



EXECUTIVE SUMMARY OF U.S. CIVIL SOCIETY
SHADOW REPORT SUBMISSIONS

COMPILED BY THE US HUMAN RIGHTS NETWORK
ON BEHALF OF MEMBER AND PARTNER ORGANIZATIONS

TO THE UNITED NATIONS
COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

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TABLE OF CONTENTS

Introduction	4
Summaries of Civil Society Submissions	
- Right to Housing	
o Homelessness & Lack of Access to Affordable Housing	5
o Homeless Youth of Color in Chicago, IL	7
o Discrimination and Segregation in Housing & Lending	8
- Right to Education	
o Public School Closures in Chicago, IL	12
o Continued School Segregation and Achievement Gap	14
o Racial Discrimination in the Legal Profession	16
- Right to Public Health and Medical Care	
o Environmental Injustice in New Mexico	17
o Inequitable Water Security in Boston, Massachusetts	19
o Sex-Selective Abortion Bans & Discriminatory Impact	20
o Reproductive Health Oppression in California Prisons	21
o Race and Gender Discrimination in Health Care	23
o HIV: Criminalization, Poverty, & Lack of Health Care Access	26
o Over-Medication of African American Girls in Foster Care	28
o Environmental Injustice in Illinois	30
o Chevron Oil Refinery in Richmond, CA	30
- Right to Equal Treatment By Tribunals & All Organs Administering Justice	
o Surveillance of and Discrimination Against Muslim Communities	31
o Immigration Detainers Encouraging Racial Profiling	34
- Right to Security of the Person	
o Impact of Parental Incarceration on Children of Color	36
o African-American Gun Violence Victimization	37
o Minority Youth Criminalized and Tried and Incarcerated as Adults	38
o Racial Disparities in the U.S. Criminal System	40
o Deportations from the U.S. to Haiti	44
o U.S. Customs and Border Protection Use of Excessive Force	46
o Criminalization Based on Race and Gender Identity	48
o Police Crimes Against Women of Color	50
o Incarceration of and Violence Against Black People with Mental Health Disabilities	52
o Forced Psychiatry and Psychiatric Abuse Against People of Color	53
o Criminal Prosecutions of Migrants and Substandard, Privately-Operated, Segregated Prisons	55
o Racial Discrimination and Sexual Violence Against Women of Color	57
- Right to Freedom of Opinion and Expression	
o Imprisoned Political Activists and Human Rights Defenders	58
- Right to Political Participation	
o Obstacles to Voting Rights	60
- Right to Leave any Country and Return to One's Own Country	
o Confiscation or Revocation of Passports of American Citizens of Yemeni Origin	62
- Right to Remedies and Effective Reparation	
o Migrant Farmworkers' Access to Justice and Healthcare	63
o Access to Counsel in Civil Cases, Including Immigration Proceedings	65
o Failure to Protect Minority Groups From Hate Crimes	67
- Economic, Social and Cultural Rights of Descendants of Africans Enslaved in the U.S.	
o Descendants of Africans Enslaved in the United States	69
- Labor and Employment Rights	
o Legal Child Labor in U.S. Agriculture	70
o Attacks on Workers' Rights and Political Participation in Indiana	72
- Economic, Social and Cultural Rights of Indigenous People	
o Historic and Current Removal of Indigenous Children From Their Families and Communities	74
- State and Local Multi-Issue Reports	
o Disparities and Solutions in Minnesota	76
o Municipal Bankruptcy, Privatization Policies and Denial of Services in Detroit, Michigan	79
- State and Local ICERD Enforcement	

○ Federal, State and Local ICERD Implementation	79
○ U.S. Federalism and Impact on ICERD Obligations	81
- Independent Indigenous Peoples' Human Rights	
○ Submission by Yamasí People	82
○ Impact of the Border Wall on Lipan Apache (Nde) Peoples	83
○ Violation of Juaneño Indigenous People's Rights	85
- Comprehensive U.S. Compliance with ICERD Obligations	
○ Racial Injustice in the U.S.	85
○ Weaknesses of the U.S. Report to the CERD Committee	87

Introduction

The following report is an executive summary of the shadow reports submitted by members of U.S. civil society to the Committee on Elimination of Racial Discrimination. The reports were submitted through the US Human Rights Network, or submitted directly to the CERD Secretariat and shared with the US Human Rights Network. The executive summary is intended to facilitate the preparation of Committee Members for the review of the United States by providing an overview of the key issues addressed in the shadow reports and highlighting recommendations made by civil society. Each chapter is organized as follows: Suggested recommendations; basis of the recommendations; correlation to U.S. government report; and shadow report/s informing the section. Please note that these summaries are strictly the opinion of the organizations that drafted the shadow reports including members and partners.

The report summaries are divided into general issue areas for readers' convenience, but this is not intended to indicate that the human rights violations they describe neatly fit into these categories. As the breadth of the Convention demonstrates, racism has multiple impacts on people's lives, opportunities, and wellbeing, and it affects both public and private aspects of their existence. Thus, a report summary containing violations of the right to security of the person under the Convention, for example, should be read with an understanding of its implications for multiple violations of other rights, such as the right to political participation, healthcare, housing, education, etc.

Acknowledgements

The US Human Rights Network (USHRN) would like to thank all our members and partners for the shadow reports that were submitted for the review of the United States Government by the UN Committee on the Elimination of Racial Discrimination. Specifically, we thank J.M. Kirby for her commitment and conscientiousness in the drafting of this Executive Summary. As always, we thank our funders for their ongoing support, and the USHRN Coordinating Center staff for their dedication and hard work.

RIGHT TO HOUSING

Homelessness and Lack of Access to Affordable Housing

People of color are disproportionately impacted by homelessness and a lack of affordable housing, yet the U.S. allocates housing resources in a way that adversely impacts them. The government fails to meet the increasing need for affordable housing, meanwhile criminalizing people made homeless by these policies.

Suggested Recommendations:

1. The Committee notes with deep concern the continuing racially disparate impact of the lack of affordable rental housing in the U.S., due primarily to the foreclosure crisis and the shrinking supply of housing affordable to low-income populations. The Committee is further concerned with the growth of ordinances and law enforcement policies that criminalize homelessness, which exacerbates rather than alleviates these disparities.
2. The Committee recommends that the State Party take immediate steps to reduce the disparate impact of housing rights violations, including by increasing the supply of affordable housing through an adequately and permanently funded National Housing Trust Fund, making permanent the Protecting Tenants at Foreclosure Act and creating adequate implementation policies, expanding HUD's definition of homelessness to include those doubled up due to economic necessity (and providing resources to house this population), and providing incentives in housing and criminal justice grants for communities to address homelessness by providing adequate housing and other services.

Basis of the Recommendations:

The U.S. expends more than \$70 billion annually on the mortgage income tax deduction, with 77% of its benefit going to predominantly white households with incomes over \$100,000 per year,¹ while only appropriating \$44.8 billion to the entire HUD budget directed at low-income populations, with the result that only 25% of the households eligible for HUD aid actually receive assistance.² The remainder of this predominantly minority and female-headed lower income population are left severely rent burdened and vulnerable to eviction.³ Over half those with worst case housing needs are people of color.⁴ Inadequate incomes and high rents place people in this vulnerable situation, yet the U.S. has cut the HUD budget by over 56% since the late 1970s, leading to the loss of about 10,000 units of publicly assisted housing,⁵ and it has failed to fund the National Housing Trust Fund.⁶ Moreover, the

¹ Will Fischer and Chye-Ching Huang, Mortgage Interest Deduction Is Ripe for Reform, Center for Budget & Policy Priorities, June 25, 2013, <http://www.cbpp.org/cms/?fa=view&id=3948>.

² *The State of the Nation's Housing* *supra* note 2 at 30; Executive Office of the President of the United States, Fiscal Year 2013 Budget of the U.S. Government 123 (2012).

³ Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* 2013 4-5 (2013), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2013.pdf>.

⁴ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WORST CASE HOUSING NEEDS 2011: REPORT TO CONGRESS viii (2013).

⁵ The 1978 HUD budget authority was \$95,700,000 in constant 2013 dollars (\$33,818,000 in 1978 dollars), the 2014 HUD budget authority estimate is \$41,518,000. White House, Office of Management & Budget, Historical Tables, Table 5.2 – Budget Authority by Agency: 1976-2019 (2014), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist05z2.xls>. *See also*, Western Regional Advocacy Project, Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness, and Policy Failures 20 (2010); National Low Income Housing Coalition, Out of Reach 2014: 25-Years Later, the Affordable Housing Crisis Continues 4 (2014). Constant dollar calculations based on Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to present*, MeasuringWorth, 2014, www.measuringworth.com/uscompare/.

⁶ United For Homes Campaign For the National Housing Trust Fund, National Housing Trust Fund Frequently Asked Questions 1 (2013), http://nlhc.org/sites/default/files/NHTF_FAQ.pdf.

Protecting Tenants at Foreclosure Act,⁷ designed to prevent homelessness amongst tenants in foreclosed buildings, is set to expire on December 2014.⁸

U.S. cities continue to criminalize people experiencing homelessness by making it illegal to perform life-sustaining activities, such as sleeping/camping, eating, sitting, and begging in public spaces, with disparate impact on people of color. The city of Los Angeles, which spends more on initiatives to police homeless people concentrated in its “Skid Row” area, than it does on emergency housing, services, and permanent housing in the city,⁹ exemplifies this trend of racially disparate criminalization. The homeless families and individuals in Skid Row, 69% percent of whom are African American,¹⁰ face disproportionate enforcement of laws criminalizing non-violent actions, such as jaywalking or littering, and are arrested if they sit or lie down during the day, even if they are too infirm or disabled to have any other choice.¹¹

ICERD Articles Implicated: 1, 2(1)(c), 2(2), and 5(e)(iii)

Correlation to U.S. Government Report:

The U.S. asserts in its report that the Department of Housing & Urban Development (HUD) provides affordable housing to a disproportionately high number of minorities.¹² However, it omits the fact that the U.S. expends far more on mortgage income tax deductions primarily benefiting wealthier, white households than it does on HUD programming directed at low-income populations. The U.S. also claims homelessness is decreasing,¹³ but HUD’s figures fail to count as homeless those who are doubled up in the homes of friends or family, a number which increased 9.4% from 2010 to 2011,¹⁴ and who, in nearly all cases, are ineligible for assistance through federal homelessness programs.¹⁵ The U.S. report neglects to mention the trend of cities targeting homeless persons by making it illegal to perform life-sustaining activities in public spaces.

The U.S. contends that the Convention does not require ensuring the fulfillment of the rights enumerated in Article 5 (including the right to housing) but only requires prohibiting discrimination in the rights as codified in domestic law,¹⁶ ignoring this Committee’s 2001 Concluding Recommendation that the U.S. should review its existing laws and policies to “ensure effective protection against... any unjustifiable disparate impact.”¹⁷ The Committee has held that to satisfy the equal enjoyment of housing for all, a State Party must revise its housing plans to account for racial disparities.¹⁸

Report Informing this Section:

⁷ Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, tit. VII, § 702 (a)(2), 123 Stat. 1632, 1660-62 (May 20, 2009), as amended by Pub. L. No. 111-203, tit. XIV, § 1484 (2010).

⁸ See National Law Center on Homelessness & Poverty, *Eviction (Without) Notice: Renters and the Foreclosure Crisis* (2012), http://nlchp.org/Eviction_Without_Notice.

⁹ Testimony of Gary Blasi, UCLA Professor of Law, University of California, Los Angeles, to State Legislators in Sacramento, CA (July 18, 2007).

¹⁰ INTER-UNIVERSITY CONSORTIUM AGAINST HOMELESSNESS, ENDING HOMELESSNESS IN LOS ANGELES, (2007), http://www.usc.edu/dept/geography/ESPE/documents/WEB_Research.pdf.

¹¹ Email from Becky Dennison, Los Angeles Community Action Network, Mar. 28, 2014, on file with report authors.

¹² Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 39, 40 (13 June, 2013).

¹³ *Id.*, at ¶ 40).

¹⁴ National Alliance to End Homelessness, *The State of Homelessness in America 2013* 26 (2013). http://b3cdn.net/naeh/bb34a7e4cd84ee985c_3vm6r7cjh.pdf

¹⁵ National Center for Homeless Education, *Education for Homeless Children and Youths Program 4* (2013).

¹⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 58 (13 June, 2013).

¹⁷ Committee on the Elimination of Racial Discrimination, *Concluding observations on the United States of America*. U.N. Doc. A/56/18 ¶ 380-407 (14 Aug., 2001).

¹⁸ See L. R. et al. v. Slovakia, Communication No. 31/2003, Para. 10.4, U.N. Doc. CERD/C/66/D/31/2003 (2005) (requiring Slovakia to reinstitute a canceled housing program that disproportionately benefited the Roma minority).

* * * * *

Homeless Youth of Color in Chicago, Illinois

Youth of color face disproportionate rates of homelessness in the U.S. and in Chicago, Illinois, but the government allocates insufficient resources to meet their needs.

Suggested Recommendations:

1. In order to document, assess progress, and determine solutions in the area of homelessness and racial disparities, federal, state, and local governments, as well as educational institutions including colleges, universities, and school districts in receipt of government funds, must collect racial/ethnic data of homeless youth. This data collection process should be transparent and the data made publicly available.
2. The state of Illinois should institute a state sponsored committee to address poverty and the subsequent racial disparities in Illinois and Chicago.
3. The U.S. government should create a federally sponsored public education program on the realities and needs of homeless youth.
4. The U.S. government should amend the McKinney-Vento Act with language that addresses racial inequities and treatment of homeless youth of color.
5. The U.S. should increase the number and quality of services (including but not limited to emergency shelter beds, affordable housing, permanent supportive housing, employment and educational opportunities, mental and medical healthcare,) for homeless persons of all ages, especially for homeless youth, including in the following Chicago area zip codes: 60649, 60619, 60620, 60644, 606028, 60644.
6. The U.S. government should embrace the National Campaign for Youth Shelter launched by the National Coalition for the Homeless to provide all youth in the United States, ages 24 and under, with immediate access to safe shelter; and to make a federal commitment to immediately add 22,000 shelter beds for youth in the United States along with appropriate services (a five-fold increase over the current level of resources).
7. The U.S. government should use federal incentives to encourage municipalities to change prohibitive zoning codes that prevent homeless youth shelters and or supportive service drop-in centers from being opened.
8. The U.S. government should increase the Federal Minimum Hourly Wage so full time workers can afford the Fair Market Rent for an apartment. The legislation should include an automatic cost of living increase to ensure that the minimum wage does not fall below the poverty threshold.

9. The U.S. Government should increase the maximum, individual, federal SSI Disability Benefit income to a rate where Fair Market Rents will be no more than 30% of the disabled youth's income.

10. The U.S. Department of Housing and Urban Development should subsidize development of an adequate number of Permanent Supportive Housing units for all homeless youth with disabilities who need intensive supportive services.

Basis of the Recommendations:

Over 60% of homeless children in the U.S. are children of color. In Chicago, as of 2007, 75% of homeless people were African American, and Illinois' communities of color are disproportionately likely to experience poverty. Significant percentages of homeless youth in the U.S. report having been physically, sexually, and emotionally abused; and large percentages identify as LGBTQ. Chicago Public Schools (CPS) identified 18,669 homeless students in the 2012-13 school year, an 8.2% increase from the prior year. Homeless and low-income youth of color were disproportionately impacted by Chicago's recent wave of public school closings.¹⁹ According to a survey by the Chicago Coalition for the Homeless, there are insufficient services to reach teens and children identified as homeless through the school systems.²⁰ Homeless college students attending City Colleges of Chicago, cannot obtain on-campus or off-campus student housing. High percentages of youth of color in Chicago²¹ are unemployed, and for those who manage to obtain minimum wage jobs, their incomes are not high enough to afford market rate housing.²² Insufficient emergency shelter and housing services places homeless youth at risk of violence. Homeless youth of color with disabilities face challenges in being recognized as a priority for housing programs as compared to homeless adults with disabilities.²³

ICERD Articles Implicated: 5(e)(iii), 5(e)(v)

Report Informing this Section:

Ann Aviles de Bradley, PhD, Northeastern Illinois University, and A. Anne Holcomb, Unity Parenting and Counseling: *Homeless Youth of Color in Chicago, Illinois: Access Denied*

* * * * *

Discrimination and Segregation in Housing & Lending

Although some limited progress has been made since 2008, U.S. policy continues to support racially and economically segregated housing patterns.

Suggested Recommendations:

1. The executive branch must meaningfully implement the affirmatively furthering fair housing

¹⁹ The Report of the Illinois General Assembly's Chicago Educational Facilities Task Force (CEFTF): Findings and Recommendations Regarding the Implementation of IL P.A. 97-0474 and Planning for the Future of Chicago's Public Schools, 2014

²⁰ Ann Aviles de Bradley, PhD, Northeastern Illinois University, and A. Anne Holcomb, Unity Parenting and Counseling: *Homeless Youth of Color in Chicago, Illinois: Access Denied*, p. 5.

²¹ Alternative Schools Network: Trends in Teen Employment in Chicago, Illinois and The United States, January 2014.

²² Out of Reach 2014, by the National Low Income Housing Coalition, 2014 p. 66

²³ Ann Aviles de Bradley, PhD, Northeastern Illinois University, and A. Anne Holcomb, Unity Parenting and Counseling: *Homeless Youth of Color in Chicago, Illinois: Access Denied*, p. 8.

(AFFH) obligation by U.S. Housing and Urban Development (HUD) and across all agencies administering housing programs. This includes finalization of HUD's AFFH Rule as well as strong ongoing oversight by HUD and additional enforcement resources.

2. The U.S. Treasury should issue civil rights standards for the Low Income Housing Tax Credit Program, including Title VI of the 1964 Civil Rights Act and the Fair Housing Act (including its AFFH provision). This should include citing standards directing a significant portion of family units to low poverty, non racially concentrated communities, while preserving units that are affordable to the lowest income families.

3. HUD should redesign all federal rental housing programs to meet affirmative obligations to address segregation, with mandatory requirements and strong incentives for mobility and affordable housing siting. In the Section 8 program, HUD should implement small area Fair Market Rents to increase the range of neighborhoods available to voucher holders. HUD should revise the Section 8 Management Assessment Program (SEMAP) and Section 8 Administrative Fee system to reward Public Housing Authorities for improved opportunity outcomes for families. The voucher portability process should be revised to minimize hurdles and information barriers for clients. Additional funding should be provided for mobility programs, particularly in segregated metropolitan areas.

4. The HUD Secretary should heighten fair housing enforcement by: increased initiation of complaints using the discriminatory effects standard of the Fair Housing Act to challenge discriminatory lending practices and source of income discrimination; and by withdrawal of funds from entitlement jurisdictions and local participants of programs if administration of those funds and programs yields discriminatory results or increases residential segregation. The executive branch should increase staffing of HUD's Office of Fair Housing and Equal Opportunity to conduct additional compliance reviews of entitlement jurisdictions' efforts to affirmatively further fair housing. The U.S. Government must also provide realistic means of redress for victims of bankers' discriminatory practices.

5. The U.S. Government should take steps to ensure nondiscrimination in Real Estate Owned (REO) property maintenance. This includes requiring that all government agencies with REO properties, and supervisory authority over private market entities that conduct business in the REO space, abide by a nationally-uniform disposition process that treats borrowers and communities fairly; and for HUD and federal banking regulators, including the Consumer Financial Protection Bureau, the Federal Reserve Board, and the Office of Comptroller of the Currency, to use their authority to conduct a nationwide investigation of bank and maintenance servicer policies and practices with regard to REO properties.

6. HUD should put protections in place to avoid wrongful sales of FHA-insured loans that qualify for loss mitigation. HUD should rigorously scrutinize loss mitigation reviews of servicers, ensure compliance and monitoring and reporting of servicing outcomes, expand outreach to homeowners adversely harmed in Distressed Asset Stabilization Program (DASP) sales, post all sales requirements, promote the purchase of loans by non-governmental organizations, and require private investor purchasers to provide sustainable loss mitigation for homeowners through a transparent process.

7. The U.S. Government must address barriers to homeownership created by the Government Supported Enterprises (Fannie Mae and Freddie Mac) for borrowers of color, by enforcing existing fair lending laws. The Federal Housing Finance Agency should undertake comprehensive review of

all actions planned by the GSEs, for their impact on the ability of minorities to access homeownership.

