sentencing Act*, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/node/17576.
[220] *Id*.
[221] ICERD, *supra* note 4, art. 6.

discrimination.[222] The Committee, in its General Recommendation No. 13, explained that "implementation of [A]rticle 7 of the Convention . . . calls upon States parties to review and improve the training of law enforcement officials."[223] If police are to exercise their discretion when confronted with a suspicious or dangerous individual, they should be adequately trained to avoid the use of racial profiling and implicit biases when deciding to detain someone and how much force to use. Yet the United States has no nationally mandated or regulated training program, or even training standards for law enforcement officials.

Although the Convention is one of the most comprehensive racial discrimination treaties to date and has the potential to "be a powerful instrument in the United States to eradicate racial discrimination," it has consistently been rendered impotent due to the insertion by the United States insertion of a non-self-executing declaration and the attachment of several RUDs—reservations, understandings, and declarations.[224] A self-executing treaty is a treaty that automatically becomes part of the national law of ratifying states and is judicially enforceable without Congressional legislation.[225] A non-self-executing treaty does not automatically become part of the national law of the ratifying states, and requires the passage of additional legislation to become enforceable.[226] A reservation is a caveat to signing or ratifying a treaty that purports to exclude or modify the legal effect of certain provisions of the treaty in its application domestically.[227] Declarations indicate that the party does not intend to create a binding obligation, but merely wants to declare certain aspirations.[228] Understandings set out an operational framework for the treaty and are used to regulate technical or detailed matters.[229]

The attachment of numerous stipulations and declarations to limit the ability of citizens to bring forth claims of discrimination has led the

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[222] *Id*. art. 7.

[223] Committee on the Elimination of Racial Discrimination, General Recommendation 13 (1993).

[224] Taifa, *supra* note 21, at 642–43.

[225] Carlos Manual Vasquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 695 (1995).

[226] *Id*.

[227] Vienna Convention on the Law of Treaties, art. 2(1)(d), May 23, 1969, S. Treaty Doc. 92-12, 1155 U.N.T.S. 331.

[228] *Definition of Key Terms Used in the U.N. Treaty Collection*, UNITED NATIONS TREATY COLLECTION, 1, 1 https://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml.

[229] *Id*.

Convention to have little effect in the United States.[230] Upon confirmation, the U.S. Senate declared:

> The Constitution of the United States contains provisions for the protections of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America.[231]

The ratification process did not begin until 1978, at which point President Jimmy Carter submitted the Convention to the Senate for confirmation, including a list of reservations, understandings, and declarations.[232] These RUDs would have served to severely undermine the Convention because they essentially exempted the United States from any provision that did not already conform to existing U.S. law. The Senate did not ratify the Convention until 1994, when President Bill Clinton again presented the Convention with limitations similar to those proposed by President Carter.[233] The provisions to which the United States had attached its RUDs are the provisions designed to have the greatest impact: Article 2, § 2(1), requiring effective measures for the elimination of racial discrimination; Article 3, requiring the eradication of discriminatory practices; Article 4, requiring condemnation of organizations based on ideas of superiority; Article 5, requiring prohibition of racial discrimination; and Article 7, requiring immediate and effective measures to combat prejudice.[234] Having taken almost three decades to ratify one of the leading human rights treaties, the United States did so only by including broad limitations that essentially exempt it from having to undertake proactive efforts to eliminate racial discrimination.[235]

The most glaring effect of the use of RUDs is perhaps the resulting inability to directly enforce the treaty in United States courts, absent specific legislation.[236] By making the treaty non-self-executing, the provisions of the Convention do not allow for a private right of action in domestic courts

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[230] Daniel, *supra* note 80, at 273.

[231] *International Convention on the Elimination of All Forms of Racial Discrimination*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#EndDec.

[232] Daniel, *supra* note 80, at 273.

[233] *Id*.

[234] IMADR, *supra* note 77, at annex 3. For full text of the reservations by the United States, *see* UNITED NATIONS TREATY COLLECTION, *supra* note 228.

