

**UN WORKING GROUP OF EXPERTS
ON PEOPLE OF AFRICAN DESCENT**

FACT-FINDING MISSION TO THE UNITED STATES

STATEMENT OF THE CENTER FOR CONSTITUTIONAL RIGHTS

JANUARY 2016

I. REPORTING ORGANIZATION

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 nonprofit 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 advocacy and legal work to challenge unlawful and inhumane government practices.¹

Contact: Nahal Zamani, Advocacy Program Manager, nzamani@ccrjustice.org, 212.614.6481 with any questions.

II. ISSUES STATEMENT AND SUMMARY

This organizational submission before the Working Group focuses on failures of government agencies to respect and promote the rights and dignity of people of African descent. We draw the Working Group's attention to several issues, including: the discriminatory and abusive policing practices; the suspicionless surveillance of Muslim communities; the racially discriminatory application of the death penalty and the use of solitary confinement in US prisons, and the discriminatory hiring practices in the Fire Department of New York. As we are also co-coordinating the civil society meetings for the Working Group's visit to New York City, we draw the Group's particular attention to several local violations in particular that are emblematic of larger issues.

III. RECOGNITION: THE RIGHT TO EQUALITY AND NON-DISCRIMINATION AND JUSTICE: ACCESS TO JUSTICE

- *Discriminatory, abusive and deadly policing practices of the NYPD*

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 local judicial systems to hold officers accountable for

¹ Learn more about us at www.ccrjustice.org. CCR also convened #Law4BlackLives, a national gathering of over 1000 lawyers, law students, legal workers, and jailhouse lawyers in 2015.

centerforconstitutionalrights
on the front lines for social justice

illegal conduct ensure impunity for incidents of police violence and brutality. This dangerous dynamic has become all the more clear by the incidents in recent years, fueling an intense and necessary national debate on police violence and racial justice.²

For over fifteen years, we have been challenging the racially discriminatory policing practices of the practices of the largest³ and most influential municipal police department: the New York Police Department (NYPD), and in 2013, a federal judge found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory “stop and frisks.”⁴ Evidence in our lawsuit, *Floyd v. City of New York*, the program targeted racial minorities and used race as a proxy for crime, as a vast majority of people stopped, roughly 85%, was Black or Latino, even though those groups only represented 52% of New York City’s population.⁵

Currently the NYPD is under the oversight of a court-appointed independent monitor to implement a series of concrete reforms to the NYPD’s policies, training, supervision, disciplinary systems, among other things, to ensure that individuals are stopped only based on the constitutionally required standard of “reasonable suspicion” and that the police no longer no longer systemically use race as a criteria for law enforcement actions. The court also ordered the City to engage in a “Joint Remedial Process,” currently underway, bringing together affected communities, elected officials, the NYPD, and other stakeholders to collaboratively develop reforms to the Department’s stop and frisk practices – and to provide a forum for a broader conversation about unfair policing practices.⁶

However, despite the court’s findings, and recent reductions in the absolute number of stops recorded by NYPD officers, there is no confirmation that the Department is yet fully in compliance with the Constitution or has stopped its use of discriminatory policing practices. Moreover, under the leadership of the current mayor and police commissioner, the NYPD has continued its overly aggressive and discriminatory enforcement of minor infractions and low-level offenses with a disproportionate impact on New York communities of color.⁷ Far from a minor inconvenience, this so-called “broken windows” style of policing, can lead to serious collateral and fatal consequences as demonstrated by the 2014 choke-hold death of Eric Garner and the broad public outrage following the failure to hold the offending officers accountable for Mr. Garner’s death.

² CCR has traveled and provided legal and advocacy support to local activists in Ferguson, Missouri and helped coordinate legal support for protesters through the Ferguson Legal Defense Committee.

³ The NYPD’s current uniformed strength is approximately 34,500. *See* http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml, *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).

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>

centerforconstitutionalrights

on the front lines for social justice

We are also concerned by the NYPD's excessive use of force, particularly in communities of color.⁸ This is coupled by the NYPD's failing disciplinary policies and procedures, which routinely fail to meaningfully punish and deter officers for incidents of misconduct, and rarely in proportion with the misconduct in question.⁹

Add to this, a national phenomenon of local municipalities failing to obtain criminal prosecutions for officers who engage in brutality through their grand jury processes, which fosters a sense of officer impunity for police violence overall.¹⁰ Across the US, it is extremely difficult and frighteningly rare to charge an officer, even when the acts of violence in question appears to contradict police department policy and is caught on video. Moreover, local district attorneys and prosecutors are both called upon to prosecute the same officers upon whom they depend on and cooperate with during their other investigations and prosecutions. This conflict of interest leads to repeat failures to indict officers for such acts. This was, up till recently, the norm in New York as well.

