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Statement of the Center for Constitutional Rights
December 9, 2014

The State of Civil and Human Rights in the United States
Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee:

The Center for Constitutional Rights (CCR) would like to thank United States Senator Dick Durbin, Ranking Member Cruz, and Members of the Subcommittee for holding this important hearing on the state of civil and human rights in the United States. This hearing is particularly timely as it follows the conclusion of three separate reviews of the U.S. government's human rights records by the U.N. Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee Against Torture. All three U.N. treaty bodies issued concerns and criticisms of the government's practices and failures to respect its obligations under international human rights law.

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing its advocacy and legal work to challenge unlawful and inhumane government practices.

In this Statement, we will focus on pressing human and civil rights concerns relating to our work on (1) police violence and discriminatory policing practices, particularly in New York; (2) abusive conditions of confinement in U.S. prisons; (3) immigrant justice; and the (4) unlawful, indefinite detention of Guantanamo detainees.

I. POLICE VIOLENCE AND DISCRIMINATORY POLICING PRACTICES

Systemic racism – which permeates too many of our local police departments – denies communities of color their entitlement to equal dignity and respect and fosters police violence. Moreover, inadequate internal police department disciplinary systems and repeat failures by the judicial system to hold officers accountable for illegal conduct ensure impunity for incidents of police violence and brutality. While other NGOs and grassroots organizations can surely speak to startling injustice from the failure to indict officers in New York City and Ferguson, Missouri for their killing of unarmed civilians, Eric Garner and Michael Brown, as well as the attendant militarization of police departments across the country, CCR would like to focus its concerns on the practices of the largest[1] and most influential municipal police department – the New York Police Department ("NYPD" or "the Department").[2]

[1] The NYPD's current uniformed strength is approximately 34,500. *See* http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml

[2] *See generally* The Center for Constitutional Rights, *Stopped, Seized and Under Siege: U.S. Government Violations of the International Covenant on Civil and Political Rights through Abusive Stop and Frisk Practices*, September 2013, available: http://ccrjustice.org/learn-more/reports/stopped-seized-and-under-siege. *See also* U.N. Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, April 22, 2014, ¶ 7, available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5 (hereinafter "HRC 2014 Concluding Observations") (criticizing practices of the NYPD)

Between January 2004 and June 2012, the NYPD conducted over 4.4 million forcible pedestrian stops of New Yorkers. As the Subcommittee is likely aware, a vast majority of people stopped in that time, roughly 85%, were Black or Latino, even though they only represented 52% of New York City's population. Only approximately 10% of stops led to any further law enforcement action.[3]

CCR successfully challenged the NYPD's abusive stop and frisk practices,[4] as constituting widespread violations of the Fourth and Fourteenth Amendments of the U.S. Constitution. In August 2013, a federal judge found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory stops.[5] The Court ordered the appointment of an independent monitor to oversee a collaborative reform process, echoing a similar process successfully implemented in Cincinnati, Ohio a decade ago. The collaborative process will bring together affected communities, elected officials, police officer organizations, the NYPD, and other stakeholders to collaboratively develop specific reforms to the Department's stop and frisk practices.[6] We are hopeful that this court-ordered joint remedial process, as the Cincinnati collaborative process did before, can serve as a model to develop meaningful, lasting and credible reforms to municipal police departments across the country.

Despite the court's findings, and recent reductions in the absolute number of stops recorded by NYPD officers, there is no indication that the Department is currently in compliance with the Constitution or has stopped its use of discriminatory policing practices. In addition, in 2014 the Department increased the overly aggressive and discriminatory enforcement of minor infractions and low-level offenses with a disproportionate impact on New York communities of color. In the first two months of 2014 alone, arrests of subway panhandlers and musicians increased by more than 300%, when compared to the same period in 2013.[7] Far from a minor inconvenience, this so-called "broken windows" style of policing, can lead to serious collateral consequences and as demonstrated by the case of Eric Garner, fatal ones as well.

