

On the Streets of America: Human Rights Abuses in Ferguson

Introduction

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

Amnesty International wrote to Ferguson Police Department on August 12 and the Department of Justice (DOJ) on August 13, reminding authorities of their international human rights obligations. On August 14, a delegation of Amnesty International observers was deployed to Ferguson. This briefing outlines some of the human rights abuses and other policing failures witnessed by those observers and includes key recommendations on the use of lethal force by law enforcement officers and the policing of protests.

1. Use of lethal force

1.1 Death of Michael Brown

On Saturday, August 9, 2014, 18-year-old Michael Brown and a friend were walking down Canfield Drive when they were stopped by Officer Darren Wilson, who is white. Moments later, Brown was fatally shot by Officer Wilson.¹ Michael Brown's body then lay on the street for at least four hours. According to the autopsies conducted by both the family and the county medical examiner's office, Michael Brown was shot six times.²

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

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

1.2 Laws governing the use of lethal force

Standards of conduct for police officers and the use of force are set out under the *U.N. Code of Conduct for Law Enforcement Officials* and the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Amnesty International recognizes that law enforcement officers face dangerous situations on a daily basis, and that the use of force is sometimes unavoidable. International standards provide that law enforcement officers should only use force as a last resort and that the amount of force

must be proportionate to the threat encountered and designed to minimize damage and injury. Officers may use firearms as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”³ Christof Heyns, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, has explained that: “The ‘protect life’ principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). **The primary aim must be to save life [emphasis added]**. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.”⁴

According to Missouri law, however, a law enforcement officer carrying out an arrest or attempting to prevent an escape from custody is justified in using deadly force only when specifically authorized; or when he or she reasonably believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested has committed or attempted to commit a felony; or is attempting to escape by use of a deadly weapon; or may otherwise endanger life or inflict serious physical injury unless arrested without delay.⁵

The Missouri statute on the use of deadly force may be unconstitutional, and is clearly out of line with international standards on the intentional use of lethal force as it goes well beyond the doctrine that lethal force only be used to protect life. The U.S. Supreme Court in *Tennessee v. Garner* held that Tennessee’s statute was unconstitutional, noting that “*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. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.*”⁶ The U.S. Supreme Court noted that lethal force may not be used unless necessary to prevent the escape and that the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

The state legislature of Missouri should bring the state statute on the use of deadly force in line with international standards and the U.S. Constitution by amending it to ensure that lethal force can only be justified when protecting life.

On August 12, 2014, Amnesty International wrote to the Chief of Police of the Ferguson Police Department to request a copy of their policies and guidelines on the use of force and use of lethal force. As of the time of writing, the request to the Ferguson Police Department is still outstanding.

1.3 Investigation into the fatal shooting of Michael Brown

Amnesty International is calling for a thorough, transparent, independent and impartial investigation into the shooting of Michael Brown.

A criminal investigation into the incident has been launched by the St. Louis County Prosecutor’s office,⁷ and a civil rights investigation has been launched by the Federal Bureau of Investigation (FBI) with the Department of Justice Civil Rights Division. Both of these investigations are ongoing and should be

concluded as soon as practicable. The investigations must be transparent, as this case raises wider issues, and merits public scrutiny.

1.4 Concerns about racial discrimination and excessive use of police force nationwide

Police officers are responsible for upholding the law and protecting the rights of all members of society. Their jobs are difficult and often dangerous. However, the shooting of Michael Brown has highlighted on a national level the persistent and widespread pattern of racially discriminatory treatment by law enforcement officers across the United States, including unjustified stops and searches, ill treatment and excessive, sometimes lethal, use of force.⁸

Indeed, just days after Michael Brown was fatally shot, St. Louis police officers shot and killed a young African American man, Kajieme Powell, 25, who was reportedly holding a knife. Police claims that he was brandishing a knife were not borne out by the available video footage of the shooting.⁹ On August 11, Ezell Ford, 25, an unarmed black man with a history of mental illness, was shot and killed by Los Angeles police officers; and on July 17, Eric Garner, 43, died after being placed in a chokehold by New York Police Department officers after being approached by an officer who attempted to arrest him for selling loose, untaxed cigarettes.

Policies and procedures on the use of firearms need to be reviewed nationwide; a key concern in recent cases has been the apparently excessive number of shots fired by officers. Michael Brown, for instance, was shot six times, and Kajieme Powell was shot nine times. The firing of so many shots in an urban environment would often be reckless, and indicates an intentional use of lethal force ["shoot to kill"] which may only be employed when strictly unavoidable to protect life.

The United States government can and must to do much more to ensure policing practices nationwide are brought into line with international human rights standards, and to address systemic racial discrimination. For years, the monitoring of police conduct and excessive use of force has been hampered by the failure of the DOJ to collect accurate, comprehensive national data on police use of force, including the numbers of people killed or injured through police shootings or other types of force.¹⁰ Because this data is not being consistently collated at a national level, no one currently knows how many people are shot and killed by police officers in the United States. Without that information, it will be even more difficult to develop concrete and workable strategies to address the issue.

Key Recommendations

1. Federal, state and local authorities should ensure that investigations into the shooting of Michael Brown are thorough, transparent, independent and impartial; and concluded as promptly as possible. Michael Brown's family must be kept informed throughout the investigation. If the evidence indicates that the killing was unlawful, the police officer responsible should be criminally prosecuted.
2. The Ferguson Police Department should:
 - a. cooperate fully with the investigation into Michael Brown's death;
 - b. undertake a review of its standards, practice, and training on the use of force and firearms, to ensure that they conform fully to international standards, including those

set out under the *U.N. Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms*; and

- c. undertake a review of its law enforcement policies and training related to race and policing diverse communities.
3. The Missouri Legislature should amend the Missouri statute that authorizes the use of lethal force (Mo. Rev. Stat. § 563.046) to bring the law in line with international standards by limiting the use of lethal force by law enforcement to those instances in which it is necessary protect life.
4. All states should review and revise their use of lethal force statutes to bring laws in line with international standards and ensure that police departments publish regular statistics on the number of people shot and killed or injured by police officers. Police departments should also provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action.
5. The Department of Justice should:
 - a. conduct an independent, transparent and impartial investigation into the death of Michael Brown;
 - b. ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994). The data collected should be disaggregated by race, ethnicity and gender;
 - c. review and update the Department of Justice's Guidance on the Use of Deadly Force by law enforcement officials to ensure compliance with international law and standards, by limiting the use of lethal force by law enforcement to only in those instances where it is needed to protect life and to ensure that sure that firearms are used as a last resort only if other means have failed or are not likely to be efficient, and even where the use of a firearm is unavoidable that they are used in a way that seeks to minimize harm and loss of life;
 - d. promptly implement a DOJ-led review of police tactics and practices nationwide;
 - e. champion the creation of a national commission to examine and produce recommendations on policing issues, including use of excessive and lethal force, policing of protests and adherence of all law enforcement agencies to human rights standards for law enforcement; and
 - f. update the DOJ's *Guidance on the Use of Race* by law enforcement officials to include a comprehensive ban on racial profiling by federal law enforcement agencies.
6. The United States Congress should:
 - a. pass the End Racial Profiling Act; and
 - b. ensure that the DOJ is able to fulfil its obligation to ensure adherence to international standards related to policing and the use of force by law enforcement officers.