Basis of the Recommendations:

Continued restricted housing choice and segregation due to the Government's inadequate implementation of anti-discrimination protections has harmful consequences for people of color, including in the areas of health and education.²⁴ Relative to white households, minority households are poorer and are disproportionately concentrated in poorer neighborhoods, regardless of income.²⁵ Government policies and programs fail to eradicate, and frequently reinforce, racial segregation. While federal agencies have taken some positive steps since 2007, including heightened fair housing enforcement and support for integration in programmatic guidance and regulatory language, they have not yet enacted specific policy reforms to eradicate and avoid perpetuating segregation. Enforcement is constrained by agencies' limited resources,²⁶ and anti-discrimination in fair housing laws has yet to be expanded to cover characteristics such as source of income, sexual orientation or gender identity, age, and disability.²⁷ In 2013, the U.S. Department of Housing and Urban Development (HUD) received 9,324 complaints of housing discrimination based on race, color or national origin combined. These complaints represent only a fraction of the estimated 4 million complaints of housing discrimination that occur every year just in the rental and real estate sales markets.²⁸

While HUD recently implemented the Fair Housing Act's discriminatory effects standard, it has not yet issued other necessary regulations, in particular one to provide structure and accountability for HUD grant recipients' obligation to affirmatively further fair housing (AFFH). Also, design features of the Section 8 Housing Choice Voucher Program steer low-income families into racially concentrated, lower opportunity areas.²⁹ The Low Income Housing Tax Credit (LIHTC) program, which the Treasury Department administers, is the largest federal low-income housing development program, yet lacks meaningful civil rights guidance.³⁰

In the area of residential lending and finance, banks disproportionately target communities of color with subprime loans that have higher rates and fees, and victims of these practices have insufficient recourse. Communities of color were overwhelmingly hardest hit by the U.S. mortgage crisis because

²⁴ See, e.g., Finch, B.K., Do, D.P., Basurto-Davila, R., Bird, C., Escarce, J., & Lurie, N. (2008) "Does Place Explain Racial Health Disparities? Quantifying the Contribution of Residential Context to the Black/White Health Gap in the United States", *Social Science & Medicine*, 67(8): 1258-1268; Rosenbaum, Emily (2008) "Racial/Ethnic Differences in Asthma Prevalence: The Role of Housing and Neighborhood Environments", *Journal of Health & Social Behavior*, 49: 131-45; Schwartz, Heather (2010) "Housing Policy Is School Policy", Washington, DC: The Century Foundation, Inc.

²⁵ Logan, John R (2011) "Separate and Unequal: The Neighborhood Gap for Blacks, Hispanics, and Asians in Metropolitan America", US2010: Discover America in a New Century, available at www.s4.brown.edu/us2010/Data/Report/report0727.pdf.

²⁶ For example, HUD has chronically understaffed its Office of Fair Housing and Equal Opportunity (FHEO) since the 1990s. The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity (December 2008), p. 44, available at www.prrac.org/projects/fair_housing_commission/final_report.php.

²⁷ For more on intersectional issues and the need for additional protections, see Megan Haberle, Poverty & Race Research Action Council & Jorge Soto, National Fair Housing Alliance, (Submitted by multiple U.S. research and advocacy organizations and scholars): *Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* 14-17.

²⁸ The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America* 11.

²⁹ For details on features of the HCVP that further segregation, see Megan Haberle, Poverty & Race Research Action Council & Jorge Soto, National Fair Housing Alliance, (Submitted by multiple U.S. research and advocacy organizations and scholars): *Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* 6-8.

³⁰ See, e.g., Letter to Michael Barr, U.S. Dept. of the Treasury, re Title VI, Section 504, and Title VIII Regulations and Guidance at the Dept. of the Treasury (Oct. 26, 2010), available at www.prrac.org/pdf/civil_rights_letter_to_Michael_Barr_10-26-10.pdf; Letter to Assistant Attorney General Thomas Perez, DOJ Civil Rights Division (Aug. 9, 2010), available at www.prrac.org/pdf/LIHTC_letter_to_AAG_Perez_8-9-10.pdf; Letter to Michael Stegman, U.S. Dept. of the Treasury (May 15, 2012), available at www.prrac.org/pdf/Letter_to_Michael_Stegman_re_fair_housing_regs_5-15-12.pdf.

of the racist targeting by subprime lenders.³¹ This has led to the massive loss of wealth built over generations in communities of color.³² The secondary mortgage market entities, or Government Sponsored Entities (GSEs), Fannie Mae and Freddie Mac, have taken actions that prevent equitable access to homeownership. For example, they unnecessarily rely on credit profiles that have a disparate impact on borrowers of color.³³

The federal government owns and insures many distressed home assets and Real Estate Owned (REO) properties, or properties that have gone through foreclosure and are now owned by banks, investors, the GSEs, and other federal agencies, but its property disposition policies discourage homeownership opportunities for people of color. Its treatment of defaulted Federal Housing Authority (FHA) notes has disproportionately harmed borrowers of color. High percentages of borrowers of color purchase financing through FHA, (an entity within HUD,) and then lose FHA's loss mitigation features when the FHA sells delinquent loans under the Distressed Asset Stabilization Program (DASP), as it did with 73,000 mortgages from 2011-2014.³⁴ Also, no uniform regulatory structure exists for banks to maintain and market REO properties, with the result that banks have maintained and marketed REO homes in white communities far better than in communities of color.³⁵

ICERD Articles Implicated: 2(1)(a) & (c), 3, 5(d)(v) & (e)(iii)

Correlation to U.S. Government Report:

The Government's report acknowledges "in some cases, minorities are concentrated in areas or communities that may have substandard living conditions and/or services,"³⁶ and that "housing discrimination and segregation continue to taint communities across the country."³⁷ The report highlights federal laws to address discriminatory housing sale, rental, financing and lending practices; as well as reinvigorated fair lending, housing and sexual harassment enforcement efforts by HUD and the Department of Justice.³⁸ The report also notes a recent HUD policy rule on implementation of a discriminatory effects standard, intended to promote enforcement against housing practices with discriminatory effect.³⁹ It describes efforts to update HUD regulations and rules regarding its Affirmatively Furthering Fair Housing program.⁴⁰ It also describes efforts within federal housing assistance programs to address segregation.⁴¹ The report says, "[e]xisting U.S. constitutional and statutory law and practice provide strong and effective protections against discrimination ... in all fields of public endeavor, and provide remedies for those who, despite these protections, become

³¹ MYRON ORFIELD, INSTITUTE ON METROPOLITAN OPPORTUNITY, TWIN CITIES IN CRISIS: UNEQUAL TREATMENT OF COMMUNITIES OF COLOR IN MORTGAGE LENDING 1 (2014), available at <http://www.law.umn.edu/uploads/ef/be/efbe0b8fda7508c925b74c7add571f41/IMO-Twin-Cities-Lending-Report-2014-Final.pdf>.

³² Debbie Gruenstein Bocian, et al., Ctr. for Responsible Lending, Collateral Damage: The Spillover Costs of Foreclosures (2012), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf>.

³³ Megan Haberle, Poverty & Race Research Action Council & Jorge Soto, National Fair Housing Alliance, (Submitted by multiple U.S. research and advocacy organizations and scholars): *Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* 10.

³⁴ Megan Haberle, Poverty & Race Research Action Council & Jorge Soto, National Fair Housing Alliance, (Submitted by multiple U.S. research and advocacy organizations and scholars): *Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* 11.

³⁵ National Fair Housing Alliance, *The Banks are Back – Our Neighborhoods are Not: Discrimination in the Maintenance and Marketing of REO Properties*, April 2012; numerous HUD administrative complaints filed against Bank of America, Deutsche Bank, US Bank, Wells Fargo.

³⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 36 (13 June, 2013).

³⁷ *Id.*, at ¶ 37.

³⁸ *Id.*, at ¶ 8, 26, 37, 38, 124-28, 192.

³⁹ *Id.*, at ¶ 10.

⁴⁰ *Id.*, at ¶ 28.

⁴¹ *Id.*, at ¶ 39, 40.

victims of discrimination,”⁴² but this statement fails to account for the fact that redress for victims of lending and other housing discrimination is beyond the capabilities and means of most citizens.

Report Informing this Section:

Megan Haberle, Poverty & Race Research Action Council & Jorge Soto, National Fair Housing Alliance, (Submitted by multiple U.S. research and advocacy organizations and scholars): *Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*;

Southside Pride: *US Government’s Failure to Protect People of Color and American Indians From Racist Practices of Mortgage Bankers in the Minneapolis St. Paul Metropolitan Area, 2008-2012*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers’ Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

* * * * *

RIGHT TO EDUCATION

Public School Closures in Chicago, IL

Despite overwhelming community opposition, in 2013, the city of Chicago, IL closed 49 public elementary schools concentrated in low-income, African American neighborhoods, depriving African American students of good quality, accessible education, and placing them at risk of physical harm.

Suggested Recommendations:

1. The U.S. Government should conduct a federal investigation into the Chicago school closings and consider appropriate measures to, among other things, determine if students were placed at risk of physical harm due to the closings, ensure meaningful public participation of parents and community members in future decisions to close public schools, and ascertain an appropriate remedy.
2. The U.S. Government should implement legislative, executive, or judicial remedies to address the racial discrimination in Chicago Public Schools.

Basis of the Recommendations:

The City of Chicago closed 49 public elementary schools in 2013, resulting in the largest wave of public school closings in U.S. history⁴³ and violating African American students’ right to accessible and good quality education. Roughly 90% of the closed schools had a majority African American student population; 71% had a majority African American teaching staff.⁴⁴ In the process of deciding to close the schools, the City made participation in community meetings difficult for the low-income African American communities that would be primarily affected, and then ignored the

⁴² *Id.*, at ¶ 7.

⁴³ *Chicago School Closings Vote: Board of Education Votes to Shutter 50 Public Schools*, THE HUFFINGTON POST, May 22, 2013, http://www.huffingtonpost.com/2013/05/22/chicago-school-closings_n_3319755.html.

⁴⁴ CHI. TEACHERS UNION, TWELVE MONTHS LATER: THE IMPACT OF SCHOOL CLOSINGS IN CHICAGO 3 (2014) [hereinafter CTU].

overwhelming community opposition that emerged.⁴⁵ While the primary justification for school closings was to improve the educational environment for students, 34% of displaced students were moved from better performing schools to lower performing receiving schools.⁴⁶ Displaced students and students in receiving schools (schools designated to receive students from closed schools) faced larger class sizes in 2014 than in previous years.⁴⁷ For example, Ryerson Elementary School, a high-performing school serving a mostly low-income student population, was closed and combined with another school, resulting in an overcrowded school with less programming.⁴⁸ All receiving schools were promised a variety of improvements, but the government failed to fulfill many of these promises. At the same time, the City invested millions of dollars into opening new charter schools.⁴⁹ Charter schools have open admission, and thus do not serve the neighborhoods where they are located.⁵⁰ There is a significant disparity between the school district's spending per child enrolled at new charter schools during the start-up period—\$2,000 per student—and its spending on children moved to receiving schools during the transition period following the closings—just \$230 per student.⁵¹ This disparity in spending disproportionately impacts displaced African American students. With the loss of these neighborhood schools, students also face increased risks to their safety on their way to and at their new schools, again disproportionately impacting African American Students.⁵²

ICERD Articles Implicated: 2(1)(a), 5(b), 5(c), and 5(e)(v)

Correlation to U.S. Government Report:

The U.S. Government addressed several education-related issues in its report to the Committee, highlighting its work on specific school desegregation cases, and efforts to prevent discriminatory suspensions and expulsions, and to address *de facto* racial segregation in schools, amongst other initiatives.⁵³ However, the Government did not directly address public school closings in Chicago and their discriminatory impact.

Reports Informing this Section:

Cecille Carrol, *Blocks Together: The Interaction of CPS' Space Utilization Formula and Facilities Assessment with Long-Term Planning: The Consolidation of Two Elementary Schools*;

The International Human Rights Clinic at the University of Chicago Law School, The Chicago Teachers Union, The University of Chicago Human Rights Program, The Collaborative for Equity and Justice in Education, and *Blocks Together: The City of Chicago's Mass Public School Closings and their Discriminatory Effect on African Americans*

⁴⁵ George N. Schmidt, *Kafka on Clark Street*, SUBSTANCE NEWS, June 4, 2013, <http://www.substancenews.net/articles.php?page=4318>; CTU, *supra* note 44, at 3.

⁴⁶ ILL. GEN. ASSEMBLY'S CHI. EDUC. FACILITIES TASK FORCE, FINDINGS AND RECOMMENDATIONS REGARDING THE IMPLEMENTATION OF IL P.A. 97-0474 AND PLANNING FOR THE FUTURE OF CHICAGO'S PUBLIC SCHOOLS 62 (2012-2013) [hereinafter CEFTF].

⁴⁷ CTU, *supra* note 44, at 8.

⁴⁸ See Cecille Carrol, *Blocks Together: The Interaction of CPS' Space Utilization Formula and Facilities Assessment with Long-Term Planning: The Consolidation of Two Elementary Schools*.

⁴⁹ CTU, *supra* note 4, at 10; see also CHI. PUB. SCHS., REQUEST FOR PROPOSALS FOR NEW SCHOOLS. (2013), available at http://www.cps.edu/NewSchools/Documents/RFP_ForNewSchools.pdf.

⁵⁰ *Despite Closings and Budget Cuts, CPS Calls for New Charter Schools*, CHI. SUN-TIMES, Sept. 15, 2013, available at <http://www.suntimes.com/news/education/21908824-418/despite-closings-and-budget-cuts-cps-calls-for-new-charter-schools.html#.U6mwGrG4Pwt>; see also CHI. PUB. SCHS., REQUEST FOR PROPOSALS FOR NEW SCHOOLS (2013), available at http://www.cps.edu/NewSchools/Documents/RFP_ForNewSchools.pdf.

⁵¹ CTU, *supra* note 44, at 2.

⁵² James Reddick, *Chicago Public Schools Closings Point Up the Dangers of Geography*, CHI. NOW, Apr. 30, 2013, <http://www.chicagonow.com/chicago-muckrakers/2013/04/chicago-public-school-closings-point-up-the-dangers-of-geography/>.

⁵³ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 20, 41-45, 145-146 (13 June, 2013).

Continued School Segregation and Achievement Gap

Federal government resource allocation encourages racial segregation in schools; a rate currently greater than in the early 1970s. The government also has failed to adequately address the “achievement gap” caused by diminished educational opportunities for youth of color, who also face harsher discipline and policing in schools than white counterparts.

Suggested Recommendations:

1. The U.S. Government should increase federal funding for education programs proven to create racially integrated learning environments for students, such as the Magnet Schools Assistance Program (MSAP).
2. The U.S. should reauthorize the Elementary and Secondary Education Act with provisions that support and encourage inter-district remedies to the problem of school segregation (such as paying up-front for the transportation of students crossing district lines and incentives for non-failing districts to receive transfers).
3. President Obama should immediately implement federal recommendations in the report of the Equity and Excellence Commission and facilitate (and require where it can) all states to identify and remedy resource disparities that deny poor and minority students, as well as those with disabilities or who are English language learners, equal educational opportunities.
4. The U.S. Department of Education (DOE) should require all states—as a condition for continuing receipt of Title I funds—to ensure that all schools have the resources needed to enable all students to achieve college-ready academic standards, including the Common Core State Standards.
5. The U.S. Department of Justice and the DOE should develop a comprehensive plan to address concentrated poverty and racial isolation in schools and neighborhoods. This should include enforcement of federal civil rights laws, as well as programs and policies to incentivize school improvement; racial and socioeconomic integration; economic and infrastructure development (including affordable housing and transportation); coordinated health and social services; and effective re-entry programs.
6. The DOE should aggressively enforce federal requirements in both Title VI of the Civil Rights Act (and related requirements of Title IX and of Section 504 and ADA) and Title I of the Elementary and Secondary Education Act that require: a) equitable assignment of teachers to poor and minority students, b) equal access to core curriculum and college-preparatory classes, c) services and appropriate instruction for English Language Learners, and d) fair and effective disciplinary policies and practices.

Basis of the Recommendations:

Students in the U.S. are more segregated by race than they were in the early 1970s.⁵⁴ The U.S. reduced funding for the one education program with an explicitly integrative focus, the Magnet Schools Assistance Program (MSAP), resulting in a one-third decrease in the number of new projects funded in 2013 compared to 2008.⁵⁵ Segregated students usually have fewer in-school resources,⁵⁶ as well as less experienced instructors,⁵⁷ larger class sizes, insufficient facilities, and reduced access to services like counseling.⁵⁸ English Language Learner (ELL) students are amongst those hard hit by segregation, with the majority of ELL students native Spanish-speakers, and with Latinos comprising the most segregated racial group in U.S. schools.⁵⁹ More racially isolated schools are also more likely to see high concentrations of poverty within the student body, further driving inequality. Minority students, to an overwhelming degree, disproportionately attend underfunded and under-resourced schools.⁶⁰ Black students attending high-poverty schools have a high school graduation rate of 50%, and minorities overall have a graduation rate of 60%, compared to 83% for White students.⁶¹

Across the U.S., lower-income, Black and Latino students as a group perform worse academically than their peers, a difference in performance known as the “achievement gap.”⁶² This reflects the diminished educational opportunity for minorities in a system of education that the U.S. has developed over centuries, which is reinforced by growing poverty, racial isolation, and a disparity in school and community resources accessible to minority students.⁶³ U.S. schools have increasingly relied on harsh disciplinary policies and practices, and increasingly are relying on police action, in dealing with classroom disruptions and unwanted student behaviors. Minority students constitute a much higher share of students disciplined than they do the student body as a whole.⁶⁴ Additionally, minority students, and Black students in particular, generally receive harsher punishments than their White counterparts,⁶⁵ even when their patterns of behaviors are indistinguishable from those of White students.⁶⁶

ICERD Articles Implicated: 1(4), 2(1)(c) & (e), 2(2), 3, 5, 5(e)(v)

Correlation to U.S. Government Report:

⁵⁴ See Richard Rothstein, *For Public Schools, Segregation Then, Segregation Since*, Education Policy Institute at 12 (2010) (table 7), available at <http://www.cpi.org/files/2013/Unfinished-March-School-Segregation.pdf>. See also GARY ORFIELD and CHUNGMEI LEE, HISTORIC REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES (August 2007), Civil Rights Project/*Proyecto Derechos Civiles* at UCLA, available at http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf; Black and Latino students were more likely to attend schools that were at least 90% minority in 2011 than in 2008. See http://nces.ed.gov/programs/digest/d13/tables/dt13_216.50.asp

⁵⁵ See <http://www2.ed.gov/programs/magnet/funding.html>. Due to inflation, this decrease in funding would be even greater if measured in 2008 dollars.

⁵⁶ ROSLYN ARLIN MICKELSON, WHEN ARE RACIAL DISPARITIES IN EDUCATION THE RESULT OF RACIAL DISCRIMINATION? A SOCIAL SCIENCE PERSPECTIVE (2003), 105 TCHRS. C. REC. at 1061.

⁵⁷ See generally, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, Brief of 553 Social Scientists as Amici Curiae in Support of Respondents (2006); at App. 31, (noting that teacher inexperience correlates with lower student performance).

⁵⁸ *Id.* at App. 33 (describing gaps in class size, facilities, per-pupil spending, and curricular and interpersonal counseling).

⁵⁹ See RANDY CAPPS ET AL., THE NEW DEMOGRAPHY OF AMERICA’S SCHOOLS: IMMIGRATION AND THE NO CHILD LEFT BEHIND ACT. (2005). The Urban Institute; <http://nces.ed.gov/programs/coe/2007/section1/indicator05.asp>.

⁶⁰ Elizabeth Lamura, Our Children, Ourselves: Ensuring the Education of America’s At-Risk Youth, 31 Buff. Pub. Interest L.J. 117, 127 (2012)

⁶¹ Presidential Task Force on Educ. Disparities, Ethnic and racial disparities in education: Psychology’s contributions to understanding and reducing disparities 14, 16 (2012), available at <http://www.apa.org/ed/resources/racial-disparities.aspx>.

⁶² An article in the *Educational Researcher*, describes an achievement gap evident by NAEP data as the long-term trend in reading and mathematics national average score differences between Whites and Blacks and Hispanics. See JAEKYUNG LEE, RACIAL AND ETHNIC ACHIEVEMENT GAP TRENDS: REVERSING THE PROGRESS TOWARD EQUITY?, *Educational Researcher*, Vol. 31, No. 1, 3-12 (2002), available at <http://edr.sagepub.com/cgi/content/abstract/31/1/3>.

