

United States of America

Submission to the United Nations Universal Periodic Review

Ninth Session of the Working Group on the UPR
Human Rights Council
1-12 November 2010

Human Rights Abuses Committed by the New York Police Department

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Endorsed by:

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¹ We are writing as members of the New York City Coalition for Community Safety (CCS), a coalition of New York City grassroots, community-based, legal and advocacy organizations. CCS's mission is to increase transparency and accountability of the New York Police Department (NYPD) to New York City communities and individuals through legislative and policy reform.

I. Police Brutality, the use of TASERS and Sexual Assault as a Form of Torture

Police brutality, the use of TASERS and sexual assault have been recognized in the international community as forms of torture. In 2006, the United Nations Committee Against Torture (the treaty body for the Convention Against Torture to which the United States is a signatory), requested that the United States provide information about how the United States monitors behavior of law enforcement officials internally.² The United States Second Periodic Report stated that there was federal legislation that allowed Attorney General to institute civil lawsuits to evoke change in “patterns or practices of misconduct” in law enforcement agencies. The report also described statutory avenues of redress such as writs of habeas corpus, criminal charges and civil actions through the use of federal civil §1983 claims.³ In response to the Periodic Report, the Committee Against Torture included in their “Conclusions and Recommendations” that the United States should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention.⁴

In January 2010, the Committee Against Torture requested reports of brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular towards racial minorities, migrants and persons of different sexual orientation. It asked the United States to describe steps taken to address this concern including establishing adequate systems for monitoring police abuse, developing adequate training for law enforcement officials and producing reports of police brutality and excessive use of force, ensuring that incidents are investigated and that perpetrators are prosecuted and appropriately punished.⁵ The United States has not responded to this report at this time. A response to this list of questions should be given to the Committee Against Torture anticipation of the Fifth Periodic Report that the United States must submit by January 2011.⁶

The Committee Against Torture and the United Nations Human Rights Committee (HRC) have expressed considerable concern regarding human rights abuses amounting to torture and cruel, inhuman and degrading treatment, as well as deaths, arising from the use of TASERS by local law enforcement agents and correctional authorities, and called on the US government

² See List of Issues to Be Considered During the Examination of the Second Periodic Report Of the United States of America. CAT/C/USA/Q/2/8 February 2006.

³ See Second Periodic Report of the United States to the Committee Against Torture, United States State Department Website (February 2000), available at <http://www.state.gov/g/drl/rls/c14907.htm>.

⁴ See United Nations, Committee Against Torture Report-Thirty-sixth Session, “Consideration of Reports Submitted by State Parties Under Article 19 of the Convention. Conclusion and Recommendations of the Committee Against Torture. United States of America” CAT/C/USA/CO/2/ 25 July 2006, (hereinafter CAT Recommendations).

⁵ List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America, 43rd Session,” CAT/C/USA/Q/5/20 January 2010, available at <http://tb.ohchr.org/default.aspx> [click on convention, “CAT”; country “United States of America”; type “List of issues”].

⁶ The present list of issues was adopted by the Committee at its forty-third session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

to strictly regulate their use.⁷ Consistent with the position taken by the Committee, the HRC also expressed concern with respect to the use of TASERS “in situations where lethal or other serious force would not otherwise have been used. It is concerned about information according to which police have used tasers against unruly schoolchildren; mentally disabled or intoxicated individuals involved in disturbed but non-life-threatening behaviour; elderly people; pregnant women; unarmed suspects fleeing minor crime scenes and people who argue with officers or simply fail to comply with police commands...”⁸ The Committee Against Torture also recommended the United States “carefully review the use of electro-shock devices, strictly regulate their use, restricting it to substitution for lethal weapons and eliminate the use of these devices to restrain persons in custody...” The US government should report on its progress in this regard.

