



UNA ★ USA
Southern New York State Division



UN Universal Periodic Review

Joint Shadow Report:

United States of America

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“Race, Criminal Justice, and Human Rights”

The United Nations Association — Southern New York State Division (UNA-SNY) is dedicated to building a strong network of global citizens in support of the United Nations. We work hard to inform, inspire and mobilize members of the community to engage with critical global issues central to the work and mission of the United Nations. We include the New York, Brooklyn, Queens, Bronx, Long Island, Mid-Hudson Valley, and Westchester UNA-USA Chapters and groups. The goal of the division is to foster dialogue and awareness in the region, as well as to coordinate with our chapters and the broader UNA-USA network. For more information, please visit: <http://www.unasny.org/>.

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Blacks in Law Enforcement of America (BLEA) is a national organization of Black Law Enforcement Professionals. It is our duty as peace officers and members of Blacks in Law enforcement of America to continue the fight for freedom, justice, and equality for all citizens. We will be advocates of law enforcement professionals by establishing continuous training and support. As black law enforcement professionals, we pledge our time, honor, and talent for the uplifting of our communities. We are truly the leaders of the community, in and out of our blue uniform. For more information, please visit: www.bleausa.org.

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A. Summary: Race, Criminal Justice, and Human Rights

(A1) Toward the goal of contributing primary-source input for the Universal Periodic Review (UPR) of the United States in May 2020, UNA-Southern New York State Division and Blacks in Law Enforcement of America submit this joint shadow report with a focus on race, criminal justice, and human rights. Specifically, this report addresses three issues:

- Policing, Pre-Trial, Parole, and Post-Prison;
- Mass Incarceration; and
- Women and Family Issues.

(A2) The United Nations Association — Southern New York State Division (UNA-SNY) is dedicated to building a strong network of global citizens in support of the United Nations. We work hard to inform, inspire and mobilize members of the community to engage with critical global issues central to the work and mission of the United Nations. We include the New York, Brooklyn, Queens, Bronx, Long Island, Mid-Hudson Valley, and Westchester UNA-USA Chapters and groups. The goal of the division is to foster dialogue and awareness in the region, as well as to coordinate with our chapters and the broader UNA-USA network.

(A3) Blacks in Law Enforcement of America (BLEA) is a national organization of Black Law Enforcement Professionals. It is our duty as peace officers and members of Blacks in Law Enforcement of America to continue the fight for freedom, justice, and equality for all citizens. We will be advocates of law enforcement professionals by establishing continuous training and support. As black law enforcement professionals, we pledge our time, honor, and talent for the uplifting of our communities. We are truly the leaders of the community, in and out of our blue uniform.

B. Methodology

(B1) This report was compiled through a consultation process held by the UNA-Southern New York State Division. The consultation included 44 invited experts and community members and was co-sponsored by a dozen civil society organizations, including: Alpha Kappa Alpha Sorority, Inc., Eta Omega Omega Chapter; Alpha Kappa Alpha Sorority, Inc., Tau Omega Chapter; Blacks in Law Enforcement of America; Global 25; Black Westchester Magazine, Institute for Peace and Leadership, Inc.; Luz Maria Foundation; New Hour for Women and Children, Long Island; Public-Private Alliance Foundation; Robert F. Kennedy Human Rights; and the Urban Justice Center. This report is jointly submitted by the UNA-Southern New York State Division and Blacks in Law Enforcement of America.

(B2) Participants were asked to share their firsthand experiences on the domestic U.S. human rights record pertaining to race, criminal justice, and human rights, and offer constructive ideas, suggestions, and recommendations. A rapporteur was present to record, consolidate, and synthesize output from the discussion. The findings, conclusions, and recommendations therein are submitted with the goal of constructively advancing human rights in the U.S.¹



C. Legal Framework

(C1) Article 1 of the Universal Declaration of Human Rights (UDHR) reads that “All human beings are born free and equal in dignity and rights.”² Furthermore in Article 2, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³ Article 7 states, “All are equal before the law and are entitled without any discrimination to equal protection under the law.”⁴ Thus, the UDHR ensures that everyone is endowed with civil rights no matter their identity.

(C2) The treaty bodies associated with the core human rights treaties that the U.S. Senate has ratified—including the Convention Against Torture, International Covenant on Civil and Political Rights, and Convention on the Elimination of Racial Discrimination—have all affirmed that civil rights and equal treatment under the law are human rights. Reviews of the country’s human rights record by these treaty bodies have highlighted the need for further improvement in ensuring that all within the U.S. are ensured with full civil rights no matter their race, gender, or ethnicity.

(C3) During its second UPR review in 2015, the U.S. supported many recommendations from members of the UN Human Rights Council concerning race, criminal justice, and human rights.⁵ These included recommendations to take measures via law enforcement and judicial systems to eliminate racial profiling, racial discrimination and excessive use of force; to undertake related training, sensitization and community outreach; to identify factors of racial disparity in the use of the death penalty; to develop strategies to end possible discriminatory practices; to invest further in efforts to address the root causes of recent racial incidents; and to expand efforts to reduce poverty in neighborhoods experiencing poor public services. Regarding women and family issues, the U.S. supported recommendations related to trafficking, sex trafficking, prison rape, and granting legal residency to foreign survivors of trafficking.