Additionally, excessive use of force continues to be a problem in New York, particularly in communities of color. Black people represent 55% of all alleged victims in complaints received by the New York City Civilian Complaint Review Board (CCRB); another 24-27% are Hispanic.[8] Of all the complaints received by the CCRB, nearly half concern excessive or unnecessary use of force by the NYPD.[9]

Furthermore, the disciplinary policies and procedures of the NYPD routinely fail to meaningfully punish and deter officers for incidents of misconduct, and rarely in proportion with the misconduct in question.[10] Add to this, repeat failures to criminally prosecute officers who engage in brutality,[11] and the

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[3] CCR, *Stopped, Seized and Under Siege*.
[4] Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd.
[5] *See Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) ("Liability Opinion")
[6] *See Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013) ("Remedial Opinion")
[7] Joseph Goldstein and David J. Goodman, "Arrests of Panhandlers and Peddlers on Subways Triple Under Bratton," NY TIMES, March 6, 2014 available: http://www.nytimes.com/2014/03/07/nyregion/arrests-of-panhandlers-and-peddlers-on-subway-increase-sharply-under-bratton.html
[8] Civilian Complaint Review Board, 2013 Annual Report, published March 14, 2014, available at: http://www.nyc.gov/html/ccrb/downloads/pdf/CCRB%20Annual_2013.pdf, page 8.
[9] *Id*., pages 6-7.
[10] Communities United for Police Reform, Priorities for the New NYPD Inspector General: Promoting Safety, Dignity and Rights for all New Yorkers, June 2014, pages 9-11, available: http://changethenypd.org/resources/priorities-new-nypd-inspector-general-promoting-safety-dignity-and-rights-all-new-yorkers
[11] Madar, Chase, "Why It's Impossible to Indict a Cop: It's not just Ferguson-here's how the system protects police," THE NATION, November 24, 2014, available: http://www.thenation.com/article/190937/why-its-impossible-indict-cop

recent immunity granted by the Staten Island District Attorney during the grand jury process to several of the NYPD officers who participated in the incident that resulted in the killing of Eric Garner – demonstrate a worrying lack of accountability or consequence for police misconduct.

We are encouraged by Attorney General Holder's announcement of a civil rights investigation by the Department of Justice into the killing of Eric Garner. Given the authority that the NYPD holds in the direction of policing in this country, we would also strongly urge this Committee to undertake hearings on the NYPD's implementation of the "broken windows" theory of policing. We would urge those hearings to include a growing chorus of experts who question the efficacy of such a mode of policing – with its overtly discriminatory focus on over-policing communities of color – as well as from community leaders in New York who can speak to the way that "broken windows" policing contributes to the unfair harassment,

In addition to the foregoing New York-specific recommendations, we also would like to draw the Subcommittee's attention towards areas where we must make improvement on a national level. Those include:

- Withdrawal of federal support and funding for municipal police departments who routinely engage in discriminatory practices;
- DOJ's creation of a national database to track police shootings and other incidents of brutality and excessive use of force;
- Ending the Department of Defense's 1033 program;
- Passage of the federal End Racial Profiling Act (ERPA); and
- Revise the Department of Justice's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to ban racial profiling on the basis of religion, sexual orientation, gender identity or national origin, and close loopholes in the Guidance that permit all forms of racial profiling in the national security and border contexts.

II. SUSPICIONLESS SURVEILLANCE OF MUSLIM COMMUNITIES AND THE INCREASED USE AND ABUSE OF MUSLIM INFORMANTS

Since 2002, the NYPD has engaged in another overtly discriminatory policy practice by targeted Arab, Muslim, and South Asian neighborhoods for surveillance and "infiltration" — without any suspicion of wrongdoing. The NYPD's surveillance program (hereinafter "Program") engaged in "human mapping" and mass surveillance of Muslim communities, infiltration of mosques and of Muslim Student Associations in the New York and New Jersey area. The Program expressly discriminates on the basis of religion and violates the U.S. Constitution. Notably, this Program life had not yielded a single criminal lead.[12]

The Program has had serious consequences in the lives of Muslim communities: altering the way they practice their faith and interact with other community members, and creating a pervasive climate of fear, suspicion and stigmatization. The Program has been the subject of several legal challenges, including one filed by Muslim Advocates and CCR on behalf of communities in New Jersey.[13]

[12] Adam Goldman & Matt Apuzzo, "NYPD: Muslim Spying Led to No Leads, Terror Cases," Associated Press, August 21, 2012, available: http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases.
[13] Learn more about CCR's case, *Hassan v. the City of New York* at http:// www.ccrjustice.org/hassan. .