2. Human rights concerns raised by law enforcement response to protests in Ferguson, Missouri

The rights of peaceful assembly, freedom of association and freedom of expression are basic human rights.¹¹ These rights are also guaranteed under the Constitution of the United States¹² and the laws of the state of Missouri.¹³ The demonstrations in Ferguson spontaneously grew following the shooting of an unarmed Michael Brown by a Ferguson police officer. In the weeks after Brown's death, protesters congregated on W. Florissant Avenue on a nearly nightly basis, to voice their anger over the shooting, that Michael Brown's body was left out in the open at the scene of the shooting for four hours, the lack of information from law enforcement and policies on policing protests imposed by the Governor of Missouri and relevant law enforcement agencies whose responsibilities are to provide security in Ferguson.

Amnesty International recognizes the difficult task that law enforcement has in policing large scale and spontaneous protests. Though the protests have been largely peaceful, there have been repeated incidences of bottles being thrown at law enforcement officers at protest sites, several incidences of looting and vandalism of local stores late at night, incidents of shots being fired in or around protests and acts of civil disobedience. However, the reaction by city, county and state law enforcement and executive officials has been to impose policies and procedures on the residents and protesters in Ferguson which collectively punish both groups.

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

Many of these policies have caused alarm and confusion among the demonstrators. Although those demonstrations have largely been allowed to proceed, actions taken by the Governor and the Missouri Highway Patrol have interfered with the exercise of the rights to peaceful assembly, association and expression. The U.N.'s High Commissioner for Human Rights, Navi Pillay, commented on the police response to the protests by stating: "I condemn the excessive use of force by the police [in Ferguson] and call for the right of protest to be respected. These scenes are familiar to me and privately I was thinking that there are many parts of the United States where apartheid is flourishing."¹⁴

Methodology

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

Obligations to facilitate peaceful public assemblies

The vast majority of those participating in the protests around Michael Brown's death have been peaceful – as noted by government officials such as the President of the United States¹⁵, the Governor of Missouri¹⁶ and Attorney General¹⁷ along with the Missouri Highway Patrol.¹⁸ However, the response by state officials and law enforcement to the violent actions of a limited number of protestors have impacted the rights of many residents in Ferguson to participate in peaceful protests.

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

2.1.1 Curfew

While the protests in preceding days had been largely peaceful, the resumption of vandalism and looting of several stores in the early morning hours of August 16 led to the declaration later that day of a state of emergency and an imposition of a curfew by Governor Jay Nixon each night from midnight until 5 a.m. the next morning. While initially imposed without notice of an end date, the curfew was in effect for the nights of August 16 and 17 before being lifted by the Governor after he signed an order to allow for the National Guard to provide support to local law enforcement in Ferguson.¹⁹ The imposition of the curfew limited not only the rights of those who were demonstrating peacefully, but also the freedom of movement of the general public in Ferguson who were required to be off of the streets after midnight each night. During the press conference announcing the curfew on 16 August, Capt. Johnson was unable to explain how the curfew would be enforced for those members of the public who were going about their daily lives, like returning from or going to their place of employment or in the case of a personal emergency between midnight and 5 a.m. According to arrest records released by the St. Louis County Police Department, there were seven people arrested between 2 a.m. and 5:30 a.m. after the first night the curfew went into effect and an additional 12 people were arrested between 1 a.m. and 3:30 a.m. after the second night. All were charged with failure to disperse. Amnesty International is unable to determine whether any of these arrests were of people who were not taking part in the protests.

2.1.2 Keep moving or be arrested

It was on August 18 that law enforcement began imposing a rule that protesters must keep walking or face arrest, unless they were in an approved protest area.²⁰ According to statements from Capt. Johnson of the Missouri State Highway Patrol, the new rule was put in place to keep groups of protesters smaller by preventing them from clustering or congregating in one particular area on W. Florissant Avenue. He went on to say that the rule could prevent those who were attending in order to commit acts of vandalism and violence from blending in with larger crowds of those who were protesting peacefully should they be standing still. The Highway Patrol also designated an "approved assembly zone" for protesters on W. Florissant Avenue, on the lot of a former car dealership.²¹ People were allowed to walk in protest on the sidewalks and street of W. Florissant Avenue or stand in this approved area. After this rule was imposed, arrests of protesters who stood still for "refusal to disperse" escalated as dozens of protesters were arrested on the nights of August 18 and 19, including 56 arrests on the night of August 18.²² A number of activists remarked to Amnesty International that they believed the rule was imposed to tire out the protesters in hopes of getting the protests to end earlier in the night.

On August 26, the American Civil Liberties Union of Missouri filed a lawsuit seeking an injunction against the County of St. Louis. The ACLU complaint alleged that the St. Louis Police Department was violating the Due Process and First Amendments rights of protestors in Ferguson by imposing the keep moving policy for protests on the streets of Ferguson. The complaint focused on three main violations:

- 1) the rule is arbitrarily applied and people pausing to catch their breaths, to request information, to gather around a community leader, etc. could all be subject to arrest. In addition, officers are given the discretion to selectively enforce the rule, and observers have confirmed that the rule has been enforced more aggressively toward young African American protestors;
- 2) in practice, the result of the rule contradicts the stated purpose of the enactment of the rule. Public safety as a reason does not stand when examining the real life effects of the rule which has been to raise tension between the protestors and police and in turn to undermine public safety;

3) the new established protest zone is an inadequate alternative for protestors as it does not allow them to convey their message to the intended audience.²³

On October 6, a federal judge, noting how the rule violates the Constitution, granted the injunction until a decision is made on the merits of the lawsuit. The judge noted that law enforcement is restricted from “telling citizens that they must keep moving, or from threatening them with arrest if they stand still, so long as those citizens are not committing a crime, engaging in violent acts, or participating in a crowd that contains other people doing those things.”²⁴

