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Submission of Wade Henderson, President and CEO The Leadership Conference Education Fund The Leadership Conference on Civil and Human Rights

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"Leaving No One Behind, People of African descent and the Sustainable Development Goals"

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Introduction

The Leadership Conference on Civil and Human Rights is the United States' premier civil and human rights coalition of more than 200 national organizations working to build an America that's as good as its ideals. It was founded in 1950 by A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson, a leader of the National Jewish Community Relations Advisory Council. For more than half a century, The Leadership Conference has led the fight for civil and human rights by advocating for federal legislation and policy, securing passage of the Civil Rights Acts of 1957, 1960, and 1964; the Voting Rights Act of 1965; the Fair Housing Act of 1968; and the Americans With Disabilities Act of 1990. The Education Fund is the research and education arm of the coalition founded in 1969. It builds public will for civil and human rights policies and laws.

The unequal treatment of people of color in the justice system is one of the most profound civil rights crises facing America in the new century. It undermines the progress we have made over the past five decades in ensuring equality under the law, and calls into doubt our national faith in the rule of that law. This treatment manifests itself in a mushrooming prison population that is disproportionately Black and Latino; in the decay of communities of color that have given up an entire generation of young men and, increasingly young women, to prison; and in a widely held belief among African Americans and Latinos that the justice system is deserving neither of trust nor of support.

Of particular concern to the American civil rights movement right now is the law-and-order rhetoric of the new Trump administration that could reverse much of the progress that was made under the Obama administration to reform our justice system and address racial and ethnic discrimination within it.

1. What are the key human rights concerns of people of African descent in your country/region today and how do you work to address them?

Discrimination and racial disparities persist at every stage of the U.S. criminal justice system, from policing to trial to sentencing.¹ For example, one in 10 Black males in their 30s is in prison or jail on any given day², and Black males are six times more likely to be incarcerated than non-Hispanic White males.³ Though the U.S. government has implemented measures in recent years to alleviate the racial discrimination that persists in the criminal justice system, there is much more to be done to sufficiently address the growing disparities. In this regard, issues related to discriminatory law enforcement and prosecutorial practices, sentencing, criminal disenfranchisement, and juvenile justice remain concerns.

In particular, over the last five years we've seen a growing movement in the United States to address policing practices, like discriminatory profiling, excessive use of force, and both explicit and implicit racial bias in law enforcement, that have a disproportionate impact on low-income communities, communities of color, and African Americans in particular. This movement was ignited in the wake of the killings of unarmed Black men and women, including Trayvon Martin (February 2012), Rekia Boyd (March 2012), Eric Garner (July 2014), Michael Brown (August 2014), LaQuan McDonald (October 2014), Tamir Rice (November 2014), Sandra Bland (July 2015), Philando Castile (July 2016), Alton Sterling (July 2016), Terence Crutcher (September 2016), and Keith Lamont Scott (September 2016).

Below we discuss these issues in further detail:

Discriminatory Law Enforcement and Prosecutorial Discretion

- *Racial Profiling*: In 2003, the Department of Justice (DOJ) issued guidance outlawing the use of race and ethnicity by federal law enforcement as an element of suspicion absent any suspect-specific information. Though a good first step, the guidance was inadequate to address profiling. As a result of civil rights advocacy, DOJ released an update guidance in December 2014. Despite significant progress, troubling exceptions and loopholes remained in the guidance, such as the guidance itself does not apply to state and local law enforcement. The guidance also retained exceptions for the Federal Bureau of Investigation, Transportation Security Administration, Immigration and Customs Enforcement, and U.S. Customs and Border Protection to profile at, or in the vicinity of, the border and in certain national security contexts, which disproportionately affect Latinos, Arabs, South Asians, Muslims, and Sikhs. Additionally, the guidance did not ban the troubling practice of “mapping,” data gathering, and surveillance of racial, ethnic, and religious communities. These activities are a pernicious form of profiling that associates criminal activity with racial, ethnic, or religious identity.

¹ For more information see the Criminal Justice section of, “Falling Further Behind: Combating Racial Discrimination in America,” pgs. 6-11. To View the Full Report Visit:

<http://www.civilrights.org/publications/reports/cerd-report-falling-further-behind/falling-further-behind.html>

² Nicholas Turner (President of the Vera Institute), *Race and Prosecution in Manhattan: Research Summary*, VERA INSTITUTE OF JUSTICE, July 2014, https://storage.googleapis.com/vera-web-assets/downloads/Publications/race-and-prosecution-in-manhattan/legacy_downloads/race-and-prosecution-manhattan-summary.pdf

³ Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation: 2012).

