

# Racial Profiling, Security, and Human Rights

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Neighborhood Watch coordinator George Zimmerman's February 2012 fatal shooting of Trayvon Martin, an unarmed, 17-year old African American in a gated community in Sanford, Florida, has raised serious questions concerning racial profiling (Yancy and Jones 2012). Racial profiling can be defined as:

Any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, [color], ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment. (UN Working Group of Experts on People of African Descent 2008).

Racial profiling is a violation of the 14<sup>th</sup> amendment of the U.S. Constitution, which recognizes "the principle of equality before the law" (UN Special Rapporteur 2009). The amendment states that no State shall "deny to any person within its jurisdiction the equal protection of the laws" (Ibid.). The immediate persons to whom the amendment referred when it was drafted and ratified were newly emancipated African Americans, whose inclusion in the citizenry had to be codified in the letter and, hopefully, also the spirit of the law. Ample evidence attests to constitutional rights being denied and abused by de facto non-enforcement during the Reconstruction and Jim Crow eras as well as during the current post-Civil Rights period. Racial profiling is one form of discrimination and rights violation that remains pervasive in law enforcement and as a tactic of everyday social control. It is also a violation of international standards for human rights.

## From Slave Patrols to Genocide

In the African American experience, racial profiling dates back to the repressive policing of "slave patrols" and was subsequently, in the post-bellum South, integral to the workings of Black Codes and later Jim Crow laws which, among other things, controlled Black labor and mobility, both physical and social (Ritchie and Mogul 2007:3; Hadden 2001). In 1951, the historic petition that the Civil Rights Congress, an organization well left of the National Association for the Advancement of Colored People (NAACP), submitted to the United Nations "documented thousands of incidents of police brutality [including profiling, that targeted] African Americans" (Ritchie and Mogul 2007:3).

According to that historic document, against which the U.S. government (including its most liberal spokespersons such as Eleanor Roosevelt) argued, the cumulative impact of those assaults, along with many other forms of discrimination and social disparities, constituted nothing less in its effects than *genocide*, a crime against humanity defined in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted in 1948 (Civil Rights Congress 1951, Anderson 2003). The convention states that "[a]ny intent to destroy, in whole or

in part, a national, racial, ethnic, or religious group...thus, ‘causing serious bodily or mental harm to members of the group’ is genocide as well as ‘killing members of the group’” (Civil Rights Congress, quoting the convention, 1951: xi). Not surprisingly, the petition, which built upon but went well beyond the 1947 petition that W.E.B. Du Bois filed on behalf of the NAACP (NAACP 1947), was entitled *We Charge Genocide* (Civil Rights Congress 1951).

Sociocultural anthropologist João Costa Vargas (2008) revisits and reflects upon the present-day implications of the 1940s and 1950s human rights advocacy of lawyer William L. Patterson (the leader of the Civil Rights Congress and the International Labor Defense), performing artist and activist Paul Robeson, and public intellectual W.E.B. Du Bois—whose cooperative political project also depended on the contributions of Black left feminists such as Louise Thompson Patterson and Eslanda Goode Robeson (McDuffie 2011, Ransby 2012). Vargas argues that a *genocidal continuum* continues to operate at the present moment in the United States as well as in other sites within the African Diaspora. Placing greater emphasis on effects and consequences than on intentions, he substantiates his claim with transnational evidence from Los Angeles and Rio de Janeiro. For example, he demonstrates that in Brazil’s so-called racial democracy hypervisible, racialized policing and para-militarization are factors that disproportionately affect people of African descent, particularly those who are structurally and existentially vulnerable to violence because of poverty. He elucidates how this situation is parallel to significant dimensions of the Black experience in the U.S. society.

### **Population Control and Controlling Images**

In the U.S. context in particular, racial profiling and “policing the crisis” of population control (cf. Hall, Critcher, Jefferson, Clarke and Roberts 1978) join a wide spectrum of iniquities, ultimately the effects of structural racism (Marable 2001, 2002)—whether intended or unintended—that interlock with growing class inequalities. These injustices and disparities include infant mortality and morbidity, HIV/AIDS incidence, shortened life expectancies, under- and unemployment, substandard housing, miseducation and the impoverishment of public education, mass incarceration, high recidivism rates, the school to prison pipeline, and felony and other forms of disenfranchisement. Contributing to these conditions are the production, reproduction, and circulation of “controlling images” (Collins 2000) that virtually conflate blackness, particularly inner-city blackness, with violent criminality, an association with drugs, and threats to law and order (Hall 2001, Jones 2005, Moody 2008).

