



**International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)
Follow-up Issue Areas Shadow Report – United States of America**

Name of NGO(s)

The [Southern New York State Division \(UNA-SNY\) of the United Nations Association of the USA](#) has prepared this report, which is endorsed by [Blacks in Law Enforcement of America](#).

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In August 2015 the UNA –SNY held a consultation entitled “*Injustice in the Criminal Justice System: A Way Forward--A Human Rights-Based Approach.*” New York State Senator Ruth Hassell-Thompson, chair of the 2009-2010 State Senate Standing Committee on Crime Victims, Crime and Correction, gave the keynote address and joined in the discussions. Participants from 39 organizations engaged in the meeting, in their personal capacities: UNA-USA (national), UNA-SNY, UNA Mid-Hudson Valley, UNA Westchester, UNA Queens, UNA-NYC, New York State Senate, Ms. Foundation for Women, chapters of the Alpha Kappa Alpha Sorority, Inc., World Federation of Methodist and Uniting Church Women, chapters of The Links, Inc., NY City for CEDAW, Herstory Writers, Black Women’s Blueprint, ECPAT-USA, Student Sponsor Partners, Mercy College, Oakwood Friends School, Marist College, Mount Vernon City Council, Black Westchester Magazine, Blacks in Law Enforcement of America, Public-Private Alliance Foundation, Adelphi University, Prison Families Anonymous, The Fortune Society David Rothenberg Center for Public Policy, Scarsdale Rotary, Brennan Center for Justice of New York University, MSNBC Lock-Up TV series, EF Language School.

**NGO Assessment of the Action of the State party (government) on the
Recommendations made by the Committee**

This Follow-up Report assesses Paragraph 17 (a) and (b).

Para 17. The State party should: (a) “Ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated; that the alleged perpetrators are

prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation;”

Current situation / Update of the Issue

The U.S. reports that systems exist for investigation and prosecution of law enforcement officials, but it is important to look beyond the justice mechanisms to ensure that those in a position to use them are doing so, and in line with international standards.

We do not contest the actions cited in the U.S. one-year report, but they are largely inadequate and do not represent significant changes in policy, practice and/or use of existing mechanisms for investigation, prosecution, sanctions or compensation.

Investigative reporting by the press has explored and published features that have inadequately been reported by the government. A 2015 comprehensive investigation by [The Washington Post](#) of the many thousands of fatal police shootings over the past decade revealed that only 54 officers were ever charged. In most of the cases where an officer was charged, the person killed was unarmed. Of those 54 cases, [only 11 resulted in convictions](#). Of the 11 officers convicted, most received rather short prison sentences, averaging four years. For the entire decade covered by the *Post* investigation, no officer received a sentence longer than 10 years.

A separate study by the [New York Daily News](#) of police killings in New York City over 15 years yielded results similar to those of the *Washington Post*. Of 179 cases since 1999, only three led to indictments and just one to a conviction – a ruling that included no jail time. The period began with the case of Amadou Diallo, an African immigrant who was mistaken for a rape suspect and [shot 41 times](#). Near the end of the study period was the case of Eric Garner, who died from a chokehold, the use of which was officially prohibited by NYPD policies.

The death of Eric Garner warrants special attention. It was specifically cited in the U.S. report as evidence of follow up action for implementation of Committee recommendations, and it illuminates the dynamics of impunity. A video of events leading up to Garner's death show him saying "I can't breathe" 11 times. The medical examiner found that Garner's death was a homicide, caused by the chokehold and compression to his chest caused by several officers who

piled onto him. Nevertheless the presiding District Attorney, Daniel M. Donovan Jr., signaled that he did not wish to prosecute and the grand jury declined to issue an indictment.¹

Another example highlighting systematic issues at federal, state and municipal levels is the case of the 13 Cleveland police officers who fired 137 shots at an unarmed couple. Only one of them was charged and he was found not guilty in May 2015. As of October 7, 2015, none of the 13 officers had been dismissed from the police force for this incident that occurred in 2012.

<http://www.dailykos.com/story/2015/10/07/1429020/-After-firing-137-shots-at-an-unarmed-couple-it-s-doubtful-any-Cleveland-Police-will-even-be-fired>

The 2013 U.S. Customs and Border Protection (CBP) review on use of force specifically states that “Improvements are also recommended in initial reporting, investigation, incident review, weapons, personal protective equipment, and training.”

