

**Violations of Human Rights Obligations under the
International Covenant on Civil and Political Rights
through the New York Police Department's
Stop and Frisk Practices**

Suggested List of Issues
to Country Report Task Force on the United States

December 17, 2012

Center for Constitutional Rights

I. Reporting Organization

The Center for Constitutional Rights (CCR) is dedicated to advancing and protecting the rights guaranteed by the United States 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 change¹.

CCR has long been active in the movement to address racial profiling, particularly in New York City. CCR engages in advocacy and organizing efforts to address discrimination, brutality, misconduct and abuse by the police. Additionally, CCR filed Floyd, et al. v. City of New York, et al., a federal class action lawsuit against the New York Police Department (NYPD) and the City of New York that challenges the NYPD's practices of racial profiling and unconstitutional stops and frisks.

II. Issue Summary

Our submission discusses the New York Police Department (NYPD) unlawful pattern and practice of “stop and frisk” in which an officer detains an individual and, in many cases, pats them down without reasonable suspicion of criminal activity. Stops and frisks occur at an alarming rate in communities of color, who often feel under siege and harassed by the police.

In a federal lawsuit set to go to trial in March 2013, which challenges the legality of the NYPD practices, a U.S. federal judge concluded that there is enough evidence to at least call into serious question the legality and fairness of the NYPD's stop and frisk policies and practices.

The NYPD stop and frisk practices are having a devastating impact on the lives of literally thousands of New Yorkers every single day. Stop and frisk is often the first interaction that individuals have with the criminal justice system and carries with it negative long-term

¹ Learn more about CCR at www.ccrjustice.org.

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consequences for the affected individual. Our interviews with individuals who were subjected to this NYPD policy confirmed that these interactions are far from a minor convenience: they include incidents of harassment, use of excessive force or assault and people have changed their behaviors, routines and associations with others in order to avoid future stops. Interviewees also shared perspectives of entire communities living under siege of the NYPD.²

Moreover, stops have been found to be made on a discriminatory basis. Data regularly provided by the New York City police department to CCR documents grossly disproportionate numbers of stops and frisks in communities of color – in 2011, Blacks and Latinos made up 84 percent of all stops.³ Additionally, the discriminatory aspects of the NYPD's stop and frisk practices extend beyond discrimination based on race and ethnicity to include other minority or vulnerable populations. CCR conducted interviews with people who have been stopped by the NYPD, without any legal justification, primarily or exclusively because of their actual or perceived age, race, class, ethnicity, gender, gender identity and expression, immigration status, socioeconomic status, prior criminal record, sexuality, housing status, income, drug use, or other status.⁴

Further, our interviews with people stopped by the NYPD confirm additional rights violations, including violations of the freedom of movement and expression, freedom from arbitrary arrests, violations to the right to privacy, failures to protect minority communities and young people, and the prohibition on cruel or degrading treatment.

² Center for Constitutional Rights, *Stop and Frisk: The Human Impact*, July 2012, available www.stopandfrisk.org.

³ Center for Constitutional Rights, *NYPD's Stop and Frisk Practice: Unfair and Unjust*, Accessed December 17, 2012, available: www.ccrjustice.org/stopandfrisk.

⁴ Further, although CCR's interviews in *Stop and Frisk: The Human Impact* did not highlight experiences of discrimination based on other factors such as disability, mental illness, occupation, HIV status, we have reason to believe these are also reflective of peoples' experiences with the NYPD.

III. Legal Framework

The NYPD's "stop and frisk" practice is a clear example of the U.S. government falling behind in its international human rights obligations, including those enshrined in the International Covenant on Civil and Political Rights (ICCPR). These rights include:

- i. freedom from discrimination (Articles 2.1 and 26);
- ii. the prohibition on cruel, inhuman or degrading treatment or punishment (Article 7);
- iii. the prohibition on arbitrary arrests and detention (Article 9);
- iv. failure to uphold, promote and respect peoples' freedom of movement (Article 12.1);
- v. right to privacy (Article 17);
- vi. right to freedom of expression (Article 19);
- vii. upholding the rights and protection of children (Article 24); and
- viii. upholding the rights and protection of minorities (Article 27).

IV. Human Rights Committee 2006 Concluding Observations

The Human Rights Committee specifically expressed concern about the prevalent use of racial profiling in law enforcement activities in their 2006 Concluding Observations, noting their concern that race was continuing to be used "as a factor in conducting stops, searches, and other enforcement procedures... in particular at the state level."⁵ The Committee recommended in the Concluding Observations,

The State party should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials. The Committee wishes to receive more detailed information about the extent to which such practices still persist, as well as statistical data on complaints, prosecutions and sentences in such matters.⁶

⁵ Human Rights Committee, *Conclusions and Recommendations of the Human Rights Committee. United States of America: CCPR/C/USA/CO/3/Rev.1*, December 18, 2006, ¶ 24, hereinafter "2006 HRC Concluding Observations"

⁶ 2006 HRC Concluding Observations ¶ 24

The Committee called on the U.S. to supply the Committee with detailed information about the extent of such practices, including statistical information about complaints, prosecutions, and sentencing in such matters.

The Committee also noted its concern “about reports of police brutality and excessive use of force by law enforcement officials,”⁷ recommending that the United States curb law enforcement’s excessive use of force and brutality.⁸ Additionally, the Committee highlighted concerns over violent crime perpetuated by law enforcement against sexual minorities.⁹

V. U.S. Government December 2011 Report

In its periodic report submitted to the Human Rights Committee in late December 2011, the U.S. Government responded to the 2006 Concluding Observations. In paragraph 594 of their report, the Government noted it was

continuing and intensifying its efforts to end racial profiling – the invidious use of race or ethnicity as the basis for targeting suspects or conducting stops, searches, seizures and other law enforcement investigative procedures – by federal as well as state law enforcement officials,¹⁰

The Government listed efforts made at the federal level, including investigations of police departments launched by the U.S. Department of Justice. While these investigations are critical steps towards justice, more needs to be done at the local government level to stop discriminatory policing in the first instance. The U.S. Government, in their December 2011 report, failed to

⁷ 2006 HRC Concluding Observations, ¶ 30.

