

United States of America
Joint Submission to the United Nations Universal Periodic Review
Ninth Session of the Working Group on the UPR
Human Rights Council
22 November – 3 December 2010

This report provides information as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review.

**UNITED STATES VIOLATION OF BASIC HUMAN RIGHTS TO FREEDOM FROM
ARBITRARY SEARCH AND SEIZURE, FREEDOM FROM RACIAL
DISCRIMINATION AND FREEDOM OF PRIVACY**

Submitted by The International Association Against Torture and the December 12th Movement International Secretariat, NGOs in consultative status with the Economic and Social Council.

EXECUTIVE SUMMARY

By dint of its admission to the United Nations, the United States of America [hereinafter US] tacitly submits itself to adherence to the Universal Declaration of Human Rights. The US has also ratified the International Convention on Civil and Political Rights [hereinafter ICCPR] and the International Convention on the Elimination of All Forms of Racial Discrimination [hereinafter ICERD]. Key elements of these Covenants include: freedom from arbitrary search and seizure; freedom to privacy; freedom from racial discrimination (ICCPR Article 9, Sections 11, 17, 26 respectively; ICERD Articles 2 and 5). The widespread practice in U.S. law enforcement agencies of “stopping and frisking” persons suspected of criminal activity on the basis of their race and/or ethnic identity violates the above-cited sections of these conventions.

INTRODUCTION

The history of the United States of America is replete with examples of human rights violations suffered by African people through the governments’ implementation of criminal justice. The process began with the enslavement of Africans who were kidnapped and brought to the shores of North America with the status of property. It continued, following the abolition of slavery, with the passing of so-called “Black Codes” and “Jim Crow” laws which prescribed the behavior of Blacks and held them to a separate, stricter standard than that for whites. In its most modern incarnation it is now called “racial profiling,” a practice by which Blacks are singled out for greater scrutiny and/or stops/detention by law enforcement because of their skin color. A form of racial profiling in the 1990s, wherein law enforcement targeted and stopped vehicles driven by Blacks, came to be popularly known as “Driving While Black.” Court decisions and the attendant negative publicity led to the public abandonment of this practice on a statewide level, however, the practice, in other forms, has continued and, in many ways worsened around the US. The rationale for the continuation of this practice which has grown so extensively that it is now called “breathing while Black” is the need for law enforcement to “preemptively combat crime” by stopping “suspicious” persons before they can commit a criminal act.

“Stop and Frisk” Law Enforcement Policies Violate International Conventions

“Stop and Frisk” is a practice which involves law enforcement officers, who are investigating crimes or working to prevent crimes, briefly detaining or “patting down” people on the street.

The legal rationale for stop and frisk is found in a 1968 decision of the United States Supreme Court, Terry v Ohio, (392 U.S. 1, 88 S. Ct. 1868; 20 L. Ed. 2d 889; 1968) which legitimized these police tactics so long as the officer can articulate “a reasonable suspicion” to justify the stop. In its application, the “reasonable suspicion” has become that the person being stopped is Black or Latino.

Across the United States police stop and question more than a million people a year, the vast majority of whom are Black and Latino males. Between 2002 and 2008, stops in Los Angeles, California doubled to 244,038. Philadelphia’s stops, more than 200,000 in 2008, were nearly double those of 2007. Cities such as Boston, New Orleans and Chicago either don’t keep statistics or refuse to divulge them.

However the unquestioned leader in this category and the best example of the violation of human rights attendant with this practice is New York City whose police force stopped over 575,000 people in 2009. Nearly 90% were Black and Latino (AP 10/9/08). Despite a declining rate of crime, the number of stops in New York is increasing annually. Raymond Kelly, the Chief of the New York City Police Department [hereinafter NYPD] defends the practice as an effective means of combating crime and maintains that there is no racial element to it. However the facts and studies done by independent observers contradict the assertion. In 1999, the New York State Attorney General conducted a study which found that, even when the statistics were adjusted for higher crime and arrest rates in Black and Latino neighborhoods, there was still a racial bias to the basis of the stops, i.e. Blacks were stopped 23% more times than whites; Latinos were stopped 39% more often than whites. 10 years later, the Center for Constitutional Rights, which has sued New York City over this issue, found, in addition, that physical force was used against Blacks and Latinos more often than against whites who were stopped. The New York Civil Liberties Union which is also opposed to this practice has found that only 1 out of 10 stops leads to an arrest or a summons (to appear in court at a later date, Ed.).

The New York City practice of stop and frisk further violates the right to privacy of the 9 out of 10 individuals stopped who are innocent of any wrong-doing by entering their pedigree information (name, address, telephone, age, race, etc.) into an NYPD data base which is used for criminal investigative purposes. There is no provision for its removal. The information stays in that database forever.

RECOMMENDATIONS

The U.S. government must use its federal power to prohibit the use of racial profiling in federal, state and local criminal investigations and/or preemptive attempts to prevent crime.

The U.S. government must prohibit the inclusion of pedigree information obtained from individuals who were stopped and found innocent of any wrong-doing in any law enforcement, other governmental or any private data base.

The U.S. government must ensure that any information previously entered into law enforcement, other governmental or any private data base obtained from individuals stopped and found innocent of any wrong-doing be immediately and permanently removed from such data bases.