<https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>

However an internal investigation, of 67 shooting incidents that left 19 people dead, absolved the agents of criminal misconduct in all but three cases, which are still pending. Those three agents are still conducting armed patrols. As of the completion of the review in May 2015, none of the agents involved had been charged with a crime. Only two agents faced disciplinary action. Both received oral reprimands. <http://www.latimes.com/nation/la-na-border-patrol-shootings-20150615-story.html>

One of the participating organizations at the UNA-SNY August 2015 consultation – Blacks in Law Enforcement of America – has prepared salient recommendations for legislative change in New York State <http://www.bleausa.org/blacks-in-law-enforcement-of-america-recommendations-on-legislation-change-for-police-oversight-and-accountability/>. These call for (1) State legislation to define police criminality; (2) need for a state-wide special prosecutor for questionable police actions; and (3) the need for police to live in the community they serve. As emphasized by the New York representative of the organization, “It is our duty as police 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.”

¹ As indicative of local sentiments, in a special Congressional election held in May of 2015, the people of Staten Island elected Donovan to Congress with [almost 60 percent of the vote](http://www.huffingtonpost.com/jerome-karabel/police-killings-lynchings-capital-punishment_b_8462778.html). (Excerpt from: http://www.huffingtonpost.com/jerome-karabel/police-killings-lynchings-capital-punishment_b_8462778.html)

Impact of the Action of the State party (if any)

As shown above, we find that the actions by the State party do not represent any change or departure from previous practice or policy. The same systems, mechanisms and patterns of use prior to the recommendations of 2014 remain in place. Additionally, many of the same individuals who have the power and authority to initiate prosecutions, and have largely failed to do so, remain in positions of power. The lack of change perpetuates the status quo; continued examples of impunity increases the gap between communities and law enforcement.

Recommendation by the Committee

Para. 17 (The State party should) also (b) “Intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure that the new CBP directive on the use of force is applied and enforced in practice;”

Current situation / Update of the Issue

The UNA-SNY would like to highlight the concern of the CERD committee that the U.S. definition of racial discrimination in policy and practice is not in line with the convention and the disparate impact doctrine, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect. (CERD/C/USA/CO/6, para.10) This issue is of particular importance in preventing excessive use of force by law enforcement officials.

A fundamental problem in the current situation is a lack of information and government responsibility for adequately tracking the actions and impact of its officers. When the recent movement emerged around police killings of unarmed black men, many were asking how many people are killed by police and are there patterns in these incidents. Who are those most impacted by excessive use of force? As reported by the [Huffington Post](#): Although the FBI annually issues a report that provides figures on "justified police homicides," reporting from local police forces is voluntary and thousands of them turn in no information. [The Washington Post](#) and [The Guardian](#) have stepped in to perform a task that should have been done by the government: the recording of every police killing. In addition to the time and place of the killings, both databases include basic demographic information, including race, gender and age. Neither attempts to determine whether the killings should be deemed "justified." As recently as the summer of 2014, the most widely used estimate of the number of people killed by police

was provided by the FBI's *Uniform Crime Report*: slightly more than 400 per year. But we now know that this figure was a gross underestimate; the number is more than 1,100 each year.²

A number of the people killed by the police are unarmed. *The Guardian* and *The Washington Post* investigations diverge sharply here as *The Guardian* number of 189 unarmed individuals killed by police from Jan 1 – Oct. 31 2015 includes deaths by taser, police vehicles, and in custody as well as shooting, and the *Post* reporting of 77 cases includes shooting only. The particulars vary, yet there is a pattern in who is killed; of the 77 cases documented by *The Washington Post*, 36 percent are black men.⁴ This is well above the figure for all police killings and, when combined with the over-representation of African-Americans among those killed by tasers and in custody (almost all of whom were unarmed), the overall pattern confirms that special sense of vulnerability felt by black people in their encounters with the police is founded in reality. http://www.huffingtonpost.com/jerome-karabel/police-killings-lynchings-capital-punishment_b_8462778.html

Under-reported but very important is the situation of black women. Although the Black Lives Matter movement is led by black women, stories of their experiences with law enforcement have been largely overshadowed by the narratives of black men. Reporting that five black women had died in jail during the month of July 2015 is finally getting the media attention activists have long called for. As reported in AlterNet.org, “It will be interesting to see how this new attention will play out in the Presidential campaign when candidates begin seeking black votes.” <http://www.alternet.org> “5 Black Women Have Been Found Dead in Jail in the Last Month.”

