STOPPED, SEIZED AND UNDER SIEGE:

U.S. Government Violations of the International Covenant on Civil and Political Rights through Abusive Stop and Frisk Practices

A Shadow Report Submitted before the U.N. Human Rights Committee

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Center for Constitutional Rights
666 Broadway
New York, NY 10012

I. Reporting Organizations

The Center for Constitutional Rights (CCR) is the primary author of this report.[1] Endorsing organizations to this report include American-Indian Movement – WEST, American Muslims for Palestine, American Muslim Voice, Arab Cultural and Community Center, Asian Americans Advancing Justice - Asian Law Caucus, Bronx Defenders, CAAAV Organizing Asian Communities, Creating Law Enforcement Accountability & Responsibility (CLEAR) project, CUNY School of Law, DRUM - Desis Rising Up & Moving, Equal Justice Society, Eritea Global Solidarity, Immigrant Defense Project, Jews for Racial & Economic Justice, The Libra Foundation, Malcolm X Center, Malcolm X Grassroots Movement, Meiklejohn Civil Liberties Institute, Muslim Advocates, National Lawyer's Guild, National Lawyers Guild Maryland Chapter, National Police Accountability Project, Inc., Northern Manhattan Coalition for Immigrant Rights, OMNI Center for Peace, Justice & Ecology, Public Science Project, Rights Working Group, Streetwise and Safe, Trinity United Church of Christ Gary, IN, VOCAL-NY, W. Haywood Burns Institute, Woodhull Sexual Freedom Alliance.

II. Introduction and Issue Summary

The Human Rights Committee's (the "Committee") interest in the New York Police Department's ("NYPD") stop and frisk practices is vital to understanding the U.S. Government's disregard towards upholding its human rights obligations in the areas of law enforcement, non-discrimination and accountability. We hope this submission may provide further information on the gravity of rights violations on the part of the NYPD, and ultimately, the U.S. Government, in light of this periodic review process.

The NYPD's use of stops is a critical rights issue for many reasons. Stops are both unlawful and discriminatory as they occur overwhelmingly without the reasonable, articulable suspicion of criminal activity as required by the law[2] and at an alarming rate in communities of color in New York City,[3] who often feel under siege and harassed by the police.[4] Stops are often the first

[1] CCR is dedicated to advancing and protecting the rights guaranteed by the United States 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. Learn more: www.ccrjustice.org.

[2] The Fourth Amendment of the U.S. Constitution guarantees that "the right of the people to be secure in their

[2] The Fourth Amendment of the U.S. Constitution guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." As a result, a police officers' authority to temporarily stop and question a person is limited to circumstances where the officer can articulate an individualized reason for suspecting criminal activity has occurred or is about to occur. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968).

[3] The Fourteenth Amendment of the U.S. Constitution guarantees that equal protection of the law shall be enjoyed by all, and prohibits police officers from engaging in discriminatory police practices. However, the Center for Constitutional Rights (CCR) receives regular reporting from the NYPD regarding its use of stop and frisk. By analyzing this data, CCR has determined that a majority of people stopped are people of color and that the use of the practice has skyrocketed to an all-time high in 2011 of 685,724 stops. Learn more at www.ccrjustice.org/floyd.

[4] One year ago, the CCR released, "Stop and Frisk – The Human Impact," a report documenting the devastating impact of the stop and frisk practice, finding that stops are far from a minor convenience. *See* Center for

interaction that people have with the criminal justice system. They also can lead to potentially grave implications in the lives of New Yorkers.[5] The NYPD's abusive use of stops also infringes upon other human rights protections enshrined in the ICCPR, including: the right to be free from discrimination (Articles 2.1 and 26); the prohibition on cruel, inhuman or degrading treatment or punishment (Article 7); freedom from arbitrary arrests and detention (Article 9); the right to freedom of movement (Article 12.1); the right to privacy (Article 17); freedom of expression (Article 19), and association (Article 22); and the protection of children (Article 24).

