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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**Written statement* submitted by the American Civil Liberties Union (ACLU),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

SANCTIONED BIAS – THE PROBLEM OF RACIAL PROFILING IN THE UNITED STATES OF AMERICA

INTRODUCTION

The American Civil Liberties Union (ACLU) submits the following statement to the United Nations Commission on Human Rights (UNCHR) in an effort to highlight the continuing problem of racial profiling in the United States. The ACLU is a national, non-partisan non-governmental organization dedicated to protecting the individual liberties, rights and freedoms guaranteed in the Constitution, laws, and treaties of the United States. The ACLU urges the UNCHR to examine the issue of racial profiling in the United States and in countries around the world and to take steps to end the practice worldwide.

RACIAL PROFILING IS A SIGNIFICANT PROBLEM IN THE U.S.

In the United States, there is a strong correlation between race and the unequal treatment of racial minorities at every stage of the criminal justice continuum, from interrogations to arrest, detention, charges, conviction, sentencing, prison and the death penalty. It all begins with an encounter with law enforcement – a discretionary decision by law enforcement officials to target a person not because he or she has committed a crime, but because of a person's skin color. This practice is commonly known as racial profiling. It essentially treats race as evidence of crime, targeting certain segments of the population as potential criminal offenders solely by virtue of their race because of a false assumption that most crimes are committed by racial minorities.¹ This practice not only violates the United States' basic constitutional commitment to equality before the law, but it also violates U.S. international legal obligations aimed at eliminating racism and racial discrimination.

Every year, thousands of racial minorities experience the humiliation of being stopped while driving, flying, or even walking simply because of their race or ethnicity. Studies conducted throughout the United States reveal that racial profiling by federal, state, and local law enforcement agencies is pervasive. In many areas of the country people of African and Hispanic descent are being stopped for routine traffic violations in excess of their representation in the population or even the rate at which such populations are accused of criminal conduct. Despite the efforts to address racial profiling within law enforcement departments, the practice continues unabated. In fact, it has become more pronounced since September 11th particularly among people of Arab and South Asian descent.

Since the terrorist attacks of September 11th thousands of people of Arab and South Asian descent were profiled, arrested and detained by US law enforcement agencies. The ACLU has gathered evidence indicating that the United States government's arrest, detention and immigrant registration policies lacked any objective or reasonable basis. In fact, the US Justice Department's Inspector General² issued a report confirming that the detainees were "almost exclusively" men from South Asia and the Middle East.³ The report also concluded that many

¹ See *Justice on Trial: Racial Disparities in the American Criminal Justice System*, Leadership Conference on Civil Rights, at 7.

² United States Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*.

³ *Id.* at 20-21.

detainees were “arrested more by virtue of chance encounters or tenuous connections to a [possible terrorism] lead rather than by any genuine indications of a possible connection with or possession of information about terrorist activity.”

THE MYTH ABOUT RACIAL PROFILING

There is incontrovertible proof that racial profiling does not give law enforcement officials an advantage in fighting crime. Furthermore, the premise upon which it is based – that certain ethnic minorities are more likely than whites to be in violation of the law – is simply wrong. Racial profiling is a distraction because law enforcement officers begin focusing on the wrong suspect. When a U.S. government building was bombed in 1995, law enforcement officials immediately began to focus its investigation on Middle Eastern suspects, but the actual perpetrator was a white war veteran. Studies consistently show that “hit rates” – the discovery of contraband or evidence of other illegal conduct – among minorities stopped and searched by the police are lower than “hit rates” for whites who are stopped and searched.⁴