CASE STUDIES:

- In 2008, a New York City police officer tasered a 35 year old emotionally disturbed man, causing him to fall from a building ledge to his death.¹
- In 2008, two lesbians of color were severely beaten and called "bitch ass dyke" and other homophobic slurs by New York City officers responding to a noise complaint at a club.¹
- In 2008, a transgender woman was forced to strip and bend over by New York City police and court personnel on three different occasions to "determine her gender" following a single arrest for misdemeanor trespassing in a public housing project. Even though she has had gender reassignment surgery, she was subsequently held overnight in a cell with men.¹
- In 2005, two New York City police officers followed a 35 year-old Latina woman home after stopping her for a traffic offense, and subsequently forced her to perform oral sex on them in her apartment while her three children slept nearby.¹

Both the Committee Against Torture and the HRC also expressed particular concern regarding violations of the human rights of lesbian, gay, bisexual and transgender people by law enforcement agencies and correctional authorities, and widespread police violence against transgender individuals was explicitly raised during the hearings before the HRC.⁹ The US

⁷ CAT Recommendations at 35; United Nations, Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant. Conclusions and Recommendations of the Human Rights Committee. United States of America” CCPR/C/USA/CO/3/Rev.1 18 December 2006, (hereinafter “HRC Recommendations”).

United Nations, Committee Against Torture Report-Thirty-sixth Session, “Consideration of Reports Submitted by State Parties Under Article 19 of the Convention. Conclusion and Recommendations of the Committee Against Torture. United States of America” CAT/C/USA/CO/2/ 25 July 2006.

⁸ See HRC recommendations. A member of the UN Committee Against Torture raised very similar concerns when questioning the US during the May 7th hearing before the CAT. During the CAT’s review of the U.S.’ government’s Initial Report to the Committee, the Country Rapporteur inquired how “the administration, however brief, of an electric shock of 50,000 volts did not constitute cruel, inhuman, and degrading treatment,” *Summary Record of the First Part (Public) of the 427th Meeting*, May 10, 2000, CAT/C/SR.424, ¶ 21, and the Committee’s 2000 Conclusions and Recommendations also reflect concerns regarding the use of electroshock devices. *Conclusions and Recommendations of the Committee Against Torture: United States of America*. 15/05/2000. A/55/44, para. 179(e).

⁹ HRC Recommendations at 25, see also CAT Recommendations 32.

government failed to offer any substantive response to questioning regarding its efforts to implement the recommendations of Amnesty International's 2005 report, *Stonewalled: Police Brutality and Abuse Against Lesbian, Gay, Bisexual and Transgender People in the US*,¹⁰ documenting widespread abuses of the rights of LGBT people by law enforcement officers extending from street encounters to custodial situations.¹¹

Additionally, the Committee Against Torture and the HRC expressed particular concern regarding violations of the human rights of lesbian, gay, bisexual and transgender people by law enforcement agencies and correctional authorities, and widespread police violence against transgender individuals was explicitly raised during the hearings before the HRC.¹²

New York City has experienced a series of police brutality cases where officers have raped, assaulted and killed innocent citizens with impunity. This violence has spanned multiple city administrations, from Rudy Giuliani to Michael Bloomberg. Innocent New Yorkers and their families, most of them people of color, have found themselves brutalized and scarred while the majority of police officers involved are not held accountable for human rights violations.

These are just a few tragic cases that demonstrate a pattern of police violence and torture that continues to disproportionately impact racial minorities with practically no oversight nor accountability.

The NYCLU reports that between 2006-2008, nearly 90 percent of the people shot by the NYPD officers were African American or Latino. Between 1999 and 2006, in 77 percent of the incidents where officers fired their weapons at civilians the officers were the only ones shooting, with officers often shooting at unarmed civilians (like Sean Bell and Amadou Diallo).¹³ Furthermore, police violence impacts sex workers and the Lesbian Gay Bisexual and Transgender (LGBT) community of color. According to two studies released by the Sex Workers' Project of the Urban Justice Center in NYC, up to 17 percent of sex workers interviewed reported rape, sexual harassment and abuse by law enforcement officers.¹⁴ Another report noted an increase in the number of cases in which officers were found to have extorted sexual acts from women in exchange for leniency.¹⁵ Additionally, LGBT people of color in New York City have reported excessively harsh treatment in their interactions with police authorities; including verbal, physical, and sexual abuse.¹⁶

¹⁰ Report available at: <http://www.amnestyusa.org/lgbt-human-rights/stonewalled-a-report/page.do?id=1106610>. A 2003 FIERCE survey of LGBT youth in the West Village and Chelsea, gay neighborhoods in NYC, found that 98 percent of respondents had experienced police harassment or violence.

¹¹ Comments of HRC member Michael O'Flaherty during the July 18, 2006 hearing.

¹² HRC Recommendations at 25, *see also* CAT Recommendations at 32.

