

EXECUTIVE SUMMARY

Island of Impunity

PUERTO RICO'S OUTLAW POLICE FORCE

These abuses do not represent isolated incidents or aberrant behavior by a few rogue officers. Such police brutality is pervasive and systemic, island-wide and ongoing. The PRPD is steeped in a culture of unrestrained abuse and near-total impunity. The issues plaguing the PRPD predate the administration of the current Governor, Luis Fortuño, and without far-reaching reforms, the abuses will continue.

Evidence drawn from interviews conducted by the ACLU between March and September 2011 in Puerto Rico, as well as careful review of case documents and publicly reported case information from incidents that took place as recently as May 2012, and government quantitative data, form the basis of the following findings.

Background: Pervasive Corruption, Domestic Violence, and other Crime by PRPD Officers

There is pervasive corruption and other crime within the police force, including domestic violence committed by PRPD officers. The PRPD's failure to address criminal conduct among its ranks is symptomatic of a larger institutional dysfunction of the police department's policing and disciplinary systems.

Over a five-year period from 2005 to 2010, over 1,700 police officers were arrested for criminal activity including assault, theft, domestic violence, drug trafficking, and murder. This figure amounts to 10 percent of the police force, and is nearly three times the number of New York City Police Department (NYPD) officers arrested in a comparable five-year period, although the NYPD is about twice the size of the PRPD. In October 2010, the Federal Bureau of Investigation (FBI) arrested 61 PRPD officers as part of the largest police corruption operation in FBI history, and additional PRPD officers have since been arrested by the FBI. Officers have been convicted of planting drugs and fabricating drug-related charges against residents of a housing project, as well as other drug and firearm violations.

Moreover, the PRPD has recorded an appalling number of complaints of domestic violence by PRPD officers. The PRPD recorded nearly 1,500 domestic violence complaints against police officers from 2005 to 2010. At least 84 still-active officers have been arrested two or more times for domestic violence. There have been multiple highly publicized cases in which PRPD officers shot their wives with their service firearms, in some cases killing their spouses.

Shooting to Kill: Unjustified Use of Lethal Force

Since 2007, PRPD officers have fatally shot, beaten, or Tasered unarmed men, the mentally ill, individuals who posed no threat to officers or bystanders, and individuals who could have been restrained with less force. A series of widely reported police killings over a nine-month period in 2007, one of which was captured on film, brought to light an ongoing problem of PRPD officers' use of deadly force, but did not result in reforms that would curb these abuses.

According to statistics provided by the Puerto Rico Department of Justice (PRDOJ), PRPD officers killed 21 people in 2010 and 2011. The ACLU documented 28 cases in which PRPD officers are reported to have killed civilians from 2007 and 2011. In most of these cases, the deaths were unjustified, avoidable, and/or not necessary to protect the life of an officer or civilian. We know of at least eight additional cases in which PRPD officers shot and killed civilians within that timeframe, but the ACLU was unable to document the circumstances of those killings.

The ACLU documented recent cases in which police shot and killed an unarmed boy as young as 14, and a man as old as 77, who was shot when police entered his home to serve and execute a search warrant. Because it is difficult to obtain case information except where there was a public scandal or related litigation, the ACLU's research on use of lethal force relies heavily on cases that have been exposed by local news media. For each of these cases that emerged in newspaper headlines, there are doubtless many others.

Excessive Force against Low-Income, Black, and Dominican Communities

PRPD officers assigned to tactical units regularly use excessive force while on routine patrols and checkpoints in low-income, Black, and Dominican communities. During encounters with civilians in these communities, officers routinely use excessive force or resort to force unnecessarily and inappropriately, and they disproportionately target racial minorities and the poor. The PRPD is using excessive force as a substitute for community policing.

Police use excessive force including beating with batons, kicking, punching, throwing on the ground or against walls and objects, chokeholds, and shooting with firearms. In the cases documented by the ACLU, police inflicted injuries including: a broken jaw, cracked or lost teeth, bone fractures, internal bleeding, severe contusions, abrasions, lacerations, organ damage, organ failure, traumatic brain injury, paralysis, brain death, and death. In the cases documented by the ACLU, victims were not resisting arrest or were already restrained, unarmed, and posed little or no risk to officers or bystanders at the time of officers' use of force. The ACLU documented cases in which police severely beat individuals already restrained in handcuffs, and in some cases police did not arrest victims after injuring them, merely leaving them broken and bleeding on the street or in their homes.

