

IV. Manifestations of racial discrimination

A. The criminal justice system and barriers to civil and political participation

20. The Working Group is deeply concerned at the alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent in the United States. In addition to the most recent and well-known cases of killings of unarmed African Americans — such as the cases of Eric Garner, Michael Brown, Tamir Rice, Walter Scott, Freddie Gray and Laquan McDonald — the Working Group received information about many other similar cases. The Working Group met with a considerable number of relatives of African Americans allegedly killed by police officers that are still seeking justice for their loved ones, including Tyrone West, Tyron Lewis, Jonathan Sanders, Oscar Grant, Tony Robinson, Marlon Brown, India Kager, Ronald Johnson, Mohamed Bah, Rekia Boyd, Sandra Bland and Alonso Smith.

21. Despite efforts made by the Department of Justice, there is still a lack of an official national system to track killings committed by law enforcement officials. Federal authorities commented that the main reason for this problem is that the 18,000 police departments and law enforcement agencies in the United States are not obliged to report these types of incidents. The Department of Justice was aware of this information gap and informed the Working Group that, notwithstanding the need for legislation, it was also building a system to track information nationwide. To date, the system had not been launched.

22. In the absence of a public national system to track cases of killings by police officers, the *Guardian* newspaper's "The Counted" database identified a total of 1,136 people killed by the police in 2015, of whom 302 were African Americans. African Americans were killed at twice the rate of white, Hispanic and Native Americans. In addition, about 25 per cent of the African Americans killed were unarmed, compared to 17 per cent of the white people.¹⁰ The *Washington Post* database of police shootings registered 990 people shot dead in 2015, of whom 38 were unarmed African Americans.¹¹ Excessive and disproportionate use of force against African Americans also includes the use of tasers and heavy-handed assaults by law enforcement officers, which also have debilitating consequences for victims; there is no national system to track such incidents, either.

23. The Working Group is deeply concerned about the low number of cases where police officers have been held accountable for these crimes, despite the evidence. The *Guardian* reported that only 18 law enforcement officers were charged with crimes in relation to the 1,136 killings registered in 2015.¹² One in every four killings by police officers that

occurred in the first quarter of 2015 remain unresolved more than a year later, and 69 per cent of the 289 cases of killings by the police in the first three months of 2015 have now been ruled justified or accidental.¹³ The final report of the President's Task Force on 21st Century Policing acknowledged some of the obstacles in tackling impunity related to killings by police officers and recommended mandatory external and independent criminal investigations and the use of external and independent prosecutors in cases of police use of force resulting in injury or death.¹⁴

24. Killings of unarmed African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system. The Working Group heard testimonies that African Americans face a pattern of police practices which violate their human rights: they are disproportionately targeted for police surveillance, and experience and witness public harassment, excessive force and racial discrimination. Due to racial bias, there is fear of approaching the police for help and there is also a failure on the part of the State to provide protection. The Working Group heard testimonies from African Americans based on their experience that from an early age they are treated by the State as a dangerous criminal group and face a presumption of guilt rather than of innocence. The rapid negative escalation of situations and the excessive use of force disproportionately used on African Americans demonstrates this concern. The Working Group heard reports that racial profiling is a rampant practice among law enforcement officials. During the country visit, the Working Group was informed about and observed the excessive control and supervision targeting all levels of the lives of African Americans. This control has been reinforced since September 2001 by the introduction of the Patriot Act, and affects not only United States citizens but also has a disparate impact on the detention, treatment and deportation of undocumented migrants, including people of African descent, who enter the United States.

25 ... Ferguson ¹⁵

26 ... Chicago ¹⁶

27. The Working Group recognizes steps taken at the federal and state level to end racial profiling. In 2014, the City of New York withdrew an appeal in connection with the landmark *Floyd v. City of New York* case and agreed to join a remedial process ordered by a federal judge, who had found the City liable for a decade-long pattern of discriminatory and unconstitutional stop-and-frisk practices that disproportionately affected the black and Latino communities.¹⁷ In a recent report by the independent monitor of the remedial process, it was underscored that despite the recent reductions in the absolute number of stops recorded by the New York Police Department and the

adoption of a set of preventive measures, there were still major challenges ahead in ensuring that written changes in policies were carried out in practice.¹⁸

28. The Department of Justice, as recommended by the Committee on the Elimination of Racial Discrimination,¹⁹ reviewed the 2003 guidance regarding the use of race by federal law enforcement agencies and adopted in 2014 new guidance that also prohibits law enforcement biases based on ethnicity, gender, national origin, religion, sexual orientation or gender identity. The new guidance eliminates the exception made in the former guidance regarding the use of racial profiling in cases of national security threats and in enforcing laws protecting the integrity of the nation's borders.²⁰

29. Although crime rates in the United States have been decreasing for the last 20 years, the federal and state prison and local jail population has soared to over 2.2 million people, with another 7 million on parole or probation.²¹ African Americans are overrepresented in the penitentiary system, accounting for 36 per cent of sentenced federal and state prisoners.²² African American women constitute 21 per cent of the imprisoned female population. The incarceration rate for African American males is 5.9 times higher than the rate for white males, while the rate for African American females is 2.1 times higher than the rate for white females.²³ The Sentencing Project has underscored that if current trends continue, one of every three black American males born today can expect to go to prison in his lifetime.²⁴

¹⁰ See www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database.

¹¹ See www.washingtonpost.com/graphics/national/police-shootings.

¹² See www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men.

¹³ See www.theguardian.com/us-news/2016/apr/13/the-counted-us-police-killings-officers-cleared.

¹⁴ Action items 2.2.2 and 2.2.3.

¹⁵ United States Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department", 4 March 2015, p. 2. Available from www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

¹⁶ Police Accountability Task Force, "Recommendations for reform: restoring trust between the Chicago police and the communities they serve", April 2016, p. 8.

¹⁷ See *Floyd v. City of New York*, 959 F. Supp.2d 540 (Southern District of New York, 2013).

¹⁸ Second report of the independent monitor, February 2016. See <https://ccrjustice.org/sites/default/files/attach/2016/02/Floyd%20Monitor%20Second%20Status%20Report%20Feb%202016.pdf>.

¹⁹ See CERD/C/USA/CO/7-9.

²⁰ Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity, December 2014. See www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf.

²¹ Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/cpus14.pdf.

²² Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/p14.pdf.

²³ Executive Office of the President of the United States, “Economic perspectives on incarceration and the criminal justice system”, April 2016.

²⁴ See <http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf>.

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