¹³ Center for Constitutional Rights Report, *Background on Racial Profiling and Police Brutality Against People of Color in New York City Prepared for the Special Rapporteur on Racism on the occasion of his 2008 mission to the U.S.*, available at: <http://ccrjustice.org/racial-gender-and-economic-justice>.

¹⁴ Sex Workers Project, *Unfriendly Encounters: Street-Based Sex Workers and Police in Manhattan, 2005*; Sex Workers Project, *Behind Closed Doors* (New York City: 2005); Sex Workers Project, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, (New York City: 2003).

¹⁵ M. Weiss, *Crooked-Cop Cases Surge*, New York Post, October 22, 2007.

¹⁶ Amnesty International, *Stonewalled, Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.*, 2005; "It's War in Here": *A Report on the Treatment of Transgendered and Intersex People in New York State Men's Prisons* 33, Sylvia Rivera Law Project (2007).

II. Racial Profiling and Racial Disparity in Policing Practices

In New York City and its surrounding boroughs, racial profiling and police brutality have been institutionalized through a series of “quality of life” programs enforced by the NYPD. These purported “anti-crime” programs are based on a theory of “zero tolerance” for even minor offenses. “Quality of life” policing creates a hostile environment where youth of color, homeless people, sex workers and street vendors, among others, are harassed, intimidated, stopped, and searched on a daily basis, where women of color are frequently subject to sexual harassment by the police, poor residents are displaced, and communities are transformed in terms of race and socio-economics.

The New York City government and the NYPD have done little to combat the racial profiling that impacts half a million New Yorkers every year. According to the NYPD’s own data, the number of stops indicates a nearly seven percent rise since 2008 in police stops with a corresponding increase in racial disparity as well. A “stop” is when a police officer approaches an individual and temporarily detains them. Furthermore, a stop often does not have to result in arrest. Between 2005 and 2008, 80 percent of individuals stopped were African American and Latinos, and police reports from 2009 indicate that 84 percent of individuals stopped were African American and Hispanic – though they comprise approximately 25 percent and 28 percent of New York City’s total population respectively. In 2009, there was a record high 576,394 stops by the NYPD. The data reveals only 1.25 percent of the year’s stops resulted in the discovery of a weapon, and only 6 percent of the stops resulted in arrests.¹⁷ This is a stark disparity considering that African Americans and Latinos make up 25 and 27 percent respectively of New York City’s population.¹⁸

The Civilian Complaint Review Board (CCRB) is the oversight agency charged with investigating complaints against police officers.¹⁹ The latest CCRB Status Report for the six month period from January through June 2009 states that the number of complaints for the first part of 2009 (totaling 4,026) was *higher* than any six month period since 1993 (the year the CCRB was first established). During this period, the CCRB referred an *additional* 5,752 complaints outside its jurisdiction to other agencies.²⁰ Furthermore, the CCRB reports that 57 percent of all complaints made against the NYPD are filed by African Americans. This is striking, considering that in 2008, African Americans made up only 23 percent of the New York City population. The CCRB reports that Hispanics make up the second highest group of

¹⁷ The City often claims the racial disparity in stops is accounted for by the racial breakdown of crime suspects, but the data from the first three quarters of 2009 (fourth quarter detail unavailable at this time) reveal that “fits relevant description” is the reason for a stop only 15 percent of the time. Far and away the most often cited reason for a stop by the police is the vague and undefined, “furtive movements” (nearly 50 percent of all stops), and “casing a victim or location” (nearly 30 percent of all stops). Also listed are “inappropriate attire for season,” “wearing clothes commonly used in a crime,” and “suspicious bulge,” among other boxes an officer can check off on the form.

¹⁸ New York City Civilian Complaint Review Board, Status Report January-December 2008, pg 14 (June 2009)

¹⁹ The CCRB is an independent and non-police mayoral agency charged with investigating civilian complaints of police misconduct and recommending disciplinary actions in cases they substantiate. The CCRB is headed by a thirteen-member board, representing 5 mayoral appointments, 5 City Council appointments and 3 police commissioner appointments. Considering the Mayor appoints the police commissioner, it is our (and many other organizations’) belief that the CCRB is not truly independent of the police department.

