

## **United States Compliance with the International Covenant on Civil and Political Rights**

August 23, 2013

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1. Meiklejohn Civil Liberties Institute (MCLI) is a national inter-racial non-governmental organization of activists, academics, and lawyers working since 1965, using its booklets and display poster in its human rights and peace law training sessions, publishing “Human Rights Organizations & Periodicals Directory” biennially, and listening to people’s problems, filing complaints, and making reports based on the U.S. Constitution, Bill of Rights, and the ICCPR and other treaties ratified and signed by the U.S.<sup>i</sup>

### **C. NON-DISCRIMINATION, EQUAL PROTECTION, AND RACIAL PROFILING**

2. While the U.S. Report does describe problems that arose in New Orleans after the Katrina hurricane involving improper police conduct, the Report does not include similar problems in large cities with large populations of African Americans, Latino/Hispanics, and Asian Americans.

3. The Report does not describe denial of the rights under ICCPR Articles 2, 3, 9, 17, 26 of African Americans and people of Latino origin in the United States by Immigration and Customs Enforcement (ICE) in the Department of Homeland Security.

### **I. ISSUE OF POLICE MISCONDUCT**

4. Oakland, California is a city with a history of serious misconduct by the Oakland Police Department in its treatment of young African Americans in general, and of all participants in demonstrations against police misconduct and other political issues such as those raised by the Occupy Movement. The U.S. Government has not acted to ensure that the ICCPR text is publicized in the City of Oakland and similar large cities with diverse populations. Nor has the Government conducted the necessary training sessions for local police department officials and officers even after the much publicized police shooting of the young African American youth Oscar Grant.

5. The population of Oakland is 399,494 , with 31.29% whites, 35.66% African Americans, 21.89 % Latino/Hispanic, 15.23% Asian American, and 0.66% Native American. The population of non-whites has gone down in recent years, from 134,925 to 125,013.<sup>ii</sup>

6. The Bratton Group and the Strategic Policy Partnership have been working with the Oakland PD for years to improve its Compstat Crime Management and Acommunal Accountability system. These reforms are part of the larger effort to move the OPD to a Neighborhood Policing Plan. Today, burglaries are not investigated in Oakland, which had only one part-time investigator assigned to more than 10,000 burglaries last year.<sup>iii</sup>

7. On January 28, 2012, OPD used the same tactic it had used against Oscar Grant demonstrators in 2010, surrounding a march and conducting a mass arrest, without giving a dispersal order. This time, they arrested more than 400 people. None were ever charged with a crime, but many spent more than two days in jail as officers struggled to process the backlog of arrests. A lawsuit over this incident is ongoing.

8. On 6/24/13, the National Lawyers Guild announced it had procured a settlement of \$1,025,000. for 150 demonstrators unlawfully arrested by the Oakland Police Department while protesting the light sentencing of the police officer on the Bay Area Rapid Transit (BART) who shot and killed Oscar Grant.<sup>i</sup>

9. Rachel Lederman, lead attorney, stated that: “We brought the lawsuit in order to protect the constitutional right to dissent in Oakland, and enforce the OPD Crowd Control Policy. It is a model policy

that gives the police many tools to respond to demonstrations without immediately resorting to mass arrests, weapons, or force. Yet, OPD chose to scrap this policy in dealing with the Oscar Grant demonstrations. They must have a basis to believe that the individuals being arrested have broken the law. In most situations, that means they must give demonstrators notice and opportunity to disperse, and there must be a constitutionally valid reasons to do so. None of that occurred in this case. The 150 arrests were illegal, and the City has acknowledged that. The settlement agreement includes court enforcement of the Oakland Police Department's crowd control policy for the next seven years.<sup>v</sup>

10. The settlement was approved by U.S. District Court Judge Thelton Henderson, the African American judge who has also overseen the Oakland Police Department's decade-long journey toward federal receivership. In 2012, a whistleblower within the department reported that photos of Judge Henderson, "defaced in a manner that Internal Affairs found to be racist, insulting and inappropriate," were hanging in a patrol line-up room.<sup>vi</sup>

## **II. DENIAL OF RIGHTS OF AMERICANS BY IMMIGRATION & CUSTOMS ENFORCEMENT**

11. The 2010 U.S. Census reports that there are 308,745,538 people living in the United States, of whom 42,020,743 are African Americans and 50,477,594 are Latinos.<sup>vii</sup> Together, these two racial groups comprise 92 million people – approximately 30% of the U.S. population.

