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on the front lines for social justice

Statement of the Center for Constitutional Rights
March 16, 2015

Race and Criminal Justice in the United States
Hearing before the Inter-American Commission on Human Rights

The Center for Constitutional Rights (CCR) would like to thank the Inter-American Commission on Human Rights (IACHR or "Commission") for holding this important hearing on the state of race and criminal justice in the United States.

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

In this written submission, we address several aspects of the criminal justice system where racial discrimination is present, including: discriminatory municipal policing practices and police violence; suspicionless surveillance of Muslim communities; harsh and unnecessary federal immigrant detention and expedited deportation practices; discriminatory designations to isolate prisoners in federal prisons; and the racially discriminatory use of the death penalty.

I. LAW ENFORCEMENT AND POLICING

A. 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. This dangerous dynamic has become all the more clear by the incidents in the last year, which have fueled an intense and necessary national debate on police violence and racial justice.[2]

CCR would like to focus its concerns on the practices of the largest[3] and most influential municipal police department: the New York Police Department ("NYPD" or "the Department"),

[1] Learn more, www.ccrjustice.org
[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*

as CCR has been challenging their racially discriminatory policing practices in and out of court for over fifteen years, culminating in a federal court judgment in our class action litigation, *Floyd v. City of New York*,[4] finding the NYPD liable for a widespread practice of unconstitutional and racially discriminatory "stop and frisks."

Between January 2004 and June 2012, the NYPD conducted over 4.4 million forcible pedestrian stops of New Yorkers. A vast majority of people stopped in that time, roughly 85%, was Black or Latino, even though those groups only represented 52% of New York City's population. Only approximately 10% of stops led to any further law enforcement action, and weapons were recovered in only a minute fraction of stops.[5] Evidence in the case revealed that officers in the case frequently made stops based on a profile: "male, black, 14-21 [years old]" and exposed the view of high level police officials that the program was designed to "instill fear" in Black and Latino youth that they might be stopped by police at any time. In other words, the program targeted racial minorities and used race as a proxy for crime. It was this practice that CCR successfully challenged in court, as constituting widespread violations of the Fourth and Fourteenth Amendments of the U.S. Constitution, resulting in an August 2013 judgment by a federal court finding the City liable.[6]

To remedy the systemic abuses, the Court ordered the appointment of an independent monitor to implement a series of concrete reforms to the NYPDs 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" that will bring 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.[7]

The court-ordered collaborative process in New York can serve as a model to develop meaningful, lasting and credible reforms to municipal police departments across the country. Similar processes, including one used over a decade ago in Cincinnati, have been effective in reducing crime and police-involved shooting deaths, significantly improving relationships between police departments and the communities they police, and bringing discriminatory and other abusive law enforcement policies and practices into compliance with the law. Notably, the recent Department of Justice report on the Ferguson Police Department (FDP), observed that the FDP "should develop and implement a system that incorporates civilian input into all aspects of

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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] CCR, *Stopped, Seized and Under Siege*.

[6] *See Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) ("Liability Opinion")

[7] *See Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013) ("Remedial Opinion")

policing, including policy development, training, use-of-force review, and investigation of misconduct complaints."[8]

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, 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.[9] 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.

Additional concerns touch upon excessive use of force, as well as insufficient disciplinary policies and procedures. In New York, excessive use of force continues to be a problem in New York, particularly in communities of color.[10] 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.[11] This problem in New York – as in virtually all jurisdictions – arises in part because the power to impose disciplinary penalties on offending officers rests solely with the commissioner or chief of the police department,[12] as does the decision whether or not to even prosecute the officers through existing administrative disciplinary hearing processes. Adding to this, municipalities commonly fail to obtain criminally prosecutions for officers who engage in brutality through a grand jury process, which fosters a sense of officer impunity for police violence.[13]

We would welcome the Commission's consideration of the following recommendations for the U.S. government:

- Withdrawal of federal support and funding for municipal police departments who routinely engage in discriminatory practices, including ending the Department of