Plaintiff Mustafa Abdullah is a program associate and legal observer for the American Civil Liberties Union of Missouri. His duties include observing protest sites, passing out “Know Your Rights” cards, engaging in conversations with protestors, and facilitating communications between law enforcement and the public. Before August 18, Abdullah had visited the Ferguson protest site and talked with people about their rights with no interference from the police. On August 18, law enforcement officers began enforcing the five-second rule by telling protestors that they could not stand still on sidewalks and that they had to keep moving. On the same day, Abdullah arrived at the protest area after the ACLU received reports of the implementation of the five-second rule. He was approached by officers and told to keep moving as soon as he began talking to people on the sidewalk. Abdullah and the protestors were prohibited from conducting community meetings and other peaceful activities unless they were walking. After one person asked Abdullah to join her in prayer, the police said that they could only pray while they were walking. Abdullah was repeatedly told to keep moving or be arrested. He filed a lawsuit against St. Louis County and Ronald Replogle, the Superintendent of the Missouri Highway Patrol seeking a temporary restraining order on the five-second rule.²⁵

According to data provided to Amnesty International by the St. Louis County Police Department, in the 12 days following the death of Michael Brown, **172** arrests were made in the Ferguson protest zone.²⁶ The arrest data shows that **132**²⁷ people were arrested solely for refusal to disperse, 21 for burglary related charges, and four for assaulting police officers. Others were charged with crimes such as trespassing, peace disturbance and destruction of private property. The vast majority of arrests for refusal to disperse were made during or following protests on the nights of August 18-19, when **85** people were arrested and charged only with that offense out of the 94 total people arrested by St. Louis County from the afternoon of August 18 through the early morning hours of August 20.

2.1.3 Restricted assembly area

A small, two-block span of W. Florissant Avenue in Ferguson was the epicenter of the nightly protests as well as a path for the marches which took place during the day. Many protesters congregated on the sidewalks of certain areas along this stretch of W. Florissant Avenue, such as the QuikTrip convenience store and gas station that was looted and burned on the evening of August 10. The parking lot of the QuikTrip served as a staging area for protesters as well as a space for interviews by the media stationed in Ferguson. For several days following Michael Brown’s death, protesters used chalk to write messages of solidarity against police shootings and support for the Brown family. After August 18, the QuikTrip parking lot was closed to the public and occupied by law enforcement to prevent protesters from congregating in this space. Instead, law enforcement set up an approved assembly area in the parking lot of a car dealership that was no longer in business. The assembly area was set back from the main traffic of W. Florissant Avenue and was often left empty until the police began dispersing protesters. Very few protesters congregated in the area except to take breaks from the five-second rule. Several protesters remarked to Amnesty International observers that the location of the assembly area had no significance for their protest and was largely sheltered away from the media center.

International law allows the restriction of the right to freedom of peaceful assembly only if it is carried out for a legitimate aim, such as the protection of public safety, order, health, morals or the fundamental rights and freedoms of others. Restrictions must be proportionate and necessary to meet that aim. However the broad imposition of a curfew for the entire city of Ferguson and requirements for those protesters on W. Florissant Avenue to keep walking under threat of arrest impede protesters from enjoying their right to freely assemble.

2.2. Intimidation of protesters

In the days following Michael Brown's death, the St. Louis County Police Department initially took over the responsibility for providing security in Ferguson. While the protests were reported to be largely peaceful, there were some incidents of violence, looting and vandalism by a minority of protesters, often late in the night. In response, the St. Louis County officers lined the march routes on W. Florissant Avenue on August 13 with officers outfitted in riot gear and armed with semi-automatic weapons that were pointed at demonstrators. The change in responsibility from the county police to the Missouri Highway Patrol on August 14 helped de-escalate the tension between residents/protesters and police in Ferguson as Highway Patrol officers participated alongside protesters in uniform, but without the show of force from the preceding days and nights. The resumption of violence by some protesters in the late night hours of August 15 brought a response where, the Highway Patrol, with assistance from the county police and smaller law enforcement agencies from across the state, confronted protesters while wearing riot gear of helmets and vests and carrying shields and batons. Some were armed with semi-automatic weapons and leashed police dogs. Officers moved among the protesters using armored vehicles which are more commonly seen in a conflict zone rather than the streets of suburban town in the United States. The Governor's decision on August 18 to mobilize the Missouri National Guard into Ferguson, though with a strict mandate to provide protection for the police command center²⁸, only served to elevate these tensions further.

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

Shortly before midnight on August 19, Amnesty International witnessed an officer with the St. Ann Police Department in Missouri point his AR-15 semi-automatic rifle at a group of journalists and threatened to kill them. The incident was filmed by a journalist and went viral on August 20.²⁹ The video shows the officer walking toward a group of protestors with his rifle raised. Voices can be heard telling him to put his gun down. The video shows the officer approaching the crowd with his rifle raised yelling, "I'm going to fucking kill you! Get back, get back." A voice in the crowd asks, "What's your name, sir?" To which the officer responds, "Go fuck yourself!" Another officer quickly approaches and escorts the

officer away from the crowd.³⁰ The officer was immediately placed on indefinite, unpaid suspension³¹ and resigned several days later.³²

Stop Militarizing Law Enforcement Act

Under a U.S. law passed on September 23, 1996, the Department of Defense is authorized to provide surplus property to local law enforcement agencies through the Law Enforcement Support Office program (also referred to as the “1033 Program”).³³ As a result, “military grade” equipment including vehicles and weapons are transferred to local law enforcement agencies such as police and sheriff’s departments and used in normal operations. Since the start of the program, more than \$4,000,000,000 USD worth of weapons and equipment have been transferred to local law enforcement agencies across the country. After the terrorist attacks on September 11, 2001, the transfers of military grade equipment to local law enforcement agencies surged. In 2011 alone, about 12,000 police organizations in the United States obtained almost \$500,000,000 USD worth of military equipment at no charge.³⁴

In response to national debate created in the wake of images from Ferguson of local police outfitted with military grade weapons while policing protests, Representatives Johnson and Labrador introduced the Stop Militarizing Law Enforcement Act on September 16, 2014.³⁵ The Act would prohibit transfers of equipment that are inappropriate for local policing, end incentives for unnecessary use, require accountability, enforce tracking mechanisms, and prohibit resale of transferred equipment.³⁶ Currently, the Stop Militarizing Law Enforcement Act has 33 cosponsors.³⁷

An officer should refrain from pointing a firearm at a suspect, especially one that is unarmed. Under the U.N.’s *Basic Principles for the Use of Force and Firearms by Law Enforcement Officials*, law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.³⁸ An officer pointing a gun at close range at an unarmed individual who is not presenting a threat would also be excessive use of force under U.S. law.³⁹

The use of heavy-duty riot gear and military-grade weapons and equipment to police largely peaceful demonstrations intimidates protesters who are practicing their right to peaceful assembly and can actually lead to an escalation in violence. Equipping officers in a manner more appropriate for a battlefield may put them in the mindset that confrontation and conflict is inevitable rather than possible, escalating tensions between protesters and police. Any police presence at demonstrations needs to be proportionate to the situation. Police deployed in larger numbers than appear necessary or deployed wearing protective clothing or riot gear can be confrontational and intimidating. As seen in many countries, inappropriate or excessive police interventions can actually lead to violence and disorder rather than reducing tensions.