²⁰ New York City Civilian Complaint Review Board Status Report January -June 2009 pg 6 (March 2010) available at http://www.nyc.gov/html/ccrb/pdf/ccrbsemi2009_Jan_June.pdf.

complainants – approximately 26 percent of all complaints filed against the NYPD compared to only 13 percent of all complaints filed by Whites.²¹

The CCRB is generally considered ineffective by many New York residents. This may be in part because the NYPD fails to discipline many officers in cases that have been substantiated by the CCRB. In the past three years, the number of cases that the NYPD has refused to discipline has increased dramatically. In the years 2004, 2005, and 2006, the NYPD refused to discipline an average of 15 cases a year. In 2007 and 2008, the NYPD has refused to discipline 104 and 86 cases respectively.²² The 2009 CCRB six-month status report notes that since 2007, the NYPD has failed to discipline an average 48 cases per six months. The report notes that the CCRB is working with the Police Department's Advocate Office to determine why there has been such a jump in cases that go undisciplined by the NYPD.²³ Without an adequate mechanism for independent civilian review, the residents of New York, especially African Americans and Latinos, lack trust in the city or state government's ability to hold accountable perpetrators of human rights violations. CCS is concerned that the CCRB has been ineffective in its investigation role and has failed to effectively advocate for the reform of police practices. The CCRB has no prosecutorial authority and carries no power to affect change within the police department. As a result, even officers reported by the CCRB are often not punished for their misconduct. Human Rights bodies such as the Committee Against Torture and Committee on Elimination of Racial Discrimination acknowledge a need for both monitoring and holding officers accountable for misconduct.²⁴ A monitoring system such as the CCRB is thus ineffective unless there are stronger measures to hold officers charged with misconduct accountable for their abuse.

²¹ *Id* at 8

²² New York City Civilian Complaint Review Board, Status Report January-December 2008, pg 10 (June 2009)

²³ New York City Civilian Complaint Review Board Status Report January -June 2009 pg 13 (March 2010) available at http://www.nyc.gov/html/ccrb/pdf/ccrbsemi2009_Jan_June.pdf.

²⁴ *See supra* note 5, see also *infra* note 24

III. International Calls for Accountability, Investigation and Reform

In March 2008, the Committee on the Elimination of Racial Discrimination presented its concluding observations on the United States to the United Nations. The Committee expressed concern about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities. The Committee observed the impunity of police officers responsible for racial profiling and recommended the United States significantly increase its efforts to address the problem by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee recognized the need to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.²⁵ Additionally, the Committee Against Torture has recently requested the United States provide information on measures taken by the Government to put an end to racial profiling by federal and state law enforcement officials, specifically requesting information on measures the federal and state governments have adopted to prohibit racial profiling and updated data on the extent to which such practices persist, as well as on complaints, prosecutions and sentences in such matters.²⁶

IV. Due Diligence in Preventing Government Misconduct

The international community has recognized a State's duty to protect citizens from excessive force,²⁷ torture and racial profiling.²⁸ Police officers are granted authority to use force, but human rights standards mandate that this force be used proportionally and in situations of necessity. The United States must ensure that harmed individuals will receive justice from ill-treatment, abuse or harassment from law enforcement agencies.

We thank you for your careful consideration of these issues.

²⁵ Committee on the Elimination of Racial Discrimination. *Concluding Observations of the Committee on the Elimination of Racial Discrimination United States of America*. CERD/C/USA/CO/6 February 2008.

²⁶ "List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America, 43rd Session," CAT/C/USA/Q/5/20 January 2010, available at <http://tb.ohchr.org/default.aspx> [click on convention, "CAT"; country "United States of America"; type "List of issues"].

²⁷ "Excessive force" is used to refer to force that exceeds what is objectively reasonable and necessary in the circumstances confronting the officer to subdue a person, as in Article 3 of the U.N. Code of Conduct for Law Enforcement Officials ([see http://www.hrw.org/legacy/reports98/police/uspo150.htm](http://www.hrw.org/legacy/reports98/police/uspo150.htm)), which provides that: "Law enforcement officials should use force only when strictly necessary and to the extent required for the performance of their duty." GA resolution 34/169 passed on December 17, 1979, and in the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which stipulates that, "Whenever the use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved." UN Doc. A/CONF.144/28/Rev.1 (1990).

²⁸ See Human Rights Watch Report, *Shielded From Justice Police Brutality and Accountability in The United States*, (1998), available at <http://www.hrw.org/legacy/reports98/police/toc.htm>; Committee on the Elimination of Racial Discrimination. *Concluding Observations of the Committee on the Elimination of Racial Discrimination United States of America*. CERD/C/USA/CO/6 February 2008;.