12. The U.S. Report to the U.N. Human Rights Committee failed to mention that acts of racial discrimination were triggered by the manner in which the Immigration and Customs Enforcement (ICE) has implemented section 287(g) of the Immigration and Nationality Act (INA), thereby heavily targeting African Americans and people of Latino origin in the U.S. State authorities who enter into Memoranda of Agreements (MOAs) with the federal government under the ICE program extend their jurisdictions and powers in law and immigration enforcement. This marked a significant shift in responsibility from the federal government to state and local law enforcement of civil immigration laws.<sup>viii</sup> Instead of preventing racial discrimination as intended, the MOAs signed under 287(g) enable racially-charged actions against minorities because there is a lack of federal oversight and funding of ICE.

13. Since 2006, ICE has signed MOAs with 68 law enforcement agencies in 24 of the 50 states.<sup>ix</sup>

14. The UN Human Rights Committee asked the U.S. about practices by the federal government violating the rights of migrants in 28 March 2013 §13(a).

## **III. DENIAL OF RIGHTS UNDER ARTICLES 2 AND 26**

15. The stated aim of ICE Program was to eliminate racial and ethnic discrimination in the United States. It delegated federal jurisdiction in immigration policy to state and local law enforcement, but with no federal oversight powers to monitor the execution of the program's goals. See U.S. Report Paragraph No. 600.

16. The ICE Program, under its 287(g) clause and MOAs, enables state and local law enforcement agencies to practice racial discrimination and target African American, Latino and other ethnic minority populations. Its basic premise violates the ICCPR by establishing one agency to deal with "immigrants", who are people with human rights, and "customs," which are inanimate products with no human rights. Since entering MOAs with the federal government, the traffic stop-and-frisking of ethnic minorities has disproportionately increased compared to whites. These delegations of federal powers occurred mainly in communities with dense Latino populations. 87% of jurisdictions were in communities with a Latino population greater than the national average.<sup>x</sup> See U.S. Report Paragraph Nos. 138, 214, 199, and 600.

17. The stated purpose of 287 (g) was to prosecute undocumented individuals suspected of committing crimes. It was not intended to permit state and local law enforcement to perform random search operations, such as "day laborer activities" or "traffic offences".<sup>xi</sup> See U.S. Report Paragraph 214.

18. The U.S. Government Accountability Office reported that ICE did not have an adequate administrative structure to carry out its functions. These failures include: The 287(g) program did not outline specific objectives, how and when 287(g) authority may be used, did not create oversight supervision over participating state and local agencies, and did not develop a method to measure progress and efficiency of program objectives.<sup>xii</sup>

19. Racial profiling arbitrarily rests on the assumption that a particular race or ethnic group is more likely to be found guilty of contraband and illegal conduct than the general public. It is a false premise to use race as an indicator of criminality. See U.S. Report Paragraph No. 676. In New Jersey, the state attorney general issued a directive that limited highway patrol from investigating a driver's legal status unless this indicated a legal offense had occurred. However, police ignored this directive. Only 1,417 of the ten thousand subjected to stop and frisk were charged with immigration offenses by ICE and the federal government.<sup>xiii</sup>

20. In New York City, NYPD stopped and frisked over 680,000 individuals in 2011, (U.S. Report Paragraph No. 600) 87% of those individuals stopped over the last decade were of African American or Latino descent. 9 out of 10 were found innocent of any wrongdoing.

21. The U.S. Report did not report that the revised ICE and 287(g) program failed to improve the situation, and improved ICE officer training and employing 19 full-time oversight positions at ICE has not remedied racial profiling at state and local enforcement agencies. From 2010 to 2012, the ICE 287(g) budget stagnated at \$68 million<sup>xiv</sup>, while the number of arrests and detentions of African American and Latino-origin persons increased.