2.3 Dispersal of protests

The police have the primary responsibility to protect the right to freedom of peaceful assembly and also to ensure that public order is maintained in a reasonable manner during an assembly. The policing of public assemblies is a particular activity that requires different skills and abilities from routine policing. In particular, it requires the balancing of competing interests and rights, and it is, therefore, important

that police officers are well trained in both human rights and crowd management principles and practices, and that they are appropriately equipped both to provide protection and maintain order. Under Missouri law, a person commits the crime of rioting if he knowingly assembles with six or more other persons and agrees with such persons to violate any of the criminal laws of Missouri or of the United States with force or violence, and thereafter, while still so assembled, does violate any of said laws with force or violence.⁴⁰ Furthermore, a person commits the crime of refusal to disperse if, being present at the scene of an unlawful assembly, or at the scene of a riot, he knowingly fails or refuses to obey the lawful command of a law enforcement officer to depart from the scene of such unlawful assembly or riot.⁴¹

These two Missouri statutes are the basis for both ordering the dispersal of protests in Ferguson and arresting those who refuse to leave the area after an order to disperse has been given, if it was in fact given in the first place. When a (lawful) decision has been taken to disperse an assembly, the order to disperse must be clearly communicated and explained to obtain, as far as possible, the understanding and compliance of the demonstrators. Sufficient time must be given to disperse. The throwing of bottles at law enforcement by a small minority of the protesters has often been the impetus for the determination of a “riot” by law enforcement as defined under Missouri law and the ensuing order to disperse.

In all, more than 170 individuals were arrested during the first 12 days of protests since Michael Brown’s death, more than three quarters of which were for the refusal to disperse charge.

The enforced dispersal of a public assembly should only take place as a measure of last resort, when violence occurs or there is an imminent threat of violence. The police should not intervene aggressively simply in response to the actions of a small number of participants. Assemblies are always diverse gatherings, and participants do not lose their individual rights simply because a small number of people are behaving violently. The methods used by law enforcement in Ferguson to disperse crowds often employ the use of police in riot gear – equipped with helmets, vests and carrying shields and batons – and has led to the repeated use “chemical irritants” (tear gas/pepper spray) and “kinetic impact projectiles” (rubber/plastic bullets) against demonstrators. Often it is unclear whether an order to disperse was given, whether that order was in fact lawful, and whether that was made clear to the protesters before law enforcement forcibly ended the protests.

2.3.1 Use of tear gas and rubber bullets to disperse protests

Though not directly witnessed by Amnesty International, law enforcement reportedly fired both tear gas and rubber bullets at protesters in Ferguson. On August 11 and 12, the initial nights of protests following the death of Michael Brown, tear gas and rubber bullets were reportedly used.⁴² On August 15, after what had largely been a day of peaceful protests, police again used tear gas to disperse the crowds late in the night, as members of the crowd grew more confrontational with police and some individuals engaged in looting and vandalism of local establishments despite the efforts of other residents to prevent the destruction.⁴³

Following the imposition of a curfew on the nights of August 16 and 17, police fired tear gas at protesters who defied the curfew and the order to disperse which was given at midnight on each night.⁴⁴ Due to the large number of families who participated in protests on Sunday, August 17, at least two children were treated for exposure to tear gas at area hospitals and later released.⁴⁵ Police later used tear gas on August 18 and 19 to disperse crowds who had defied the recently imposed rule that protesters must keep walking unless they were in an approved protest area.⁴⁶

On August 13, Renita Lamkin, an African Methodist Episcopal church pastor, was shot by a rubber bullet while attempting to mediate between police and protestors.⁴⁷ Lamkin was among protestors calling for the release of Antonio French, a St. Louis alderman who was previously arrested and later released.⁴⁸ According to media reports, Lamkin was protesting calmly while repeating “Jesus, Jesus, Jesus.” When police arrived in armored vehicles, Lamkin stood in front of the protestors, attempting to mediate, telling the police, “They’re moving, they’re leaving.” Lamkin heard a “pop” and was hit by a rubber bullet in the stomach.⁴⁹ The bullet left a large, bloody bruise approximately four to five inches in diameter.⁵⁰

While Amnesty International did not see police officers launching tear gas canisters to disperse crowds, on the night of August 18 the delegation was caught in the middle of a gas cloud. At approximately 10:20 p.m., several protestors uprooted a traffic yield sign and walked into center of road in front of armored truck at north end of W. Florissant Avenue, removing it a few minutes later. At 10:43 p.m., an announcement from law enforcement was made telling “all members of the media, please separate yourselves from the protestors immediately.” Over the next 20 minutes, a police line formed on the north end of the street and forced the protesters south before Amnesty International heard the sound of six loud pops from the north end of W. Florissant Avenue, followed by two more. According to members of the delegation it appeared that flash bangs and tear gas were thrown directly in front of the line of protestors, forcing the protesters along with members of the media to run south down W. Florissant Avenue. Amnesty International approached the police lined up near Ferguson Avenue and asked why police resorted to tear gas and how much warning was provided, however the officer said “You will have to ask at the other end.” As the delegation tried to make its way north down W. Florissant Avenue to reach their transportation and leave the protest site at 11:24 p.m, they witnessed officers aboard armored truck in full riot gear, including helmets, vests, masks, and boots. Some of the officers had their guns drawn with no names, badges, other identifying information visible. Amnesty International requested information from the officers regarding what agency they were from and why the gas was used but were told “not right now, please go back down W. Florissant.”

The type of equipment used to disperse an assembly must be carefully considered and used only when necessary, proportional and lawful. Policing and security equipment – such as rubber bullets, tear gas and stun grenades, often described as “less-lethal” weapons – can result in serious injury and even death. Toxic chemical irritants, such as tear gas, should not be fired directly at an individual, used in confined spaces against unarmed people, or in situations in which exits and ventilation points are restricted. Irritants should not be launched near vulnerable people, such as the elderly, pregnant women and children.

2.3.2 Use of Long Range Acoustic Devices

On the night of August 18 at approximately 10:00 p.m., following the reported throwing of bottles at police and a group of protestors stopped in front of a police line in defiance of the five-second rule, law enforcement activated a Long Range Acoustic Device (LRAD) that was mounted about 8-10 feet off the ground on top of an armored truck at the intersection of W. Florissant and Ferguson avenues.⁵¹ The LRAD was pointed at group of stationary protestors on the street approximately 15 feet away. Members of the media and observers were about the same distance from the device. Law enforcement gave no warning to protestors that an LRAD would be used. After providing earplugs to a member of Amnesty International, a St. Louis County police officer said, “This noise will make you sick.” Several members of the delegation reported feeling nauseous from the noise of the LRAD until it was turned off at approximately 10:15 p.m.