While we recently welcome the announcement of the passage of an executive order in July 2015 by New York State Governor Andrew Cuomo creating the office of a special prosecutor to investigate killings by police of unarmed civilians and with the discretion to investigate police killings of allegedly armed civilians, nationwide.

We request that the Working Group urge the US government to allow for truly independent investigations of incidents of lethal police violence as this is an imperative step in holding police accountable for their actions, delivering justice to the families of those killed and ultimately ending police violence.

With regards to New York-level needs for police accountability, we urge the Working Group to recommend to the US to:

- Engage in independent analysis of the NYPD's disciplinary policies and procedures and the strengthening of systems to ensure accountability;
 - Pass of the Right to Know¹¹ and the Criminal Justice Reform Acts by the New York City Council;
 - End aggressive and discriminatory enforcement of misdemeanor criminal and other quality of life laws, commonly known as or "broken windows" policing; and
 - Support meaningful engagement by all stakeholders with the above-described Joint Remedial Process in *Floyd v. City of New York*.
- *Suspicionless Surveillance of Muslim Communities by the NYPD*

For over a decade, starting in 2002, the NYPD has engaged in another overtly discriminatory policy practice by targeting Arab, Muslim, and South Asian neighborhoods for surveillance and "infiltration" — without any

⁸ 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. 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

⁹ 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>

¹⁰ 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>

¹¹ Communities United for Police Reform, Right to Know Act: About the Legislation, available: <http://changethenypd.org/right-know-act>

suspicion of wrongdoing.¹² 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 has not yielded a single criminal lead.¹³ With serious consequences in the lives of Muslim communities, including 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 is the subject of our ongoing litigation, *Hassan v. City of New York*, on behalf of communities in New Jersey.¹⁴

Though the NYPD recently disbanded one of the main units through which it conducted the surveillance, there is no evidence that it has abandoned the underlying unlawful targeting and profiling of Muslims. On October 13, 2015, the Third Circuit Court of Appeals issued a strong opinion in our clients' favor that reversed and remanded the case back to the district court.

We recommend the Working Group asks the why the current mayoral administration still defends this form of outright discrimination against Muslims, as exemplified in a January 2016 filing.¹⁵

- *Disparate and Discriminatory Impact in the Application of the Death Penalty and Solitary Confinement in US Prisons*

i. Solitary Confinement

CCR has a long history of challenging the use of isolation in US prisons, and firmly believes that all people are entitled to dignity, safety and humane treatment, irrespective of whether and where they are incarcerated.

In addition to solitary confinement's well-documented psychological and physically destructive consequences for peoples' lives,¹⁶ we wish to draw the Working Group's attention to the ways in which solitary confinement is disproportionately used against prisoners of color. While corrections officials claim that solitary confinement is used to protect prisons and guard from violent prisoners – solitary confinement is imposed on individuals, particularly prisoners of color, who threaten prison administrators in an altogether different way. Consistently, jailhouse lawyers and doctors, who administer to the needs of their fellow prisoners, are placed in solitary confinement. Political prisoners from various civil rights and independence movements join them.¹⁷

¹² Moreover, the surveillance of Muslims by the NYPD and the FBI was the subject of UN treaty review bodies throughout 2014 HRC 2014 Concluding Observations, ¶ 7. 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")

¹³ 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>.

¹⁴ Learn more about *Hassan v. the City of New York* at: <http://www.ccrjustice.org/hassan>.

¹⁵ See Answer of Defendant City of New York, *Hassan v. City of New York*, No. 2:12-cv-03401-WJM, January 15, 2016 filing, City files answer to complaint with district court, available: <http://www.ccrjustice.org/sites/default/files/attach/2016/01/Hassan%20v%20City%20of%20New%20York%20Answer%201%2015%2016.pdf>

¹⁶ CCR, Written Testimony, Human Rights and Solitary Confinement in the Americas: Thematic Hearing Before the Inter-American Commission on Human Rights, March 12, 2013, available: www.ccrjustice.org/home/get-involved/tools-resources/publications/ccr-written-testimony-use-solitary-confinement-us

¹⁷ *Harrison v. Institutional Gang of Investigations*, 2010 U.S. Distr. LEXIS 14944 at *21 (N.D. Cal. 2010).

We have consistently drawn the attention of independent human rights experts to this phenomenon during the recent periodic treaty reviews and relevant hearings of the US government,¹⁸ and these experts have expressed their persistent concern regarding the overuse of and disparate impact in whom in sent to solitary confinement in US prisons.

We recently announced a settlement in a lawsuit that is transforming California's use of solitary confinement.¹⁹ When the case was filed in 2012, more than 500 prisoners had been isolated in Pelican Bay State Prison's Security Housing Unit (SHU) for over 10 years, and 78 had been there for more than 20 years. The prisons had spent 22 ½ to 24 hours every day in cramped, concrete, windowless cells, and were denied telephone calls, physical contact with visitors, and vocational, recreational, and educational programming. Pelican Bay was not an anomaly, hundreds of other prisoners throughout California have been held in similar SHU conditions, as well as in other facilities across the country.