Recommendation: The U.S. government should pass legislation to ban discriminatory profiling, implement robust data collection and complaint protocols for all federal law enforcement and state and local counterparts, and provide funding for mandatory anti-bias training of state and local law enforcement. In addition, the Department of Justice should eliminate the guidance exemptions that allow profiling in the vicinity of the border and in certain national security contexts, and should apply the guidance to state and local law enforcement that receive federal funds and all joint task forces and centers in which the federal government participates.

- *Police Misconduct:* Police misconduct has also been an issue of concern, as federal, state, and local police continue to use force disproportionately, and, in particular, more deadly force against individuals and communities of color. Actions by DOJ’s Special Litigation Section – mandated to investigate state and local law enforcement agencies for compliance with federal civil rights law, including police misconduct – are small in number. The section is under-resourced and so has only had 33 cases and matters since the year 2000⁴. However in the past few years, investigations into misconduct in cities with high-profile police killings like Ferguson, Baltimore, Cleveland and Chicago have found systemic failures in constitutional policing, which have led to consent decrees that will hopefully lead to systemic reform. Though the federal government has a limited role in local policing, these investigations are an important tool in protecting the civil rights of all Americans, especially communities of color. That is why it’s troubling that the Department of Justice under the new Trump administration has indicated its intention to cease using pattern and practice investigations and consent decrees to make systemic reform to discriminatory police departments.

Recommendation: The Department of Justice should promote constitutional policing practices through collaborative reform and pattern or practice investigations.

- In addition, abuses by the U.S. Customs and Border Protection (CBP) have also come to light. At least 48 of the 53 people that died as the result of an encounter with CBP officials since January 2010 died as the result of use of force or coercion,⁵ and hundreds have filed formal complaints of official misconduct, including beatings, sexual abuse, and other assaults. Under the new Trump administration, the Department of Homeland Security issued a memo outlining new policies to drastically increase the use of expedited removal and essentially eliminate the priorities for deportation. These policies create the foundation for a mass deportation machine, unlike anything we have ever seen in the United States and will probably lead to more troubling civilian contact with law enforcement.

⁴ U.S. Dept. of Justice, Cases and Matters, <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0>

⁵ ACLU of New Mexico Regional Center for Border Rights. “Deaths and Injuries in CBP encounters since January 2010 (including off-duty incidents and when CBP was acting as a backup).” As of May 19, 2016. https://www.aclu.org/sites/default/files/field_document/may_2016_dead_and_injured_by_cbp_officials.pdf

Recommendation: CBP and ICE should promptly deploy body-worn cameras within an appropriate policy framework that include strong civil rights and policy protections for officers/agents and the public, to cover all CBP and ICE encounters with the public.

- *Prosecutorial Discretion:* Prosecutorial discretion also has disproportionately negative effects on defendants of color. For example, Hispanic defendants, all else being equal, are more likely than Whites to be sentenced to terms of incarceration⁶. Black defendants in the federal system typically receive sentences that are almost 10 percent longer than comparable sentences for Whites arrested for similar crimes.⁷ The government under the previous administration took steps to alleviate this problem by announcing a new policy in 2013 to guide prosecutorial discretion in U.S. attorneys' offices. However, the new U.S. Attorney General Jeff Sessions has indicated that he'll rescind this policy, which we would oppose.

Disparities in Sentencing

- *Mandatory Minimums:* Harsh mandatory minimum sentencing laws, particularly at the federal level, have intensified racial disparities within the criminal justice system and caused our federal system to balloon over the last 30 years. People of color comprise three-quarters of those serving a mandatory sentence for a federal drug trafficking offense, and in those instances in which relief from the mandatory minimum penalty occurred, it occurred least often for Black offenders. To address these disparities, the U.S. government passed the Fair Sentencing Act of 2010 as an effort to level the disproportionate impact the "War on Drugs" and the sentencing disparity between crack and power-cocaine has on Black defendants. However, these efforts alone are not enough to fully address the racial disparities in the justice system. Mandatory minimum reform is crucial to slowing the overwhelming growth of our prison population and reducing its staggering economic costs.

Recommendation: The U.S. Congress must address this issue by passing a bill to further reform federal mandatory minimum sentencing laws.