Although these negative meanings certainly tend to be inscribed upon the bodies of young Black males, Black women are not immune to being stereotyped and profiled as criminal suspects, particularly as drug couriers or mules, addicts, and sex workers (see Davis 2003, the Sentencing Project website, and Harrison 2007 on Black women’s incarceration). This makes Black women vulnerable to a range of gender-specific abuses from official and vigilante law enforcement. Not uncommonly, profiling leads to strip searches, sexual harassment, and rape (Ritchie and Mogul 2007:19-20).

The stereotypes projected upon Black male physicality are also both raced and gendered in light of an ideology that attributes an innate proclivity for aggression, violence and predatory sexuality to black masculinity (Jones 2005). These notions purportedly justify the deployment of coercion on the part of police and, in the context of the Trayvon Martin tragedy in Florida, self-appointed “stand-your-ground” defenders of local security (Yancy and Jones 2012).

## **Racial Profiling as a Human Rights Violation**

Racial profiling is a breach of international treaties such as the International Covenant on Civil and Political Rights and, particularly, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The United States signed this treaty in 1966 but did not ratify it until 1994. It qualified its ratification with reservations concerning the U.S. Constitution's purported precedence over ICERD and any other instrument of the UN human rights system. The United States has also been slow to submit its obligatory periodic reports on its compliance with the convention. Its reports have been fraught with ambiguities and evidentiary gaps that have prompted the Committee on the Elimination of Racial Discrimination (CERD) to respond critically but constructively with recommendations for reform. These have included adopting the End Racial Profiling Act and rescinding the National Entry and Exit Registration System. These recommendations have been informed by the shadow reports that a range of civil society organizations and coalitions (e.g., Amnesty International [AI], American Civil Liberties Union [ACLU], Rights Working Group, US Human Rights Network) have submitted to CERD, documenting the persistence of racial discrimination in the United States. A few years ago, the ACLU and Rights Working Group (2009) collaborated on a follow-up report that focused specifically on profiling, *The Persistence of Racial and Ethnic Profiling in the United States*. This document clearly attests to the severity of the problem.

CERD issues country-specific and general recommendations in satisfying its charge to monitor compliance with ICERD. The Committee advocates the kinds of reforms also consistent with the Declaration & Programme of Action adopted at the 2001 World Conference against Racism (WCAR) in Durban, South Africa (UN 2002). That blueprint for antiracism (along with the declaration and program that the 2001 Non-Governmental Organization (NGO) Forum, accompanying the inter-government conference, adopted) has been reinforced by the 2009 and 2011 Durban Review Conferences in Geneva and New York, respectively (WCAR NGO Forum 2002). Another significant report resulted from the field investigations of the UN's Special Rapporteur on Contemporary Forms of Racism. The internationally renowned lawyer and legal scholar Doudou Diène visited the United States in 2008 (UN Special Rapporteur, April 2009). Racial profiling was one of the concerns he addressed in several places in his report, most notably under the themes of law enforcement, immigration, counterterrorism, and post-Katrina conditions. Another UN-related group that has addressed profiling is the Working Group of Experts on People of African Descent (UN Working Group of Experts 2008).

International NGOs such as Amnesty International (AI) and Minority Rights Group along with national and regional human rights organizations, commissions and councils have also weighed in on the problem of profiling, which exists internationally. For instance, a 2011 AI report indicates that African immigrants in Spain are regularly subjected to stop and search identity checks in public places. It is not uncommon for them to be profiled several times a day (AI 2011). As pointed out in Diène's report, in the United States profiling is also deployed in the context of immigration control but also in those of policing street-level crime and counterterrorism.

## **Security, Safety, and Moral Panic Since 9/11**

Since September 11, 2001 the problem of racial profiling has both deepened and expanded in terms of the populations being targeted. Incentives to profile have been built into

antiterrorism and anti-illegal immigration laws and policies that subordinate civil liberties and rights to the supposedly greater good of homeland security and border control. Escalating anxieties over security in transnational, national and local contexts have produced an increasingly volatile climate in which individuals perceived to fit the stereotypes of Arab/Islamist terrorists, illegal immigrants (particularly Mexican and Central American), and ghetto thugs are subjected to indiscriminate profiling. The interrelated wars on terrorism, “illegal aliens” or undocumented workers, and drug crimes converge in creating a climate in which a moral panic (Cohen 1972; Hall, Critcher, Jefferson, Clarke and Roberts et al. 1978) over national security and personal safety has escalated. In moral panics, the public sense of danger and vulnerability are magnified beyond the actual incidence of crime and political disorder. Invoking the need to protect the national body from external and internal threats, the State galvanizes nativist, xenophobic and anti-crime publics that support the intensification of “policing the crisis” (Hall, Critcher, Jefferson, Clarke and Roberts 1978; Harrison 2012b). The resultant law and order regime, engendering conditions that risk authoritarianizing democracy, justifies its breach or suspension of civil liberties, civil rights, and human rights in the name of homeland security and law and order.