22. NYPD officers were expected to stop and frisk more individuals each year. If officers fail to meet the sliding quota standard, they are subject to disciplinary action. The quota system provides incentives of promotion for officers, executives, and commanders. Therefore, stop and frisk was not a proactive tool to target criminals but a corrupted policy that punished state or local authorities who failed to meet the quota, regardless of the suspects' actions. African American and Latino origin persons were more likely to be stopped because of this quota policy. U.S. Report Paragraph No. 600. In addition, the stagnant ICE program-funding did not change in relation to an increase of stops performed by state and local authorities.<sup>xv</sup>

#### **IV. DENIAL OF RIGHTS UNDER ARTICLE 3**

23. In 2008, racial profiling was tracked in Arizona. Data found that African American and Latino drivers were 2.5 times more likely than whites to be stopped and searched by Arizona's highway patrol officers. This did not lead to the arrests of suspects. After the Department of Public Safety agreed to address the frequency of stops and searches, the agency itself published data that showed no improvement.<sup>xvi</sup>

24. The ICE program lacked funding and oversight authority to administer the proper and effective implementation of its operations. Government entities, research institutions, and civil society found that the 287(g) program lacked transparency and oversight, which results in inconsistent use of authority and the racial profiling of ethnic minorities.<sup>xvii</sup>

#### **V. DENIAL OF RIGHTS UNDER ARTICLES 9 AND 17**

25. Neighborhood sweeps were also in violation of prohibitions against racial profiling. In April 2008, Maricopa County Sheriff Joe Arpaio of Arizona, who signed the most comprehensive MOA, conducted a raid on a predominantly Latino community near Phoenix. Over 100 deputies stopped and aggressively searched for undocumented immigrants in residential and business areas, which led to the arrest and detention of many Latinos. After terrorizing the town for two days, the state and local force only found and deported nine undocumented immigrants.<sup>xviii</sup> U.S. Report ¶¶ Nos. 214 and 556.

#### **VI . SUGGESTED QUESTIONS THE COMMITTEE MAY WANT TO ASK THE U.S.**

26. The Committee may want to ask the U.S. several questions concerning the admitted failures of the police department in Oakland, California to enforce the rights of demonstrators under the First Amendment to the U.S. Constitution and the ICCPR Arts. 20, 9, and 15.

27. Is the U.S. Department of Justice or other federal agency now engaged in any programs to publicize the text of the ICCPR in Oakland, California and other U.S. cities with bad records of police misconduct?

28. Is the U.S. considering seeking funding from Congress in order to conduct training sessions on human rights law under the U.S. law and ICCPR for the Oakland Police Department and police departments in other U.S. cities with histories of police misconduct?.

29. What is the U.S. doing to overcome widespread racial discrimination by many police departments in the U.S., not only in the South, but in cities in California and Illinois and other northern and western states?.

30. The Committee may also want to ask the U.S. to include in its next report statistics on the conditions in all 50 states and U.S. territories, including:

number of arrests of demonstrators, by race and nationality

number of lawsuits charging police misconduct pending

number of settlements of complaints of police misconduct

what materials the U.S. federal government has prepared for distribution to city, county and state police agencies including reference to relevant ICCPR articles

31. Is the U.S. government taking any steps to prepare templates that could be used by local governments to report their compliance with and problems with enforcing each relevant article in the ICCPR ?

32. Based on the information in this report, the Human Rights Committee may conclude that the U.S. Immigration and Customs Enforcement and its manner of implementing MOAs under 287(g) are in violation of Articles 2, 3, 9, 17, and 26 of the ICCPR, and that the U.S. Government needs to establish a national human rights institution ( suggested in 107<sup>th</sup> session report ¶ 2) because it will not be in compliance with the Covenant until it closes ICE and establishes a new agency that deals only with human beings who have human rights. This new agency must have increased funding for oversight work in proportion to the increase of arrests, detentions, and deportations of more persons of African American and Latino origin in stop and frisks on streets, neighborhoods, or highways.