Police training in the United States is both short and inadequate, and the nature of the training exerts a profound effect on the officers. Understandably concerned about officer safety, [police academies spend far more time on firearms training](#), devoting an average of 60 hours to it, than on mediation and conflict management, which receive only eight hours. While officer safety is critical, we must call into question a training regimen that is premised on fear and focussed on protecting officers from the very communities they are charged with serving. It is worth noting that compared to the 1,100 police killings each year, officer fatalities have not exceeded 200 since 1981 (with the exception of 2001) and most years are far less (110 to date for 2015) <http://www.nleomf.org/facts/officer-fatalities-data/?referrer=http%3A%2F%2Fwww.nleomf.com%2F%3Freferrer%3Dhttps%3A%2F%2Fwww.google.com%2F?referrer=https://www.facebook.com/> .

Schools:

An important area completely left out of the U.S. follow up report is that of excessive use of force by law enforcement officials in schools and educational institutions. In every state studied, there is significant racial discrepancy in rates of suspension, expulsion and referral to the police. While black students represented just under a quarter of public school students in these states, they made up nearly half of all suspensions and expulsions. In some districts, the gaps were even more striking: in 132 Southern school districts, for example, black students were suspended at rates five times their representation in the student population, or higher. http://www.nytimes.com/2015/08/25/us/higher-expulsion-rates-for-black-students-are-found.html?_r=0. New York City has more than 5,000 police officers patrolling the city's schools— more than the combined number of school guidance counselors and social workers. Nationwide, more than 17,000 officers work in schools. What happens when students are arrested in the classroom? We look at what many experts call the "school-to-prison pipeline." http://www.democracynow.org/2015/10/28/criminalizing_the_classroom_inside_the_school

A recent example of excessive use of force by law enforcement in a school setting comes from South Carolina, where an officer pulled a student from her desk and slammed her against the floor. http://www.democracynow.org/2015/10/28/when_school_cops_go_bad_south

In another instance a Texas student spent 52 days hospitalized after being tased by a police officer at school. http://www.democracynow.org/2015/10/28/texas_student_spent_52_days_in

Impact of the Action of the State party (if any)

A report by *The LA Times* specifically addresses the impact of the new CPB use of force directive. Overall, use of force has declined after implementation of the new CPB guidelines, but use of firearms remains steady <http://www.latimes.com/nation/la-na-border-force-20151012-story.html>

Other Comments

The August 2015, UNA – SNY's stakeholder consultation highlighted: Women and girls; School-to-prison pipeline; and Sentencing, prison and post-incarceration. It also discussed the systemic racism at the core of the justice system.

The following are recommendations for action from stakeholders at the UNA consultation regarding use of force in school settings and the school-to-prison pipeline:

- Mandates from the national or state level, or both, for districts to eliminate racial discrepancies in rates of suspension, expulsion and referral to the police through training for administrators and teachers to remove conscious and unconscious bias.
- National level: Create policy for FACE (Families and Community Engagement) programs in all municipalities and school districts and provide funding to support these programs.
- State level: Mandate teacher, administrator and governmental employee annual training (mandatory Career and Technical Education (CTE) hours) that provides cultural training and parental and community engagement strategies. Provide funds (Title 1 re-wire of governance regulations of funds) that allow community and parents engaged in school planning to be equal partners in the planning and execution stages. Shift in youth incarceration from punitive to corrective.
- District / Local levels: Implement and monitor engagement and funds. Special programs should be designed to meet the corrective/supportive needs of troubled youth as alternatives to incarceration and provide resources for families on how better to support their children.
- Our Organizations: Encourage politicians to see the value of alternatives to incarceration, in both the long and short term, in terms of productiveness in society.

Solutions to these problems will require changes in penal policies, schooling and the criminal justice system, and the culture at large. Movement away from mass, high-stakes testing, removal of police officers from school hallways and increased educational opportunities for incarcerated minors would help reduce violence in schools and some incidents of excessive use of force. Ultimately, the UNA consultation called for a re-orientation of the education system away from punitive, zero tolerance policies and toward more positive, supportive systems of discipline.

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