Excessive use of force is rampant. According to data provided by the PRPD's Auxiliary Superintendency for Professional Responsibility (Auxiliary Superintendencia de Responsabilidad Profesional, or SARP), which oversees the internal administrative investigations of PRPD officers, civilians filed at least 1,768 complaints against officers for excessive or unjustified force and assault from 2004 to August 2010. These numbers are most surely low and do not accurately represent the extent of the problem: the ACLU's research shows that civilians regularly elect not to report police abuse because of a lack of faith in the investigatory and disciplinary system; because of widely-known impunity for police abuse; and because of fear of retribution for filing complaints of civil rights and human rights violations.

Excessive force is routine among police officers in multiple tactical units of the PRPD. We have determined that particularly problematic units include the Tactical Operations Unit (Tactical Operations Unit or UOT), whose work is carried out by a Tactical Operations Division in each of the 13 police regions (Division of Tactical Operations or DOT), colloquially known as the Riot Squad (Force Control); and the Drug, Narcotics, Vice, and Illegal Weapons Bureau (Division of Drug, Narcotics, Vice, and Illegal Weapons or NDNV), which is represented in each of the 13 police regions across the island by a Division of Drug, Narcotics, and Vice (Division of Drug, Narcotics, and Vice or DNV), commonly known as the Drug Division (DD). Also problematic is the Specialized Tactical Unit (Specialized Tactical Unit or UTE), commonly known as the Group of 100 (Force Control), an elite unit of officers grouped into multidisciplinary teams drawn from several different police units including drug, traffic, stolen vehicles and the UOT, to combat the drug trade. In addition to its anti-drug operations, the UTE has worked closely with the UOT in responding to protests.

Billy Clubs versus Speech: Excessive Force against Protesters to Suppress Speech and Expression

Since 2009, the PRPD also has used excessive force against nonviolent protesters. Even as police crackdowns on the Occupy movement have brought attention to the problem of police abuse against protesters in the United States, the PRPD has failed to address its frequent and systematic use of force against protesters. Officers use excessive force to suppress constitutionally protected speech and expression, indiscriminately using chemical agents including a toxic form of tear gas and pepper spray, batons, rubber bullets and rubber stinger rounds, sting ball grenades, bean bag bullets, Tasers, carotid holds, and pressure point techniques on protesters. Police have regularly used excessive force in violation of protesters' First Amendment right to freedom of speech, expression, and assembly, as well as their Fourth Amendment right to be free from unreasonable searches and seizures.

The ACLU documented numerous instances of police abuse against protesters at locations throughout the polis, including at the beach and at the

protesters' faces, directly into protesters' eyes, noses, and mouths. Protesters told the ACLU that police sprayed them so thickly with pepper spray that they were covered in the orange liquid, which poured down their faces and bodies, temporarily blinding them and causing excruciating pain that in some cases lasted for days.

Police have also routinely struck, jabbed, and beat protesters with 36" straight-stick batons, used as blunt impact weapons specifically for riot control. Riot squad officers struck protesters with two-handed jabs and single-handed strikes in which officers raised the batons over their heads to hit protesters with maximum impact. In numerous cases riot squad officers even chased after fleeing protesters and struck them in the head, back and shoulders from behind. Officers also used painful carotid holds and pressure point techniques intended to cause passively resisting protesters pain by targeting pressure points under protesters' jaws, near their necks, or directly on their eyes and eye sockets. Pressure point tactics not only cause excruciating pain, but they also block normal blood flow to the brain and can be potentially fatal if misapplied. In some cases these pressure point techniques have caused student protesters to lose consciousness.

In the cases documented by the ACLU, as a result of the PRPD's excessive use of force numerous protesters required and received medical treatment for blunt and penetrating trauma, contusions, head injuries, torn ligaments and sprains, respiratory distress, and second-degree burns from chemical agents.