⁶³ LINDA DARLING-HAMMOND, EVALUATING ‘NO CHILD LEFT BEHIND’, *The Nation* (May 21, 2007).

⁶⁴ National Center for Education Statistics, 2009. U.S. Office for Civil Rights, 2006.

⁶⁵ Open Society Institute-Baltimore, Putting Kids Out of School: What’s Causing High Suspension Rates and Why are they Detrimental to Students, Schools and Communities, September 2008

⁶⁶ See Russell J. Skiba, *Zero Tolerance, Zero Evidence*, Indiana Education Policy Center (2000) at 12.

The U.S. Government documented some progress in addressing racial discrimination in education in its recent report to the Committee, but these steps have been in the area of civil rights enforcement against local school districts,⁶⁷ not advances in program reform and federal funding of separate and unequal schools.

Report Informing this Section:

Michael Hilton, Poverty & Race Research Action Council, submitted with Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, Center for Civil Rights at the University of North Carolina School Of Law, Civil Rights Project / Proyecto Derechos Civiles at the University of California Los Angeles, Lawyers' Committee for Civil Rights Under Law: *Education in the United States and the Federal Responsibility to Reduce School Segregation and Address the Achievement Gap*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

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Racial Discrimination in the Legal Profession

Housing and education discrimination from the elementary school level to college; combined with law school accreditation mechanisms and legal licensing tests that disparately impact people of color, have caused a severe underrepresentation of people of color in the legal profession.

Suggested Recommendations:

1. The U.S. Government, through the Department of Education and state accreditation authorities, should use its accreditation oversight responsibility to insist that all accredited law schools admit a racially and ethnically diverse student body, specifically forbidding the use of any admissions practice that disadvantages racial minorities and that has not been validated as an accurate predictor of competent law practice.
2. The U.S. Government, through the oversight authority of the Department of Education, the enforcement authority of the Equal Employment Opportunity Commission, and that of the state accreditation authorities, should forbid the use of any attorney licensing test that disadvantages racial minorities unless it can be shown that use of such a test is necessary for valid measurement of minimum competence to practice law.
3. The U.S. Government should direct all federal agencies, as well as the Commission on Civil Rights, and state and local authorities to develop and aggressively promote affirmative action programs designed to increase the diversity of the bench and bar. In this regard, the U.S. should take advantage of the diversity rationale in its jurisprudence, acknowledge that racial preferences designed to assist groups that have been historically discriminated against are not the equivalent of racial preferences designed to subjugate, and therefore must not be considered to be race discrimination.

⁶⁷ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 15, 41-45 (13 June, 2013).

4. The U.S. Government should make clear in its submissions to federal or state courts on matters relevant to the elimination of all forms of racial discrimination the implications of such positions on the U.S. international obligations under ICERD.

Basis of the Recommendations:

The American Bar Association (ABA) has recognized that “minority representation in the legal profession is significantly lower than in most other professions.” Specifically, the ABA reports that minority representation among lawyers is about 9.7 percent,⁶⁸ and there were actually fewer African American and Mexican American first year law students in the Fall 2005 class (3595 combined) than existed in Fall 1992 (3937).⁶⁹ The disproportionately low number of people of color represented in the legal profession begins with racial discrimination in housing and in education access at the elementary-, and then secondary- and college- education levels.⁷⁰ Numerous factors at the level of entry into legal education and licensing also contribute to this disparity. Law school rankings are based on a private entity’s compiling of students’ Law School Admission Test scores, Undergraduate Grade Point Average (GPA), and deemphasize factors accounting for successful practice of law.⁷¹ Thus, schools recruit students with top scores for higher financial aid packages, and cut off acceptance around the level where significant numbers of minorities score for LSAT and GPA. The LSAT test itself also disproportionately deters admission of minority applicants. Standardized licensing tests have never been correlated with successful practice of law, and minority licensing exam passage rates are disproportionately low, yet the Department of Education continues to emphasize their use to establish law school accreditation standards.⁷²

ICERD Articles Implicated: 5(a), 5(e)(v)

Correlation to U.S. Government Report:

The U.S. Government’s report does not mention the lack of people of color in the legal profession.

Report Informing this Section:

Society of American Law Teachers: *Racial Discrimination in the Legal Profession*

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RIGHT TO PUBLIC HEALTH & MEDICAL CARE

Environmental Injustice in New Mexico

Communities of color throughout New Mexico, suffer disproportionate health impacts from pollution caused by industrial and extractive industry, yet many are denied effective legal recourse.

Suggested Recommendations:

⁶⁸ American Bar Association Commission on Racial and Ethnic Diversity in the Profession, *Miles to Go 2000: Progress of Minorities in the Legal Profession* (2005)..

⁶⁹ See <http://www2.law.columbia.edu/civilrights/> (using data from the Law School Admissions Council).

⁷⁰ Society of American Law Teachers: *Racial Discrimination in the Legal Profession* 9-31.

⁷¹ Marjorie M. Shultz & Sheldon Zedeck, *Development and Validation of Predictors for Successful Lawyering*, 2009 (identifying twenty-six factors for effective lawyers and testing tools that supplement the LSAT and are race neutral); *Achieving Diversity*, *supra* note 5.

⁷² Society of American Law Teachers: *Racial Discrimination in the Legal Profession* 34.

1. The U.S. Government should require comprehensive studies analyzing and evaluating the public health consequences from disproportionate impacts of air pollution on minority communities; and from historic uranium mining and processing in minority communities impacted by uranium mining and processing, prior to permitting or licensing any new uranium mines or mills.
2. The U.S. Government should ensure that state and local governments implement and enforce federal environmental law, including and especially, the Clean Air Act; and that they take into consideration the cumulative impacts of pollution from industrial and other operations on minority communities.
3. The U.S. Government should ensure that communities of color have equal access to justice to address disparate environmental impacts.
4. The U.S. Government, including its state and local governments, should cease permitting new uranium mining and processing operations until waste from historic uranium mining and processing has been remediated to standards consistent with CERD's guaranteed right to health.

Basis of the Recommendations:

In Albuquerque and surrounding Bernalillo County, NM, minority and low-income communities suffer disproportionate health impacts from air pollution, including higher risk of disease and lower life expectancy due to unequal implementation and enforcement of federal, state, and local air pollution laws.⁷³ Air quality data used by local regulatory agencies under the oversight of the U.S. Environmental Protection Agency (EPA) significantly underestimate the impacts on minority neighborhoods, because air monitoring stations are located substantial distances from pollution sources concentrated in minority neighborhoods.⁷⁴ Local regulatory agencies claim no legal requirement to disclose and evaluate the cumulative environmental and health impacts of an operation seeking a permit under federal, state and local air pollution laws. The U.S. Supreme Court's interpretation of Title VI of the Civil Rights Act denies minority communities equal access to tribunals to challenge discriminatory enforcement of environmental laws that result in disparate adverse environmental and health impacts.⁷⁵

Another area of environmental injustice results from the fact that from 1950s until the 1990s, uranium was mined and processed in northwestern New Mexico for atomic weapons and later, nuclear power. Millions of tons of radioactive and toxic waste were left behind. The impacts from both historic waste and proposed new mining fall primarily on minority communities. Emerging research⁷⁶ is revealing that people living in close proximity to uranium mine and processing waste suffer a broad range of adverse health effects. Uranium mine and mill waste clean-up is conducted relatively quickly in predominantly non-minority communities, but not in minority communities, causing significant health impacts.⁷⁷ While vast areas of contamination from historic uranium mining and milling remain unremediated, the U.S. Government and state governments continue to permit new uranium mines in impacted areas.⁷⁸ U.S. administrative agencies responsible for managing

⁷³ Joint Center for Political and Economic Studies, *Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All* (Sept. 2012) at p. 17-19; <http://www.bcplacematters.com/wp-content/uploads/2010/11/Place-Matters-for-Health-in-Bernalillo-County.pdf>.

⁷⁴ <http://www.svparkers.org/VOC%20presentation%2009-17-09.pdf>, p. 4.

⁷⁵ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

⁷⁶ Significantly, all the emerging research has been done by uranium impacted communities along with their research partners. Neither federal nor state governments have initiated any of the studies that indicate the wide ranging adverse health effects associated with uranium mining and processing waste.

⁷⁷ For details, see Multicultural Alliance for a Safe Environment & New Mexico Environmental Law Center: *Response to the Periodic Report of the United States of America to the Committee on the Elimination of Racial Discrimination*, at 4.

⁷⁸ <http://www.wise-uranium.org/upusanm.html#CHURCHR>.

federal land interpret the General Mining Act of 1872,⁷⁹ as a blanket prohibition on interfering with mining.⁸⁰ The U.S.’ implementation of laws governing uranium mining and processing have resulted and continue to result in disparate adverse health and environmental impacts on racial and ethnic minorities.

ICERD Articles Implicated: 1, 2, 2(1), 2(1)(a), 5(a), 5(e)(iv), 6

Correlation to U.S. Government Report:

The U.S. Government’s report discusses equal access to justice issues⁸¹ but fails to address minority communities’ inability to enforce civil rights guarantees based on disparate effects or impacts, or in the context of enforcing environmental health laws. The U.S. notes steps it has taken to increase access to health care as a way of addressing health disparities,⁸² but does not mention any steps to address the segregation of racial minorities and low-income families into communities that have the highest concentrations of industrial pollutants.

The U.S. addresses discrimination with respect to the right to health as it pertains to environmental justice,⁸³ but does not indicate that the efforts it mentions have resulted in any minority community being relieved of disparate environmental impacts in federal or state permitting, enforcement or rulemaking. It cites Plan EJ 2014 as a positive step toward addressing environmental racism.⁸⁴ However, Plan EJ 2014 is a “roadmap” for re-integrating environmental justice into national environmental programs and has not resulted in affirmative progress. Indeed, the EPA and other Federal administrative agencies and state and local governments continue to marginalize communities of color in rulemaking and permitting. The U.S. does not address disparate access to clean water or disparate impacts of resource extraction on the water quality in minority communities.

Reports Informing this Section:

Multicultural Alliance for a Safe Environment & New Mexico Environmental Law Center: *Response to the Periodic Report of the United States of America to the Committee on the Elimination of Racial Discrimination*

SouthWest Organizing Project & New Mexico Environmental Law Center: *Response to the Periodic Report of the United States of America to the Committee on the Elimination of Racial Discrimination*

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Inequitable Water Security in Boston, Massachusetts

In Boston, Massachusetts, residents in communities of color and low-income neighborhoods are more likely to receive water-shut off notices and to be in arrears with respect to their monthly water bills.

⁷⁹ General Mining Act of 1872, 30 U.S.C. §§ 22 *et. seq.*

⁸⁰ See, e.g., United States Department of Agriculture, *Draft Environmental Impact Statement for Roca Honda Mine* at p. 356 (Feb. 2013) (noting that General Mining Law of 1872 eclipses the Religious Freedom Restoration Act (“RFRA”) and that RFRA only applies to Federal, not state, actions, citing *City of Boerne v. Flores*, 521 U.S. 507 (1997)). http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880_FSPLT2_383483.pdf.

⁸¹ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 59-86 (13 June, 2013).

⁸² *Id.*, at ¶ 137.

⁸³ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 144 (13 June, 2013).

⁸⁴ *Id.*

Suggested Recommendations:

1. The U.S. Government should engage civil society and directly impacted communities to establish guidelines for all water utilities to ensure that all residents enjoy the human right to water and sanitation.
2. The U.S. Government should establish a public reporting mechanism that involves water utilities and civil society in monitoring the enjoyment of the human right to water with particular attention to difference and inequalities that correlate with race, income, ethnicity, national origin, gender, disability status, and age.

Basis of the Recommendations:

In Boston, Massachusetts, residents in communities of color and low-income neighborhoods are more likely to receive water-shut off notices and to be in arrears with respect to their monthly water bills. The city has no publicly stated mechanism to reduce water bills for those who cannot afford their water bills. Neither the City nor its utility, the Boston Water and Sewer Commission (BWSC), have mechanisms in place to determine and report on patterns of racial inequality in the provision of water. No mechanisms exist to determine the impacts of planned water price increases on low-income residents and communities of color. The announced price increases come after decades of nearly continuous price increases outstripping annual Consumer Price Index changes. The right to housing requires provision of adequate water and sanitation.

ICERD Articles Implicated: 5, 5(e)(iii) & (iv)

Correlation to U.S. Government Report:

The U.S. Government's recognizes that "minorities are concentrated in areas or communities that may have sub-standard living conditions and/or services,"⁸⁵ but does not mention water shut-offs in the City of Boston.

Report Informing this Section:

Massachusetts Global Action: *Sharp Inequalities in Water Security Across the City of Boston; People-of-Color Communities Most Impacted*

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Sex-Selective Abortion Bans & Discriminatory Impact

Using racially charged arguments based on inaccurate empirical claims concerning Asian American communities, state legislatures are passing sex-selective abortion bans, with potential harmful impacts for Asian American women's access to reproductive health services.

Suggested Recommendations:

⁸⁵ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 36 (13 June, 2013).

1. The U.S. Government should issue a statement condemning sex-selective abortion bans as discriminatory against and harmful to Asian American women, encouraging state legislatures to repeal their sex-selective abortion bans, and encouraging the U.S. Congress *not* to enact a federal sex-selective abortion ban.

2. The U.S. Congress should take affirmative measures to counteract the harmful stereotypes about persons of Asian descent being propagated at the state level through sex-selective abortion bans, including by allocating funding to organizations working to counteract these stereotypes; and by enacting a resolution stating that it refuses to enact a sex-selective abortion ban due to the discriminatory impact of such a ban.

Basis of the Recommendations:

Several state legislatures have considered and/or passed laws that ban sex-selective abortion,⁸⁶ with sponsoring legislators publicly claiming the purpose is to halt the practice amongst Asian Americans.⁸⁷ Evidence demonstrates that there is no sex-selective abortion phenomenon in Asian American communities.⁸⁸ The laws may disproportionately inhibit Asian American women's access to reproductive health services: medical professionals may deny care to Asian American women, since legislative histories single out Asian American women as a group that allegedly seeks sex-selective abortions. Moreover, the laws' legislative histories stigmatize Asian American women by imputing a pernicious preference for sons to them.

ICERD Articles Implicated: 1, 2, 2(1)(a), (c) & (e), 5(e)(iv)

Correlation to U.S. Government Report:

The U.S. Government's report neither addresses sex-selective abortion bans nor speaks directly to continuing racial disparities in women's access to reproductive health services.

Report Informing this Section:

International Human Rights Law Clinic at the University of Chicago Law School, National Asian Pacific American Women's Forum, Advancing New Standards in Reproductive Health: *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States*.

* * * * *

Reproductive Health Oppression In California Prisons

Those locked up in California's women's prisons are disproportionately people of color, and have suffered multiple violations of their reproductive health rights, including involuntary sterilization, and have received no adequate reparations.

⁸⁶ For just a small number of many examples of this phenomena, see ARIZ. REV. STAT. § 13-3603.02 (2013); 720 ILL. COMP. STAT. § 510/6-8 (2013); KAN. STAT. § 65-6726 (2013); N.C. GEN. STAT. § 90-21.121 (2013); N.D. CENT. CODE § 14-02.1-04.1 (2013); OKLA. STAT. TIT. 63, § 1-731.2 (2013); 18 PA. CONS. STAT. § 3204 (2013); H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted); United States Congress, see, e.g., Prenatal Nondiscrimination Act of 2013, H.R. 447 and S. 138, 113th Cong. (2013).

⁸⁷ Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(F) (2013); Molly Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants—Supporters of a South Dakota Bill Say Asian Americans Don't Value Girls as Much as Boys*, MOTHER JONES (Feb. 5, 2014), <http://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants> (quoting House Judiciary Committee, South Dakota Public Broadcasting, available at <http://sdpb.sd.gov/SDPBPodcast/2014/hju19.mp3>).

⁸⁸ See International Human Rights Clinic at the University of Chicago Law School, National Asian Pacific American Women's Forum & Advancing New Standards in Reproductive Health, *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States* 15–18 (May 2014), available at <https://ihrcclinic.uchicago.edu/page/replacing-myths-facts-sex-selective-abortion-laws-united-states>.

Suggested Recommendations:

1. The U.S. Government should act to ensure a moratorium on prison and jail expansion.
2. The State of California must contact all individuals who received sterilization surgery—in particular those who were sterilized via tubal ligation—acknowledge and apologize for the sterilization abuses documented, provide follow up medical and mental health care by a provider of the prison sterilization survivor's choice, monetary compensation, and other remedies as identified by survivors.
3. The State of California should conduct research into surgeries conducted upon people in California women's prisons that did or could have resulted in sterilization dating back to at least 1997.⁸⁹ This includes: tubal ligation, hysterectomy, oophorectomy, or any other means rendering an individual permanently incapable of reproducing.
4. The U.S. Government must ensure that people inside prisons receive health treatment outside the prison walls, from medical professionals who will respect their patients and who have no affiliations to correctional departments. People in prison should have their non-emergency healthcare needs provided by local public health agencies, and timely and ready access to these medical facilities must be provided. Co-pays for all doctor visits should be eliminated, as proposed by the California State Audit.⁹⁰
5. California lawmakers should support the decarceration strategies proposed by Californians United for a Responsible Budget, which proposes, in part, sentencing laws that mandate parole, rather than prison, abolish return-to-custody as a sanction for technical parole violations; and which proposes support for policies and programs that will ease the re-entry process.⁹¹

Basis of the Recommendations:

People of color, including women of color, are more likely to enter prison and to face abuses while there.⁹² Women in California's prisons have suffered multiple violations of their reproductive health rights, including involuntary sterilization during labor and birth, substandard medical care, heightened risk of maternal death, and shackling during labor.

Following a request by Justice Now and the California Legislative Women's Caucus, the California State Auditor conducted an investigation and concluded that 144 tubal ligations occurred with the sole purpose of permanently sterilizing people in prison between 2005 and 2013, including multiple cases in which people definitively did not give informed consent. The survivors were disproportionately people of color. Since 2004, Justice Now has also exposed over thirty cases of predominantly Black, Latina, and indigent women and transgender individuals experiencing hysterectomies and oophorectomies under highly questionable or clearly abusive circumstances,

⁸⁹ Data from the Office of the Federal Receiver listed hundreds of tubal ligation and other sterilization procedures dating back to 1997. Surgeries prior to 2005 have yet to be investigated by the California State Auditor. DATA MANAGEMENT UNIT, CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, A HIDPSB REPORT: TUBAL LIGATIONS BY CONTRACTOR/PROVIDER (MAY 3, 2013); DATA MANAGEMENT UNIT, CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, A HIDPSB REPORT: SUMMARY OF FEMALE PROCEDURES BY CPT CODE (AUGUST 28, 2013)

⁹⁰ See CAL. DEP'T. OF CORR. & REHAB., INMATE MEDICAL SERVICES PROGRAM POLICIES AND PROCEDURES VOL. 1, CH. 10, P.1 (2002); CAL. DEP'T. OF CORR. & REHAB., PREGNANT INMATE CARE AND BIRTH OF CHILDREN VOL. 4, CH. 24 (2006).

⁹¹ The full list of strategies suggested by CURB is found in "50 Ways to Reduce the Number of People in Prison in California." <http://curbprisonspending.org/wp-content/uploads/2010/05/50waysCurb.pdf>

⁹² Meda Chesney-Lind & Lisa Pasko, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME 155-56 (Sage Publications 2003) (1997) ("[T]he surge in women's imprisonment has disproportionately hit women of color in the United States...[M]uch of this increase can be laid at the door of the war on drugs, which many now believe has become a war on women, particularly on women of color").

including due to false medical diagnosis, without an imprisoned individual's knowledge or informed consent, and/or as first response to problems that have far less invasive remedies available. Because a punitive environment is a fundamental aspect of prison, the most effective way to provide humanized medical treatment, and to confront the destruction of families of color, is to funnel people outside of the prison system.

ICERD Articles Implicated: 5(a) & (b), 5(e)(iv)

Correlation to U.S. Government Report:

In response to paragraph 20 of the Committee's 2008 Concluding Observations, the U.S. Government cites the Fair Sentencing Act (FSA),⁹³ and research produced by The Sentencing Project that shows that "disparities in the prison population may be starting to diminish."⁹⁴ These observations inadequately address the human right to family. While the FSA is one good step towards undoing disparity, the act still does not make the sentences for crack and cocaine equal, and thus African Americans are still targeted for higher sentences. The Sentencing Project report makes it clear that racial/ethnic disparities in U.S. incarceration remain substantial. Further, as the Sentencing Project's report to this Committee indicates,⁹⁵ the reduced racial disparity largely pertains to women and in significant part is a function of more white women being sentenced to prison, rather than action by the government to reduce current disparities.⁹⁶ Racial and ethnic disparities among women remain prevalent.⁹⁷

In response to paragraph 33 of the Committee's Concluding Observations, the U.S. report states, "the United States recognizes that more can be done to increase women's access to health care, reduce unintended pregnancies, and support maternal and child health,"⁹⁸ but fails to address ongoing reproductive oppression of women in prison.