Re-Entry

- *Collateral Consequences.* Every year, nearly 700,000 people are released from American prisons, and an estimated 9 million are released from jail. According to the National Institute of Justice, almost two-thirds of them are arrested again within three years. Once released, formerly incarcerated people face a myriad of barriers to successfully re-entering society. They are not allowed to vote, have little access to education, face scant job opportunities, and are ineligible for public benefits, public housing and student loans. These obstacles have profoundly negative

⁶ National Academy of Sciences, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 2014

⁷ Rehavi, M. Marit and Sonja B. Starr, Racial Disparity in Federal Criminal Charging and its Sentencing Consequences, University of Michigan Law School: Program in Law & Economics Working Paper Series, No. 12?002 (May 7, 2012) available at Criminal Justice and Civil Rights Primer 9 DATA & CIVIL RIGHTS: A NEW ERA OF POLICING AND JUSTICE <http://ssrn.com/abstract=1985377>.

effect on millions of American families and make it practically impossible for millions of people who are returning home to be the engaged, responsible citizens we say we want them to be.

Recommendation: The U.S. government should pass legislation that provides resources to state and local governments and nonprofit agencies who are working to reduce recidivism and improve outcomes for people returning from state and federal prisons, local jails, and juvenile facilities.

- *Felony Disfranchisement* Individuals with criminal convictions in the United States are subject to many state laws governing their right to vote and they often lack information about the status of their voting rights or how to restore them. Nationwide, one in 13 African Americans of voting age have lost the right to vote—a rate four times the national average.⁸ The United States is one of the few western democracies that excludes such large numbers of people from the democratic process.

Recommendation: The U.S. government should pass legislation restoring the right to vote to people who have been incarcerated or have a felony conviction and states should eliminate voting restrictions for these individuals as well.

- *Fair Chance Hiring.* Seventy (70) million adults living in the U.S.—about one in three American adults—has a criminal record that will show up on a routine background check.⁹ Securing and holding employment is imperative to successful re-entry, but qualified job seeking people with records struggle against immense odds to do so. More than 90 percent of companies use background checks in their hiring decisions, putting jobs further out of reach for the one in three adults who are living with a record.¹⁰ Having a record reduces the likelihood of a job callback or offer by nearly 50 percent¹¹ and contributes to high levels of unemployment among prime-age working men; 34 percent of unemployed men ages 25 to 54 have been convicted of a crime.¹² Fair chance hiring refers to policies that help people involved in the criminal justice system—formerly incarcerated people and individuals with arrest or probation records—find and secure jobs for which they are well-qualified. Removing questions about criminal history from job applications, known as “banning the box,” allows employers to judge applicants on their qualifications first, without the stigma of a record. Fair chance hiring policies do not prohibit

⁸ Jean Chung, The Sentencing Project, *Felony Disenfranchisement: A Primer*, 2, June 2014, available at http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf

⁹ Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More than You Think*, WALL STREET JOURNAL, August 7, 2015, <http://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>

¹⁰ Michelle Natividad Rodriguez and Maurice Emsellem, *65 Million Need Not Apply*, NATIONAL EMPLOYMENT LAW CENTER, March 2011, http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf

¹¹ Devah Pager, *The Mark of a Criminal Record*, NORTHWESTERN UNIVERSITY, March 2003, http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf

¹² Maurice Emsellem and Michelle Natividad Rodriguez, *Advancing a Federal Fair Chance Hiring Agenda*, NATIONAL EMPLOYMENT LAW CENTER, January 2015, <http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf>

background checks, but they postpone them until later in the hiring process (i.e. the conditional offer stage of the process).

Recommendation: The U.S. government should pass legislation adopting a fair chance hiring policy that applies to federal agencies and federal contractors and state and local jurisdictions should do the same.

- *Education.* Access to higher education for formerly incarcerated individuals has been severely curtailed. In 1994, the Omnibus Crime Bill included a provision that blocked Pell Grants for incarcerated people. The next year, the number of incarcerated individuals able to access higher education fell by 44 percent.¹³ Nearly 40 percent of incarcerated individuals over 18 years old have not graduated from high school.¹⁴ Numerous studies conducted over several decades have shown that the more education an incarcerated person receives, the less likely he or she is to return to prison.¹⁵ However, in 2005, the Bureau of Justice Statistics reported that only 35 percent of prisons were providing some sort of access to higher education.¹⁶

Recommendation: The U.S. government should pass legislation to open up opportunities for incarcerated individuals and those who've been released to access federal funding for higher education.