Despite the PRPD's widespread use of violence on protesters during several of the incidents documented by the ACLU, including a protest at the Capitol on June 30, 2010 and a demonstration outside a political fundraiser at the Sheraton Hotel on May 20, 2010, few protesters were arrested during these incidents. The dearth of arrests following these incidents indicates that protesters were not threatening public safety and the use of force was neither necessary nor justified.

In other instances involving UPR student protesters, particularly during the April to June 2010 and December 2010 to February 2011 student strikes, we documented baseless mass arrests of UPR students to put an end to their protests, thereby suppressing their speech and expression. A very small fraction of these arrests of student protesters were supported by probable cause. Of approximately 200 UPR student protesters who have been arrested, some of whom have been arrested multiple times, prosecutors have pursued charges against only approximately 17 students. In case after case, student protesters were arrested and held for hours in a police cell, only to have a court find no probable cause to support the arrest.

These abuses have had a chilling effect on First Amendment-protected protest, and numerous university students and labor union leaders and members reported to the ACLU that they have ceased protesting, or significantly scaled back their protest activity, because of fear that they will again be subjected to police violence and baseless arrest. A number of these self-described activists, who have participated in past protests on numerous occasions, told the ACLU they no longer feel safe participating in demonstrations. They said they fear that the PRPD will again

use excessive and unnecessary force to suppress their demonstrations, and they are reluctant to express their political beliefs in public and risk retaliation by the PRPD.

All of the protesters interviewed by the ACLU told us that they believe the PRPD's use of force against them is designed to suppress their speech and expression, and is specifically directed at those with viewpoints that are critical of the current administration and its policies. Without exception, all of the concerned citizens, community leaders, university student activists, and labor union leaders and members we interviewed told us that they feel the police have targeted them because of the viewpoints they have sought to express.

Failure to Police Crimes of Domestic Violence and Sexual Assault

The PRPD systematically fails to protect victims of domestic violence and to investigate reported crimes of domestic violence, sexual assault, and even murders of women and girls by their partners or spouses. The PRPD is failing to protect women and girls from abusive intimate partners and ex-partners, and the PRPD is not policing those crimes when they are committed.

Puerto Rico has the highest per capita rate in the world of women over 14 killed by their partners. The numbers are disturbing, and climbing: 107 women were killed by their intimate partners in a five-year period from 2007 to 2011. The number of women killed by their intimate partners jumped significantly in 2011, to 30 women killed, up from 19 in 2010. In 2006, the PRPD reported 23 murders of women at the hands of their partners or spouses, placing Puerto Rico first on an international list comparing the number of women killed in each country/territory by their partners per million women over the age of 14.

Of the women killed by their intimate partners from 1991 to 1999, only 17 percent had orders of protection, a scant 2 percent had orders of arrest against their murderer, and 4 percent had expired orders of protection. In 2007, 25 percent of the women killed by their partners had previously reported incidents of domestic violence to the PRPD. Few women are seeking protection from their abusive partners, in part because they lack faith in a system that is failing to provide adequate protection to victims.

In addition, the PRPD is failing to ensure that women confronting domestic violence utilize the legal options available to them, and it is failing to enforce existing protective orders by arresting abusers who violate orders that are in place.

In July 2011, during his confirmation hearing before the committee on Public Safety and Judicial Affairs, the recently-replaced Superintendent of Police, Díaz Colón, was asked about deaths from domestic violence that have occurred on the island, and he replied that domestic violence is a private matter and is outside the purview of the PRPD.

Moreover, the PRPD is not adequately responding to or investigating rape crimes, and it is significantly underreporting these crimes. The PRPD reported that only 39 forcible rapes were

committed in 2010, while the department also reported 1,000 homicides during the same year. Based on data from police departments around the U.S., we would expect the rape statistics to be 100 times the figure reported by the PRPD, as other jurisdictions in the U.S. report about four times as many rapes than homicides.

The number of reported forcible rapes has declined exponentially; from 426 in 1990 to 39 in 2010. While the reported rape rate has declined sharply in the last ten years, from 228 forcible rapes in 2000 to 39 in 2010, the murder rate has seen a sharp increase during the same time period, indicating that reduced crime is not the cause of the recent suspiciously low rape statistics.