The main targets of these expanded policing powers at the local, state and federal levels are immigrants and ethno-racial minorities. The danger of racial and ethnic profiling has grown in contexts ranging from the federal implementation of the USA Patriot’s Act to the local-level enforcement of programs that fall under the parameters of ICE ACCESS—that is, the U.S. Immigration & Customs Enforcement’s Agreements of Cooperation in Communities to Enhance Safety and Security. One such program is the 287 (G), which authorizes “state and local law enforcement officials to perform the duties of federal immigration officers in investigating, detaining and initiating removal proceedings against immigrants” (AI 2012: 38-39). Related programs are the Criminal Alien Program (CAP) and the Secure Communities Program, which also provide pretexts for targeting and screening individuals in prisons and jails and during local arrests based on race and ethnicity (AI 2012:39).

As the case of Trayvon Martin reveals, the policing of those profiled as terrorists, illegal aliens, or criminals is not only undertaken by law enforcement officials. Vigilante justice also plays a role, whether along the US-Mexican border or in neighborhood-watch situations in gated and non-gated communities. The popular perception that Black male youths like Martin are life-threatening dangers (Jones 2005, Moody 2008) is too often internalized not only by Euro-Americans but also by other people of color and immigrants (Basch, Glick Schiller and Szaonton-Blanc 1993; McClain et al. 2006). Integral to their enculturation in the host country is learning the invidious notions about difference, particularly the common-sense ordering of racial hierarchies in which African Americans are relegated to the social bottom as undeserving, pathologized Others (Basch, Glick Schiller and Szanton-Blanc 1993). Even black immigrants may fall into this trap (Rahier, Hintzen, and Smith 2010; Okpewho and Nzegwu 2009). Research suggests that in some cases, anti-Black American racial/ethnic stereotyping is learned before immigration to the United States (McClain et al. 2006). This can be attributed, in good part, to the global reach of U.S. media representations. However, the source of this bias is often compounded in places (e.g., Latin America) where African origins and blackness have been stigmatized and devalued in sociocultural terms specific to those national contexts (Andrews 2004). Paradoxically, persons who are themselves likely to be profiled under certain

circumstances may perpetrate the offense against individuals who belong to more racially-denigrated categories within the established status quo.

## **Conclusions**

While African Americans (and other Black ethnic groups) are not the only ones who suffer racial profiling in this country, blackness has long represented the most radical form of racial alterity or difference (Harrison 2012a). This phenomenon has implications for Black people being able to enjoy human dignity and rights when dehumanizing contexts of State and vigilante repression still exist.

A growing demand for human rights right here in the United States is now being made (Harrison 2005, 2012a; Soohoo, Albisa, and Davis 2008). This is a reflection of the extent to which democratization as well as social and economic justice remain unevenly and unequally developed—despite the country’s claim to being the paragon of the free world. The assertion and exercise of a human rights consciousness are also part of the legacy of earlier generations of struggle—from Frederick Douglass to the NAACP and Civil Rights Congress of the 1940s and early 1950s to Malcolm X a decade later (Harrison 2012a). In these interrelated contexts of struggle, claims to human dignity and rights have been conceptualized and mobilized both within and beyond the borders of national citizenship—whose construction has implicated racialized disparities of power.

A human rights approach to the problem of racial profiling suggests a number of recommendations for policy reformulation and implementation. Among them are: 1) raising public consciousness of the present-day workings of race, racism, xenophobia and related intolerance, which belie the notion of a “post-racial” society; 2) educating the American public on the content and scope of universal human rights and this country’s ethical and legal obligations to comply with them; 3) holding the U.S. government accountable to the UN covenants and conventions it has signed and ratified; 4) galvanizing public support for official U.S. participation in UN and other world conferences on matters related to racism, migrant rights, and indigenous self-determination; 5) holding the U.S. government and civil society accountable to the Declaration and Programme of Action that emerged from the 2001 WCAR and to the recommendations that the UN Special Rapporteur for Contemporary Forms of Racism made in 2008; 6) adopting federal legislation such as the End Racial Profiling Act and rescinding discriminatory policies and programs such as the National Entry and Exit Registration System. There is a serious need to find effective and innovative ways to stimulate and facilitate a public dialogue that is constructive and conducive to forms of change grounded in social and economic justice.

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