Given our work in California, we respectfully request the Working Group's consideration of the following sample recommendations for the use of solitary confinement nationwide:

- Ensure no one is sent to solitary confinement on the basis of their race, ethnicity, religion or protected activities or beliefs, and that these factors are not used as a proxy for designation be housed in solitary.
- Express concern over the broad use of solitary confinement, despite a growing international condemnation of its use, and the ability of the U.S. government to meet its obligations to prevent racial discrimination in the administration and functioning of the criminal justice system.

ii. Death Penalty

In 2013, CCR and our partner FIDH released a report examining the implementation of the death penalty in Louisiana and California, based on interviews of death-row prisoners, exonerees and their family members, advocates, legal counsel, and non-governmental organizations. In our report, we found that California and Louisiana both violate the principle of non-discrimination in the charging, conviction and sentencing of persons to death.²⁰

Of particular interest to the Working Group is the presence of two indicators of racial discrimination in California and Louisiana: the number and proportion of minorities in prison and the handing down of harsher sentences to those groups. In both States, minorities are disproportionately represented on death rows; this is particularly true with regards to African Americans.²¹ In California, we found the ratio of African Americans on death row was nearly six times their percentage in the population at large, and in Louisiana, the percentage of African Americans was double their representation in the population.

¹⁸ CCR, *Written Testimony, Human Rights and Solitary Confinement in the Americas*; CCR, *Statement of the Center for Constitutional Rights Race and Criminal Justice in the United States: Hearing before the Inter-American Commission on Human Rights*, March 16, 2015, available: <http://ccrjustice.org/iachrcjandrace>; See also CCR's periodic treaty submissions accessible at www.ccrjustice.org/iccpr, and www.ccrjustice.org/cerd.

¹⁹ Learn more at <http://www.ccrjustice.org/home/what-we-do/our-cases/ashker-v-brown>

²⁰ FIDH, CCR, *Discrimination, torture and execution: a human right analysis of the death penalty in Louisiana and California*, October 2013, available: <https://www.fidh.org/International-Federation-for-Human-Rights/americas/usa/california-and-louisiana-death-row-conditions-result-in-torture-14084>

²¹ FIDH, CCR, *Discrimination, torture and execution*.

We hope the Working Group will consider the following recommendations to the US Government in order to bring both California and Louisiana and all states still practicing the death penalty into compliance with international human rights standards, including:

- Imposing an immediate moratorium on executions and new death sentences;
- Expanding the domestic prohibition to include discriminatory impact without a particularized showing of intent—in line with international norms; and
- Regulating prosecutorial discretion that makes minorities vulnerable.

IV. DEVELOPMENT AND EMPLOYMENT: THE RACIALLY DISCRIMINATORY HIRING PRACTICES OF THE FDNY

CCR draws the Working Group's attention to the discriminatory hiring practices in the New York City Fire Department (FDNY), the subject of litigation and currently over court oversight, and as a clear example of barriers towards employment with governmental agencies faced by Black New Yorkers for over a decade.

We filed a legal challenge focusing on the discriminatory impact of written exams used by the FDNY to screen applicants as well as the discriminatory hiring process following the tests in April 2002. In 2012, a historic decision found New York City liable for FDNY's racially discriminatory hiring practices, which violated Title VII of the Civil Rights Act of 1964, the United States Constitution, the New York State Constitution, and New York State and City Human rights law. We settled with the FDNY and are currently monitoring the imposition of new recruitment goals, enhanced educational opportunities for firefighter applicants, and the ensuring of equal opportunity within the department. After the case was settled in 2014, with a new, fairer exam and oversight of the firefighter appointment process, the FDNY appointed the most diverse class in its history, with 17 percent Black firefighters and 24 percent Latino firefighters. When CCR filed its federal Equal Employment Opportunity Commission (EEOC) charge in 2002, New York City's fire department was 2.9 percent Black, in a city where 27 percent of the residents are Black. New York City also had at the time, the least diverse fire department of any major city in America – only 7.4 percent Black and Latino.²²

We recommend the Working Group consider asking what proactive steps municipal government agencies currently employing to learn from the example of the FDNY in their hiring practices.

V. CONCLUSION

We sincerely believe that the Working Group's fact-finding mission and its engagement with civil society will help usher in the continued and improved engagement by the U.S. government to ensure the protections of international rights, and in particular, the rights and dignity of people of African Descent. We stress the importance that all levels of government – federal, state and municipal – uphold this nation's human rights obligations.

²² Learn more at <http://www.ccrjustice.org/home/what-we-do/our-cases/united-states-america-and-vulcan-society-inc-v-city-new-york>.