The remarkable data spread between reported forcible rape and murder is the result of the PRPD's failure to follow protocols to respond to, record, or investigate crimes of rape. Official sources estimate that, in the case of sexual violence, only about 16 percent of rapes are reported. In their latest study, issued in 2007, the Puerto Rico Department of Health's Center for Assistance to Rape Victims estimated that 18,000 people in Puerto Rico, mostly women and girls, are victims of sexual violence each year.

Total Impunity: Failure to Investigate or Punish Police Brutality

There are numerous contributing factors that are responsible for these deeply-rooted, wide-ranging, and long-standing human rights abuses—abuses which are both preventable and predictable. Our research has found that the investigatory, disciplinary, and reporting systems in place utterly fail to address, and therefore prevent, police abuses. In particular, we have documented the failure of the following systems: the disciplinary and other accountability systems, which fail to meaningfully punish officers for misconduct; the investigatory system, which fails to effectively examine use of force and allegations of police misconduct; and the reporting system, which fails to collect and track data that could be used to correct these grave issues.

These systems virtually guarantee impunity: instead of deterring abuses by holding abusive officers accountable, the PRPD allows officers to escape punishment or any other consequences, rearming them and returning them to active duty, often to repeat their offenses. Citizen complaints of brutality, lethal force, and excessive force languish for years without resolution. Abusive officers rarely are administratively punished or criminally prosecuted. The PRPD fails to track repetitive conduct by officers who violate the law or have significant records of complaints from the public. The failure to implement effective early warning systems to identify abusive officers and flag high-risk officers likely to commit abuses has resulted in the avoidable loss of numerous lives.

The investigatory, disciplinary, and reporting systems of the PRPD rubber-stamp the use of force, cover up abuse by its officers, and encourage a code of silence. We documented a disciplinary system that retains, protects, and even promotes officers who use lethal and

excessive force. It is a disciplinary system that retained an abusive officer even after he was labeled a “ticking time bomb” by a police psychologist, to see him later execute an unarmed man in the street; awards medals of valor to officers involved in a deadly shooting of a mentally ill man even while the official investigation into their use of force was ongoing; and reinstated an officer who held the local police chief hostage at gunpoint, rearmed him after he was arrested eight times, and returned him to foot patrol in a housing project where he shot and killed an unarmed 18-year-old boy.

We also documented an investigatory system that fails to interview witnesses and ignores eyewitness accounts that contradict the officers’, as in one case in which an investigation of the fatal shooting of an unarmed man reported only the involved officers’ account of events and summarily stated that bystanders were interviewed at the scene, “but they said adverse things about the officers.”

A Lawless Police Force: Lack of Guidance Governing the Use of Force and Lack of Oversight, Training and Transparency

The ACLU has identified a number of additional problematic PRPD policies and practices that contribute to the pattern of police abuse, including lack of guidance governing the use of force; lack of effective oversight, supervision, and training; failure to collect and track data that could be used to correct these grave issues; and failure to fully implement a standard trigger weight that meets U.S. national standards.

PRPD officers perform an essential public safety function, and the ACLU recognizes the important work performed every day by the department’s officers. However, the PRPD fails to provide even basic guidance to its personnel on how to discharge their duties in compliance with constitutional and human rights standards. Until January 31, 2012, the PRPD had no comprehensive policy on the use of force. Such a policy is standard for police departments across the United States, and is standard policing practice around the world. To date, the PRPD has not fully implemented the new policy, and it has not yet trained all of its personnel in the policy.

The PRPD continues to lack standard protocols governing the use of force that officers are authorized to use, including guidance on the use of chemical agents, impact weapons, and “less-lethal” ammunition such as rubber bullets or sting ball grenades. The PRPD also lacks any protocols on policing protests and large-scale demonstrations, interactions with people with mental illness, and handling complaints of domestic and sexual violence.

Existing PRPD policies fall short of constitutional legal standards and U.S. police practices. For example, PRPD policies on the use of firearms, Tasers, and batons do not incorporate current legal requirements governing officers’ use of force, do not emphasize alternatives to physical force, and do not require the use of measures to avoid or minimize the use of force. The existing policies fail to establish a clear protocol on the levels of force that are permitted

in response to different levels of resistance from suspects. The existing policies also fail to provide any guidance on types of force other than firearms that may constitute lethal or deadly force, such as chokeholds, carotid holds, and strikes to the head with batons or other impact weapons. The existing policies do not even acknowledge that such types of force can be lethal, a serious omission. In addition, the PRPD's orders regulating police practices are not easily comprehensible or accessible to officers, who are not provided with copies of the policies.