[8] U.S. Department of Justice Civil Rights Division, Investigation of the Ferguson Police Department, March 4, 2015, page 95.
[9] 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
[10] 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
[11] 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
[12] The very few exceptions include San Francisco, CA, and Milwaukee, Wisconsin, where officer appeals of police commissioner disciplinary decisions and, in San Francisco only, serious misconduct cases in which disciplinary penalties in excess of 10-day suspensions are contemplated are heard and decided by the civilian board or commission that governs the police department. *See* City and County of San Francisco Police Commission, *Procedural Rules Governing Trial of Disciplinary Cases* § I (adopted April 27, 2011)(hereinafter "S.F. Police Commission Disciplinary Trial Rules"); City of Milwaukee Fire and Police Commission, *About the Fire and Police Commission*, available at http://city.milwaukee.gov/fpc/About. Civilian governance of local police departments is discussed further in Point III *infra.*
[13] 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

Defense's 1033 program which grants municipalities "excess" military apparatus and contributes to escalating militarized policing of municipalities;
- DOJ's creation of a national database to track police shootings and other incidents of brutality and excessive use of force;
- Passage of the federal End Racial Profiling Act (ERPA); and
- Revision of 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.

At the municipal level, we recommend:

- Independent analysis of the NYPD's disciplinary policies and procedures and the strengthening of systems to ensure accountability;
- Passage of the Right to Know Act by the New York City Council;[14]
- Granting of power to New York State Attorney General to independently investigate and prosecute incidents of lethal police violence;
- Ending of aggressive and discriminatory enforcement of misdemeanor criminal and other quality of life laws, commonly known as or "broken windows" policing; and
- Support for and meaningful engagement by all stakeholders with the above-described Joint Remedial Process in *Floyd v. City of New York*.

B. Suspicionless Surveillance of Muslim Communities and the Increased Harassment and Coercion of Muslims to Become Government 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.[15] 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.[16]

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 a case, *Hassan v. City of New York*, filed by Muslim Advocates and CCR on behalf of communities in New Jersey.[17]

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

[15] 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")

[16] 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.

[17] Learn more about *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.[18] Additionally, there is no effective or transparent process for being taken off the List.[19] 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. CCR with CUNY Law School, has filed a legal case demanding an end these abusive practices and to ensure transparency and judicial limitations on the use of the No Fly List.[20]

We would welcome the Commission's consideration of the following recommendations for the U.S. government:

- Prohibit 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;
- Hold hearings to investigate the use of unlawful or abusive pressure tactics by law enforcement to recruit informants and implement appropriate remedies; and the
- Develop 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.

II. IMMIGRATION DETENTION AND EXPEDITED DEPORTATION

While CCR welcomes the implementation of President Obama's Executive Actions 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 international bodies.

A. Immigration detention

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 "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

[18] 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/
[19] *See* ACLU, Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority 46-48 (Sept. 2013).
[20] Learn more about *Tanvir v. Holder* at: http://ccrjustice.org/Tanvir

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.

Throughout 2014, DHS 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.[21]

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.

B. Expedited Removal and Accelerated Legal Proceedings

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.

[21] 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," ¶19.

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 by sending refugees back to dangerous locations where they are likely to be persecuted, and doing so without due process.

We would welcome the Commission's consideration of the following recommendations for the U.S. government:

- 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; and
- Eliminate expedited processing and expedited removal procedures.

III. PRISONS

A. U.S. Bureau of Prisons' Isolation of Muslim Prisoners: Communications Management Units

In 2006, the Federal Bureau of Prisons (BOP) secretly opened the first Communications Management Unit (CMU), a prison unit designed to isolate and segregate certain prisoners in the federal prison system from the rest of the BOP population. There are currently two CMUs, one located in Terre Haute, Indiana and the other in Marion, Illinois. Together, they house between 60 and 70 prisoners.[22]

While the BOP claims that the CMUs are designed to hold dangerous terrorists and other high-risk prisoners who require heightened monitoring of their external and internal communications, this account is incomplete. Because of the minimal procedural protections in place to guide CMU designations, the BOP has disproportionately focused on Muslim prisoners, and those with unpopular political views, irrespective of the alleged threat that they pose.[23]

[22] CCR, Factsheet, CMUs: The Federal Prison System's Experiment in Social Isolation, Updated March 2013, available: www.ccrjustice.org/files/CCR_CMU_Factsheet_March2013.pdf.

[23] Prisoners have also been sent to the CMU in retaliation for challenging poor treatment or other rights violations in the federal prison system.