Further, *federal* law enforcement agencies also have used coercive and intimidating tactics to recruit Muslim men to become informants within Arab, Muslim, and South Asian communities across the country. The FBI aggressively uses immigration status and the threat of criminal charges to intimidate individuals into working as informants and threatens people with placement on the federal government's secretive No Fly List. Thousands of persons, primarily Muslims, have been swept up on these lists, absent any threat to aviation security.[14] Additionally, there is no effective or transparent process for being taken off the List.[15] The increasing use of this unlawful, secretive tool to coerce law-abiding Muslim-Americans to become spies and informants on their communities destabilizing Muslim communities and doing those individuals who cannot travel to see loved ones or pursue work, real harm.

Moreover, the surveillance of Muslims by the NYPD and the FBI was the subject of concern by the U.N. Human Rights Committee during the review of the U.S. compliance with the International Covenant on Civil and Political Rights in March 2014,[16] and highlighted by the CERD committee in its Concluding Observations in August 2014.[17]

We recommend:

- No federal, state, or local law enforcement agency targets Arab, Muslim, and South Asian neighborhoods, businesses, mosques, schools, and organizations for surveillance, monitoring, and intelligence-gathering without particularized suspicion of wrongdoing;
- Hearings to investigate the use of unlawful or abusive pressure tactics by law enforcement to recruit informants and implement appropriate remedies; and the
- Development of federal administrative regulations to ensure that law enforcement agents do not make promises or threats involving the No Fly List or other coercive measures when engaging with informants or potential informants and provision of meaningful procedural protections to challenge a No Fly List designation.

III. THE EXTENSIVE USE OF SOLITARY CONFINEMENT IN U.S. PRISONS, JAILS, AND DETENTION CENTERS

Solitary confinement remains a critical issue for the Subcommittee's continued scrutiny. As we have previously detailed in written testimonies before Congress, the U.S. holds nearly 800 people in solitary confinement in federal facilities, and there are approximately 80,000 prisoners in solitary confinement in state and local jails, prisons, and detention centers across the country. At California's Pelican Bay State Prison alone, where CCR is challenging the constitutionality of prolonged solitary confinement,[18] approximately 1,000 prisoners are held in multi-year isolation. In fact, hundreds of the prisoners at Pelican Bay have been in solitary for over a *decade*.

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[14] See Jeremy Schahill and Ryan Devereaux, *Blacklisted: The Secret Government Rulebook for Labeling You a Terrorist*, The Intercept, July 23, 2014, available at: https://firstlook.org/theintercept/2014/07/23/blacklisted/

[15] *See* ACLU, Unleased And Unaccountable: The FBI's Unchecked Abuse Of Authority 46-48 (Sept. 2013).

[16] HRC 2014 Concluding Observations, ¶ 7.

[17] CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of United States of America, August 29 2014, ¶ 8, available: http://www.ushrnetwork.org/resources-media/cerd-concluding-observations-2014, (hereinafter "CERD 2014 Concluding Observations")

[18] For more information about CCR's class action lawsuit challenging prolonged solitary confinement in California, *Ashker et al. v. Governor of California, et al*., 09-cv-5796 (N.D. Cal.) (Wilken, J.) (N.D.Cal.), please visit www.ccrjustice.org/pelican-bay.

Wherever it is imposed, solitary confinement takes on brutal dimensions. Prisoners are typically warehoused in cramped, concrete, windowless cells in a state of near-total solitude between 22 and 24 hours a day.[19] They are deprived of any normal human interaction, stimulation, meaningful programming or vocational opportunities.

It is well-documented that solitary confinement, and particularly prolonged isolation, poses a grave risk of psychological and physical harm for all prisoners,[20] a harm that frequently persists even following release. The incidence of suicides, attempted suicides, self-harm and the development of mental illness are much higher among prisoners who have been in solitary confinement. Our clients at Pelican Bay have told us that they feel like they are "silently screaming" all day, and that they have forgotten what it feels like to touch another human being.