Report Informing this Section:

Justice Now: *Reproductive Health Oppression in California Women's Prisons*

* * * * *

Race and Gender Discrimination in Health Care

Women of color suffer poorer health outcomes—including far higher maternal mortality rates—than white women, due to lack of access to affordable healthcare, discrimination in healthcare settings, and laws excluding public health coverage based on immigration status, amongst other factors.

Suggested Recommendations:

⁹³ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 66 (13 June, 2013).

⁹⁴ *Id.*, at ¶ 68.

⁹⁵ Sentencing Project, Correctional Association of New York, Drug Policy Alliance, Grassroots Leadership, Justice Strategies, Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, National Association for the Advancement of Colored People (NAACP), National Law Center on Homelessness & Poverty, New Jim Crow Action Group – Atlanta, Southern Center for Human Rights: *Shadow Report of the Sentencing Project to the Committee on the Elimination of Racial Discrimination*

⁹⁶ MARC MAUER, THE SENTENCING PROJECT, THE CHANGING RACIAL DYNAMICS OF WOMEN'S INCARCERATION (2013) available at http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.

⁹⁷ *Id.*

⁹⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 196 (13 June, 2013).

1. The U.S. Government should take proactive steps to **eliminate racial disparities in reproductive and sexual health, especially maternal mortality**, by: (1) increasing coverage for low-income women living in states that have opted out of Medicaid expansion; (2) increasing access to a full range of affordable contraceptive services that help women plan healthy pregnancies; (3) addressing racial and gender stereotypes that promote stigma, inhibit the ability of women of color to seek and receive sexual and reproductive health services and information, and reduce women's control over their reproductive decision-making; (4) increasing quality of and access to maternal health services for women relying on the public health system, including pre- and postnatal care; and (5) passing paid parental leave legislation to ensure optimal health and well-being for women and children.
2. The U.S. Government should **improve monitoring and accountability mechanisms for preventable maternal mortality** through standardizing data collection on maternal deaths across states and ensuring that state maternal mortality review boards have the resources and capacity to address systemic problems in care and afford meaningful remedies to women and their families.
3. The U.S. Government should **eliminate discriminatory policies that restrict immigrant women's access to health insurance** on the basis of their citizenship status, including legislative repeal of the five-year waiting period on qualified immigrants to enroll in Medicaid and the ban on participation by undocumented immigrants in the insurance exchanges created by the Affordable Care Act.

Basis of the Recommendations:

Maternal mortality is a human rights crisis in the U.S., fueled by racial disparities. Overall, the U.S. maternal mortality rate has increased significantly since the last U.S. review by CERD.⁹⁹ This trend must be understood in terms of racial and socioeconomic disparities. For the last four decades, Black women have been dying in childbirth at a rate three to four times their White counterparts.¹⁰⁰ Poverty and lack health insurance are also significant drivers of disparities.¹⁰¹ Due to poor access to health care generally, Black women—especially Black women in southern states that have chosen not to expand Medicaid under the Affordable Care Act—are more likely to suffer diseases such as diabetes, obesity, and hypertension that place them at a higher maternal health risk. Discrimination in the health care system and poor quality of services for those seeking care at public hospitals contribute to higher maternal mortality in Black women, as well as wide disparities in other reproductive health indicators including unintended pregnancy, abortion, sexually transmitted infections including HIV, and cervical cancer.

⁹⁹ World Health Organization (WHO), et al., *Trends in Maternal Mortality: 1990 to 2013*, 43 (2014), http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226_eng.pdf?ua=1 [hereinafter WHO, *Trends in Maternal Mortality*]. See also Nicholas Kassebaum et al., *Global, Regional, and National Levels and Causes of Maternal Mortality During 1990–2013: A Systematic Analysis for the Global Burden of Disease Study 2013*, *The Lancet* (May 2, 2014), [http://dx.doi.org/10.1016/S0140-6736\(14\)60696-6](http://dx.doi.org/10.1016/S0140-6736(14)60696-6) (showing the U.S. MMR rate at 18.5 per 100,000 live births relying on a different data set, but showing a similar level of increase as the WHO study on maternal mortality trends).

¹⁰⁰ Centers for Disease Control and Prevention (CDC), *Pregnancy Mortality Surveillance System*, <http://www.cdc.gov/reproductivehealth/MaternalInfantHealth/PMSS.html> (last updated Mar. 3, 2014) [hereinafter CDC, PMSS] (noting that from 2006–2009, the pregnancy-related mortality ratios for White and Black women in the U.S. were 11.7 compared to 35.6 deaths per 100,000 live births, respectively); see also *Deadly Delivery*, *supra* note 16, at 6.

¹⁰¹ Nat'l Women's Law Ctr., *Poverty Rates by State, 2012* (Sept. 2013), http://www.nwlc.org/sites/default/files/pdfs/final_compiled_state_poverty_table_2012.pdf. Of the women living in poverty in the U.S. in 2012, 25.1% were African American and 24.8% were Hispanic; Farah Ahmad & Sarah Iverson, *The State of Women of Color in the United States*, Ctr. for Am. Progress, 12 (Oct. 2013), <http://www.americanprogress.org/wp-content/uploads/2013/10/StateOfWomenColor-1.pdf>. The poverty rates of White, non-Hispanic women compared to Latina and African American women were 10.8%, 27.9%, and 28.6%, respectively; Kaiser Family Foundation (KFF), *Uninsured Estimates of the Total Population, American Community Survey (ACS)* (2012), <http://kff.org/uninsured/state-indicator/total-population-2/#map>; Jessica Stevens et al., *Health Coverage and Care in the South in 2014 and Beyond* (Apr. 24, 2014), <http://kaiserfamilyfoundation.files.wordpress.com/2014/04/8577-health-coverage-and-care-in-the-southin-2014-and-beyond1.pdf>; U.S. Dept. Health & Human Servs., *National Healthcare Disparities Report 2012* (May 2013), <http://www.ahrq.gov/research/findings/nhqrdr/nhqr12/2012nhqr.pdf>.

Despite this worsening crisis, the U.S. government has failed to include information about disparities in maternal mortality in its periodic report to CERD. Data collection on maternal mortality is not prioritized in U.S. reports on health disparities, nor is it standardized across states. As such, the causes of maternal deaths and interventions that could address disparities are not adequately understood. Accountability measures to provide systematic recommendations and remedies to victims do not exist in 29 states.

For other women of color, including many immigrant women, health insurance coverage is the primary barrier to health care and principal driver of health disparities. Although the federal government passed the 2010 Affordable Care Act (ACA) to expand health insurance coverage and address health disparities, the U.S. Supreme Court struck down a provision requiring states to participate in the expansion of Medicaid to cover the low-income uninsured who could not afford private insurance. As of June 2014, in 19 states, legislatures with ideological objections to the ACA opted out of the Medicaid expansion program.¹⁰² The states that failed to expand Medicaid are many of the poorest states in the country,¹⁰³ including Southern states with disproportionately high rates of people of color living in poverty.¹⁰⁴ Also hindering access to reproductive healthcare for women, including women of color, is the fact that many states are considering legislation or have laws severely restricting abortion rights and hampering access to contraception.¹⁰⁵

U.S. policy discriminates against non-citizens in access to health care by excluding large groups of immigrants from eligibility for public health insurance. The ACA requires non-citizens lawfully present in the U.S. to wait five years before they can enroll in Medicaid (but note some states do not allow lawfully residing immigrants to enroll even after completion of the waiting period). Undocumented immigrants are completely barred from Medicaid, and not permitted to buy private insurance on the newly developed health insurance exchanges, even with their own money.

ICERD Articles Implicated: 2, 5(e)(iv)

Correlation to U.S. Government Report:

The information about health insurance coverage in the U.S. report is incomplete, failing to describe the fact that many of the poorest states in the country have failed to fund the Medicaid expansion program under the Affordable Care Act. The U.S. report also fails to address the Affordable Care Act's differential treatment of non-citizens and citizens in access to health insurance and care. Although the Government alludes to expanded coverage afforded to Latinos under the ACA, an estimated 6.5 million income-eligible Latinos will be excluded solely due to their immigration status.¹⁰⁶ The U.S. report also fails to mention the lack of effective mechanisms to enforce its ICERD obligation to remedy disparate impact discrimination in multiple areas, including health, particularly since the Supreme Court's 2001 decision in *Alexander v. Sandoval*¹⁰⁷ restricted individuals' ability to bring lawsuits alleging disparate impact discrimination under the U.S. Civil Rights Act.

The U.S. report acknowledges that “more can be done to increase women’s access to health care,

¹⁰² U.S. Census Bureau, *Population Estimates, State Totals: Vintage 2013, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2013* (2013), <http://www.census.gov/popest/data/state/totals/2013/index.html>.

¹⁰³ Alemayehu Bishaw, *Poverty: 2000 to 2012, American Community Survey Briefs*, U.S. Census Bureau (Sept. 2013), <https://www.census.gov/prod/2013pubs/acsbr12-01.pdf>; KFF, *Status of State Action on the Medicaid Expansion Decision, as of March 26, 2014* (2014), <http://kff.org/health-reform/state-indicator/state-activity-aroundexpanding-medicaid-under-the-affordable-care-act/#note-2>.

¹⁰⁴ See Poverty USA, U.S. Poverty Map (2011), <http://www.povertyusa.org/the-state-of-poverty/poverty-map-state/> (last visited May 30, 2014).

¹⁰⁵ Ann Fagan Ginger, Meiklejohn Civil Rights Institute: *Report on Abortion*.

¹⁰⁶ KFF, *Health Coverage for the Hispanic Population Today and Under the Affordable Care Act*, 4 (Apr. 2013), <http://kaiserfamilyfoundation.files.wordpress.com/2013/04/84321.pdf>.

¹⁰⁷ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

reduce unintended pregnancies, and support maternal and child health.”¹⁰⁸ However, it fails to provide data specific to these disparities in sexual and reproductive health care, elaborate on how it has failed to achieve these goals, or offer a plan of action. Data on key women’s health indicators; including maternal mortality, unintended pregnancy rates, abortion rates, and non-pregnancy related health outcomes like cervical cancer are also missing from the U.S. report.

Report Informing this Section:

Center for Reproductive Rights, National Latina Institute for Reproductive Health, & SisterSong Women of Color Reproductive Justice Collective: *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care*

Ann Fagan Ginger, Meiklejohn Civil Rights Institute: *Report on Abortion*

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HIV: Criminalization, Poverty, & Lack of Health Care Access

High incidence of HIV infection persists in communities of color, particularly amongst LGBT communities, due to criminalization, continued disparate poverty and unemployment rates, and a lack of affordable health care access.

Suggested Recommendations:

1. The U.S. Government should mandate systematic repeal of all HIV criminalization laws and/or the modernization of such statutes to reflect accurate, up-to-date medical information and science on the routes, risks, and consequences of HIV. This includes the passage of the Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination (REPEAL) Act, currently being considered by Congress (H.R. 1843/S.1790) as a critical first step to addressing unjust HIV criminalization laws.
2. There must be an immediate expansion of Medicaid across all U.S. states to alleviate issues of the uninsured and lack of access to health care faced by communities of color, people living with HIV and to improve racial disparities along the HIV continuum of care. The U.S. Government should also develop mechanisms to monitor the progress on addressing racial health disparities and issues of health care access within the context of the Affordable Care Act roll-out and implementation.
3. The U.S. Government should support the integration of trauma-informed care frameworks and practices into the US health care system to address issues of internalized trauma among communities of color that stem from intersectional experiences with racism, sexism, poverty, homophobia, transphobia, stigma, discrimination, criminalization, incarceration and/or violence.
4. The U.S. Government should support development of a strong and effective operational plan through the new iteration of the National HIV/AIDS Strategy that focuses on impacting social drivers in the HIV epidemic in the US, and is far more ambitious in its targets, and should follow the post 2015 development agenda being drafted by UNAIDS, which is calling for 90% reductions in new infections, discrimination and deaths by 2030.

¹⁰⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 196 (13 June, 2013).

5. The U.S. Government should direct federal support and resources for improved transgender-competent health care and social outreach to the transgender population; developing robust, non-stigmatizing and accurate data surveillance of transgender people through the National Behavioral Health Survey (NHBS); and implementing transgender-specific policies to expand access to health care and employment opportunities/ protections, particularly for transgender women, as a high-impact prevention strategy.

Basis of the Recommendations:

Blacks represent approximately 12% of the US population, but accounted for an estimated 44% of new HIV infections in 2010.¹⁰⁹ In 2010, the rate of new HIV infections for Latino males was 2.9 times that for white males, and the rate of new infections for Latinas was 4.2 times that for white females.¹¹⁰ At the urging of AIDS activists in the U.S., the Government implemented a National HIV/AIDS Strategy (NHAS) in 2010, with five-year targets to reduce new infections, increase access to care, and reduce disparities in health outcomes. Unfortunately, these goals are far from being met, with key reasons including criminalization of vulnerable populations and people living with HIV, poverty and lack of employment, and lack of health care access.

Discrimination based on sexual orientation and gender identity also plays a role, leading to disproportionately high rates of HIV infection amongst Black gay men and Black transgender women.¹¹¹ With regard to the impacts of criminalization, LGBT communities of color, particularly transgender women of color and youth, are consistently profiled as engaging in sex work and other sexual offenses.¹¹² In such situations, possession of condoms is used as evidence of prostitution (leading to condom confiscation and criminalization).¹¹³ Thirty-two states in the U.S. criminalize exposure and transmission of HIV.¹¹⁴ Many of these laws criminalize exposure of HIV through biting and spitting—“routes” proven to have negligible risk of transmission.¹¹⁵ Disproportionately, people of color are charged with these offenses.¹¹⁶

Increasingly, HIV is considered a disease associated with poverty. According to the Centers for Disease Control, poverty “can limit access to health care, HIV testing, and medications that can lower levels of HIV in the blood and help prevent transmission. In addition, those who cannot afford the basics in life may end up in circumstances that increase their HIV risk.”¹¹⁷ Even with the progress made to expand health care access through the Affordable Care Act (ACA), incomplete and uneven implementation continues to hinder access, particularly in states that have chosen not to expand Medicaid. Communities of color and LGBT people of color also face discrimination in health care, which deters engagement in care and results in poorer health outcomes. Experiences

¹⁰⁹ CDC. *HIV among African Americans*. (February 2014). Available at: <http://www.cdc.gov/nchhstp/newsroom/docs/CDC-HIV-AA-508.pdf>

¹¹⁰ CDC. *HIV among Hispanics/Latinos* (December 3, 2013). Available at: <http://www.cdc.gov/hiv/risk/raciaethnic/hispaniclatinos/index.html>

¹¹¹ CDC. *HIV Among African American Gay and Bisexual Men* (May 21, 2014). Available at:

<http://www.cdc.gov/hiv/risk/raciaethnic/bmsm/facts/index.html>; CDC. *HIV and Young Men Who Have Sex with Men* (June 2012). Available at: http://www.cdc.gov/healthyyouth/sexualbehaviors/pdf/hiv_factsheet_ymsm.pdf; National Gay and Lesbian Taskforce. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (February 3, 2011). Available at:

http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

¹¹² *Supra* note 28

¹¹³ *Supra* note 28

¹¹⁴ Center for HIV Law and Policy. *Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions* (May 12, 2014). Available at: <http://www.hivlawandpolicy.org/resources/ending-and-defending-against-hiv-criminalization-state-and-federal-laws-and-prosecutions>

¹¹⁵ NAM Publications. *Non-sexual HIV exposure or transmission*. Aidsmap (2010). Available at: <http://www.aidsmap.com/Non-sexual-HIV-exposure-or-transmission/page/1444047/>

¹¹⁶ *Id.*

¹¹⁷ Centers for Disease Control. *Socioeconomic Factors Affecting HIV Risk* (June 25, 2013). Available at: <http://www.cdc.gov/nchhstp/newsroom/HIVFactSheets/Epidemic/Factors.htm>

with discrimination include outright refusal of care, violence and harassment, sexual abuse, lack of provider knowledge, and inaccessibility of insurance.¹¹⁸

ICERD Articles Implicated: 1, 2, 4, 5, 5(d)(i) & (iii), 5(e)(i) & (iii)-(v), 6, & 7

Correlation to U.S. Government Report:

The U.S. Government's report describes the 2011 release of the Action Plan to Reduce Racial and Ethnic Health Disparities, by the Department of Health and Human Services;¹¹⁹ and heralds the enactment of the Affordable Care Act.¹²⁰ Unfortunately, multiple states' refusal to expand Medicaid under the ACA is limiting its potential to increase health access. The U.S. report also describes the release of the National HIV/AIDS Strategy.¹²¹ However, as the end of the NHAS target period approaches, it is certain that the goal to reduce racial disparities in health outcomes, treatment and care will fall short. The U.S. Government's response fails to recognize that high infection rates are due in part to unjust and uneven policies and laws that enforce racism, stigma, criminalization, and discrimination, thus hindering access to health. Moreover, the US government failed to address the Committee's finding of "growing disparities in HIV infection rates for minority women (art. 5 (e) (iv))"¹²² in its latest report.

Report Informing this Section:

AIDS Foundation of Chicago, Center for HIV Law and Policy, Counter Narrative Project, HIV Prevention Justice Alliance, National Working Positive Coalition, Positive Women's Network of the United States of America, Sero Project, Treatment Action Group, Women With a Vision: *HIV Criminalization, Poverty, and Health Care Access—United States' Violations of the International Convention on the Elimination of all Forms of Racial Discrimination*

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Over-Medication of African American Girls in Foster Care

Evidence suggests that African American girls in foster care are disproportionately over-prescribed psychotropic drugs, with pernicious effects on their health and lives.

Suggested Recommendations:

1. The U.S. Government should require federal, state and local governments to collect data categorized by race or ethnic origin and further disaggregated by gender and gender-identity within those racial or ethnic groups.
2. The U.S. Government should enact federal, state and local legislation extending the oversight and monitoring of the use of psychotropic medications by foster care children beyond social service agencies to include, but not limited to, courts, school systems, juvenile service systems, etc.

¹¹⁸ *National Transgender Discrimination Survey Report on Health and Health Care*, (examining experiences of discrimination by transgender people in the US health system.)

¹¹⁹ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 140 (13 June, 2013).

¹²⁰ *Id.*, at ¶ 134.

¹²¹ *Id.*, at ¶ 201.

¹²² Committee on the Elimination of Racial Discrimination, *Concluding Observation: United States of America* ¶ 33 (72d Sess., 2008), U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008). Available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN.

3. Federal, state, and local agencies should be required to provide financial and non-financial resources to recruit, hire, and develop mental health professionals who deliver gender specific, culturally competent, trauma-informed therapies as a more humane approach to treat African-American girls with mental and emotional issues.

Basis of the Recommendations:

As concern mounts about over-use of psychotropic medicine on children in the U.S. foster care system, facts have emerged indicating that: foster care children are prescribed psychotropic medications at nine times the rate of other children,¹²³ African-American children in foster care are diagnosed with higher rates of mood/psychotic and behavior or conduct disorders that link to prescribing anti-psychotic medications,¹²⁴ and girls in foster care are diagnosed with higher rates of depression.¹²⁵ A topic woefully understudied, there is no detailed information on psychotropic medication of African American girls in foster care, but testimony reveals that over-medication of this type is a human rights abuse they suffer.¹²⁶ Side effects and long-term effects can be harmful to health and wellbeing.¹²⁷

ICERD Articles Implicated: 1, 2, 2(1)(c), 5, 6, 7

Correlation to U.S. Government Report:

In its report, the U.S. Government did not indicate that it collected disaggregated data on vulnerable children in special populations, such as foster care, to address disparities in health care for persons belonging to racial, ethnic and national minorities by age, gender, race, ethnic or national origin or disability.