In 2010, CCR filed a legal challenge, *Aref v. Holder,* to various policies and practices the CMUs.[24] In April 2014, CCR was able to make available dozens of BOP documents obtained through this litigation for the first time. These documents confirm systematic rights violations at the CMUs. Discovery in the case illustrates the discriminatory nature of CMU designations along with myriad due process violations in the CMU designation and review process.[25]

An examination of the CMU population uncovers a vast overrepresentation of Muslims. While this is likely the result of purposeful targeting of Muslims for CMU designation, the disproportionate focus on Muslim prisoners is troubling even if only discriminatory impact can be proven.

The first CMU was opened in 2006 in the absence of written criteria or a designation process.[26] Over the next three years, the BOP continued to designate prisoners to the CMU in the absence of any explicit written criteria or process.[27] Eventually, the BOP documented a vague series of criteria in response to the type of individuals who were approved for transfer to the unit.[28] These vague and inconsistent criteria have has allowed for a disturbing overrepresentation of Muslims in the CMU.[29] Of 178 total documented CMU designations, 101 were of Muslims.[30] This is a nearly 1000% overrepresentation of Muslims compared to the BOP's general federal prison population. [31]

Though the BOP has previously defended this overrepresentation as the unavoidable and non-discriminatory consequence of their focus on individuals with terrorism convictions, a close look at the data contradicts this explanation. Of the first 55 prisoners designated to the CMU, 45 were sent there because of their connection to terrorism, but the remaining 10 were designated due to involvement in prohibited activities related to communication, not terrorism. Of those ten, eight self-reported as Muslim.[32] The BOP cannot defend these troubling statistics simply by invoking terrorism. Indeed, CCR believes that the CMUs were created to allow for the segregation and restrictive treatment of primarily Muslim prisoners based on the U.S. government's belief that such prisoners inherently pose a threat to institution security.[33]

Many CMU prisoners have neither significant disciplinary records nor a history of communications-related misconduct. Instead, religious profiling and political scapegoating keep them locked inside these special units. The discriminatory nature of CMU designations is further accentuated by the fact that CMUs have been used to also house various outspoken individuals

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[24] *Aref v. Holder* is a federal lawsuit challenging the policies and conditions at the two CMUs, as well as the circumstances under which they were established. Learn more at www.ccrjustice.org/cmu.
[25] CCR, Statement of Undisputed Facts and supporting exhibits, in *Aref v. Holder,* April 23, 2014, available: http://ccrjustice.org/ourcases/current-cases/aref-et-al-v-holder-et-al
[26] *Id.* at ¶ 84, 85.
[27] *Id.* at ¶ 88.
[28] *Id.* at ¶ 127.
[29] The Muslims detained in these two CMUs are both of Middle Eastern descent and also African-American (many who converted during their time in the prison system).
[30] Statement of Undisputed Facts and supporting exhibits, at ¶ 272.
[31] *Id.* at ¶ 274; CCR, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment in *Aref v. Holder,* April 23, 2014, available: http://ccrjustice.org/files/Memo%20in%20Support%20of%20Summary%20Judgment%20Motion.pdf
[32] CCR, Statement of Undisputed Facts and supporting exhibits at ¶ 273, *CCR*, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, p. 10.
[33] CCR, First Amended Complaint, in *Aref v. Holder,* September 5, 2012, available: http://ccrjustice.org/files/First%20Amended%20Complaint%20with%20Exhibits%20-%20Redacted.pdf, p. 30.

with "unpopular" political views, such as environmental activists. Some of these prisoners may have been brought to the CMU as a calculated means to "integrate" the units after critical press attention focused on the targeting of Muslims.[34]

Compounding this concern, the BOP has not provided clear criteria for designating prisoners to the units,[35] and when prisoners are told the purported reason or their CMU placement, these reasons are frequently demonstrably false or inaccurate.[36] Moreover, the BOP does not require that the final decision-maker document or explain the reason(s) relied upon in ordering that a prisoner be sent to a CMU.[37] The Notice provided to prisoners upon arrival at a CMU does not include the actual rationale or information that was used to make that decision. Thus, the BOP provides CMU prisoners no meaningful way to challenge these incomplete and inaccurate notices, or understand what alleged conduct led to their CMU confinement. As a result, prisoners languish for years in the CMU for no discernible, non-discriminatory reason.[38]

These realities give rise to concerns over international rights obligations to prevent discrimination of U.S. government agencies in their administration and functioning of the criminal justice system. Additionally of concern is the lack of meaningful processes and opportunities for those who wish to challenge their designation and continued placement in the units.[39]

We respectfully request the IACHR's consideration of the following sample recommendations:

- Ensure no one is sent to the CMUs on the basis of their ethnicity, religion or protected activities or beliefs, and that these factors are not used as a proxy for designation to the units.
- Express concern over the CMUs 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.