(C4) In its 2015 National Report, the U.S. affirmed it was taking proactive action to address challenges related to race, criminal justice, and human rights.⁶ The government, for example, reported progress toward eliminating racial profiling and excessive use of force by law enforcement, racial bias in the criminal justice system, mandatory minimum sentences, prison conditions, reintegration of formerly incarcerated people, limitation of capital punishment, and conduct of justice-related human rights education, training and engagement with civil society.

(C5) However, various policies have been revised within the U.S. in relation to criminal justice, with some being detrimental to ensuring equal and fair treatment under the law. These include multiple executive orders heightening penalties connected to unauthorized immigration. Another example is a U.S. Attorney General’s memo reversing the “Smart on Crime” policy, which had previously encouraged alternatives to arrest and reduced sentences for low-level nonviolent crimes. More recently, the current U.S. Attorney General has taken steps to reinstitute capital punishment at the federal level.

(C6) Participants recognized the need to acknowledge and promote advances by states in reforming criminal justice in the U.S. While affirming the need for more work, they drew upon numerous recent actions in the state of New York. This includes the Domestic Violence Survivors Act to reduce related prison sentences; the Child Victims Act to help survivors of child sex abuse; reforms to bail and arrest procedures to reduce pretrial incarceration; steps to help ensure the right to a speedy trial; improvements to the discovery process for trial defendants; assurance of transparency and accountability in civil asset forfeiture; reforms to police

use-of-force policies and reporting; reduction of solitary confinement and steps for rehabilitation of those needing therapy; improvement of re-entry packages for formerly incarcerated persons; reforms for youth in the Persons in Need of Supervision program; a Reproductive Health Act and Comprehensive Coverage Act to guarantee women's rights are protected; the Gender Expression Non-Discrimination Act that prohibits discrimination based on gender and the banning of gay conversion therapy; decriminalization of marijuana and expungement of related records; gun legislation reforms; and expanded protections for sex trafficking victims.^{7 8 9} As stated in the 2019 Women's Justice Agenda, promoted by New York's Governor, "[It is important] to understand how gender, gender identity, race, ethnicity, nationality, socioeconomic class, sexual orientation, disability, religion, and the many other aspects of our identities interact to shape the social, cultural, economic, and political inequalities, oppressions, and privileges that we all experience . . . Together we will continue to make New York a model of equality and opportunity for the nation to follow."¹⁰

D. Policing, Pre-Trial, Parole, and Post-Prison

(D1) While the Obama Administration had appointed a Task Force on 21st Century Policing and received its report on how to strengthen public trust and foster strong relationships between local law enforcement and the communities they protect, this effort has largely been overturned by the current Administration. While the Task Force's recommendations would likely be implemented through the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), the DOJ's Fiscal Year 2020 President's Budget proposed to merge the COPS Office into the Office of Justice Programs (OJP) and for OJP itself to downsize, effectively ending the program.¹¹

(D2) Misconduct of police force members continues to be a widespread issue and resulted in the deaths of an estimated 1,147 people in 2017.¹² Furthermore, racial profiling within policing remains pervasive as African Americans were 25 percent of those killed despite being only 13 percent of the population. In other words, African Americans were three times more likely to be killed by a police officer than white Americans. There is also a lack of prosecution of police violence: 90 percent of cases in 2015 did not result in the officer being convicted of any crime.

(D3) Incarcerated people up for parole often face arbitrary and overly broad statutory provisions for parole, which often leads to unjust parole denials and creates a cycle of punishment rather than correction and rehabilitation.

(D4) Formerly incarcerated people face challenges in reintegrating into society, experiencing difficulty finding housing, maintaining a job, and accessing social support services. This inadequate assistance often leads to a cycle of incarceration.

(D5) Recommendations for the U.S.:

- Make efforts to diversify professionals working in the criminal justice system, from law enforcement officers to prosecutors;
- Create a subcommittee on diversity in Congress to tackle issues of racial profiling within the criminal justice system;



- Thoroughly address and create solutions regarding the issue of racial profiling within the criminal justice system;
- Create and provide funding for community-based organizations to facilitate prisoner re-entry to society, including mentoring, medical and mental health treatment, as well as educational and employment assistance; and
- Pass legislation reforming and clarifying the statutory factors determining parole decisions.

E. Mass Incarceration

(D1) Passage of the First Step Act in December 2018 has been a welcome advancement toward reducing mass incarceration. It aims to reform lifetime mandatory minimum sentencing by giving a judge more discretion when sentencing nonviolent repeat drug offenders and making the Fair Sentencing Act of 2010 retroactive. It also provides prisoners with drug treatment programs, vocational and educational training and instruction, the ability to earn credit for early release, and places inmates closer to their family and friends to allow for easier and more frequent visitations.