Moreover, despite litigation victories prohibiting solitary confinement for certain vulnerable populations – which are limited to a narrow set of jurisdictions – vulnerable populations, including people with mental disabilities, children, women, LGBTI persons and people in immigration detention continue to be disproportionately held in solitary confinement, as numerous reports have documented.[21]

At the federal Administrative Maximum ("ADX") facility in Florence, Colorado, more than 400 inmates spend 23 hours a day locked in concrete cells in conditions of extreme isolation.[22] In February 2014, several prisoners went on hunger strike at ADX and were force-fed.[23] A former warden of the facility has described ADX as "a cleaner version of hell."

Compounding the ill-effects of solitary confinement, the DOJ also imposes Special Administrative Measures (SAMs), on a number of prisoners in the federal system, which impose particularly harsh isolation, communication and classification restrictions akin to, and sometimes more severe than, those placed on Guantanamo detainees. SAMs are at times imposed pre-trial, placing undue pressure on detainees and impairing their ability to effectively assist in their defense. The DOJ has

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[19] Center for Constitutional Rights, et al., *The Use of Prolonged Solitary Confinement in United States Jails, Prisons and Detention Centers, September 2014, available at* http://www.ccrjustice.org/files/CCR_CAT%20Submission_SolitaryConfinement.pdf

[20] For a summary of the social science literature on the psychological effects of prolonged solitary confinement, see Declaration of Craig Haney, Ph.D., J.D., In Support of Plaintiffs' Motion for Class Certification, *Ashker*, Dkt. No. 195-4 (available at http://ccrjustice.org/files/195-4%20Exhibits%20T-Y.pdf). *See also* Fatos Kaba, MA, Andrea Lewis, PhD, Sarah Glowa-Kollisch, MPH, et. al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 443 (Mar. 2014); http://thinkprogress.org/justice/2014/02/18/3303721/solitary-confinement-dramatically-alter-brain-shape-just-days-neuroscientist-says/#.

[21] Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYC. L. 104, 104-05 (2010). *See also* American Civil Liberties Union (ACLU) and Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the U.S.*, October 2012, available at http://www.aclu.org/files/assets/us1012webwcover.pdf; ACLU, *Alone and Afraid: Children held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, June 2014, available at https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf; ACLU, *Worse than Second-Class: Solitary Confinement of Women in the United States,* available at https://www.aclu.org/sites/default/files/assets/worse_than_second-class.pdf; Heartland Alliance's National Immigrant Justice Center & Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, September 2012, available at http://www.immigrantjustice.org/InvisibleinIsolation.

[22] Pardiss Kebraei, *The Torture that Flourishes From Gitmo to an American Supermax,* THE NATION, January 30, 2014, available at http://www.thenation.com/article/178172/torture-flourishes-gitmo-american-supermax

[23] Solitary Watch, *ADX H-Unit on Hunger Strike, Prisoners Being Force Fed*, February 25, 2014, available at http://solitarywatch.com/2014/02/25/adx-h-unit-hunger-strike-prisoners-force-fed/

withheld virtually all information about the use of SAMs, including who and how many are subject to the measures, where these individuals are being held, and what the measures entail.[24]

These conditions and the continued use of solitary confinement have been subject to international scrutiny. As the Committee is undoubtedly aware, the United States recently participated in a periodic review before the U.N. Committee Against Torture (CAT). While the U.S. government asserted that federal facilities are "safe, humane, and appropriately secure,"[25] the Committee found otherwise in its Concluding Observations.