IV. THE DISCRIMINATORY USE OF THE DEATH PENALTY: CALIFORNIA AND LOUISIANA

CCR and our partner FIDH released a report in 2013[40] examining the implementation of death penalty in Louisiana and California. We consider the implementation of death penalty in those two States as emblematic examples of violations to the principle of non-discrimination in the context of the implementation of criminal law.[41] The report, based on interviews of death-row

[34] CCR, CMUs: The Federal Prison System's Experiment in Social Isolation.
[35] CCR, Statement of Undisputed Facts and supporting exhibits, ¶85, 88, 123, 124, 127,
See also CCR, Exhibit 46, http://ccrjustice.org/files/SJ%20-%20Exhibit%2046.pdf.
[36] CCR, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, pp. 21-4.
[37] CCR, Statement of Undisputed Facts and supporting exhibits, in *Aref v. Holder,* ¶ 144-7.
[38] CCR, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, pp. 25-9.
[39] *Id.*, pp. 20-31.
[40] 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
[41] Moreover, FIDH and CCR's report found that the death penalty, as implemented in California and Louisiana, violates the right to life, the right to non-discrimination as well as due process, and freedom from torture or cruel, inhuman, or degrading treatment. The violations of these core human rights obligations overlap and intersect, and are present at every stage in the capital

prisoners, exonerees and their family members, advocates, legal counsel, and non-governmental organizations in both States found California and Louisiana violate the principle of non-discrimination in the charging, conviction and sentencing of persons to death.

The number and proportion of minorities in prison on one hand and the handing down of harsher sentences to those groups on the other constitute two indicators of racial discrimination. Both indicators are present in the case of death penalty sentences in California and Louisiana. In both States, minorities are disproportionately represented on death rows; this is particularly true with regards to African Americans.[42] In California, the ratio of African Americans on death row is nearly six times their percentage in the population at large, and in Louisiana, the percentage of African Americans is double their representation in the population. It is widely reported that the proportion of persons sentenced to death who are minorities does not correlate with the rates of all death eligible murders. As set forth above, the disparities are even starker in cases where the victim is white. Moreover, reports indicate that the discretion granted to elected prosecutors in California and Louisiana contributes to inconsistent and biased use of the death penalty.[43]

Until the complete abolition of the death penalty in the United States is realized, the following interim steps must be taken to bring California and Louisiana into compliance with international human rights standards, including:

- Impose an immediate moratorium on executions and new death sentences;
- Expand the domestic prohibition to include discriminatory impact without a particularized showing of intent—in line with international norms;
- Ensure meaningful, expeditious judicial review of death penalty convictions;
- Regulate prosecutorial discretion that makes minorities vulnerable;
- Provide properly funded and well-trained counsel; and
- Ensure there are impartial juries that represent the full range of public opinion.

V. CONCLUSION

We sincerely hope that this hearing will help usher in the continued engagement by the U.S. Government to ensure all protections of international rights and, in particular, to address racial discrimination within the criminal justice system. We stress the importance that all levels of government – federal, state and municipal –uphold this nation's human rights obligations. With strong leadership, sound practices, and a renewed commitment, the U.S. government can take strong steps towards upholding its human rights obligations at home.

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process, from the charging of a death eligible crime, to the actual commission of the execution. No legal or correctional reforms could bring legitimacy to the necessarily inhumane and premeditated taking of a life by the state through its imperfect system. As such, FIDH and CCR unambiguously and fundamentally oppose any use of the death penalty in the United States, including in California and Louisiana and calls for its immediate abolition.

[42] FIDH, CCR, *Discrimination, torture and execution*.

[43] *Id.* at 42.