Unfortunately, the statistics and experiences of New Yorkers confirmed the violative nature of NYPD stop and frisk practices. Moreover, the use of the practice has dramatically increased over the last decade. Between January 2004 and June 2012, the NYPD conducted over 4.4 million stops. A vast majority of people stopped in that time, roughly 85%, were Black or Latino, even though they only represent 52% of New York City's population. Only approximately 10% of stops led to any further law enforcement action. Importantly, although not captured by the data, complaints related to stop and frisk have not been limited to racial discrimination. For examples, women, LGBTQ and gender non-conforming persons report sexual harassment, inappropriate questioning and verbal abuse; and homeless persons are routinely pushed out of public spaces and ticketed for failing to show identification.[6]

Furthermore, the abuse of stop and frisk by the NYPD represents a critical issue that is relevant far beyond New York City. With nearly 35,000 members,[7] the NYPD is the largest police force in the United States, and its policing practices are extremely influential both across the country and around the world.[8] Additionally, the NYPD's abuse of stop and frisk practices should be considered in the context of its other discriminatory policies, such as the surveillance of Muslim communities and profiling of gender non-conforming persons, which presume guilt and suspicion based on race, religion, national origin, gender and sexuality.

Constitutional Rights, *Stop and Frisk: The Human Impact – The Stories Behind the Numbers, the Effects on Our Communities*, July 2012, available at: www.stopandfrisk.org. *See also* Center for Constitutional Rights, 2011 Stop and Frisk Statistics, available: http://ccrjustice.org/files/CCR-Stop-and-Frisk-Fact-Sheet-2011.pdf.

[5] In the late 1990's a rogue plainclothes unit called the Street Crimes Unit operated within the NYPD and routinely abused its power. This unit was responsible for horrible civilian deaths including the widely-publicized 1999 shooting of Amadou Diallo, an unarmed African immigrant, 41 times while he was standing in the vestibule of his home. That year, CCR filed a lawsuit against the NYPD for discriminatory use of stop and frisk practices on the basis of race. The unit was eventually disbanded and the lawsuit settled in December 2003 when the NYPD agreed to implement an anti-racial profiling policy and regularly release stop and frisk statistics to CCR and the public. After significant non-compliance with the consent decree and after new information released publicly by the City of New York showed a remarkable increase in stops, CCR filed a new lawsuit challenging the entire department's stop and frisk policy. Learn at www.ccrjustice.org/floyd.

[6] *See* Center for Constitutional Rights, *Stop and Frisk: The Human Impact*.

[7] The NYPD's current uniformed strength is approximately 34,500. *See* http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml

[8] For example, in June 2012, Mayor Edwin Lee of San Francisco, California stated that he was considering implementing a "New York City-style" stop and frisk policy. The mayor and police chief announced they would not implement such a policy following a critical local response. Coalition for a Safe San Francisco, *Community Opposition to "Stop-and-Frisk" Policy in San Francisco*, Letter dated July 10, 2012, available: http://www.safesf.org/wp-content/uploads/2012/07/2012.07.10-CSSF-Ltr-re-Stop-and-Frisk_Mayor-Lee.pdf. *See also* Center for Constitutional Rights, *Stop and Frisk: The Human Impact.*

Violations of the Freedom of Movement: A Closer Look

> *The NYPD Police Commissioner informed elected officials that NYPD stop and frisk practices focused on young Blacks and Latinos "because he wanted to instill fear in them, every time they leave their home, they would be stopped by police."*

In addition to the aforementioned rights violations implicated in the abuse of this policing practice, CCR wishes to draw the Committee's attention to the violation to the right to movement, as enshrined in Article 12(1) of the ICCPR.[9] The NYPD's stop and frisk practices create a *de facto* restriction of the freedom of movement of impacted individuals and communities in violation of international human rights law. New Yorkers have described reluctance to leave their homes or go about daily activities for fear of being stopped by the police and incurring risk of arrest. People interviewed by CCR reported that they changed their behavior and daily routines in an effort to avoid being stopped by the NYPD, by avoiding walking outside, walking very fast from one destination to another, and changing their routes.[10] Such interference with peoples' freedom of movement as a result of unjust or discriminatory police practices has previously been the subject of concern by the Committee.[11]