LRADs emit high volume sounds at various frequencies, with some ability to target the sound to particular areas. Used at close range, loud volume and/or excessive lengths of time, LRADs can pose a serious health risks which range from temporary pain, loss of balance and eardrum rupture, to permanent hearing damage. LRADs also target people relatively indiscriminately, and can have markedly different effects on different individuals and in different environments.

At least one city has been sued for the permanent damage caused by exposure to an LRAD⁵² and a Canadian court limited the use of a sound cannon by the Toronto Police Department prior to that year's G-20 summit in that city due to concerns about the lack of training received by law enforcement on its use and the lack of studies on its effects.⁵³ Further research into the use of LRADs for law enforcement is urgently needed.

2.3.3 Orders to disperse

Often dispersal tactics were used without a clear order to disperse, but rather in response to protesters violating the five-second rule. For instance, at 9:48 p.m. on the evening of August 18, a portion of the protesters became largely stationary at the intersection of W. Florissant and Ferguson avenues. The police formed a line in front of protestors down the middle of the street and held for approximately a minute. From what Amnesty International delegation members could observe, the line largely consisted of St. Louis County Police officers outfitted in riot helmets and vests and carrying shields with some officers pointing guns directly at the crowd. As the police line began to move forward, the crowd scattered.

On the night of August 19, at 11:00 p.m., Amnesty International arrived on W. Florissant Avenue and immediately noticed that officers had their guns drawn and several officers with dogs were out in the middle of the street. The atmosphere was tense as protestors were mandated to keep marching or risk arrest. Periodically police on loudspeakers announced "please continue moving or you will be arrested." Without warning, police lined up parallel to the street, facing the groups of protestors. They then rushed into the crowd to grab specific people, causing groups of protesters to spread and run from the immediate scene. Just before midnight on August 19, a crowd of protesters massed at the north end of W. Florissant Avenue, directly in front of the police line. A voice on loudspeaker repeated: "you need to disperse immediately." Immediately after, two or three bottles, which appeared to be plastic, were thrown at the officers. A few minutes later, community members made a barricade in front of police line, linking arms to separate protestors from authorities with their backs to the police. The media was then ordered to "separate yourselves from protestors" and go to a media holding pen. About 12 minutes later, the police ordered the media to stay in its designated area, and ordered all others to disperse.

Since the curfew was lifted a representative of Amnesty International asked why the crowd was being mandated to disperse, however the police officers refused to answer. Roughly four minutes later at 12:22 a.m. the police repeated the announcement that all media should leave the area and instead go to a police command center at Target. By 12:34 a.m., the police began kettling⁵⁴ the crowd into a space directly next to the McDonalds, in front of JC Wireless near the W. Florissant Avenue intersection with Ferguson Avenue. The loudspeaker repeated commands to media to move to the staging area or leave. The police began arresting people at random in the crowd, leaving them handcuffed and surrounded by officers (and one to two police dogs) in the middle of W. Florissant Avenue directly in front of McDonalds. When a member of the delegation asked why these arrests were being made, a St. Louis County Officer said that people were being arrested for failure to disperse and that "this is a riot situation." It is unclear if any one particular act, such as the throwing of what appeared to be several

plastic bottles, is what caused the determination to label the protest a riot situation and led to dispersal of protesters.

Amnesty International noted a clear lack of consistency and transparency from night to night and officer to officer in policing practices regarding dispersal of protests or arrests of protesters. For example, during the protests on the night of August 19, Amnesty International inquired with three different police officers throughout the night about why the crowd was being dispersed and was told "I don't know" or "I can't answer that question" and directed to ask officers at the other end of West Florissant while another officer characterized the protest as "a riot situation."

According to Amnesty International observers, on nights such as August 18, the time that elapsed between announcing that a group of people was "unlawfully assembled" and some form of use of force varied enormously from anywhere between approximately five minutes to approximately half an hour. In the case of formation of police lines and some form of kettling, the police usually only gave an order to disperse just before advancing on protestors and either using force or making arrests, or not at all – withdrawing back and moving out of a formation.

On the use of force during the policing of assemblies, Article 3 of the *U.N. Code of Conduct for Law Enforcement Officials* states "[l]aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." If the use of force is unavoidable, law enforcement officials must exercise restraint in its use.

In addition, the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states that law enforcement officials shall "not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury." Force should not be used to punish the (presumed or alleged) non-compliance with an order nor simply for the participation in an assembly. Arrest and detention should be carried out only in accordance with procedures established by law. They should not be used as means to prevent peaceful participation in a public assembly nor as a means of punishment for participation. The type of equipment used to disperse an assembly must be carefully considered and used only when necessary, proportional and lawful. Policing and security equipment – such as rubber bullets, tear gas and stun grenades, often described as "less-lethal" weapons – can result in serious injury and even death.

On August 19, 2014, Amnesty International wrote to Capt. Johnson in regards to the policing of protests since the Missouri State Highway Patrol assumed responsibility for security in Ferguson. Amnesty International made requests to speak with Capt. Johnson about policies on the policing of protests, to which he agreed on the condition that media would not be involved and Amnesty International would not use social media during the interview. On August 21, 2014, Capt. Johnson and a spokesperson of the Missouri Department of Public Safety met with a member of the Amnesty International delegation in the back of an unmarked police cruiser for approximately 15 minutes. Amnesty International shared a handout on the "Best Practices for Policing Protests" and proceeded to ask specific questions on the decision to disperse protests, use force and communicating with protests organizers, among other questions. While the spokesperson wrote down the questions asked and promised to respond to Amnesty International, Capt. Johnson's only comment was to say, "There are only two things I'd like to say: respect and partnerships. Respect has been our overall priority, and partnerships." As of the writing of this document, Amnesty International has not received any official response to the questions posed during that meeting.

2.4 Restrictions on the media and legal and human rights observers at protests

Representatives of civil society organizations and other types of monitors have a right to be present at public assemblies and can have a positive role to play in observing compliance with human rights. Similarly, the media have a right to attend and report on peaceful assemblies, and law enforcement officials have a responsibility not to prevent or obstruct their work. However, legal and human rights observers as well as members of the media have repeatedly been obstructed from carrying out their roles and responsibilities by law enforcement in Ferguson. From August 13 through October 2, at least **19** journalists and members of the media were arrested by law enforcement with others subjected to tear gas and the use of rubber bullets.⁵⁵ Reporters for CNN, Al Jazeera America and other outlets report being harassed or physically threatened.⁵⁶

Law enforcement created a designated space for members of the media on W. Florissant Avenue during the curfew. Those media members who proceeded past the designated area either after the curfew was imposed or when an order to disperse was given, were arrested. Several journalists who spoke with Amnesty International feared that they would be arrested for doing their jobs.