Hate Crimes

- Recently, there have been backlash crimes against Muslims, Arabs, Sikhs, and South Asians following the terrorist attacks in Paris and San Bernardino. Unfortunately, anti-Muslim incidents in the U.S. have continued to occur at a disturbing rate – exacerbated by the nasty rhetoric and the appeals to prejudice and bigotry that have emerged in the 2016 election campaign. In addition, in the current environment – with the refugee crisis, the rise of far-right parties and movements espousing hatred, and an increase in hate crimes – The Leadership Conference members are urging OSCE's participating states to make reporting and enforcement a higher priority.
- In the aftermath of the election, the nation has experienced an extremely disturbing surge of post-election hate incidents. According to the Southern Poverty Law Center, there were 1,094 hate incidents in the first month following the election. Overall, the most recent federal data on hate crimes in the United States released in November found that hate crime incidents increased 7 percent – from 5,479 to 5,850. The data show an increase in the number of race-based crimes, crimes directed against Jews, and against the LGBT communities – and a significant increase in anti-Muslim hate crimes.

¹³ <http://www.urban.org/research/publication/classroom-community>

¹⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_09_1YR_S2601B&prodType=table

¹⁵ <http://www.dllr.maryland.gov/adulted/aeimpactprisoned.pdf>

¹⁶ <http://www.bjs.gov/content/pub/pdf/csfef05.pdf>

- The Leadership Conference is working with national, state and local partners to document hate incidents across various communities and provide resources (legal and social services) to victims. That data is public and searchable at www.communitiesagainsthate.org. The U.S. government should mandate data collection and reporting of hate incidents by state and local law enforcement and provide resources to local communities to address hate violence through public education and awareness campaigns.

Our advocacy

- The Leadership Conference and The Education Fund addresses these issues by bringing together unique and unlikely allies to advance comprehensive justice reform through public education and legislative advocacy campaigns. Our work highlights the need for reform in each stage of the justice system, from law enforcement and policing, to sentencing and prison reform, to re-entry. To that end, we focus on three primary areas of criminal justice reform: (1) ensuring racial justice in the criminal justice system; (2) maintaining civil rights protections and increasing transparency and accountability in federal, state and local law enforcement agencies; and (3) raising awareness of the need to provide opportunities for formerly incarcerated people to become fully contributing members of society.
- Currently, we are supporting legislation that will reform discriminatory policing practices, reform sentencing laws, and ease the transition of formerly incarcerated people back into society at the federal level, as well as partnering with local advocacy organizations to address these issues at the state level.
- In addition, while we are pushing for affirmative reform of the system, we are also working to stop legislation and policy changes that would exacerbate the racial and ethnic disparities in the system.

2. How can the WGEPAD improve and enhance its engagement with civil society for greater impact on the ground?

The visit made by members of the WGEPAD to the United States provided an excellent opportunity for local civil society groups to engage with the working group and the report issued following the visit reflected much of that input. Unfortunately, there is no mechanism in the U.S. government to promote implementation of the recommendations from the Working Group. This will have to come from civil society. Currently, a group of US civil society organizations convened by the U.S. Human Rights Network is developing a set of activities to promote the Decade and the need for more sustained education and understanding of the history of people of African descent here in the U.S. and the pernicious and lasting effects of that history. Developing activities in partnership with members of the working group both at the national and local levels could both help shape the agenda of the WG in response to local needs as well as provide people in the U.S. with a global perspective on addressing the needs of people of African Descent.

3. Which human rights concerns should the WGEPAD focus on in the next three years?

More broadly, over the next three years, WGEPAD should focus on raising awareness about the need for anti-discrimination laws in countries where people of African descent have historically been marginalized and criminalized. This would include addressing specific challenges relating to poverty, criminal justice, hate crimes, education, employment, housing, and voting rights. This increased focus would help to highlight the particular challenges that people of African descent face and ways that governments make restitution and promote greater diversity and inclusion. To the extent effective practices have been developed to combat such discrimination, the working group could play an important role in highlighting these practices and approaches.

Additionally, in its engagement with the United States, we would encourage the working group to prioritize the recommendations above related to the disproportionate impact that the justice system has on people of color, especially those of African descent, from arrest, to sentencing, to release. Though we don't discuss these issues in detail here, we would also encourage the working group pay particular attention to efforts to rollback progress on core civil rights protections, in the areas of voting rights, education, and broad non-discrimination.

Thank you for your consideration. If you have any questions regarding these issues, please feel free to contact, Sakira Cook, Counsel, at cook@civilrights.org or 202-263-2894.