⁸ Id.

⁹ 2006 HRC Concluding Observations, ¶ 25.

¹⁰ United States State Department, Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, December 30, 2011, available at: http://www.humanrights.gov/wp-content/uploads/2011/12/ICCPR_Fourth_Periodic_Report.pdf (hereinafter “U.S. ICCPR Report 2011”) at paragraph 594.

address discriminatory policing practices by local law enforcement agencies including the millions of people unlawfully stopped by the NYPD.

Moreover, in their December 2011 response to paragraph 25 of the Committee’s Concluding Observations, the U.S. noted “a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities, based on prejudice and stereotypes”¹¹, however the federal government did not discuss the role of local law enforcement agencies in perpetuating this form of discrimination.

VI. Human Rights Committee General Comments

The Committee has issued several General Comments that have clarified the scope of prohibited violations that are relevant to the NYPD stop and frisk practice. Of particular relevance, General Comment 18 clarifies that the prohibition on discrimination by State Parties includes:

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹²

The Committee has interpreted Article 26 to prohibit discrimination in law or in fact in any field regulated and protected by public authorities¹³ and requires that State Parties provide information about these practices in their periodic treaty reports.¹⁴ The Committee also has explained that State Parties to the treaty must “take affirmative action in order to diminish or eliminate

¹¹ U.S. ICCPR Report 2011 at paragraph 606.

¹² HRC Gen. Comment 18

¹³ HRC Gen. Comment 18 at ¶ 9 (emph. added).

¹⁴ *Id.*, at ¶ 12.

conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”¹⁵ In its 2006 review of the U.S. government’s compliance with the ICCPR, the Human Rights Committee cited General Comment 18 and reminded the U.S. of its obligation to protect against practices “that have either the purpose or the effect of discrimination on a racial basis.”¹⁶

VII. Other UN Body Recommendations

The matter of stop and frisk has also been brought before various human rights bodies. Most recently, stop and frisk was highlighted during the Universal Periodic Review (UPR) process of the U.S.’ entire human rights record by civil society submissions and advocacy efforts.¹⁷ Notably, the U.S. government, in their submission before the Human Rights Council recognized “that racial or ethnic profiling is not effective law enforcement and is not consistent with our commitment to fairness in our justice system”¹⁸ and highlighted the Constitutional “right to be protected from unreasonable search and seizures,”¹⁹ yet failed to discuss NYPD practices that

¹⁵ *Id.*, at ¶ 10.

¹⁶ U.N. Human Rights Committee, CCPR General Comment 18: Non-Discrimination. October 11, 1989, ¶ 7, available:

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument> (hereinafter “HRC Gen. Comment 18”).

¹⁷ Civil society reports include: Center for Constitutional Rights, *From Rhetoric to Action: A Report on U.S. Engagement with the Universal Periodic Review Process*, March 17, 2010, available <http://www.ccrjustice.org/upr>, pp. 19-20; *Coalition for Community Safety*, Human Rights Abuses Committed by the New York Police Department, November 2010, available <http://www.ushrnetwork.org/content/papersdocuments/police-misconduct-new-york-city>; *U.S. Response to UN Human Rights Council Working Group Report*, March 10, 2011, and Rights Working Group, *The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion and National Origin*, November 2010, available at:

http://www.rightsworkinggroup.org/sites/default/files/Racial%20Profiling%20Joint%20Report%20USA_0.pdf.

¹⁸ U.S. Government: *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: United States of America Working Group on the Universal Periodic Review*, Ninth Session.. November, 2010. At Sec. 9, ¶ 50. The report went on to list several federal anti-discrimination statutes applicable to law enforcement and stated that efforts were being made to better enforce such federal statutes and to examine federal law enforcement policies and practices; nothing was mentioned regarding the use of racial profiling by state and local law enforcement agencies, including such as the NYPD, *See* Sec. 9, ¶ 51 and 52. Available: http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_USA_1_United%20States-eng.pdf.

¹⁹ *Id.* ¶ 56.

were failing to protect protected rights and uphold the U.S.’ commitment in a meaningful manner.

Following the November 2010 periodic review of the United States, members of the Human Rights Council repeatedly highlighted the issue of discrimination and use of force by members of law enforcement in their recommendations.²⁰ The U.S. responded in March 2011 by noting they were “conducting a thorough review of policies and procedures to ensure that none of its law enforcement practices improperly target individuals based on race or ethnicity.”

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance also outlined discriminatory stops as a concern during his 2009 visit to the U.S.²¹

VIII. Recommended Question

- What specific efforts have been made to review, modify or end practices and policies that perpetuate discrimination and other rights violations by local law enforcement agencies, including the NYPD, through practices such as stop and frisk?

²⁰ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, United States of America* ¶ 92.

²¹ “The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion and National Origin.” November 2010, at 3, available at: http://www.rightsworkinggroup.org/sites/default/files/Racial%20Profiling%20Joint%20Report%20USA_0.pdf.

IX. Suggested Recommendations

- Find that discriminatory and unlawful use of stop and frisk and other discriminatory law enforcement policing practices represent violations of the U.S. government's obligations under the ICCPR;
- Inquire as to what remedies are available to individuals whose rights are violated by the NYPD's stop and frisk practices; and
- Recommend that the United States ensure appropriate measures and mechanisms are put in place that works towards eliminating discriminatory policing practices by law enforcement agencies.