[BOX TEXT]

In the early morning hours of August 19, *Intercept* journalist Ryan Devereaux and *Bild* reporter Lukas Hermsmeier were arrested and jailed overnight for allegedly “failing to disperse.”⁵⁷ Earlier that night, police officers ordered a dispersal of the protest areas due to what they deemed a “public safety issue” as a result of reported “shots fired.” As Devereaux and Hermsmeier were attempting to leave, Devereaux noticed the police announcing, “This is your final warning” to some protestors who had returned to the area. The journalists exited their car to interview one of the peaceful protestors, during which police officers began firing heated metal canisters of tear gas in their direction, driving the group away from their car.⁵⁸

As Devereaux and Hermsmeier attempted to return to the safety of their car in the midst of tear gas and metal canisters flying overhead, armed police officers drove up in armored vehicles and blocked their passage. After coming out behind a cover with their hands in the air, shouting, “Press!” and “Journalists” and “We’re media!” the officer allowed them to pass. However, as Devereaux and Hermsmeier continued walking with their hands in the air, shouting “Press!” the same officer shot rubber bullets at them, hitting both journalists in the back. Out of fear, they dove behind a car. The officers approached with guns pointed and arrested them without reading their rights or notifying them of their charge despite their continuous announcements that they were from the media.⁵⁹

They were placed in a jail cell with other protestors, the majority of whom were African American. An officer subsequently denied Devereaux’s request for his lawyer’s phone number, claiming that it was “too late” to retrieve it.⁶⁰ Despite Missouri Highway Patrol Capt. Ron Johnson’s assurance that night that no journalists were among the arrested and that even if they were, the police department had already taken proper action to release them immediately, Devereaux and Hermsmeier were not released until the next morning.⁶¹

[END BOX TEXT]

On the night of September 20, Capt. Johnson of the Missouri Highway Patrol responded to a media question about the arrests of media personnel in Ferguson who were covering the protests. He responded, “It is difficult to tell who is media, and who is disguising themselves as such,” hence the crackdowns, restrictions of movement and arrests of members of press. His response raises troubling

questions about a) how officers themselves were making this distinction and potentially targeting some members of the press differently than others, and b) whether or not concerns about “fake journalists” were well founded enough to dramatically undermine overall press freedom in Ferguson.

Likewise, legal and human rights observers have also faced arrest for carrying out their roles. Immediately following the press conference on August 16 announcing the imposition of a midnight to 5 a.m. curfew, Amnesty International observers spoke with Capt. Johnson to request that human rights and legal observers be allowed to remain on W. Florissant Avenue past the curfew time of midnight in order to observe and document interactions between law enforcement and demonstrators and others who decided to violate the imposed curfew time. While acknowledging the need for observers, Capt. Johnson expressed that he was unsure how many individuals besides the media he could allow to remain as observers due to concerns around security, despite Amnesty International observers wearing bright yellow T-shirts with “OBSERVER” in bold type font across the front and back. At approximately 11:25 p.m., shortly before the curfew went into effect, two of Amnesty International delegation members again approached Capt. Johnson to restate the organization’s earlier request for human rights and legal observers to be allowed to remain out past the curfew. Capt. Johnson initially mentioned that anyone who was not a member of the press and who was on the streets past midnight would be arrested. He informed the delegation members that he would find and speak with the delegation a short time later. That meeting never took place despite further attempts by Amnesty International to speak with Capt. Johnson. At 11:45 p.m., members of the delegation decided that the group would not defy the curfew and risk arrest and a decision was made to vacate the area.

It was also reported that Max Suchan, a law student serving as a National Lawyers Guild (NLG) legal observer, was arrested while observing the arrest of a protester in the early morning hours of August 20. Suchan was released after spending about four hours in a police vehicle and was not charged.⁶² Amnesty International witnessed Suchan, identifiable by the green fluorescent hat worn by NLG observers, among those arrested in front of a McDonald’s on W. Florissant Avenue. When one delegation member asked officers nearby to explain these arrests, a St. Louis County police officer responded that people were being arrested for failure to disperse despite the lack of an announcement of an order to do so and that “this is a riot situation.” On August 30, the NLG reported that four legal observers were arrested during the previous nights of protests.⁶³

2.5 Accountability for law enforcement in policing protests

Several times when Amnesty International delegates witnessed actions taken by police officers they requested the name of the officer or attempted to determine which law enforcement agency the officer belonged to when affecting an arrest or issuing an order to protesters. However those requests and questions often went unanswered by law enforcement personnel. In a letter to the Ferguson Police Department on September 23, investigators from the DOJ observed Ferguson Police Department officers not wearing their name plates while engaged in the policing of demonstrations, which violated Ferguson Police Department policy. The letter stated, “Officers wearing name plates while in uniform is a basic component of transparency and accountability ... Allowing officers to remain anonymous when they interact with the public contributes to mistrust and undermines accountability ... and conveys a message to community members that, through anonymity, officers may seek to act with impunity.”⁶⁴ Under international law, officers need to be accountable to the public and, in order to facilitate accountability, officers should be identifiable during public order operations.

Recommendations on the policing of protests

1. Governments and law enforcement authorities, in particular, must ensure that everyone under their jurisdiction can enjoy their human right to peaceful assembly, the right to freedom of expression, and freedom of movement.
2. All law enforcement agencies must comply at all times with international human rights obligations and with international standards on policing, in particular the *U.N. Code of Conduct for Law Enforcement Officials* and the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, which must be the guiding principles underpinning all operations before, during and after demonstrations.
3. Ensure that all law enforcement agencies engaged in the policing of protests understand that their task is to facilitate, not to restrict, a peaceful public assembly. All necessary measures must be taken to prevent use of excessive force and other human rights violations by law enforcement officials in demonstrations.
4. Ensure that all law enforcement agencies engaged in the policing of protests review their policies in the policing of protests by taking an approach that leads to de-escalation. They should avoid unnecessary escalation through threatening appearance and/or behavior, excessive use of force, inappropriate equipment, and arbitrary arrests. They should seek dialogue with protest organizers, call for calm, and not make public statements which label an entire group of protesters as the enemy of the state, such as “we will fight vandals and criminals.”
5. Ensure that all law enforcement agencies engaged in the policing of protests engage in communication with organizers and demonstrators before and during the operation in order to create mutual understanding and prevent violence. Where outbreaks of violence are highly probable, communication with organizers and demonstrators becomes even more important in order to reduce tension and to avoid unnecessary confrontation. Law enforcement officials and organizers should look together for ways to prevent violence or to stop it quickly as soon as it breaks out.
6. Ensure that any decision to disperse an assembly is taken only as a last resort and carefully in line with the principles of necessity and proportionality, i.e., only when there are no other means available to protect a legitimate aim and when the level of threat of violence outweighs the right of people to assemble. Ensure that even in situations in which a small minority tries to turn a peaceful assembly into a violent one, police should ensure that those who are protesting peacefully are able to continue to do so, and not use the violent acts of a few as a pretext to restrict or impede the exercise of rights of a majority.
7. Ensure that the type of equipment used for the purpose of dispersing is carefully considered and used only when necessary, proportional and lawful. Policing and security equipment – such as kinetic impact projectiles (e.g. rubber/plastic bullets), chemical irritants (e.g. tear gas/pepper spray) and stun grenades, often described as “less-lethal” weapons – can result in serious injury and even death. Toxic chemical irritants, such as tear gas, should not be fired directly at an individual, used in confined spaces against unarmed people, or in situations in which exits and ventilation points are restricted. Irritants should not be launched near vulnerable people, such