Officers also receive patently inadequate training, insufficient supervision, and minimal guidance on the legal boundaries of their use of force and other conduct. The PRPD fails to enforce even the protocols and laws in place to regulate officers' conduct. Moreover, there is minimal public oversight and transparency of the PRPD's policies and practices, including no effective independent review.

Until February 2011, the PRPD lacked any standard trigger weight, instead leaving all service weapons at their factory settings of 5.5 and 6.5 pounds, which are substantially lighter than the standard trigger weights of U.S. metropolitan police departments such as the NYPD, which requires a trigger weight of 12 pounds on all service weapons. The PRPD had not paid any attention to the trigger weights of its service weapons until the September 2010 fatal shooting of an unarmed 22-year-old witness to a robbery who had remained at the scene to provide police with a statement. In that case, after the gun of one of five officers at the scene accidentally discharged, another officer began shooting and fired 10 bullets, one of which fatally struck the young man in the back of his head.

In February 2011, the Superintendent of the PRPD issued an order setting the standard trigger weight of all PRPD service weapons at 8.5 pounds. However, the Superintendent ordered that trigger weight springs on service weapons would be changed gradually, and as of June 2011, the PRPD still had over 9,000 service weapons in use that had not been altered to the higher standard trigger weight. Sensitive triggers lead to unintentional shootings during police interactions with civilians and overfiring in which officers shoot more rounds than they would with firearms with heavier trigger weights. In the mid-1990s the NYPD increased the mandatory trigger weight for service weapons from 8 pounds to 12 pounds in order to minimize unintentional shootings. It is essential that the PRPD modify all of its service firearms to the 8.5-pound trigger weight at a minimum, and ideally increase its standard trigger weight to bring it in line with police department policy in cities such as New York and Los Angeles.

The Path Ahead

The United States Department of Justice (DOJ) opened an investigation into the PRPD in July 2008, and in September 2011 issued its findings in a scathing report, technically termed a "findings letter." The DOJ's investigation focused on the four-year period from 2004 to 2008, and was expanded to include police response to protests in 2009 and 2010. The DOJ found a pattern and practice of constitutional violations by the PRPD, including excessive force in violation of the Fourth Amendment and unreasonable force and other misconduct designed to suppress

the exercise of First Amendment rights, concluding that the PRPD “is broken in a number of critical and fundamental respects.”¹ The superintendent at the time, Emilio Díaz Colón, who had been in the post for only three months when the DOJ published its report, responded by rejecting the DOJ’s findings and denying any constitutional violations by the PRPD. In a court filing, Puerto Rico’s Justice Department subsequently denounced the DOJ report as unreliable, flawed, and biased.5(e,)JJETEMC /Span #MCsID 375 BDCs2blis2 3781 Tft1_0 6.413 222.1192 701.0526 Tm(1)TjE

The ACLU makes the following key recommendations. A complete list of recommendations is set forth at the end of this report.

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- The legislature of Puerto Rico should create an effective and independent oversight body to monitor the PRPD’s compliance with all applicable laws. The oversight body should be fully empowered and adequately funded to discharge its mandate, and it should be fully independent of the PRPD and the office of the Governor of Puerto Rico.
- The DOJ should enter into a court-enforceable and court-monitored agreement with the PRPD. The agreement should include a detailed and court-enforceable plan for comprehensive reforms that addresses all of the findings and the recommendations contained in the DOJ findings letter and this report.

1 U.S. Dep’t of Justice, Civil Rights Division, *Report on the Investigation of the Puerto Rico Police Department* (Sept. 5, 2011), http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf (hereinafter DOJ report).

2 *Report on the Investigation of the Puerto Rico Police Department*, D.P.R., Case No. 10-2246-JAG, OR752Ao e()TjEuqR(g Lea5 BDC3 HTS/Span9.5224 Tm())TJETEMC /Spa15(onc)9(o P)10(ojETpf8 0 0 8 508.009stert)8dTtpf8 0 S_sl/docu,19812t #O /L.