The Committee recommended that the U.S. should limit the use of solitary confinement as a measure of last resort, for as short time as possible, under strict supervision and with the possibility of judicial review; prohibit any use of solitary confinement against juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers in prison; ban prison regimes of solitary confinement such as those in super-maximum security detention facilities; and compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.[26] The Committee also concluded that "full isolation for 22-23 hours a day in super-maximum security prisons is unacceptable."[27]

The U.S. should substantially curb the use of solitary confinement in this country, and eliminate the use of prolonged solitary confinement altogether. Specifically, the U.S. should:

- Prohibit solitary confinement in excess of 15 days in U.S. prisons, jails, and detention centers, except under exceptional circumstances;
- End the practice of solitary confinement for people in pre-trial detention;
- Ensure that those prisoners who are sent to solitary confinement are only sent for the most serious disciplinary infractions, where no other less restrictive alternatives exist, and receive meaningful process prior and subsequent to such confinement;
- Develop standards to ensure that actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one's rights as a prisoner plays no role in the decision to confine a prisoner to solitary confinement; and
- Reveal criteria for placement of individuals under Special Administrative Measures and data about its use in federal detention facilities, offer meaningful administrative review procedures to permit challenges to SAMs designation, and ban the coercive use of SAMs for pre-trial detainees.

IV. IMMIGRATION DETENTION AND EXPEDITED DEPORTATION

While CCR welcomes President Obama's recent announcement of Executive Action to assist many undocumented immigrants, the policy fails to protect millions of immigrants and refugees from unjust and frequently long-term detention and expedited deportation and removal policies. Both matters have also been the subject of grave concern by the U.N. Committee Against Torture.

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[24] The only available official data is from 2009, when DOJ reported that there were 44 prisoners subject to SAMs in Bureau of Prisons ("BOP") facilities. *See* U.S. DOJ, *Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System*, June 9, 2009, available at http://www.justice.gov/opa/pr/2009/June/09-ag-564.html.
[25] U.S. Dep't of State, Third to Fifth Periodic Reports of the United States to the Committee Against Torture ¶ 213 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.
[26] CAT Committee, Concluding Observations on the third to fifth periodic reports of the United States of America, November 20, 2014, UN CAT/C/USA/CO/3-5 (hereinafter "CAT 2014 Concluding Observations" ¶ 9.
[27] CAT 2014 Concluding Observations.

1. Immigration Detention

As the Sucbommittee is aware, every day, Immigration and Customs Enforcement (ICE) holds approximately 34,000 immigrants—about 400,000 each year—as part of a provision in annual appropriations acts known as the "detention bed mandate" or "bed quota." The 2014 Congressional Appropriations Act states that "funding made available … shall maintain a level of not less than 34,000 detention beds...." ICE has interpreted this wording as a requirement to fill 34,000 beds daily. As a result, immigration detention is expanding, at great profit to private corporations, even though approximately half of detained individuals have not been convicted of any crime, and the vast majority of the others are non-violent or low-level offenders. Our punitive immigration laws mandate detention for asylum seekers and other arriving immigrants as well as non-citizens who have already served time for certain crimes, including many non-violent crimes. Further, 30% of individuals in detention are not subject to mandatory detention, but are nevertheless held at the Department of Homeland Security's (DHS) discretion.

In the past year, DHS has resurrected the discredited practice of detaining families and children by creating new detention centers in remote locations to hold Central American women and children fleeing violence. These harsh and financially costly policies have been widely criticized for years in the United States and in the international community. In its Concluding Observations the CAT Committee also raised concerns about these practices, particularly the "plan to establish 6350 additional detention beds for undocumented migrant families," and the detention of unaccompanied minors in facilities "that closely resemble juvenile correctional facilities."[28]

Immigration detention is civil in nature, but many individuals are detained for months with no judicial review or opportunity to obtain bond. Indeed, at the end of December 2012 about 4,793 detainees had already been detained for at least six months, and many individuals have been held for almost a decade. Those held for the longest period of time are Lawful Permanent Residents who have families and community ties and are most likely to obtain immigration relief. Many non-citizens eligible for relief from deportation give up their viable legal cases and accept forced deportation away from their families and loved ones due to the continued psychological, economic, and/or physical hardships associated with prolonged detention.

Many detention facilities have come under scrutiny for ongoing inhumane treatment of detained persons, including prolonged solitary confinement, inadequate nutrition, inadequate medical and mental health treatment, lack of access to counsel, and verbal, physical and sexual abuse. Yet there is no accountability for U.S. government agents and contractors who have violated the rights of detained non-citizens, as the Performance-Based National Detention Standards issued by ICE take the form of mere guidelines rather than enforceable civil regulations, and are enforced only through internal inspections. Until adequate standards are codified into enforceable law, detained individuals have minimal protection from abuse.