as the elderly, pregnant women and children. The discharge of 'less lethal' projectiles (rubber or plastic bullets) should be prohibited, unless the projectiles have been rigorously and independently tested to ensure that they are sufficiently accurate not to cause unwarranted injury, and their use is strictly limited to situations of violent disorder posing a risk of harm to persons, where no less extreme measures are sufficient to achieve the objective of containing and stopping the violence. Semi-automatic weapons, i.e. weapons that can be put on multiple shot mode, have no place in such situations where each single shot must be justified. In general, firearms are not ordinary tools for public order management. Police should only be deployed with firearms where a level of violence is anticipated that life of people is in danger.

8. Officials must investigate effectively, impartially and promptly all allegations of human rights violations by police officials during public assemblies, including unlawful use of force, arbitrary arrest and detention; and bring all those found responsible, including commanding officers, to account through criminal or disciplinary proceedings as appropriate; and provide full redress to victims.
 - Any use of force during a public assembly should be subject to review, and, where appropriate, investigation and disciplinary or criminal sanction.
 - Complaints against police must be effectively and impartially investigated, and, where appropriate, subject to disciplinary or criminal sanction.
 - Law enforcement officials should be identifiable during public order operations either through name or number tags.
9. Review and revise the training provided to law enforcement officials, ensuring that more thorough training on the lawful use of force and firearms and the policing of protests as well as on respect for human rights is included.

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

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

To the Department of Justice

12. Review and revise DOJ guidelines to law enforcement agencies on the policing of protests to ensure that there is compliance at all times with international human rights obligations and with international standards on policing, in particular the *U.N. Code of Conduct for Law Enforcement Officials* and the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement*

Officials must be the guiding principles underpinning all operations before, during and after demonstrations.

13. The DOJ should ensure that all allegations of human rights violations by police officials during the protests in Ferguson, Missouri are investigated effectively, impartially and promptly, including unlawful use of force, arbitrary arrest and detention; as well as the failure to protect peaceful protesters from counter-protesters. All those found responsible, including commanding officers, must be brought to account through criminal or disciplinary proceedings as appropriate, and victims provided full redress.

To the United States Congress

14. Pass the Stop Militarizing Law Enforcement Act.

¹ *Ferguson, Missouri Community Furious after Teen Shot Dead by Police*, AP/Huffington Post, August 9, 2014, available at http://www.huffingtonpost.com/2014/08/09/ferguson-teen-police-shooting_n_5665305.html.

² Robles, Frances and Julie Bosman, *Autopsy shows Michael Brown was struck at least 6 times*, The New York Times, August, 17, 2014, available at http://www.nytimes.com/2014/08/18/us/michael-brown-autopsy-shows-he-was-shot-at-least-6-times.html?_r=0

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

⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC26/36, April 1, 2014, para 72.

⁵ Mo. Rev. Stat. § 563.046.

⁶ *Tennessee v. Garner*, 471 U.S. 1 (1985)

⁷ Kimberly Kindy, *Objectivity of prosecutor in Missouri shooting of Michael Brown is questioned*, The Washington Post, August 15, 2014, available at http://www.washingtonpost.com/politics/objectivity-of-prosecutor-in-missouri-shooting-of-michael-brown-is-questioned/2014/08/15/1fe20690-24bc-11e4-958c-268a320a60ce_story.html.

⁸ See: United States of America, Rights for All (AMR 51/35/98).

⁹ Ford, Dana, *Man shot and killed by St. Louis Police*, CNN, August 20, 2014, available at <http://www.cnn.com/2014/08/19/us/missouri-police-shooting/index.html>

¹⁰ The Violent Crime Control and Law Enforcement Act (1994) requires that the Attorney General to acquire data about the use of excessive forces for research and statistical purposes and to publish an annual summary.

¹¹ Art. 19, Art. 21 and Art. 22(1) International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI),

21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force

23 March 1976. See also Art. 19 and Art. 20 of the Universal Declaration of Human Rights, G.A. res. 217A (III),

U.N. Doc A/810 at 71 (1948). Detailed guidance on the regulation of peaceful assemblies in line with international standards can be found in the reports of the UN Special Rapporteur on the rights of peaceful assembly of association. Additionally, the Organization for Security and Cooperation in Europe (OSCE) has elaborated extensive Guidelines on Freedom of Peaceful Assembly (OSCE Guidelines) for OSCE participating states. Though not binding on the United States, the OSCE Guidelines help frame the proper protocols when policing peaceful assemblies for the United States.

¹² United States Constitution, Amendment I; see also, *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958).

¹³ Mo. Rev. Statutes §574.040. "A person commits the crime of unlawful assembly if he knowingly assembles with six or more other persons and agrees with such persons to violate any of the criminal laws of Missouri or of the United States with force or violence."

¹⁴ United Nations Office of the High Commissioner on Human Rights, Press Release, August 14, 2014, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14945>

¹⁵ Jackson, David, *Obama treads fine line on Ferguson*, USA Today, August 19, 2014, available at <http://www.usatoday.com/story/theoval/2014/08/19/obama-ferguson-michael-brown/14277483/>

¹⁶ Urbanski, Dave, *Missouri Governor declares State of Emergency, imposes curfew in Ferguson*, Associated Press August 16, 2014, available at <http://www.theblaze.com/stories/2014/08/16/missouri-governor-declares-emergency-imposes-curfew-in-ferguson/>

¹⁷ *From Eric Holder: A message to the people of Ferguson*, St. Louis Post-Dispatch, August 20, 2014, available at http://www.stltoday.com/news/opinion/from-eric-holder-a-message-to-the-people-of-ferguson/article_ea8b7358-67a3-5187-af8c-169567f27a0d.html

¹⁸ See full video of Governor Nixon press Conference: <http://fox2now.com/2014/08/16/governor-nixon-imposes-curfew-in-the-city-of-ferguson-midnight-5am/>