Report Informing this Section:

Stephanie S. Franklin, Esq., The Franklin Law Group: *African-American Girls in Foster Care & Psychotropic Medication: Her Right to Survival & Development, Bodily Integrity & Self-Determination*

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Environmental Injustice in Illinois

¹²³ Abdelmalek, Mark Dr., Adhikari, B., Koch, S., Diaz, J., and Weinraub, C. “New Studies Shows U.S. Government Fails to Oversee Treatment of Foster Children With Mind-Altering Drugs.” November 30, 2011.

<http://abcnews.go.com/US/story-shows-foster-children-high-rates-prescription-psychiatric/story?id=15058380>; Government Accounting Office. Children’s Mental Health. “Concerns Remain About Appropriate Services for Children in Medicaid And Foster Care.” December 2012.

<http://www.gao.gov/assets/660/650716.pdf>; Government Accounting Office. “Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions.” December 1, 2011. <http://www.gao.gov/products/GAO---12---270T>.

¹²⁴ “Mental Health Surveillance Among Children—United States- 2005-2011,” Centers for Disease Control and Prevention, May 17, 2013 <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6202a1.htm#Tab2>; Nauert, R., Ph.D., “Child’s Mental Health Diagnosis Influenced by Ethnicity,” May 20, 2008 <http://psychcentral.com/news/2008/05/20/childs-mental-health-diagnosis-influenced-by-ethnicity/2317.html>

¹²⁵ “Mental Health Surveillance Among Children—United States- 2005-2011,” Centers for Disease Control and Prevention, May 17, 2013 <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6202a1.htm#Tab2>; Nauert, R., Ph.D., “Child’s Mental Health Diagnosis Influenced by Ethnicity,” May 20, 2008 <http://psychcentral.com/news/2008/05/20/childs-mental-health-diagnosis-influenced-by-ethnicity/2317.html>

¹²⁶ See, e.g., Stephanie S. Franklin, Esq., The Franklin Law Group: *African-American Girls in Foster Care & Psychotropic Medication: Her Right to Survival & Development, Bodily Integrity & Self-Determination* at 4-5.

¹²⁷ Breggin, Peter, MD, “The Psychiatric Drugging of America’s Foster Children,” May 28, 2014, Citizens Commission on Human Rights International, <http://www.cchrint.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/>.

Local communities throughout Illinois that are threatened by polluting industries are comprised disproportionately of people of color and poor people, and they face an increasingly difficult struggle to achieve industry and policy changes that can address their needs.

The Problem:

In Illinois, low-income communities and communities of color endure health disparities and experiences of environmental racism. On the shore of Lake Michigan, the Waukegan coal-fired power plant, one of the oldest coal plants in the country, is a heavy polluter, contributing to high levels of related health illnesses in the disproportionately minority surrounding community. In southern Illinois, the Shawnee indigenous people are experiencing loss of land, and pollution of their air and water due to exploitation of their land by the Peabody Coal Company. In Southeast Chicago, a low-income community of color that already bears the environmental fallout of heavy industrialization, is experiencing another polluting industry repercussion, in the form of petroleum coke (“petcoke”) currently emanating from area oil refineries. In the Southwest Chicago community of Pilsen, heavily burdened with harmful smelter emissions, and other environmental pollutant, the Zoning Board of Appeals approved a new metal shredder, which will further pollute the area with heavy metals and harm residents’ health.

ICERD Articles Implicated: 5(b), 5(e)(iv)

Correlation to U.S. Government Report:

The U.S. addresses discrimination with respect to the right to health as it pertains to environmental justice in its report,¹²⁸ but does not indicate that its efforts have resulted in communities of color being relieved of disparate environmental impacts in federal or state permitting, enforcement or rulemaking. It cites Plan EJ 2014 as a positive step toward addressing environmental racism.¹²⁹ However, Plan EJ 2014 is a “roadmap” for re-integrating environmental justice into national environmental programs and has not resulted in affirmative progress.

Report Informing this Section:

Little Village Environmental Justice Organization: *2014 CERD Report—Environmental Justice Struggles in Illinois*

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Chevron Oil Refinery in Richmond, California

The Chevron oil refinery in Richmond, California, is a source of dangerous pollution to the surrounding community, with disproportionate impact on people of color.

Suggested Recommendations:

1. The U.S. Government should ensure the safety and protection of workers and communities in and around chemical factories and oil refineries, and insist that Chevron and other corporations adequately upgrade facilities to prevent fires and explosions and reduce emissions, using state of the

¹²⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 144 (13 June, 2013).

¹²⁹ *Id.*

art technology.

2. The U.S. Government should insist that Chevron and other corporations provide health care for those communities affected by pollution from their factories and refineries.

3. The U.S. Government should properly clean up toxic super fund sites immediately and provide necessary funding to properly staff all regulatory agencies to adequately oversee all factories and oil refineries.

Basis of the Recommendations:

Chevron's oil refinery is a major source of harmful pollution, causing severe health impacts to its surrounding community, with disproportionate impact on people of color. The surrounding county has the highest asthma rate in the state, yet Chevron suffers only minimal consequences for major violations of environmental laws and regulations.

ICERD Articles Implicated: 5(b), 5(e)(iv)

Correlation to U.S. Government Report:

The U.S. Government Report failed to address the human rights of communities living in and around chemical factories and/or oil refineries

Report Informing this Section:

Victoria Sawicki, Meiklejohn Civil Liberties Institute: *Right to Life and Health in Communities of Color*

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RIGHT TO EQUAL TREATMENT BY TRIBUNALS & ALL ORGANS ADMINISTERING JUSTICE

Surveillance of & Discrimination Against Muslim Communities

The New York Police Department (NYPD) has targeted Arab, Muslim, and South Asian neighborhoods for law enforcement investigation with no suspicion of wrongdoing, while federal law enforcement agents are using coercive tactics to recruit Muslim men to become informants in Arab, Muslim and South Asian communities throughout the U.S. Muslims are also unfairly targeted throughout the U.S., including through discriminatory federal legislation.

Suggested Recommendations:

1. The U.S. Government should ensure the NYPD ends its unconstitutional discriminatory Muslim surveillance program, and direct the U.S. Department of Justice (DOJ) to investigate the NYPD's conduct. Furthermore, it should ensure that no federal, state, or local law enforcement agency targets Arab, Muslim, and South Asian neighborhoods, businesses, mosques, schools, and organizations for surveillance, monitoring, and intelligence-gathering without particularized suspicion of wrongdoing.

2. The DOJ should revise its Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to ban racial profiling on the basis of religion, sexual orientation, gender identity or national origin, and close loopholes in the Guidance that permit all forms of racial profiling in the national security and border contexts.

3. The U.S. Government should revise the Attorney General's Federal Bureau of Investigation (FBI) operations guidelines to (1) prohibit law enforcement from conducting "assessments," preliminary investigations, or full investigations without any factual predicate of wrongdoing, (2) prohibit racial and ethnic mapping, and (3) prohibit the FBI from using informants or undercover agents in "assessments" or preliminary investigations.

4. The U.S. Government should investigate the use of unlawful or abusive pressure tactics by law enforcement to recruit informants and implement appropriate remedies, including disciplining officers for misconduct; and furthermore should ensure that law enforcement agents (1) do not use threats or intimidation when engaging with informants or potential informants, and (2) do not make promises or threats involving the No Fly List when engaging with informants or potential informants.

Basis of the Recommendations:

Since at least 2002, the NYPD has conducted a surveillance program that targets, maps, and monitors American Muslims in Arab and South Asian communities throughout New York City, New Jersey, and beyond, on the basis of their religion, and without suspicion of wrongdoing.¹³⁰ The NYPD scrutinized more than 250 mosques and hundreds of Muslim student groups, businesses, and community organizations under its massive surveillance program.¹³¹ By subjecting Muslims to law enforcement scrutiny that isn't visited upon any other community, the surveillance program stigmatizes all people of that faith and creates a pervasive climate of fear and suspicion within Muslim communities.¹³²

Since September 11, 2001, the Federal Bureau of Investigation (FBI) has expanded the use of informants. In 2008, the FBI disclosed that it had 15,000 informants on its payroll, the most it has ever had.¹³³ The FBI has targeted Arab, Muslim, and South Asian communities for surveillance and investigation by informants.¹³⁴ The FBI frequently asks informants to monitor activities within the community without any reasonable suspicion of criminal activity—a practice sanctioned by FBI guidelines.¹³⁵ Although the FBI claims that its agents are prohibited from using threats or coercion to recruit informants,¹³⁶ the Attorney General's guidelines on the use of confidential informants do not explicitly ban this practice.¹³⁷ Many individuals have recounted how FBI agents threatened them

¹³⁰ The AP released a series of articles in 2011 and 2012 documenting the NYPD's surveillance program in detail. See AP's Probe into NYPD Intelligence Operations, ASSOCIATED PRESS, <http://www.ap.org/Index/AP-In-The-News/NYPD> (last visited 27 June 2014).

¹³¹ Eileen Sullivan, "NYPD Spied on City's Muslim Anti-Terror Partners," ASSOCIATED PRESS, 6 Oct. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-spied-on-citys-Muslim-anti-terror-partners>.

¹³² CLEAR, MACLC, & AALDEF, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 12-15 (2013), available at <http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

¹³³ See "Terror Probes have FBI's Informant Numbers Soaring," NPR, 21 Aug. 2011, [http://www.npr.org/2011/08/21/139836377/the-surge-in-fbi-informants?sc=ema&TREVOR_AARONSON,_THE_TERROR_FACTORY:_INSIDE_THE_FBI'S_MANUFACTURED_WAR_ON_TERRORISM_112_\(2013\)](http://www.npr.org/2011/08/21/139836377/the-surge-in-fbi-informants?sc=ema&TREVOR_AARONSON,_THE_TERROR_FACTORY:_INSIDE_THE_FBI'S_MANUFACTURED_WAR_ON_TERRORISM_112_(2013)).

¹³⁴ See, e.g., Scott Glover, "FBI Monitored Members of O.C. Mosques at Gyms, Alleged Informant Says," LOS ANGELES TIMES, 28 Apr. 2009, <http://articles.latimes.com/2009/apr/28/local/me-surveillance28>; Jerry Markon, "FBI Accused of Spying on Muslims at Community Outreach Forums," WASHINGTON POST, 2 Dec. 2011, http://www.washingtonpost.com/politics/fbi-illegally-using-community-outreach-to-gather-intelligence-aclu-alleges/2011/11/30/gIQA1qxyGO_story.html.

¹³⁵ FED. BUREAU OF INVESTIGATION, U.S. DEPT OF JUSTICE, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE 89 (2011), available at <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/fbi-domestic-investigations-and-operations-guide-diog-2011-version>; see also Petra Bartosiewicz, "Deploying Informants, the FBI Stings Muslims," THE NATION, 13 June 2012, <http://www.thenation.com/article/168380/deploying-informants-fbi-stings-muslims>.

¹³⁶ AARONSON, *supra* note 13, at 100 (quoting FBI spokesperson Kathleen Wright).

¹³⁷ See U.S. DEPT OF JUSTICE, THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF FBI CONFIDENTIAL HUMAN SOURCES (Dec. 2006), available at <http://fas.org/irp/agency/doj/fbi/chs-guidelines.pdf>.

with baseless terrorism charges or deportation to coerce them into becoming informants, or have brought charges against them in retaliation for their refusal to work as informants.¹³⁸ In addition, the FBI threatens people with placement on the federal government's secretive No Fly List if they refuse to be informants, a particularly coercive tactic because there is no effective or transparent process for being taken off the List.¹³⁹

Anti-Muslim sentiment has also been instrumental in promoting anti-Islam legislation. In 2012, two Reauthorization Acts of the U.S. Department of Homeland Security (DHS) contained language that focused on Muslims in the United States for greater scrutiny concerning the threat of extremism in the United States.¹⁴⁰ This environment has encouraged unjust searches and property seizures, and other civil rights violations of Muslims, including in the case of Imam Syed Fazil Hussain Mosavi in Los Angeles.¹⁴¹

ICERD Articles Implicated: 2, 5(a)

Correlation to U.S. Government Report:

In its latest report to the Committee, the U.S. Government noted that racial or ethnic profiling “is not effective law enforcement practice and is not consistent with our commitment to fairness in our justice system,” and listed recent Department of Justice investigations into police departments for discriminatory conduct.¹⁴² To date, however, the U.S. Department of Justice (DOJ) has not opened an investigation into the NYPD for its discriminatory surveillance of Muslim communities despite calls by more than 125 faith, civil rights, and community organizations to do so.¹⁴³

The U.S. did not otherwise address the issue of widespread surveillance of Arab, Muslim, and South Asian communities in its 2003 report, nor did it address the widespread use and recruitment of Muslim informants to spy on Muslim communities. In 2009, at the request of the Committee, the U.S. Government submitted a follow-up report, and noted that it relied on a 2003 “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies” prepared by the DOJ to train various federal law enforcement agencies on racial profiling.¹⁴⁴ However, the 2003 Guidance does not prohibit profiling based upon religion, and allows law enforcement agents to consider race and ethnicity in certain investigations.¹⁴⁵ Revisions to the racial profiling rules, which have not yet been finalized, are currently drafted to give the FBI continued authority to do so.¹⁴⁶ The U.S. also noted in its follow-up report that the FBI is specifically prohibited from racial profiling because the Attorney General’s guidelines regulating the FBI’s domestic operations incorporate the 2003 Guidance.¹⁴⁷ In fact, by relaxing the bar and allowing the FBI to preliminarily investigate anyone without suspicion

¹³⁸ See, e.g., AARONSON, *supra* note 13, at 92-97 (recounting cases of Foad Farahi, Tarek Saleh, and Yassine Ouassif); Bartosiewicz, *supra* note 16 (recounting cases of Ahmadullah Niazi and Tarek Mehanna); Nick Baumann, “This American Refused to Become an FBI Informant. Then the Government Made His Family’s Life Hell,” THE NATION, May/June 2014, <http://www.motherjones.com/politics/2014/05/sudan-fbi-informant-naji-mansour-terrorism>.

¹³⁹ See ACLU, UNLEASHED AND UNACCOUNTABLE: THE FBI’S UNCHECKED ABUSE OF AUTHORITY 46-48 (Sept. 2013).

¹⁴⁰ *Legislating Fear*, “The State of Islamophobia in America,” (Council on American Islamic Relations, Washington D.C. 2013) p. 73.

¹⁴¹ See Sayeda Mosavi, Meiklejohn Civil Liberties Institute: *Islamophobia in the United States* at 2-3.

¹⁴² Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 80 (13 June, 2013).

¹⁴³ See Letter to the Department of Justice seeking an investigation into the NYPD’s suspicionless surveillance of Muslims, 24 Oct. 2013, https://www.aclu.org/sites/default/files/assets/2013-10-24_doj_investigation_letter_combined.pdf.

¹⁴⁴ CERD, Information Provided by the Government of the United States of America on the Implementation of the Concluding Observations of the Committee on the Elimination of Racial Discrimination, ¶ 8, CERD/C/USA/CO/6/Add.1, 13 Jan. 2009, *available at* [www.refworld.org/publisher,CERD,USA,49c8a1a32,0.html](http://www.refworld.org/publisher/CERD,USA,49c8a1a32,0.html).

¹⁴⁵ U.S. DEP’T OF JUSTICE, GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES, June 2003, *available at* http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf.

¹⁴⁶ Matt Apuzzo, “Profiling Rules Said to Give F.B.I. Tactical Leeway,” NEW YORK TIMES, 9 Apr. 2014, <http://www.nytimes.com/2014/04/10/us/profiling-rules-said-to-give-fbi-tactical-leeway.html>.

¹⁴⁷ Information Provided by the United States on the Implementation of the Concluding Observations, *supra* note 31, ¶ 10.

of wrongdoing,¹⁴⁸ the Attorney General's guidelines make it much easier for the FBI to consider illegitimate factors such as race, ethnicity, and religion in law enforcement actions involving national security.

Reports Informing this Section:

Center for Constitutional Rights; American Civil Liberties Union (ACLU); Asian Americans Advancing Justice – Asian Law Caucus; Bill of Rights Defense Committee (BORDC); Brennan Center for Justice; Council on American-Islamic Relations (CAIR); Creating Law Enforcement Accountability & Responsibility (CLEAR) project; Desis Rising Up and Moving (DRUM); International Center for Advocates Against Discrimination (ICAAD); Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim Consultative Network (MCN); No Separate Justice; Sikh Coalition; and Women in Islam, Inc.: *Suspicionless Surveillance of Muslim Communities and the Increased Use and Abuse of Muslim Informants*

Sayed Mosavi, Meiklejohn Civil Liberties Institute: *Islamophobia in the United States*

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Immigration Detainers Encouraging Racial Profiling

Federal immigration enforcement agencies in the U.S. increasingly rely on local law enforcement agencies to enforce immigration laws, encouraging unlawful racial profiling, and violating due process rights.

Suggested Recommendations:

1. The U.S. Government must establish mechanisms for identifying racial profiling in its immigration enforcement initiatives and suspend operation of initiatives and collaborations with local law enforcement when racial profiling is evident.
2. The U.S. Congress should pass the End Racial Profiling Act or similar legislation to eliminate racial profiling.
3. The U.S. Government must enforce laws and policies to eliminate racial profiling among law enforcement agencies and hold them accountable for failure to abide by these policies.
4. U.S. President Obama's administration should end the Secure Communities program, the 287(g) program, the use of detainers, and other ICE ACCESS programs that encourage the use of profiling and undermine public safety; and also end the Operation Streamline program; implement all recommendations on use of force from the Police Executive Research Forum;
5. U.S. President Obama's administration should replace the overbroad 2011 civil enforcement priorities memo with DHS-wide guidance that limits and better defines the priority categories.
6. When immigrants stand up for basic labor and civil rights protections, they should never be undercut by immigration enforcement practices. U.S. President Obama's administration should: 1) clarify and publicize the processes for immigrants involved in labor and civil rights cases to obtain

¹⁴⁸ U.S. DEPT OF JUSTICE, THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS 19, *available at* <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

immediate immigration status and work authorization; 2) prohibit civil immigration or criminal arrests of workers in the context of workplace enforcement actions; 3) look into labor and civil rights complaints before I-9 or other worksite enforcement actions; and 4) prevent employers from abusing I-9 or E-Verify procedures to violate workers' rights.

Basis of the Recommendations:

The U.S. Department of Homeland Security (DHS) increasingly relies on partnerships with state and local law enforcement agencies (LEAs) to enforce immigration law in the interior of the U.S. Detainers are a written request from Immigration and Customs Enforcement (ICE), DHS's interior enforcement arm, instructing LEAs to hold an individual for up to 48 hours (excluding weekends and holidays) past his or her release date so that ICE can investigate whether the individual is subject to removal.¹⁴⁹ Studies find that officers frequently use race as an indicator of immigration status.¹⁵⁰ ICE has issued thousands of detainers for U.S. citizens and noncitizens eligible for relief from deportation. Individuals with an immigration detainer spend, on average, an extra 43 to 72 days in pre-trial custody than those without detainers.¹⁵¹ In violation of due process rights, ICE officers do not obtain a judicial determination of probable cause before issuing an immigration detainer. Furthermore, ICE does not notify individuals when detainers are issued against them, and no process exists for them to challenge the extended detention.

ICERD Articles Implicated: 1, 2, 5(a)

Correlation to U.S. Government Report:

In its report, the U.S. Government claims that it is engaged in efforts to ensure that immigration enforcement initiatives do not become conduits for discriminatory policing.¹⁵² It also claims that "DHS acts to ensure that its programs and activities are free of invidious racial or ethnic profiling."¹⁵³ It cites clear prohibitions against racial and ethnic profiling in DHS initiatives with state and local police, as well as the specialized training that state and local law enforcement receives under the 287(g) program. However, racial discrimination has proliferated under its immigration enforcement programs, requiring additional measures.

Report Informing this Section:

National Immigrant Justice Center: *CERD Shadow Report: Immigration Detainers Encourage Racial Profiling*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

¹⁴⁹ 8 C.F.R. 287.7(a); see generally National Immigrant Justice Center, *Immigration Detainers* (2014), <http://immigrantjustice.org/sites/immigrantjustice.org/files/Detainers.pdf>.

¹⁵⁰ See generally Aarti Kohli et al., *Secure Communities By the Numbers: An Analysis of Demographics and Due Process*, Chief Justice Earl Warren Institute on Law & Social Policy (2011), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf; Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, Chief Justice Earl Warren Institute on Law & Social Policy (2009), http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf.

¹⁵¹ Andrea Guttin, *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas*, Immigration Policy Center (2010), <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Travis%20County%20Texas%20report.pdf>; Aarti Shahani, *New York City Enforcement of Immigration Detainers*, Justice Strategies (2010), <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NYC%20Detainer%20Report.pdf>.