[235] Daniel, *supra* note 80, at 274.

[236] Taifa, *supra* note 21, at 651.

unless the U.S. legislature passes implementing legislation.[237] However, since Congress has not created any such legislation, individuals are effectively precluded from relying on any of the treaty's provisions in U.S. courts.[238] Despite the Supremacy Clause of the U.S. Constitution, which states that treaties are the supreme law of the land, the RUDs and non-self-executing limitation have stripped the Convention of any domestic force.[239] Amnesty International censured the use of RUDs and stated that "[i]f every government were to ratify treaties only after making reservation to ensure there is no change in existing state practice, the whole concept of international human rights protection, and the authority of treaties, would become meaningless."[240]

V. RECOMMENDATIONS AND CONCLUSION

In conclusion, the United States is not in compliance with its obligations under the Convention. Based on the factual indicators provided by the Committee, it is clear that U.S. federal and state laws need to be reformed. Given the number of sensational deaths in the headlines of American media, the United States would do well to heed the following recommendations.

A. Better Enforcement

Congress should repeal the RUDs placed on the Convention at the time of its passing, which have rendered it almost completely powerless. Then Congress should begin a review of its federal laws to ensure that they are in compliance with international law. Congress should also pass implementing legislation to allow for enforcement of the Convention both in domestic and international tribunals.

B. Better Legislation

Congress should take action to ensure that, at each level of government, laws on the use of force are in compliance with international laws. Additionally, they should require state and local governments to review and

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[237] Robin H. Gise, *Rethinking* McCleskey v. Kemp*: How U.S. Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination Provides a Remedy for Claims of Racial Disparity in Death Penalty Cases*, 22 FORDHAM INT'L L.J. 2270, 2298 (1999).

[238] Taifa, *supra* note 21, at 651.

[239] Daniel, *supra* note 80, at 275.

[240] Taifa, *supra* note 21, at 653 (quoting Amnesty International, *Human Rights Violations: A Summary of Amnesty International's Concerns*, 1 (1995)).

revise their policies to ensure compliance with international law. Congress should mandate these actions by conditioning the receipt of federal funds on the revision of their laws.

C. Better Access to Justice

Congress should amend its current deprivation of rights statutes to allow for a greater likelihood of success on claims of police misconduct. There should be no immunity for officers in cases where misconduct is alleged, and there should be an automatic federal investigation of such claims. Special prosecutors of a neutral position should be appointed for all such proceedings. Lastly, financial settlements should not disrupt claims for injunctive or declaratory relief, as they are necessary to ensure reform and compliance of law enforcement policies.

D. Better Accountability

To encourage compliance with deadly force statutes, the government should implement an accountability mechanism. The Department of Justice should establish a national registry for the mandatory reporting of misconduct, use of force, and deaths in custody, in accordance with the Death in Custody Reporting Act of 2013, which requires any state or local law enforcement entity that receives federal grant money to submit quarterly reports to the Attorney General concerning the deaths of any person who is detained.

E. Better Police Training

In order to counteract the ill effects of racial profiling, local law enforcement entities should be required to provide better training for their officials in accordance with the standard for training and education provided in the Basic Principles. Cultural training could help reduce some of the biased profiles created by police to justify their discriminatory behavior. In addition to cultural training, law enforcement officials need tactical training on how to handle situations without turning to deadly force right away, and once deadly force is deemed necessary, training on how to avoid killing a suspect or on employing non-shoot-to-kill methods.

If the United States wishes to continue to hold herself out as a symbol of freedom and democracy, she needs to address the racial discrimination within her own criminal justice system, rather than turning a blind eye to and ignoring the injustice that plagues her citizens of color. Congress has failed to enact meaningful legislation to cure this injustice. By signing the

International Convention on the Elimination of Racial Discrimination and attaching its extensive reservations, America only pays lip service to the problem. Not only does the attachment of its reservations render the Convention almost completely void of any real force, it also allows the United States to carry on without addressing the several indicators that racial discrimination is still a problem today.