III. RECENT DEVELOPMENTS: DECEMBER 2012 TO PRESENT

Due to the NYPD's failure to address the growing racial disparity in stop and frisk encounters, CCR filed *Floyd v. City of New York* in January 2008, alleging systematic violations of the Fourth and Fourteenth Amendments of the U.S. Constitution by the NYPD. After a nine-week trial concluded in May 2013, this August, a federal judge found the NYPD liable for a pattern and

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[9] *See* ICCPR, Article 12 (1) ("Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.)", Preamble (""freedom from fear … can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights."); *See also* General Comment No. 27: Freedom of movement (Art.12), CCPR/C/21/Rev.1/Add.9, General Comment No. 27. Moreover, discriminatory practices that limit freedom of movement based upon protected categories such as race are specifically prohibited under international law. *See* ICERD, Article 5(i). This freedom is also recognized as a fundamental right in United States law. *See United States v Guest*, 383 U.S. 745 (1966) and *Shapiro v Thompson*, 394 U.S. 618 (1969). No. 9 Argued: May 1, 1968 --- Decided: April 21, 1969, available: http://supreme.justia.com/cases/federal/us/394/618/case.html.

[10] Center for Constitutional Rights, *Stop and Frisk - The Human Impact.*

[11] For instance, the Committee previously expressed concern about discrimination by the State against minority communities in its periodic review of Thailand, including restrictions of movement based upon ethnicity. *See* Human Rights Committee, *Report of the Human Rights Committee: Volume 1, ICCPR, A/60/40,* (2005) at paragraph 24, available: http://ccprcentre.org/doc/ICCPR/AR/A_60_40_vol.I_E.pdf. Moreover, international norms stress "the need to protect public safety… cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse." *See* UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4 at Paragraph 25, available at: http://www.unhcr.org/refworld/docid/4672bc122.html (hereinafter "Siracusa Principles"). While the NYPD maintains that its stop and frisk policy promotes public safety, the high percentage of persons who are subsequently found to have committed no crime, combined with the extremely low yield of weapons indicate that the imposed restrictions on freedom of movement are disproportionate to any legitimate ends. The NYPD can achieve public safety goals without engaging in the widespread violations of human rights.

practice of racial profiling and unconstitutional stops and frisks. The Court's findings illustrate the pervasiveness of the NYPD's callous disregard for the rights of minority communities:

- NYPD Police Commissioner Ray Kelly stated that stop and frisk practices focused on young Blacks and Latinos "because he wanted to instill fear in them, every time they leave their home, they would be stopped by police."[12]
- The NYPD has an unwritten illegal policy of targeting "the right people"—meaning Black or Hispanic men—in its stop and frisk practices.
- When confronted with evidence of unconstitutional stops, the NYPD routinely denies the accuracy of the evidence and refuses to impose meaningful discipline.

The court recognized the importance of both continued monitoring and involving persons impacted by stop and frisk in future reform efforts and the federal judge overseeing the case ordered oversight by a court-appointed monitor and required the NYPD to engage in a process that involves community members.

However, the NYPD and the City of New York have categorically rejected allegations of unconstitutional conduct despite the court ruling and made it clear that they are not interested in court oversight of stop and frisk reforms. Notably, the NYPD and the City of New York have categorically rejected allegations of unconstitutional conduct throughout the *Floyd* trial, denied the violations of New Yorkers' rights, and made it clear that they are not open to outside oversight. Moreover, the City of New York has filed a notice of appeal of last week's court ruling with the Second Circuit for the U.S. Court of Appeals, signaling that it disputes the court's legal conclusions.

As of the writing of this shadow report, legislation had been passed in the New York City Council that would expand the categories of communities protected from discriminatory policing practices; create an enforceable profiling ban by the NYPD; and establish an office of the Inspector General to review and report on NYPD policies and practices. This important legislative development occurred following a groundswell of directly-affected individuals and civil society bringing attention to the unlawful use of stops and frisks and other abusive policies and calling for change within the NYPD. Efforts include tens of thousands marching silently down Fifth Avenue in opposition to stop and frisk abuses, packed public hearings, increased documentation of police abuses on the street, and taking this injustice to the federal courts to bring about change.