¹⁵² Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 28 (13 June, 2013).

¹⁵³ *Id.*, at ¶ 83.

RIGHT TO SECURITY OF THE PERSON

Impact of Parental Incarceration on Children of Color

Children of color disproportionately suffer the absence of a parent due to incarceration, with many of their parents imprisoned for nonviolent offenses as a result the U.S.'s "war on drugs."

Suggested Recommendations:

1. At the sentencing hearing of an individual convicted of a non-violent offense and who is the parent of children and/or other dependents, the court should hear and consider the impact of incarcerating the parent on her or his children or dependents. Federal and state sentencing laws should allow judges, in their discretion, to sentence parents to an alternative to a prison term (i.e. probation, drug treatment, education or job training.)
2. Federal and state governments should statutorily require that Family Impact Statements be submitted to the court for review prior to sentencing determination in order to assist judges in assessing the impact of parental incarceration on children and/or other dependents.

Basis of the Recommendations:

The U.S. Bureau of Justice Statistics (BJS) estimated that by 2007 more than half (53 percent) of the 1.5 million people in U.S. prisons were parents of one or more minor children. This represents an increase of 80% since 1991. BJS also found that disproportionately, it is children of color whose parents are imprisoned, with Black children seven and a half times more likely than white children to have a parent in prison, and Latino children's parents imprisoned at two and a half times the rate.¹⁵⁴ As American Indians' rate of incarceration is 38% higher than national rates,¹⁵⁵ likely American Indian children also face much higher rates of parental imprisonment. Policies of increased criminalization and harsher sentences as part of the U.S. "war on drugs" have led to skyrocketing incarceration rates in the U.S., meaning more children losing their parents to prison, and for longer periods of time. The U.S. has made insufficient effort to minimize the use of prison sentences, particularly for minor, victimless offenses.

ICERD Articles Implicated: 1, 2, 5(e)(iv), and 6

Correlation to U.S. Government Report:

While the Committee heard the issue of impact of parental incarceration on youth of color in 2008, the U.S. Government did not raise it in its latest report to the Committee.

Report Informing this Section:

Justice Strategies: *Alleviating the Impact of Incarceration on Indigenous, African-American and Latino Children*

¹⁵⁴ Lauren E. Glaze & Laura M. Maruschak, U.S. Department of Justice, Bureau of Justice Statistics Special Report, Parents in Prison and Their Minor Children (Aug. 2008) available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

¹⁵⁵ Lawrence A. Greenfeld and Steven K. Smith, "American Indians and Crime," U.S. Department of Justice (1999), <http://bjs.gov/content/pub/pdf/aic.pdf>.

African-American Gun Violence Victimization

Despite well-documented disparate effects of gunfire injury and death amongst African Americans, as well as wide public support for gun control, the U.S. government has failed to enact legislation to curb gun violence.

Suggested Recommendations:

1. In addition to the Human Rights Committee's recommendation to pursue legislation expanding background checks covering all private firearm transfers, the U.S. must: a) repeal the Tiahrt Amendments to reinstate the public watchdog function and stop obstruction of law enforcement efforts regarding illegal gun sales; b) repeal or modify the Protection of Lawful Commerce in Arms Act to limit the broad-based immunity granted to the firearms industry; c) ban the practice of carrying concealed handguns in public venues; and d) review Stand Your Ground Laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defense.
2. Consistent with paragraph 36 of CERD Annotated Concluding Observations of US Obligations (2012), "the State party should organize public awareness and education programmes on the Convention and its provisions, and step up its effort to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanism and procedures provided for by the Convention in the field of racial discrimination and intolerance."

Basis of the Recommendations:

Multiple studies and statistics demonstrate that African Americans disproportionately fall victim to gun violence, with African American males seven times more likely to die by firearm homicide than white males. This disparity stems from various factors, including overt expressions of racial hatred, implicit bias in shootings (as evidenced by jury verdicts utilizing "Stand Your Ground" laws to exonerate shooters of African Americans in racially charged cases),¹⁵⁶ as well as enduring predominately black economically depressed urban areas where African Americans become both victims and perpetrators of gun violence. Despite the fact that multiple of its board members have issued racial slurs or racially insensitive comments, the National Rifle Association continues to be one of the most well-funded and active lobbies in the U.S., using its power to lobby against gun control. The U.S. Congress has failed to pass widely popular gun control measures, instead passing legislation that protects perpetrators of illegal gun sales.

ICERD Articles Implicated: 2, 5, and 6

Correlation to U.S. Government Report:

Despite a failed U.S. legislative effort in 2013 to address gun violence, the U.S. Government report does not mention African-American gun violence victimization.

¹⁵⁶ "Stand your ground" laws change the common law doctrine of self-defense. "Stand your ground" laws have exacerbated the discriminatory treatment toward suspects of color. A recent study found substantial evidence of racial disparities in justifiable homicide outcomes of cross-race homicides nationwide, and that Whites who kill Blacks in "stand your ground" states are far more likely to be found justified in their killings. John K. Roman, The Urban Inst., "Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data" (July 2013), available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

Report Informing this Section:

Arthur Kamm, PhD., Violence Policy Center, & Amnesty International: *African American Gun Violence Victimization in the United States*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

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Minority Youth Criminalized and Tried and Incarcerated As Adults

Punitive zero-tolerance education policies, increased police presence in schools and minority neighborhoods, and laws that allow youth to be criminally tried as adults have resulted in a “school to prison pipeline” which expels, arrests, criminally tries and incarcerates youth at alarming rates, with disproportionate impact on youth of color.

Suggested Recommendations:

1. The U.S. Government should adopt measures to ensure that minority youth and all youth in conflict with the law are not subjected to adult criminal procedures that fail to take into account their age and cognitive development and the desirability of promoting rehabilitation.
2. The U.S. Government should create meaningful incentives and penalties to ensure that states comply with the Prison Rape Elimination Act and enforce PREA's audit requirements.
3. The U.S. Government should amend the Juvenile Justice Delinquency Protection Act (JJDPa) to require states to report measures they have taken to decrease disproportionate minority youth contact at each stage of contact with the system.
4. The U.S. Government should improve data collection at the federal, state and local levels to accurately reflect racial and ethnic disparities and provide disaggregated data by both race and ethnicity at all stages of contact with the system and disaggregated data for youth under 18 in prisons and jails.
5. The U.S. Government should address the School to Prison Pipeline by requiring states to adopt the federal standards in the school discipline guidance package to limit referrals and/or interaction with law enforcement.
6. The U.S. Government should direct funding and technical assistance to districts to comply with the school discipline guidance package to limit the use of suspensions, expulsions and law enforcement referrals, provide training in proven practices--such as restorative justice--and invest in school counselors, social workers and other support staff instead of law enforcement personnel.

Basis of the Recommendations:

Zero tolerance educational policies and increased presence of law enforcement in schools disproportionately impact youth of color. Black students are 3.5 times and Latino students are

approximately 1.5 times¹⁵⁷ more likely to be expelled from school than white students. Many schools directly refer youth involved in school-based infractions to law enforcement. Nationwide, more than 70 % of students involved in school-related arrests or referred to law enforcement are black or Latino.¹⁵⁸ Black youth are more than twice as likely to be arrested as white youth,¹⁵⁹ and after arrest, stand a greater chance of being tried as adults. In the state of Indiana, for example, stark racial disparities in the criminal system stem from assaults on public education combined with criminalization of youth of color.¹⁶⁰

State criminal laws permit, and in some cases require, that youth, defined as individuals under 18, be subjected to adult criminal prosecution and penalties. Each year approximately 200,000 youth are prosecuted as adults in criminal court,¹⁶¹ and on any given day, thousands are incarcerated in adult jails and prisons.¹⁶² The vast majority of youth who are criminalized and incarcerated in adult facilities are racial and ethnic minorities. Once in the adult criminal justice system, minority youth are significantly more likely to receive the most severe adult criminal sentences. Youth sent to adult jails and prisons are subjected to multiple additional human rights violations. They are at high risk of physical and sexual assault.¹⁶³ They are deprived of age-appropriate programming, education, and medical and mental health care. Because prisons are not set up to meet the needs of youth, youth in prison are disproportionately punished through disciplinary actions and solitary confinement.¹⁶⁴

ICERD Articles Implicated: 1(a), (c) & (d), 5(a), (b), (e)(iv) & (v), &6.

Correlation to U.S. Government Report:

The U.S. fails to address the issue of youth who are tried as adults. Federal efforts to enforce non-discrimination laws and the Juvenile Justice Delinquency Protection Act (JJDPa) described in the U.S. report¹⁶⁵ address youth in the juvenile justice system and do not apply to youth who are tried and incarcerated in the adult criminal justice system. The Prison Rape Elimination Act (PREA) does include national standards requiring that youth in adult prisons be separated from adults. However, PREA does not address the underlying problem of trying youth as adults, imposing adult sentences and incarcerating them in adult facilities. Further, the standards are only binding on federal

¹⁵⁷ Advancement Project, Test, Punish, and Push Out: How “Zero Tolerance” and High-Stakes Testing Funnel Youth into the School-to- Prison Pipeline (Washington, DC: Advancement Project, 2010).

¹⁵⁸ http://www.abajournal.com/news/article/gestapo_tactics_must_end_say_school_discipline_panelists/.

¹⁵⁹ In 2011, the arrest rate for black youth was 8380.5 per 100,000 blacks 10-17. The arrest rate for white youth was 3786.7 per 100,000 whites aged 10-17. National Center for Juvenile Justice (February 25, 2014). Juvenile Arrest Rates by Offense, Sex, and Race. Available: http://www.ojjdp.gov/ojstatbb/crime/excel/JAR_2011.xls. See Sentencing Project, Disproportionate Minority Contact in the Juvenile Justice System, p. 2.

¹⁶⁰ Rev. Dwight Gardner & Rev. Cheryl Rivera, Northwest Indiana Federation of Interfaith Organizations; Renee Hatcher, Esq.; Chicago Lawyers’ Committee for Civil Rights Under Law; Rev. Dr. John E. Jackson, Sr.; Trinity United Church of Christ, Gary; & M. Thandabantu Iverson, PhD.: *Workers’ Human Rights in Indiana: A Critical Look at Recent Violations*, at 2.

¹⁶¹ Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION NATIONAL REPORT SERIES, BULLETIN, 20-1 (Sept. 2011). This figure combines the estimated number of youth transferred from juvenile to adult criminal court and the estimated number of youth prosecuted as adults in states that exclude 16 and 17 year olds from juvenile court jurisdiction. The conservative estimate of youth who are tried as adults in states that try all 16 and 17 year olds as adults is 175,000. *Id.* at 21. There were 14,000 reported transfers of youth into the adult system in 2007, but most states do not track or report the data. *Id.* at 20.

¹⁶² The combined single day count for youth in adult jails and prisons in 2012 was over 6,800. This figure combines counts of children in adult prisons on December 31, 2012 and children in adult jails on June 30, 2012. See e.g., Todd D. Minton, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012 – STATISTICAL TABLES, 5 tbl. 2 (2013) available at: <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>; E. Ann Carson, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012: TRENDS IN ADMISSIONS AND RELEASES, 1991-2012, 26 (2013) available at: <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

¹⁶³ 77 Fed. Register 119 (June 20, 2012), p. 37128 (noting that state prison inmates under 18 were more than 8 times more likely to have a substantiated incident of sexual abuse than the average inmate) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>

¹⁶⁴ American Civil Liberties Union & Human Rights Watch, *Growing Up Locked Down: Youth In Solitary Confinement in Jails and Prisons Across the United States*, 63-65, 68 (October 2012). Solitary confinement has devastating psychological effects on youth, including an increased risk of suicide. *Id.* at 23-24.

¹⁶⁵ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 19, 73 (13 June, 2013).

facilities¹⁶⁶ and youth incarcerated in adult jails and prisons are in state or local facilities. To date only two states have indicated they are in compliance with PREA.¹⁶⁷

Report Informing this Section:

International Women's Human Rights Clinic, City University of New York Law School; ACLU Michigan/Juvenile Life Without Parole Initiative; Campaign for Youth Justice; Correctional Association of New York; The Project on Addressing Prison Rape, American University, Washington College of Law; University of Miami Human Rights Clinic; Jessica Chiappone, NSU Shepard Broad Law Center, Children and Families Clinic, Education and Advocacy Program; Marlene Sallo, ABA Commission on Youth at Risk: *Criminalization of Minority Youth: Youth Criminally Tried and Incarcerated as Adults*

Rev. Dwight Gardner & Rev. Cheryl Rivera, Northwest Indiana Federation of Interfaith Organizations; Renee Hatcher, Esq.; Chicago Lawyers' Committee for Civil Rights Under Law; Rev. Dr. John E. Jacson, Sr.; Trinity United Church of Christ, Gary; & M. Thandabantu Iverson, PhD.: *Workers' Human Rights in Indiana: A Critical Look at Recent Violations*

* * * * *

Racial Disparities in the U.S. Criminal System

Racial minorities are not only incarcerated disproportionately, but are also likely to be sentenced more harshly than white defendants for similar crimes. Racial disparity pervades all aspects of the criminal system, including designation of prisoners to harsh segregation conditions in Communication Management Units (CMUs).

Suggested Recommendations:

1. Given the injustices and unfairness produced by mandatory sentencing policies, the U.S. Government should strive to repeal these policies, including incentivizing states to repeal them for drug offenses. In addition, policies such as the Fair Sentencing Act, which have corrected injustices in the system, should be applied retroactively to persons convicted of relevant sentences prior to adoption of the legislation.
2. As a result of the 2012 U.S. Supreme Court ruling in *Miller v. Alabama*, persons under the age of 18 may no longer be sentenced to life without parole without judicial consideration of less punitive options. As the states come into compliance with this ruling they should establish a minimum term before parole consideration of no longer than 15 years in prison, based on young people's capacity to change and to take advantage of rehabilitation opportunities in prison.
3. The U.S. Government should ensure no one is sent to Communication Management Units (CMUs) on the basis of their ethnicity, religion or protected activities or beliefs, and that these factors are not used as a proxy for designation to the units.
4. The U.S. Department of Justice (DOJ) should revise its guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of profiling.

¹⁶⁶ *Id.*, at ¶ 28.

¹⁶⁷ See, Department of Justice List for PREA State Certifications (May 28, 2014) found at <http://www.wcl.american.edu/endsilence/documents/PREASTateList.pdf>.

5. U.S. President Obama should issue an executive order prohibiting law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state and local law enforcement authorities in connection with any federal program.
6. U.S. President Obama should rigorously investigate disproportionate use of deadly force against individuals of color by all law enforcement, require law enforcement agencies to collect data disaggregated by race and use its federal funding authority to encourage police departments to reduce the use of deadly force by police departments.
7. The Federal Communications Commission should prohibit the prison and jail communications industry from sharing its profits with contracting agencies, set maximum rates for all phone calls placed from correctional facilities, and enact comprehensive regulation to control other predatory charges and practices in the industry.
8. The DOJ should expand and clarify its support of automatic restoration of voting rights to citizens upon their release from incarceration for disfranchising convictions, and oppose restrictions for those on parole or probation or with unpaid fees or fines.
9. The U.S. Government must sign the Convention Against Corruption, and take action to prevent policing for profit by federal and other law enforcement officers via abuse of civil asset forfeiture laws.

Basis of the Recommendations:

Racial disparity pervades the U.S. criminal justice system. Not only are racial minorities incarcerated disproportionately, they are also likely to be sentenced more harshly than white defendants for similar crimes.¹⁶⁸ The War on Drugs exacerbated racial inequalities through discriminatory law enforcement and disparities in sentencing laws. While the federal Fair Sentencing Act (FSA) of 2010 reduced the crack/cocaine sentencing quantity disparity triggering mandatory minimum penalties from 100:1 to 18:1, there is still disparate treatment in the sentencing for offenses involving these pharmacologically identical drugs.¹⁶⁹ Because African Americans constitute 80% of those sentenced under federal crack cocaine laws, this disparity leads to harsher sentences for Black defendants.¹⁷⁰ The FSA also did not alter mandatory minimum sentences imposed for a majority of drug offenses, which continues to fuel racially disproportionate imprisonment.¹⁷¹ While the U.S. Sentencing Commission voted to apply the guidelines changes associated with the FSA retroactively, those persons sentenced prior to adoption of the law are still subject to the previous mandatory minimum levels.¹⁷² While all racial groups use and sell drugs at roughly the same rate, Blacks and Hispanics comprise 62% of those in state prisons for drug offenses and 72.1% of those sentenced for federal drug trafficking offenses.¹⁷³

¹⁶⁸ See, Cassia Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, in 3 POLICIES, PROCESSES, AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM 427, 481-82 (2000), available at <http://www.justicestudies.com/pubs/livelink3-1.pdf> (concluding that race and ethnicity play a role in sentencing decisions accounting for the seriousness of the offense and the offender's prior criminal record).

¹⁶⁹ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 51 (The New Press 2012); KARA GOTSCH, *THE SENTENCING PROJECT, BREAKTHROUGH IN U.S. DRUG SENTENCING REFORM: THE FAIR SENTENCING ACT AND THE UNFINISHED REFORM AGENDA* 9 (Washington Office on Latin America, 2011), available at http://sentencingproject.org/doc/dp_WOLA_Article.pdf.

¹⁷⁰ U.S. SENTENCING COMM'N, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, tbl.34 (2012).

¹⁷¹ U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, 142 fig.7-15 (Oct. 2011).

¹⁷² *Fair Sentencing Act*, ACLU, <https://www.aclu.org/fair-sentencing-act> (last visited June 16, 2014).

¹⁷³ E. Ann Carson And Daniela Golinelli, Bureau Of Justice Statistics, Prisoners In 2012 - Advance Counts, Table 10 (July 2013); U.S. Sentencing Comm'n, Annual Report, Table 34, Race of Drug Offenders in Each Drug Type, available at <http://www.uscc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table34.pdf>.

People of color disproportionately receive the harshest sentences, including life without parole for juveniles (JLWOP). Of the 2,500 individuals currently serving JLWOP sentences 61% are African American, 27% are white, and 12% are “other.”¹⁷⁴ While the U.S. Supreme Court, in *Miller v. Alabama*,¹⁷⁵ found mandatory JLWOP sentences unconstitutional, in most states, juveniles may still be sentenced to LWOP as long as it is not mandatorily imposed,¹⁷⁶ and many will not apply *Miller* retroactively.¹⁷⁷ Additionally, the Juvenile Justice and Delinquency Prevention Act (JJDP Act) has not been reauthorized in over five years. Reauthorization could strengthen the Act's mandate to address racial and ethnic disparities plaguing juvenile justice systems nationwide by requiring states to take concrete steps to reduce and monitor disparities.

It is important to note the ongoing racial disparity in death penalty cases. Those convicted of killing whites are more likely to be sentenced to death than those convicted of killing blacks,¹⁷⁸ and black defendants are more likely to be sentenced to death regardless of the race of their victims.¹⁷⁹ Racial inequality also reflects in post-sentence outcomes. An estimated 5.85 million persons are ineligible to vote as a result of a current or previous felony conviction, with disparate impact on the African American population.¹⁸⁰ One of every thirteen African Americans of voting age is disenfranchised, a rate more than four times greater than non-African Americans.¹⁸¹ Additionally, families of imprisoned people of color bear a high financial burden due to their loved ones' imprisonment, including having to pay exorbitant private telephone company costs to speak to them.¹⁸² Furthermore, civil assets forfeiture laws, which often allow property seizure even when the target person has neither been charged nor convicted of any wrongdoing, are being disproportionately enforced against people of color.¹⁸³

Communications Management Units (CMUs) represent another area of racial disparity. The first CMU, a prison unit designed to isolate prisoners in the federal prison system, was opened in 2006 in secrecy, absent a written criteria or designation process.¹⁸⁴ Eventually, the Bureau of Prisons (BOP) documented vague criteria, in response to the type of individuals who had been approved for transfer to the unit,¹⁸⁵ which ultimately allowed for a nearly 1000% overrepresentation of Muslims in the CMU,¹⁸⁶ clearly indicating that no measures are being taken to ensure Muslim and Arab men are not being singled out for CMU designation. Many CMU prisoners have neither significant disciplinary records nor a history of communications-related misconduct. There is evidence of due process violations in all aspects of CMU designation and review.¹⁸⁷

¹⁷⁴ *Id.* at 1.