33. The new agency must charge more state and local law authorities who fail to comply with new standards; address the inefficiency of stop and frisks in locating criminals and undocumented immigrants; revoke existing MOAs with jurisdictions who fail to properly utilize civil immigration powers as delegated under ICE and 287(g); and revoke existing MOAs where there are conflicts of interest including internal incentives for stop and frisking.

34. The Committee may provide in its Concluding Observations after its 2013 meeting with the U.S. that only with these changes will persons of Black or African American and Latino origin realize their equal protection under the ICCPR and U.S. Law.

35. The Committee may also decide to commend the jurisdictions that have voted not to work with ICE officials when they seek to make arrests in their jurisdictions because of the violations of human rights by ICE officials. See U.S. Report & Nos. 214 and 600.

36. The Committee may also want to commend the State Legislature of California for adopting Assembly Concurrent Resolution ACR 129 in August 2010, which describes U.S. ratification of the ICCPR, ICAT and ICERD and requests the Attorney General of California: 1) to publicize the text of the three treaties to state, county, and city bodies, and 2) to prepare templates that can be used by local government officials to make the required reports to the UN Human Rights Committee and the UN Committee Against Torture and the UN Committee on Elimination of Racial Discrimination.

## END NOTES:

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<sup>i</sup> This issue was prepared by attorney (ret.) Ann Fagan Ginger, who co-authored “Police Misconduct

The issue of Immigration and Customs Enforcement (ICE) was prepared by Jonathan Trinh, earning his B.A. from the University of California Berkeley, while as an Intern at MCLI in the fall of 2012, with additions by Lucy Rodriguez, immigration lawyer and Board member of MCLI.

<sup>ii</sup> “2010 U.S. Census,” *U.S. Census Bureau*, accessed November 25, 2012, <http://2010.census.gov/2010census/data/>.

<sup>iii</sup> See Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*. (Feb. 2009), 16, available at <http://www.justicestrategies.org/sites/default/files/publications/JS-Democracy-On-Ice-print.pdf>.

The Branton Group:

<http://www2.oaklandnet.com/oakcal/groups/police/documents/webcontent/oak04108.pdf>

<sup>i</sup> Oscar Grant Committee Against Police Brutality and State Repression (OGC) @ [oscargrantcommittee.web:u/cp](http://oscargrantcommittee.web.u/cp)

<sup>v</sup> Id.

<sup>vi</sup> Thelton Henderson: <http://oaklandnorth.net/2013/28/qa-with-federal-judge-thelton-henderson-about-the-oakland-police-case-his-career/>

<sup>vii</sup> See end note ii.

<sup>viii</sup> See Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*. (Feb. 2009), 16, available at:

<http://www.justicestrategies.org/citesdefault/files/publications/JS-Democracy-On-Ice-print.pdf>

<sup>ix</sup> See U.S. Immigration and Customs Enforcement, “Fact Sheet: Updated Facts on ICE’s 197(g) Program,” *ICE*, 2010 [herein after ICE Fact Sheet], <http://www.ice.gov/news/library/factsheets/287g-reform.htm>.

<sup>x</sup> See note viii.

<sup>xi</sup> See ICE Fact Sheet, note ix.

<sup>xii</sup> See American Civil Liberties Union, “The Persistence of Racial and Ethnic Profiling in the United States: A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination,” p. 26-27, June 30, 2009 [herein after ACLU Report].

<sup>xiii</sup> See Leadership Conference, “Restoring a National Consensus: The Need to End Racial Profiling in America,” p. 15, March 2011 [herein after Leadership Conference].

<sup>xiv</sup> ICE Fact Sheet.

<sup>xv</sup> See Ross Tuttle et al., “Stopped and Frisked [VIDEO],” October 8, 2012, available at <http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video>.

<sup>xvi</sup> ACLU Report, p. 41.

<sup>xvii</sup> See Ross Tuttle et al., “Stopped and Frisked [VIDEO],” October 8, 2012, available at <http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video>.

<sup>xviii</sup> ACLU Report, pp. 42-43.

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