(D2) However, mass incarceration remains an increasingly prevalent issue within American society. Between 1980 and 2015, the number of people incarcerated in America increased from roughly 500,000 to over 2.2 million.¹³ Today, the U.S. makes up about five percent of the world's population but has 21 percent of the world's prisoners. Racial disparities are also rampant within the criminal justice system as African Americans are incarcerated at more than five times the rate of white Americans.

(D3) Incarceration is too often used as a first resort and nearly 80 percent of criminal convictions are for misdemeanors.¹⁴ Low-income people are often arrested for minor offenses and must be kept in jail when they cannot post bail which can take a high toll on their families and jobs. As a result, prisons and jails are often overcrowded which creates poor conditions and lack of services.

(D4) Racial prejudice, lack of counsel, and lack of knowledge of rights has led to miscarriages of justice and unjust incarceration.

(D5) Those with mental and physical illnesses are often particularly vulnerable within the criminal justice system and face a lack of support services along with discriminatory treatment in jails and prisons.

(D6) Recommendations for the U.S.:

- Decrease arrest and prosecution rates for minor offenses, recalibrate the use of bail, and avoid fines and fees that trap people in jail;
- Increase access to legal aid lawyers in order to protect the rights of vulnerable people and reduce unjust incarceration;

- Institute substantive personal and professional development programs within prisons to facilitate re-entry to society and reduce recidivism;
- Ensure access to health and support services for the mentally and physically ill within the criminal justice system;
- Reduce and reform the use of solitary confinement in prisons; and
- Collect, publicize, and integrate data on incarceration by race, gender, and ethnicity to reshape policy and legislation that can reduce racial bias and mass incarceration, particularly within the Bureau of Justice Statistics.

F. Women and Family Issues

(F1) The Allow States and Victims to Fight Online Sex Trafficking Act of 2017 was an achievement in fighting sex trafficking and made it illegal to knowingly assist, facilitate, or support sex trafficking, including people and websites.

(F2) Sex trafficking and human trafficking continues to be a pervasive issue in the U.S. Young girls coerced into sex trafficking are often treated as perpetrators rather than victims and face unnecessary and detrimental prison sentences.

(F3) Women and children face disparities within civil rights and the criminal justice system, particularly in areas such as the foster care system, maternal health, and sex trafficking. The current foster care system in the U.S. too often removes children from their biological parents instead of providing support and monitoring services within the home, imposing detrimental and long-lasting effects on children and creating a cycle of violence, incarceration, and poverty. African American women also face discrimination in health care: maternal mortality rates are three times higher for African American women as compared to white women.¹⁵

(F4) Introduction to the prison system often starts with children who face disciplinary issues in schools, with under-performing African American boys particularly vulnerable. Rather than providing necessary preventative services, these children are often incarcerated which permanently changes the trajectory of their lives.

(F7) Recommendations for the U.S.:

- Increase funding for preventative services to keep at-risk families intact and avoid foster care placements;
- Take steps to address and find solutions to disparities in maternal mortality rates;
- Implement suspension diversion programs to avert the school-to-prison pipeline for young people; and
- Reform treatment of young girls coerced in sex trafficking within the criminal justice system in order to ensure a rehabilitative rather than punitive response.



Endnotes

¹ The order of the issues presented in this report does not imply a prioritization of observations or recommendations.

² <https://www.un.org/en/universal-declaration-human-rights/>

³ Ibid.,

⁴ Ibid.,

⁵ *2RP: Responses to Recommendations & Voluntary Pledges*. UPR, 2015.

⁶ "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21," *Human Rights Council*, 2015. https://www.upr-info.org/sites/default/files/document/united_states/session_22_-_mai_2015/a_hrc_wg.6_22_usa_1_e.pdf

⁷ https://opdv.ny.gov/law/summ_subject/crimlawenfcrimct.html

⁸ <https://www.ny.gov/fy-2020-new-york-state-budget/highlights-fy-2020-budget>

⁹ <https://www.nysenate.gov/newsroom/articles/2019/andrea-stewart-cousins/update-new-york-state-senate-majority-leader-andrea>

¹⁰ <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/WomensReport021919.pdf>

¹¹ "Community Policing (COPS)," *Department of Justice*, <https://www.justice.gov/jmd/page/file/1142446/download>

¹² "Mapping Police Violence." <https://mappingpoliceviolence.org/>

¹³ "Criminal Justice Fact Sheet." *NAACP*, <https://www.naacp.org/criminal-justice-fact-sheet/>

¹⁴ "America's Massive Misdemeanor System Deepens Inequality and Burdens Low-Income Communities." *Equal Justice Initiative*, 9 Jan. 2019, eji.org/news/americas-massive-misdemeanor-system-deepens-inequality.

¹⁵ "What Is the Status of Women's Health and Health Care in the U.S. Compared to Ten Other Countries?: Commonwealth Fund." *The Commonwealth Fund*, 19 Dec. 2018, www.commonwealthfund.org/publications/issue-briefs/2018/dec/womens-health-us-compared-ten-other-countries.