¹⁷⁵ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

¹⁷⁶ JOSHUA ROVNER, THE SENTENCING PROJECT, TWO YEARS LATER, STATES RESIST SUPREME COURT MANDATE ON JUVENILE LIFE WITHOUT PAROLE 3 (June 2014).

¹⁷⁷ *Id.* at 1-2.

¹⁷⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO GGD-90-557, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES, 5 (Feb. 1990) [hereinafter GAO GGD-90-557].

¹⁷⁹ David Baldus et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, With Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638 (1998); GAO GGD-90-557, *supra* note 23, at 6.

¹⁸⁰ Christopher Uggen, Sarah Shannon & Jeff Manza, STATE-LEVEL ESTIMATES OF DISENFRANCHISEMENT IN THE UNITED STATES, 2010 1, 15 (The Sentencing Project 2012).

¹⁸¹ *Id.* at 1-2.

¹⁸² Leadership Conference Educ. Fund, A Second Chance (Oct. 2013) (discussing how prison systems and telephone companies take unfair advantage of incarcerated individuals and their families through exorbitant telephone rates).

¹⁸³ “Taken: The Use and Abuse of Civil Forfeiture”, Published August 12, 2013, <https://www.aclu.org>; “Forfeitures and Fairness,” February 28, 2000, *New York Times*; Scott Bullock, “End Policing for Profit,” *The Huffington Post*, April 12, 2010.

¹⁸⁴ CCR, Statement of Undisputed Facts and supporting exhibits, in *Aref v. Holder*, April 23, 2014, available: <http://ccrjustice.org/ourcases/current-cases/aref-et-al-v-holder-et-al> at ¶ 84, 85.

¹⁸⁵ *Id.* at ¶ 127.

¹⁸⁶ The Muslims detained in these two CMUs are both of Middle Eastern descent and also African-American (many who converted during their time in the prison system). CCR, Statement of Undisputed Facts and supporting exhibits, in *Aref v. Holder*, April 23, 2014, available:

<http://ccrjustice.org/ourcases/current-cases/aref-et-al-v-holder-et-al> at ¶ 274; CCR, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment in *Aref v. Holder*, April 23, 2014, available: <http://ccrjustice.org/files/Memo%20in%20Support%20of%20Summary%20Judgment%20Motion.pdf>.

¹⁸⁷ For detail, see Center for Constitutional Rights: *Violations of CERD at the Communications Management Units*, at 3.

ICERD Articles Implicated: 2, 2(1), 2(1)(c), 5, 5(1)(a)

Correlation to U.S. Government Report:

In response to paragraph 20 of the Committee's 2008 Concluding Observations, the U.S. Government highlights the Fair Sentencing Act, enacted in 2010, which reduced disparity between crack and powder cocaine sentences.¹⁸⁸ The report indicates that the Sentencing Commission voted to apply retroactively the guideline amendment implementing the FSA, but the Department of Justice has appealed a federal court ruling in favor of retroactive application of the FSA.

The U.S. government cites a report by The Sentencing Project to suggest that disparities in the prison population may be diminishing.¹⁸⁹ However, this reduced racial disparity largely pertains to women and in significant part is a function of more white women being sentenced to prison, rather than action by the government to reduce current disparities.¹⁹⁰ Racial and ethnic disparities among women remain prevalent, although less substantial than disparities among men.¹⁹¹

Regarding the U.S. response to paragraph 21 of the Committee's Concluding Observations,¹⁹² while the Supreme Court held mandatory juvenile life without parole (JLWOP) sentences to be in violation of the Eighth Amendment, there are still about 2,500 individuals in the United States serving such sentences for crimes committed before the age of eighteen, and states still apply the sentence.¹⁹³

The U.S. response to paragraph 23 of the Committee's Concluding Observations,¹⁹⁴ notes that six states have repealed the death penalty in the past seven years, yet more than 3,000 people remain on death row.¹⁹⁵ In the past ten years 42 people on average have been executed each year and 20 people have already been executed in 2014.¹⁹⁶

Regarding the U.S. response to paragraph 27 of the Committee's Concluding Observations,¹⁹⁷ racially disparate felony disenfranchisement remains a significant consequence of criminal justice policy in the United States.¹⁹⁸

The U.S. contends that racial or ethnic profiling "is not effective law enforcement practice and is not consistent with our commitment to fairness in our justice system."¹⁹⁹ However, the report failed to

¹⁸⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 66 (13 June, 2013).

¹⁸⁹ *Id.*, at ¶ 68.

¹⁹⁰ MARC MAUER, THE SENTENCING PROJECT, THE CHANGING RACIAL DYNAMICS OF WOMEN'S INCARCERATION (2013) available at http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.

¹⁹¹ *Id.*

¹⁹² Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 71-74 (13 June, 2013).

¹⁹³ JOSHUA ROVNER, THE SENTENCING PROJECT, POLICY BRIEF: JUVENILE LIFE WITHOUT PAROLE 1(2014) available at http://sentencingproject.org/doc/publications/jj_Juvenile%20Life%20Without%20Parole.pdf.

¹⁹⁴ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 69-70 (13 June, 2013).

¹⁹⁵ *States With and Without the Death Penalty*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (last visited June 17, 2014); *Death Row Inmates By State and Size of Death Row by Year*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year?scid=9&did=188#year> (last visited June 17, 2014).

¹⁹⁶ *Executions by Year Since 1976*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/executions-year> (last visited June 17, 2014).

¹⁹⁷ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 102 (13 June, 2013).

¹⁹⁸ Christopher Uggen, Sarah Shannon & Jeff Manza, STATE-LEVEL ESTIMATES OF DISENFRANCHISEMENT IN THE UNITED STATES, 2010 1-2, 15 (The Sentencing Project 2012).

¹⁹⁹ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 80 (13 June, 2013).

discuss the existence of CMUs, which are a stark example of a failure to uphold fairness and combat discrimination.

Reports Informing this Section:

Center for Constitutional Rights: *Violations of CERD at the Communications Management Units*

Sentencing Project, Correctional Association of New York, Drug Policy Alliance, Grassroots Leadership, Justice Strategies, Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, National Association for the Advancement of Colored People (NAACP), National Law Center on Homelessness & Poverty, New Jim Crow Action Group – Atlanta, Southern Center for Human Rights: *Shadow Report of the Sentencing Project to the Committee on the Elimination of Racial Discrimination*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

David Nelson, Meiklejohn Civil Liberties Institute: *De Facto Racial Discrimination Resulting from Civil Asset Forfeiture Laws*

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Deportations from the U.S. to Haiti

Despite the ongoing humanitarian crisis and dangerous and unhealthy conditions on the ground in post-earthquake Haiti, the U.S. has resumed deportations of Haitians convicted of criminal offenses, including minor, nonviolent offenses, and including people with serious physical or mental health ailments, in contravention of the requests of numerous international human rights bodies.

Suggested Recommendations:

1. The U.S. Government should suspend deportations to Haiti, and should not resume removals until it is determined that conditions are safe and humane for individuals to be returned to Haiti.
2. The U.S. Government should ensure that Immigration and Customs Enforcement (ICE) practices comport with its April 2011 policy, wherein a balancing test is meaningfully employed before a person is deported to Haiti.
3. The U.S. Government should direct ICE to create a formal and transparent procedure for assessing whether individuals should be deprioritized for removal under the April 2011 policy.
4. The U.S. Government should direct ICE to provide for an appeals process and judicial review of negative decisions made under the April 2011 policy.

Basis of the Recommendations:

The U.S. has a long history of disproportionately targeting Haitian migrants in its immigration policy and practice. Following the devastating 2010 earthquake in Haiti, the U.S. halted deportations to Haiti. A year following the earthquake, the U.S. resumed deportations of Haitians with criminal

convictions, despite the continuing humanitarian crisis in Haiti, and despite unhealthy and even deadly conditions for these deportees, who have historically been detained in Haiti's unsanitary prisons upon deportation from the U.S.²⁰⁰ Many deportees have lived in the U.S. most of their lives, have permanent resident family members in the U.S., and face discrimination and social stigmatization, as well as denial of multiple economic and social rights, upon return to Haiti.²⁰¹ On April 1, 2011, U.S. Immigration and Customs Enforcement (ICE) issued a new policy on deportations to Haiti, requiring it to weigh numerous factors, including severity and number of convictions, against an individual's family ties and other factors, before deciding to prioritize them for deportation.²⁰² However, ICE has no established procedures to assess if individuals should be deprioritized,²⁰³ and continues to deport people convicted of non-violent and minor crimes, including people with serious medical conditions and close family ties to the U.S. Detainees cannot seek judicial review of these decisions.²⁰⁴

ICERD Articles Implicated: 2, 5, 6, & 7

Correlation to U.S. Government Report:

The U.S. Government's report to the Committee fails to mention deportations to Haiti.

Report Informing this Section:

University of Miami School of Law Human Rights Clinic, University of Miami School of Law Immigration Clinic, FANM/ Haitian Women of Miami, Alternative Chance, Americans for Immigrant Justice: *Deportations From the United States to Haiti: A Violation of the Convention on the Elimination of all Forms of Racial Discrimination*

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U.S. Customs and Border Protection Use of Excessive Force

U.S. Customs and Border Protection (CBP) continues to use excessive force, primarily against Latinos. A lack of accountability surrounds these incidents, and CBP lacks transparency about its investigations and policies.

Suggested Recommendations:

1. As the overarching federal agency, the U.S. Department of Homeland Security should implement

²⁰⁰ Centers for Disease Control and Prevention, *Cholera in Haiti. What is the Current Situation?*

<http://wwwnc.cdc.gov/travel/notices/watch/haiti-cholera> (updated Sept. 4, 2013) (citing figures provided by Haiti's Ministère de la Santé Publique et de la Population (MSP) as of August 4, 2013); see also *The United Nations' Duty in Haiti's Cholera Outbreak*, THE WASHINGTON POST (Aug. 11, 2013),

http://articles.washingtonpost.com/2013-08-11/opinions/41299675_1_u-n-peacekeepers-united-nations-artibonite-river; Independent Expert on the Situation of Human Rights in Haiti, *Rep. on Forced Returns of Haitians by Third States*, Human Rights Council, ¶ 40, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012) (by Michel Forst), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf; Travel Warning, U.S. Dep't of State, Haiti (Aug. 13, 2013), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5850.html.

²⁰¹ Independent Expert on the Situation of Human Rights in Haiti, *Rep. on Forced Returns of Haitians by Third States*, Human Rights Council, ¶ 8, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012) (by Michel Forst),

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf

²⁰² Press Release, Immigration and Customs Enforcement, Policy for Resumed Removals to Haiti, ICE's Removal Policy for Haitian Deportation (Apr. 1, 2011), <http://www.ice.gov/news/releases/1104/110401washingtondc2.htm>.

²⁰³ Joint Statement by Non-Governmental Organizations Condemning the U.S. Government's Resumption of Deportations to Haiti from the American Civil Liberties Union to the Human Rights Council (June 16, 2011), http://www.aclu.org/files/assets/haiti_joint_statement_final.pdf.

²⁰⁴ Independent Expert on the Situation of Human Rights in Haiti, *Rep. on Forced Returns of Haitians by Third States*, Human Rights Council, ¶ 53, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012) (by Michel Forst), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf

policies that would require thorough investigation of each allegation of excessive force and use of deadly force.

2. The U.S. Government must ensure that the investigatory procedure at CBP require disclosure of the specifics of use of deadly force incidents to allow victims to seek remedy and to deter officers from engaging in excessive force.

3. As there is very limited public evidence that the U.S. Department of Justice has pursued investigations of serious use of force abuses, the U.S. Government should conduct full and transparent criminal investigations to hold those responsible accountable.

4. U.S. President Obama's administration should strengthen oversight and accountability regarding inappropriate use of force; roll back the U.S. Customs and Border Protection's (CBP) claimed 100-mile authority; create enforceable standards and provide effective oversight for CBP short-term holding facilities; carefully limit the use of drones; equip all CBP officers with lapel cameras; and provide more humanitarian resources such as rescue beacons and water stations along the border region.

Basis of the Recommendations:

U.S. Customs and Border Protection (CBP) officers engage in use of excessive force, and the vast majority of the victims are Latino.²⁰⁵ According to a 2013 investigation, CBP officers violate the organization's use of force policy and at times use deadly force as a result of frustration rather than necessity,²⁰⁶ and where non-lethal options are available.²⁰⁷ A list of those killed or injured following encounters with CBP officials between January 2010 and February 2013 includes forty-two cases, in which most victims are Latino.²⁰⁸ There were no transparent investigations of these incidents.²⁰⁹ An investigative report by *The Arizona Republic* concluded that forty-two individuals have been killed by Border Patrol agents since February 2005. The report addressed in detail eight instances of excessive force and lack of accountability.²¹⁰ In each incident, CBP officials would claim disciplinary action had been taken against the involved officers, but would not disclose the nature and scope of the supposed disciplinary action.²¹¹ Information received through Freedom of Information Act (FOIA) litigation revealed a startlingly low incidence of meaningful inquiry into CBP use of force complaints. Of 809 abuse complaints lodged against CBP's officers within 100 miles of the Southwest border, only thirteen (less than two percent) led to disciplinary action.²¹² Furthermore, Numerous reports have pointed to border security agents "regularly overstepping the boundaries of their authority" not only by using excessive force, but also by "engaging in unlawful searches and

²⁰⁵ See American Civil Liberties Union, *List of Dead and Injured by CBO Officials since January 2010 (as of February 15, 2013)* (Attachment 1). See also Terri Burke et al, *Complaint and request for investigation of abuse of power, excessive force, coercion, and unlawful confiscation of property by Customs and Border Protection at ports of entry along the U.S.-Mexico border*, May 9, 2012, (hereinafter "ACLU Complaint"). See also Bob Ortega and Rob O'Dell, *Deadly border agent incidents cloaked in silence*, The AZ. Central, Dec. 16, 2013, available at <http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html>. See also Steve Inskeep, *After Shootings, Extended Silence: What The Border Patrol Hasn't Said*, NPR, June 9, 2014, available at <http://www.npr.org/2014/06/09/320220093/foi-request-sheds-some-light-on-border-patrol-shootings>.

²⁰⁶ See Police Exec. Research Forum (PERF), *U.S. Customs And Border Protection Use of Force Review: Cases and Policies*, 8 – 9, (2013) (hereinafter "PERF Report"), available at <http://1.usa.gov/1nKOBQS>.

²⁰⁷ *Id.* at 6.

²⁰⁸ American Civil Liberties Union, *List of Dead and Injured by CBO Officials since January 2010 (as of February 15, 2013)* (Attachment 1).

²⁰⁹ See American Civil Liberties Union, *Shadow Report to the Fourth Periodic Report of the United States*, September 13, 2014, available at https://www.aclu.org/files/assets/american_civil_liberties_union_shadow_report_to_the_u.s._fourth_periodic_report_final.pdf.

²¹⁰ See Bob Ortega and Rob O'Dell, *Deadly border agent incidents cloaked in silence*, The AZ. Central, Dec. 16, 2013, available at <http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html>. See also Steve Inskeep, *After Shootings, Extended Silence: What The Border Patrol Hasn't Said*, NPR, June 9, 2014, available at <http://www.npr.org/2014/06/09/320220093/foi-request-sheds-some-light-on-border-patrol-shootings>.

²¹¹ See *id.*

²¹² See Danel E. Martinez, Guillermo Cantor, Walter A. Ewing, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse* (American Immigration Council) <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>

seizures, making racially motivated arrests, detaining people under inhumane conditions, and removing people from the United States through the use of coercion and misinformation.”²¹³

In September 2013, the U.S. Department of Homeland Security’s Office of Inspector General (OIG) reported that CBP’s reporting system did not allow for tracking use of force incidents and CBP did not report assaults against officers in which deadly force was avoided. The OIG report concluded that tracking and analyzing incidents in which deadly force was not used would help CBP implement policies aimed at avoiding excessive force. CBP lacks transparency in these matters and while it ultimately released its use of force policy handbook following widespread public pressure, and the DHS OIG report, it redacted major portions of the OIG report, including those related to accountability and use of force.²¹⁴ CBP fails to release the names of officers and officers involved in use of force incidents, make public disciplinary actions taken, or make public investigation results.²¹⁵

ICERD Articles Implicated: 5, 6

Correlation to U.S. Government Report:

The U.S. Government report, with respect to paragraph 25 of the Committee’s 2008 Concluding Observations, lists laws prohibiting police brutality and discriminatory policing. The report further states that conviction under these laws has increased. Additionally, the report states that CBP is investigated internally, when warranted, regarding incidents of assaults, harassments, threats, or shootings involving employees. Lastly, the report states that private litigants may sue enforcement agencies for discriminatory police activities, citing *Elliot-Park v. Manglona*, 592 F.3d 1003 (9th Cir. 2010). However, there is no mention of the number of complaints filed under this authority.²¹⁶ The U.S. Government lists the remedies available, but fails to demonstrate that CBP has taken any action to ensure its officers are disciplined for policy violations.

Report Informing this Section:

University of California, Irvine School of Law International Justice Clinic: *United States Customs and Border Protection Has Not Addressed the 2008 CERD Committee Recommendation and Engages in Excessive Force for Which There is no Accountability and the Organization Lacks Transparency*

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers’ Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

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Criminalization Based on Race & Gender Identity

Transgender, transsexual or gender nonconforming people of color (TGNC POC) are commonly stopped, harassed, profiled and unjustly arrested by police. In prison or jail they experience assault, harassment, solitary confinement, and other violence.

²¹³ See, e.g., Daniel E. Martínez et al., Am. Immigration Council, No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse (April 2014), available at <http://bit.ly/SwNbye>; The Ctr. For Latin Am. Studies, Univ. of Ariz., In The Shadow of The Wall: Family Separation, Immigration Enforcement and Security, Preliminary Data from the Migrant Border Crossing Study (2013), available at <http://las.arizona.edu/mbsc>.

²¹⁴ DHS OIG Report at 16 - 17; Andrew Becker and G.W. Schulz, *Border agency watchdog censurs recommendations to curb deadly force*, The Center For Investigative Reporting, January 29, 2014. <http://cironline.org/reports/border-agency-watchdog-censurs-recommendations-curb-deadly-force-5761>

²¹⁵ ACLU Complaint; Bob Ortega and Rob O’Dell, *Deadly border agent incidents cloaked in silence*; Steve Inskeep, *After Shootings, Extended Silence: What The Border Patrol Hasn’t Said*.

²¹⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 89-93 (13 June, 2013).

Suggested Recommendations:

1. The U.S. Department of Justice (DOJ) should adopt and enforce an updated directive on profiling by federal law enforcement, prohibiting profiling based on actual or perceived sexual orientation, gender, gender identity and expression, disability, immigration, housing, marital and HIV status, and condition funding for local law enforcement agencies on compliance. DOJ should similarly adopt policies to ensure that TGNC people are referred to by the name and gender pronoun they regularly use.
2. DOJ should review its “Model State Provisions on Pimping, Pandering, and Prostitution,” in order to remove provisions that criminalize and otherwise endanger sex workers, trafficked individuals and people in the sex trades.
3. Together with the Centers for Disease Control and Prevention and other agencies, the DOJ should condemn the ongoing practice of seizure of condoms as evidence in prostitution arrests and the use of condoms as evidence of intent to engage in criminal activity.
4. The DOJ should closely monitor Prison Rape Elimination Act enforcement to ensure that TGNC people are not subject to discriminatory enforcement, and amend PREA regulations to include an explicit prohibition on search for the sole purpose of determining genital characteristics.
5. The Federal Bureau of Prisons (BOP) should eliminate all forms of solitary confinement in federal prisons but particularly as “protective” detention for TGNC people; and make transparent policy regarding housing of transgender prisoners and enable engagement of transgender advocates in those determinations.
6. U.S. lawmakers should prioritize the critical needs identified by survivors of trafficking over law enforcement-based responses for the Federal Strategic Action Plan on Services for Victims of Human Trafficking. They should also establish a task force that meaningfully involves current and former sex workers, people in the sex trades, and their allies, to investigate the impact of criminalization of involvement in sex work or the sex trades on public health, safety, budgets, and the economy, and examine alternative approaches to addressing harms to individuals in the sex trades by reducing poverty, homelessness, and basic needs in groups most represented in the sex trade.