The CAT Committee recommended the U.S. review its use of detention of immigrants, develop "community-based alternatives to immigration detention," move towards the elimination of family detention, and establish independent mechanisms that would work to investigate "allegation[s] of violence and abuse in immigration centers."[29]

[28] CAT 2014 Concluding Observations, ¶19.
[29] *Id*.

2. Expedited Removal and Accelerated Legal Proceedings

ICE reports that it deported 368,644 people in FY 2013, the highest number in history. Expedited removal procedures, often mandated by law, are increasingly employed by the U.S. Government in ways that deny due process to non-citizens, including torture survivors and asylum seekers, and keep individuals in need of international protection from being able to access asylum procedures in the United States. The United States Customs and Border Protection, often the first screening officials responsible for referring arriving non-citizens for interviews with USCIS if they fear returning home, frequently deny the right to seek asylum to non-citizens apprehended within the expedited removal process. Increasingly, refugees are denied access to credible fear interviews because CBP officers ignore pleas, deny interpreters, use physical intimidation, or hold non-citizens in substandard facilities with no access to even basic needs. Further, USCIS has recently revised its interpretation of the credible fear standard to make it more restrictive.

The U.S. government has also begun to implement highly accelerated procedures for children and families fleeing persecution and violence in Honduras, Guatemala and El Salvador despite their likely eligibility for asylum and other relief. In addition to detaining these families, DHS has begun to "fast track" their legal proceedings, inhibiting their ability to access counsel who can adequately develop their cases for asylum, Special Immigrant Juvenile Status, and other relief. These proceedings violate the United States' compliance with its own refugee protection laws as well as international treaties, including the Convention Against Torture, by sending refugees back to dangerous locations where they are likely to be persecuted, and doing so without due process.

As previously mentioned previously, the U.N Committee Against Torture also addressed removal-related human rights violations in its recent review, and made a number of recommendations to the U.S. government, including urging the United States to uphold more meaningfully the principle of non-refoulement, and providing special considerations for "minors, women, victims of torture or trauma and other asylum seekers with specific needs" during asylum procedures. [30]

3. Additional Recommendations

In addition to the recommendations made by the Committee Against Torture, we recommend that the United States:

- End all discretionary detention;
- Eliminate or significantly reduce the use of detention for non-citizens in removal proceedings, and implement alternatives to detention in the extreme cases where a restriction on liberty is warranted;
- Require regular and fair bond hearings for all detained individuals;
- Create binding, humane detention standards applicable to all facilities;
- Require access to counsel that ensures adequate representation for all detained non-citizens; Eliminate expedited processing and expedited removal procedures.

[30] *Id*. at ¶ 18.

V. GUANTÁNAMO AND INDEFINITE DETENTION

Despite repeated public assurances that the government is committed to closing Guantánamo, as of December 8, 2014, 136 men remain imprisoned. More than half of them – 67 – have been approved for transfer, most of them by the unanimous consent of an inter-agency task force over four years ago (and many of them multiple times). Of the remaining 136 detainees, 33 are slated for prosecution and 36 have been designated for continued detention – without charge or trial – indefinitely. Only 7 of the 33 are currently actively being prosecuted and a subset of the prosecutions are taking place in a system of military commissions, which CAT Committee recently identified as a "system that fails to meet international standards."[31]

The category of detainees that continue to be indefinitely detained without charge, presents a host of legal problems, particularly since it has not been accompanied by a meaningful mechanism to review the need for continued detention. The judicial process enabling detainees to challenge the basis for their detention has been rendered effectively meaningless by the DC Circuit Court of Appeals.[32] The Guantanamo Periodic Review Board (PRB), recently created for this purpose, has only managed to hold hearings for ten detainees. Neither process has led to orders compelling authorities to immediately release unlawfully held detainees.