¹⁹ Piper, Brandie, *Curfew Lifted in Ferguson*, KSDK, August 18, 2014, available at <http://www.ksdk.com/story/news/local/2014/08/18/ferguson-curfew-lifted/14240715/>

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- ²⁰ *Tensions flare in Ferguson; more tear gas fired*, St. Louis Post-Dispatch, August 19, 2014, available at http://www.stltoday.com/news/local/metro/police-fire-tear-gas-on-protesters-near-quicktrip-in-ferguson/article_f794b446-1ee7-56f1-b4f5-03c5663b596f.html
- ²¹ *Outburst interrupts night of peace in Ferguson*, St. Louis Post-Dispatch, August 20, 2014, available at http://www.stltoday.com/news/local/metro/ferguson-protest-area-subdued-at-nightfall-tonight/article_375eff87-6a6b-534b-abcc-a8664e7d3ba2.html
- ²² See St. Louis County Police Department Arrest data, on file with Amnesty International USA.
- ²³ The suit alleges that the five-second rule is a violation of Due Process because of its vagueness in providing fair notice of what and when certain actions are likely to become unlawful. When a regulation interferes with First Amendment rights, it requires “greater degree of specificity than other regulations” in order to meet Due Process requirements. Plaintiff claims that because the rule is unclear in what it prohibits, when it is enforced, and who it is enforced against, the five-second rule fails to meet this standard of this heightened specificity and in turn violates Due Process. In addition, the Plaintiff alleges a violation of First Amendment rights because the rule does not further the asserted government interest, it is not narrowly tailored, and fails to leave open ample alternative channels, thereby violating previously established requirements for intermediate scrutiny. Because the protestors’ First Amendment rights were violated, the plaintiff claims that this harm is irreparable. See ACLU complaint *Abdullah v. County of Saint Louis, Missouri*, available at http://www.aclu-mo.org/download_file/view_inline/1273/535/
- ²⁴ Lippmann, Rachel, *Federal Judge Weighing Whether to Halt ‘Move Along’ Rule in Ferguson*, St. Louis Public Radio.com, September 29, 2014, available at <http://news.stlpublicradio.org/post/federal-judge-weighing-whether-halt-move-along-rule-ferguson>; See Memorandum, Order and Preliminary Injunction, *Abdullah V. County of Saint Louis*, Case No. 4:14CV1436CDP, available at <https://www.documentcloud.org/documents/1310115-5-second-rule-injunction.html>
- ²⁵ Memorandum, Order and Preliminary Injunction, *Abdullah V. County of Saint Louis*, Case No. 4:14CV1436CDP, available at <https://www.documentcloud.org/documents/1310115-5-second-rule-injunction.html>
- ²⁶ See St. Louis County Police Department Arrest data, on file with Amnesty International USA.
- ²⁷ Two additional individuals were charged with Refusal to Disperse but also had other charges filed against them and were excluded from this total.
- ²⁸ *Following coordinated attacks on civilians and law enforcement, Governor Nixon signs executive order directing Missouri National Guard resources to Ferguson*, Office of Missouri Governor Jay Nixon, August 18, 2014, available at <https://governor.mo.gov/news/archive/following-coordinated-attacks-civilians-and-law-enforcement-governor-nixon-signs>; Matthew Dolan & Pervaiz Shallwani, *Curfew Lifted in Ferguson as National Guard Arrives*, The Wall Street Journal, August 18, 2014, available at <http://online.wsj.com/articles/missouri-governor-deploys-national-guard-after-clashes-in-ferguson-1408348954>.
- ²⁹ Patrick, Robert, *St. Ann officer removed after pointing gun, threatening Ferguson protesters*, St. Louis Post-Dispatch, 20 August 2014, available at http://www.stltoday.com/news/local/metro/aclu-cites-ferguson-video-asks-highway-patrol-to-remove-officer/article_3854ed72-a14c-5b8e-b32f-ddb35de94803.html
- ³⁰ *Ferguson, Missouri (POLICE) I’m Going to KILL YOU*, August 20, 2014, available at <https://www.youtube.com/watch?v=YknrZE0CCYE>.
- ³¹ Murdock, Sebastian, *CONFIRMED: Cop Who Threatened Ferguson Protesters is Lt. Ray Albers*, August 20, 2014, available at http://www.huffingtonpost.com/2014/08/20/ray-albers-ferguson-protesters_n_5696715.html.
- ³² Warren, Lydia, *Veteran police officer who was filmed threatening to kill Ferguson protesters as he raised his gun resigns*, August 29, 2014, available at <http://www.dailymail.co.uk/news/article-2737819/Veteran-police-officer-filmed-threatening-kill-Ferguson-protesters-raised-gun-resigns.html>.
- ³³ 10 U.S.C.A. § 2576a (2014).
- ³⁴ United States. House of Representatives. 113th Congress, 2D Session. H.R. 5478, Stop Militarizing Law Enforcement Act [introduced in the U.S. House of Representatives; September 16, 2014]. 113th Congress, 2D sess. Congressional Bills, Govtrack.us. Web, October 15, 2014.
- ³⁵ United States. House of Representatives. 113th Congress, 2D Session. H.R. 5478, Stop Militarizing Law Enforcement Act [introduced in the U.S. House of Representatives; September 16, 2014]. 113th Congress, 2D sess. Congressional Bills, Govtrack.us. Web, October 15, 2014.
- ³⁶ “Reps. Johnson, Labrador introduce bill to de-militarize police,” Press Releases, September 16, 2014, available at <http://hankjohnson.house.gov/press-release/rep-johnson-labrador-introduce-bill-de-militarize-police>.
- ³⁷ “H.R. 5478: Stop Militarizing Law Enforcement Act,” Govtrack.org, available at <https://www.govtrack.us/congress/bills/113/hr5478>.
- ³⁸ Principle 9, U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- ³⁹ *Robinson v. Solano County* 278 F.3rd 1007 (9th Cir. 2002).
- ⁴⁰ Missouri Revised Statutes §574.050.
- ⁴¹ Missouri Revised Statutes §574.060
- ⁴² *Police use tear gas to disperse St. Louis looters*, USA Today, August 11, 2014, available at <http://www.usatoday.com/story/news/nation/2014/08/10/st-louis-teen-police-shooting/13856377/>. *Police again disperse crowds in Ferguson with tear gas, rubber bullets*, PBS Newshour, August 11, 2014, available at <http://www.pbs.org/newshour/rundown/police-disburse-crowds-ferguson-tear-gas-rubber-bullets/>
- ⁴³ Yamiche Alcindor, *Looting, tear gas shatter period of calm in Ferguson*, USA Today, August 19, 2014, available at <http://www.usatoday.com/story/news/nation/2014/08/16/michael-brown-shooting-ferguson-missouri-police/14152447/>
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