RACIAL PROFILING IN PRACTICE

The story of Janneral Denson is just one example of how this horrible practice affects the lives of ordinary people. Ms. Denson is an African American woman who was seven months pregnant at the time she was racially profiled for drug possession by United States Customs agents at the Fort Lauderdale Hollywood International Airport. While passing through customs, Denson was detained by the customs Service, taken to a hospital, forced to take laxatives and then shackled to a bed for two days so agents could monitor her bowel movements. Eight days after her ordeal, Denson’s son was born premature in an emergency Caesarean section. Custom agents found no contraband or evidence of other illegal activity. According to a 2000 Report by a U.S. government agency on U.S. Customs Service, while U.S. women of African descent were nine times more likely than White females to be x-rayed following a frisk or patdown, they were less than half as likely to be found carrying contraband.⁵

Because traffic stops account for 52 percent of contacts between law enforcement and American citizens, disparities in vehicle stops and searches are generally instrumental in defining the treatment of minorities by law enforcement.⁶ In April 2004, a television news program, *DATELINE NBC*, featured a report on the latest collection of evidence that reveals that people of African descent are unfairly targeted for a disproportionate number of police investigations.⁷ During the course of a 14-month investigation, *Dateline* surveyed more than four million traffic stops and tickets from cities across the country and found that in most cities people of African descent were ticketed at rates three times higher than their white counterparts for non-moving violations. While the report focused exclusively on racial profiling within the communities of people of African descent, there are countless examples of racial profiling incidents within the communities of people of Hispanic, Asian and South Asian descent as well as Indigenous peoples.

⁴ See “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001,” Leadership Conference on Civil Rights Education Fund (2003) (hereinafter “Wrong Then, Wrong Now”), at 17-18.

⁵ General Accounting Office, *United States Customs Service: Better Targeting of Passengers for Personal Searches Could Produce Better Results* (March 2000).

⁶ David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* (The New Press 2002), at 99.

⁷ “A Pattern of Suspicion”, April 9, 2004.

In addition, immigration enforcement policies have often targeted specific groups of immigrants for disproportionate and improper attention. A study by the National Council of La Raza identified a pattern of selective enforcement against individuals of Hispanic descent by U.S. Immigration officials. People of Hispanic descent have been subjected continuously to improper interrogation and detention for suspected violations of immigration or criminal laws.⁸

THE UNITED STATES' FAILURE TO END RACIAL PROFILING IS IN VIOLATION OF ITS INTERNATIONAL OBLIGATIONS

The United States has ratified two treaties that are directly relevant to its international obligations to end racial profiling: the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Under the ICERD the United States accepted the obligation not to engage in racially discriminating acts or practices. Article 2 of ICERD obligates the United States to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the effect of creating or perpetuating racial discrimination."⁹

Similarly, under the ICCPR, the United States is not only to cease from engaging in racial profiling on a national level, but also to actively monitor the policing activities of law enforcement agencies at all levels in order to identify racial profiling and put an end to it. Both the ICCPR and ICERD require a state party to not only refrain from committing discrimination, but to undertake affirmative steps to prevent and put an end to existing discrimination, as well.

The U.S. government has attempted to address racial profiling by issuing profiling guidelines for federal law enforcement agencies; however, the guidelines fall woefully short of remedying the problem. In fact, since September 11th, we have actually witnessed an increase in racial profiling and the United States' willingness to condone law enforcement and security actions based primarily on skin color and national origin.

RECOMMENDATIONS

Because the United States has failed to meet its obligations under the ICERD and the ICCPR, the American Civil Liberties Union urges the UNCHR to:

1. Request the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance to prepare a report on the practice of racial profiling including its use in the United States.
2. Call upon the US government to cooperate and fully engage with the special procedures established by UNCHR and to extend an invitation to the Special Rapporteur on Racism to visit the U.S. to examine the issue of racial profiling.
3. Call upon the United States Government to adopt effective legislative, administrative, and judicial measures to abolish and prevent the practice of racial profiling at a local, state, and federal level. At a minimum, the legislation should make racial profiling illegal, and provide a legal remedy for individuals harmed by the practice. It should also

⁸ National Council of La Raza, *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the 90's* (1999).

⁹ CERD, Part 1, Article 2(1)c.

implement a uniform data collection system to identify and track racial profiling and require a report of the government's findings on compliance.