Transfers of Yemenis, who now constitute the majority (84) of the prison population and the vast majority (54) of the cleared detainee population, continue to be at an impasse. The Obama Administration lifted its self-imposed moratorium on transfers to Yemen in May 2013, but, since July 2010 (a period of four and a half years), only four Yemenis have left the prison alive, and they were resettled in third countries. There appears to be no plan for gradual repatriation of Yemeni detainees based on an individualized assessment of their probability of successful adjustment to civilian life after release, or to resettle cleared Yemenis who would accept transfer to a third country, and no progress towards creating a rehabilitation center for former detainees in Yemen. We remain concerned about the possibility of Guantánamo devolving into an indefinite detention camp housing exclusively Muslim men from Yemen.

Reflecting on the legal status of those currently held at Guantánamo, the Committee Against Torture in the same report expressed "its deep concern about the fact that the State party continues to hold a number of individuals without charge at Guantánamo Bay detention facilities," noting that "indefinite detention constitutes per se a violation of the Convention."[33]

Numerous studies have shown that the atmosphere of persistent uncertainty about one's fate and the experience of effective indefinite detention has negative psychological impacts for the men at Guantánamo, with the potential for long-term ramifications long beyond release.[34]

Those detainees that have chosen to go on hunger strike to protest their unlawful detention and raise awareness about their plight have faced serious abuse. The twenty or so detainees currently on hunger strike have to undergo humiliating and painful forcible feeding that a medical expert described as "an extraordinary departure from customary medical practice." The feeding includes the daily re-insertion

[31] CAT 2014 Concluding Observations ¶ 14.
[32] Stephen Vladeck, *The D.C. Circuit After Boumediene*, available at: http://www.lawfareblog.com/wp-content/uploads/2011/12/Seton-Hall.pdf
[33] CAT 2014 Concluding Observations ¶ 14.
[34] *See, e.g.,* Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (Jun. 2011), http://physiciansforhumanrights.org/library/reports/indefinte-detention-june2011.html#sthash.8Q6ugnPs.dpuf.

of a tube that is wider than normally used in nasogastric feeding, infusing liquid nutrients at greater than standards speed and quantity, and other non-standard, painful procedures that are potentially dangerous to the detainees' health. During force-feeding, detainees are physically strapped down to a chair, where they remain for up to two hours. In its recent concluding observations, the CAT Committee stated that the "force-feeding of prisoners on hunger strike constitutes ill-treatment in violation of the Convention", and explicitly recommended that the U.S. "put an end to force-feeding of detainees in hunger strike as long as they are able to take informed decisions."

Long-term hunger strikers are also penalized for their protest through segregation in cell blocks where solitary confinement-like conditions are imposed, including stricter procedures as to searches, severely curtailed access to open air and exercise, and limited communication with their fellow inmates. Detainee abuse isn't limited to hunger strikers—our clients have told us, for example, that they regularly undergo humiliating genital search procedures whenever they are taken out of their cell for calls or meetings with their lawyers.

In light of these internationally recognized concerns, the U.S. government should:

- Exercise authority under the 2014 NDAA to effect additional transfers without further delay, including transfers to Yemen, of all men who are cleared and whom the government does not plan to charge to their home or resettlement countries;
- Provide the anticipated date by which the Administration expects to complete Periodic Review Board hearings for all detainees slated for review;
- Disclose the number of detainees currently on hunger strike and currently being forcibly fed;
- Disclose the number of detainees currently being held in solitary confinement at Guantánamo; and
- Adapt procedures for treatment of detainees on hunger strike, including medical counselling, in accordance with international recommendations for ethical procedures in protest hunger strikes and limited use of solitary confinement.

VI. CONCLUSION

We sincerely hope that this hearing will help usher in the continued engagement by this Subcommittee and Congress overall in the years that follow which will usher in policies and reforms that hold the U.S. accountable to its international obligations on key civil and human rights issues. Particularly in the year following the completed review of the U.S.' human rights record, and in the months before our universal periodic review process, we also remind the Subcommittee of the importance of all levels of government to uphold our human rights obligations. With strong leadership, sound practices, and a renewed commitment, the U.S. government can take strong steps towards fulfilling its international human rights obligations and upholding the Constitution.