Despite majority support for legislation by the New York City Council, in July 2013 New York City Mayor Michael Bloomberg announced he will fund opposition to the bills from his personal funds and subsequently vetoed the bills. In late June 2013, in his continued defense of the stop and frisk program, Mayor Bloomberg stated, "I think we disproportionately stop whites too

[12] See *Floyd v. City of New York*, 08-cv-1034, Opinion and Order Dkt#373 (S.D.N.Y Aug. 8, 2013), at 90-91. Available: www.ccrjustice.org/floyd.

much and minorities too little."[13] A City Council vote to override the mayoral veto took place on August 22, 2013 and the bills were ultimately passed.

Most importantly, while this legislative development is remarkable, passage of the bills does not diminish the necessity for further action by the U.S. Government to prevent such violations from occurring and to proactively take steps to meet international human rights obligations.[14]

IV. Relevant Question in 2013 List of Issues

The issue of stop and frisk was raised by the United Nations Human Rights Committee (hereinafter "Committee") in their March 2013 "List of Issues" [15] regarding U.S. Government compliance with the International Covenant on Civil and Political Rights (ICCPR). Specifically, the Committee underlined in paragraph 5, "Please also provide information on steps taken to address discriminatory and unlawful use of "stop and frisk" practices by officers of the New York Police Department."

V. U.S. Government Response

In response to the Committee's question regarding stop and frisk, the U.S. government elaborated on critical steps taken by the federal government around stop and frisk in a response before the Committee dated June 28, 2013.[16] Specifically, in paragraph 16 of its June 2013 response, the U.S. Government noted that the Department of Justice (DOJ) has been reviewing complaints from New York City community members regarding NYPD's stop and frisk and in June 2013, filed a Statement of Interest in *Floyd* on the subject of fashioning an appropriate remedy so that, if the court does determine that NYPD's conduct is unlawful, that conduct can be effectively and sustainably corrected. However, the DOJ took no position as to whether NYPD's stop-and-frisk practices violate the law in their statement.

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[13] Gonen, Yaev and Jensen Werley, *Bloomberg: `We Disproportionately stop whites too much and minorities too little' in stop-frisk checks*, *The Daily News,* June 28, 2013, available: http://www.nypost.com/p/news/local/whites_subjected_to_too_many_stop_QM64S34uJ37zoJ36auG0HM.

[14] For example, the proposed NYPD Inspector General will not have the authority for implementation or enforcement of recommended reforms when they discover serious rights violations.

[15] UN Human Rights Committee, *List of Issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1)*, 29 April 2013 adopted by the Committee at its 107th session (11–28 March 2013, paragraph ¶ 5, noting, "Please also provide information on steps taken to address discriminatory and unlawful use of "stop and frisk" practices by officers of the New York Police Department."

[16] United States Government, *United States Responses to Questions from the United Nations Human Rights Committee: Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights (ICCPR)*, CCPR/C/USA/Q/4/Add.1, ¶ 16, noting the U.S. Department of Justice's filing of a statement of interest in *Floyd v. the City of New York*. Available: http://www2.ohchr.org/english/bodies/hrc/hrcs109.htm.

VI. Recommended Questions to the U.S. Government

We respectfully request the Committee's consideration of these sample questions during the U.S. government's periodic review session:

1. What specific efforts have been made to review, modify or end practices and policies that perpetuate discrimination, restrictions on freedom of movement and other human rights violations by local law enforcement agencies, including the NYPD, through practices such as stop and frisk?

2. What steps have been taken to reduce the disproportionate or harsh impact of stop and frisk and use of force on vulnerable communities, including minorities and women?

VII. Suggested Recommendations

While the Committee must consider many issues during the review period, we respectfully request the Committee's consideration of the following sample recommendations regarding stop and frisk in its drafting of the Concluding Observations following U.S. government's periodic review session:

1. Reform the NYPD's stop and frisk practices to comply with the U.S. Constitution and ICCPR.

2. Encourage the City of New York to meaningfully engage with the reform process—including receiving input from directly-impacted community members—ordered by the court in *Floyd v. City of New York* and withdraw its pending appeal.

3. Detail steps taken by the U.S. Government to inform and educate local governments on their obligations with respect to non-discrimination, upholding freedom of movement and other rights enshrined within the ICCPR.

4. Encourage the passage of the federal End Racial Profiling Act (ERPA).