Basis of the Recommendations:

Given the multi-faceted and persistent nature of discrimination against transgender, transsexual or gender nonconforming people of color (TGNC POC), TGNC POC experience barriers accessing employment, housing, healthcare, and education.²¹⁷ Inaccessibility of these resources can place pressure on them to find alternative sources of income, including sex work and other criminalized activities. TGNC POC are commonly profiled, stopped, and harassed by the police, on suspicion they are engaged in sex work or other illicit sexual activity, even when not doing so. Transgender women of color, in particular, are often stopped and arrested under the pretext of enforcement of

²¹⁷ Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade, and Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, NEW YORK: CENTER FOR GENDER & SEXUALITY LAW AT COLUMBIA LAW SCHOOL 54 (2014), available at https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.

anti-prostitution laws.²¹⁸ Thus, TGNC POC, whether or not actually engaged in sex work, are at high risk of entering the criminal justice system.²¹⁹ Further, LGBT youth and adults involved in sex work or the sex trades who experience abuse or violence, are met with profiling and indifference from police and service providers who do not recognize them as survivors of violence.²²⁰

Policing of prostitution, combined with discriminatory profiling, negatively impacts the health and safety of TGNC POC. For example, police routinely use the fact of possession or presence of condoms as evidence of prostitution-related offenses.²²¹ TGNC POC who are subjected to police contact frequently experience unlawful searches and sexual assaults by law enforcement officers, as well as by other detainees.²²² TGNC detainees are often subjected to isolation from other prisoners for their “protection”—often rendering them vulnerable to abuse by police officers.²²³ Transgender women are particularly vulnerable because they are often placed in men’s facilities, where they face violence.²²⁴ Additionally, in compliance with the Prison Rape Elimination Act (PREA), TGNC prisoners are often punished and placed in solitary confinement due to policies that forbid gender non-conforming behavior and punish consensual physical contact.²²⁵

ICERD Articles Implicated: 2, 5, 6

Correlation to U.S. Government Report:

The U.S. Government report does not mention comprehensive steps to amend federal law enforcement policies and practices in order to end violence and discrimination against TGNC POC.

Report Informing this Section:

Best Practices Policy Project, Streetwise and Safe (SAS), & Legal Aid Society—Trafficking Victims Advocacy Project: *Criminalization of Transgender, Transsexual and Gender Nonconforming People of Color*

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Police Crimes Against Women of Color

Women of color are disproportionately targeted by law enforcement officials for profiling, unjustified arrest, beatings, sexual assault, rape, murder, denial of health care and other violations—all committed with extremely high rates of impunity.

Suggested Recommendations:

²¹⁸ MAKE THE ROAD NEW YORK, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* 4 (October 2012), available at http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf; HUMAN RIGHTS WATCH, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities* 2 (July 2012), available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf; Mogul, Ritchie and Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Beacon Press 2011); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States*, AMR 51/122/2005, 2005.

²¹⁹ Hanssens et al., *supra* note 217, at 58.

²²⁰ *Id.*, at 64.

²²¹ HUMAN RIGHTS WATCH, *supra* note 8, at 29; see also PROS NETWORK & URBAN JUSTICE CENTER SEX WORKERS PROJECT, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City* (April 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>.

²²² Hanssens et al., *supra* note 217, at 16.

²²³ *Id.*, at 20.

²²⁴ *Id.*, at 22.

²²⁵ *Id.* For example, as a result of a prohibition on consensual sexual contact or touching, a facility in West Virginia sentenced a prisoner to sixty days in solitary confinement. PREA also prohibits prisoners from dressing or displaying the appearance of the opposite gender. TGNC individuals are typically targeted for violating PREA mandates and are frequently punished through the use of solitary confinement. See *id.* at 21.

1. The U.S. Government should establish a National Police Rape Elimination Commission to recognize, study, and eliminate sexual assault by police officers, and to create policies, practices and procedures to quickly terminate offenders, prosecute them, and provide services and reparations to victims.
2. The U.S. Department of Justice (DOJ) should employ more FBI Color of Law special agents to investigate “on the ground” criminal offenses committed by police officers.
3. The U.S. Government should admonish States Attorneys that have records of complete insensitivity to the public and have a statistically significant wrongful convictions record; and should increase funding to NGO and law enforcement think-tanks specifically directed to document and create strategies to eliminate violence against women during policing encounters.
4. The U.S. Government should prioritize reporting of deaths of civilians in police custody: As it releases the Law Enforcement Officers Killed in Action Report annually, U.S. Bureau of Justice Statistics should also release the Arrest Related Deaths (ARD) Report annually, instead of every three years. There should be mandatory requirements to submit data for the ARD report.
5. The U.S. Congress must immediately reauthorize the Deaths in Custody Act (H.R. 1447), and make it mandatory for all law enforcement departments to submit yearly reports of deaths in police custody.
6. The DOJ must investigate the Chicago Police Department for racially discriminatory practices, policies and procedures; for all forms of violence against women; for extrajudicial killings of African people and people of color, and for its institutional code of silence and attempts to cover-up officers’ criminal acts.
7. The U.S. Government should review the use and abuse of resisting arrest statutes that police departments and prosecutors employ to harass, charge, and convict people who were unlawfully arrested and/or abused by police, and to prevent victims of police violence and harassment from accessing justice.
8. The U.S. Government should allow for external independent investigators to investigate sexual assault, abuse and harassment by police department personnel, thereby removing the responsibility from U.S. police departments’ internal affairs divisions.

Basis of the Recommendations:

Women of color face multiple forms of violence at the hands of law enforcement, and are also denied access to justice when they attempt to report crimes against them. The War on Drugs ushered in a new era of punitive policies that involve the stigmatization, heightened police surveillance, and the regulation of poor women of color as a criminal class, which resulted in the mass incarceration of women, most of whom are women of color convicted for survival crimes.²²⁶ The CATO Institute finds that the rate of criminal police violence is higher than that of the general population, and that this violence occurs largely with impunity. Specifically, it reports that “sexual assault rates are significantly higher for police when compared to the general population,” and sexual assault ranks second in crimes police most commit.²²⁷ In Chicago, the Police Department has averaged about 9,700 complaints per year against its 13,000 officers. Of available data on female

²²⁶ According to the Sentencing Project, the number of women in prison increased by 646% between 1980 and 2010.

²²⁷ CATO Institute’s 2010 *National Police Misconduct Reporting Project* (NPMRP).

complainants, over 71% of victims are African women, and over 87% are women of color. African and Latino women were 3 times more likely to be stopped by the Los Angeles Police Department than were white women.²²⁸ Anna Brown's case is one amongst many that illustrates police criminalization of women and color and failure to respond to their emergency needs. Ms. Brown was seeking emergency medical care when the police arrested her, locked her in a cell and left her to die, instead of ensuring she be provided healthcare.²²⁹

ICERD Articles Implicated: 2, 4, 5, 5(a), 5(b), 5(d)(i), (viii) & (ix), 5(f)

Report Informing this Section:

Crista E. Noel & Dr. Olivia Perlow, Women's All Points Bulletin: *American Police Crimes Against African Women and Women of Color*

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Incarceration of and Violence Against Black People with Mental Health Disabilities

People from racial minorities who have mental health conditions are routinely and disproportionately routed to the criminal justice system, notably in Los Angeles, California, where they face violence and mistreatment, instead of to alternative, community-based programs shown to better address their needs.

Suggested Recommendations:

1. The U.S. Government, including state and local governments, should require comprehensive mental health, community-based diversion programs²³⁰ for people with mental health conditions accused of crimes rather than invest in high-cost jail construction, and monitor implementation on the county level, especially in high-prisoner population areas. The U.S. Government should ensure federal oversight of Civil Rights laws, including the Civil Rights of Institutionalized Persons Act, and address intersectional identities and violations such as race and mental health in the criminal justice system.
2. The U.S. Government should require that relevant organs and institutions collect intersectional data and generate analysis on gender, gender identity, sexual orientation, race and ethnicity by mental health diagnosis to inform and tailor prevention and treatment services in the community and the criminal justice system. It should institute periodic research and publication on the social determinant of incarceration on health focused on racial disparities in access to mental health services and the disproportionate impact of incarceration on racial and ethnic minority communities.
3. The U.S. Government, including state and local governments, should enact independent civilian oversight bodies tasked with monitoring and coordinating with local county government and law enforcement agencies to oversee human rights and constitutional protection of incarcerated racial and ethnic minorities, particularly safeguarding against violence, medical abuse and neglect.

²²⁸ http://assets.lapdonline.org/assets/pdf/consent_decree_fdr_02_07_11.pdf; Samuel Walker, May 2002 Special Report, "Driving While Female: A National Problem In Police Misconduct."

²²⁹ See <http://www.dailykos.com/story/2012/04/02/1079918/-Anna-Brown-Surveilled-to-Death#>.

²³⁰ Programs should utilize integrative wrap-around services using models that have been proven to reduce recidivism and improve mental health outcomes. Counties should further pursue and implement additionally methods such as split-sentencing, pre-trial release, and other practices that have been proven to reduce jail overcrowding and recidivism.

Basis of the Recommendations:

Black people make up a mere 9.6% of the population in Los Angeles, California (LA)¹⁰ yet they constitute 31% of LA County jail prisoners,²³¹ and 43.7% of those diagnosed with “serious mental illness” requiring special jail housing.²³² Black peoples’ limited access to mental health care leads to “more severe symptoms, greater criminal involvement, and more frequent arrest.”²³³ Black people are overrepresented among mentally ill persons who are arrested and incarcerated, suffer “higher rates of diagnosed schizophrenia, lower likelihood of receiving the latest psychiatric medications, and greater difficulty in achieving successful community integration.”²³⁴ Due to lack of capacity and overcrowding, over a third of the 3,200 people identified as having a debilitating mental health condition are housed in the general jail population rather than in a dedicated mental health facility.²³⁵ Alarming conditions in LA County Jail pose significant risks for triggering or worsening mental health conditions, causing posttraumatic stress, and leading to suicides, including for persons with no prior mental illness diagnosis.²³⁶ The overrepresentation of Black people in jails renders them particularly vulnerable to the violence that typifies incarceration. A third of all deputy-on-prisoner use of force incidents is perpetrated against prisoners with mental health conditions.²³⁷ Despite recognition of the effectiveness of community-based mental health diversion programs, the LA County Board of Supervisors recently endorsed a massive \$2.3 billion jail expansion plan for a new 4,860-bed “mental health treatment jail” requiring \$456 million a year to operate.

ICERD Articles Implicated: 5(a), 5(b), 5(e)(iv), 7

Correlation to U.S. Government Report:

The U.S. report concedes that despite laws and mechanisms “in place to ensure equality of access to and treatment in the criminal justice system... racial and ethnic disparities continue to exist” and “the proportion of minority persons in the justice and prison systems” call for further studies and “continued vigilance.”²³⁸ Nonetheless, it fails to account for the overlap between disproportionate rates of incarceration of Black people and people with mental health conditions, underscoring the dire necessity for alternatives to incarceration, as well as studies on the underlying causes of such multiple and intersecting discrimination. The report also states that DOJ/CRT investigates discriminatory practices or patterns in prisons, jails, and mental health facilities.²³⁹ However, DOJ/CRT investigated the treatment of prisoners with mental health conditions in the L.A. County Jail system in 1997, resulting in a negotiated agreement with local officials found in June 2014 to fall short of anticipated progress.²⁴⁰ Absent clear directives to look at intersectional violations, such investigations fail to account for the multiple discriminations of race, ethnicity, gender, and disability in the criminal justice system.

²³¹ The JFA institute, *Evaluation of the Current and Future Los Angeles County Jail Population*, p. 15 (April 10, 2012) at <http://www.jfa-associates.com/publications/LA%20Jail/LA%20County%20Jail%20Report.pdf>.

²³² Email from Jim Austin, President of the JFA Institute, (June 10, 2014)

²³³ Cuellar AE, Snowden LM, Ewing T., Criminal records of persons served in the public mental health system, 58(1) *Psychiatric Services* pp. 114-20 (2007) at <http://ps.psychiatryonline.org/article.aspx?articleid=97584>.

²³⁴ *Id.*

²³⁵ Department of Justice, Civil Rights Division (DOJ CRT), *Compliance Mental Health Care and Suicide Prevention Practices at Los Angeles County Jails*, (June 4, 2014) [Compliance Letter].

²³⁶ *A Way Forward: Diverting People with Mental Illness from Inhumane and Expensive Jails into Community-Based Treatment that Works*, ACLU Southern California, (forthcoming; July 1, 2014)

²³⁷ *Id.*

²³⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 65 (13 June, 2013).

²³⁹ *Id.*, at ¶ 216.

²⁴⁰ Department of Justice, Office of Public Affairs, *Justice Department Concludes That Los Angeles County Jails System Has Made Progress, but Serious Deficiencies Continue* (June 6, 2014) at <http://www.justice.gov/opa/pr/2014/June/14-crt-610.html>.

Report Informing this Section:

Dignity and Power Now: Impact of Disproportionate Incarceration of and Violence Against Black People with Mental Health Conditions in the World's Largest Jail System

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Forced Psychiatry and Psychiatric Abuse Against People of Color

African Americans and other people of color bear a disproportionate impact of cruel and callous treatment administered by the mental health system in the U.S., including application of restrictive measures, restraint, and solitary confinement.

Suggested Recommendations:

The Committee should build on the approach of the Convention on the Rights of Persons with Disabilities in setting out standards for the abolition of forced psychiatry and the development of supports that respect the persons' will and preferences, and recommend the following to the U.S. Government:

1. The U.S. Government should prohibit mental health commitment and forced treatment, so as to end the social control function that has been given to the mental health system, which has a discriminatory impact on people of color.
2. The U.S. Government should transfer resources from research and services based on a medical model of mental illness, to research, development and expansion of alternatives that fully respect the person's autonomy, choices, dignity and privacy, that are culturally competent, trauma-informed and capable of meeting diverse needs of people experiencing serious distress or altered realities, and including aid in withdrawing from psychiatric drugs.
3. In order to implement the shift from a medical model to person-directed services, the U.S. Government should carry out consultations, in a manner accountable to communities and to people with lived experience and their trusted family members and supporters, to learn about alternatives such as Soteria, Open Dialogue, Family Group Conferencing, Intentional Peer Support, WRAP, Personal Ombud and Personal Board models, and create a menu of such services from which individuals and communities can choose.
4. The U.S. Government should support community-based peacemaking and restorative justice programs to reduce violence and create constructive solutions, and to promote community-building based on racial justice and equity along with justice and equity from a disability perspective.

Basis of the Recommendations:

The U.S. mental health system acts as a system for social control that exists in parallel to the criminal justice system, is governed by minimal guarantees of due process, legitimizes discrimination based on disability and gives free rein to racial prejudice. African Americans and other people of color – including children – bear a disproportionate impact of this system in the United States. In particular they experience its most cruel and callous treatment,²⁴¹ the disproportionate application of restrictive

²⁴¹ A FY 2013 report by the State of Colorado showed that, "like blacks, Hispanics are more likely to be subject to the most punitive conditions while in care. About 30 percent of the people put into seclusion and restraint last year were Hispanic." Colorado Moves Away from Seclusion, Restraint in

measures such as inpatient hospitalization,²⁴² restraint and seclusion (solitary confinement),²⁴³ the combined impact of coercive mental health and criminal justice systems,²⁴⁴ the application of dehumanizing diagnostic classifications,²⁴⁵ and the invoking of control systems of any kind for behavior of lower intensity than is the case for most whites. Exemplifying this disparate impact, a study of a New York City forensic psychiatric institution (psychiatric commitment resulting from criminal proceedings) found that African Americans comprised 56% of inmates and represented 65% of seclusion (solitary confinement) episodes, although they make up only 25% of the city's population.²⁴⁶

ICERD Articles Implicated: 5, 5(b)

Correlation to U.S. Government Report:

The U.S. Government's report fails to mention the issue of forced psychiatry and psychiatric abuse of people of color.

Report Informing this Section:

Campaign to Repeal Mental Health Laws, M.O.M.S.—Movement of Mothers and Others Standing Together, Center for the Human Rights of Users and Survivors of Psychiatry, Law Project for Psychiatric Rights, Victorious Black Women, MindFreedom International, World Network of Users and Survivors of Psychiatry, & International Disability Alliance: *Report on Forced Psychiatry and Psychiatric Abuse Against African Americans as Intersectional Discrimination Based on Race and Disability*

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Mental Health Crisis Cases, Inequities Remain, by Kristin Jones, June 11, 2014, available at:

<http://inewsnetwork.org/2014/06/11/colorado-moves-away-from-seclusion-restraint-in-mental-healthcrisis-cases-inequities-remain/>. See also Campaign to Repeal Mental Health Laws, M.O.M.S.—Movement of Mothers and Others Standing Together, Center for the Human Rights of Users and Survivors of Psychiatry, Law Project for Psychiatric Rights, Victorious Black Women, MindFreedom International, World Network of Users and Survivors of Psychiatry, & International Disability Alliance: *Report on Forced Psychiatry and Psychiatric Abuse Against African Americans as Intersectional Discrimination Based on Race and Disability*, § III, IV, and Appendix I.

²⁴² African Americans are more often coerced into treatment and hospitalization, are hospitalized as inpatients disproportionately to whites, are more often subjected to restraints and seclusion, and receive diagnoses that lead them to be considered as “severely mentally ill.” Julian Chun-Chung Chow, Kim Jaffee, Lonnie Snowden, Racial/Ethnic Disparities in the Use of Mental Health Services in Poverty Areas, *Am J Public Health*. 2003 May; 93(5): 792–797; David T. Takeuchi, Mang-King Cheung, Coercive and voluntary referrals: How ethnic minority adults get into mental health treatment; Arnold Barnes, Race, Schizophrenia and Admission to State Psychiatric Hospitals, *Administration and Policy in Mental Health and Mental Health Services Research* Vol. 31, No. 3 (2004); Lonnie R. Snowden, Julia F. Hastings, Jennifer Alvidrez, Overrepresentation of Black Americans in Psychiatric Inpatient Care, *Psychiatric Services*, Vol. 60 No. 6 (2009).

²⁴³ Two-Year Trends in the Use of Seclusion and Restraint Among Psychiatrically Hospitalized Youths, Abigail Donovan, B.S.; Robert Plant, Ph.D.; Allyson Peller, M.P.H.; Lesley Siegel, M.D.; Andrés Martin, M.D., M.P.H., *Psychiatric Services* 2003; doi: 10.1176/appi.ps.54.7.987; Armando Barragán, Jr, Seclusion and Mechanical Restraints Among Ethnic Minorities: Understudied and Needed Area of Research, *Mental Health Law & Policy Journal* Vol. 1 99-125 (2012); Paul J Toriello, Stephen J Leierer, Joseph E Keferl, The Impact of Race on the Use of Physical Restraint on Adolescent Males with Behavioral Disabilities: An Initial Study, *Journal of Applied Rehabilitation Counseling* Vol. 34 No. 4 (Winter 2003).

²⁴⁴ African Americans are especially over-represented in forensic psychiatric settings, i.e. those that are part of the criminal justice system. Michael Rembis, *The New Asylums, in Disability Incarcerated*, ed. Liat Ben-Moshe, Chris Chapman & Alison C. Carey (2014) (citing Patricia E. Erickson and Steven K. Erickson, *Crime, Punishment, and Mental Illness: Law and the Behavioral Sciences in Conflict* [2008]).

²⁴⁵ Schizophrenia, a highly controversial and stigmatizing diagnosis once more closely associated with gender bias and stereotypically passive resistance, and applied to white women, has shifted since civil rights movement protests to be consistently applied disproportionately to African American men, and to be seen as linked with violence. Christopher Lane, “How Schizophrenia Became a Black Disease: An Interview with Jonathan Metzl [author of *The Protest Psychosis* (2010)],” *Psychology Today*, <http://www.psychologytoday.com/blog/side-effects/201005/how-schizophrenia-became-black-disease-interview-jonathan-metzl>; Caroline Helwick, “Schizophrenia May Be Overdiagnosed in Black Patients,” *Medscape Medical News*, 31 July 2012 (citing study by Lawson et al. in *Arch Gen Psychiatry*. 2012;69:593-600).

²⁴⁶ Tracy Benford Price, MD, Bruce David, DO, JD, and David Otis, PhD, The Use of Restraint and Seclusion in Different Racial Groups in an Inpatient Forensic Setting, *J Am Acad Psychiatry Law* 32:163–8, 2004.

Criminal Prosecutions of Migrants and Substandard, Privately Operated, Segregated Prisons

Since 2000, there has been a sharp increase in the number of migrants—the vast majority Mexican nationals—prosecuted for immigration crimes at the border, and incarcerated in substandard, privately operated, segregated immigrant prisons.

Suggested Recommendations:

1. The DOJ and the U.S. Department of Homeland Security should issue guidance to relevant agencies instructing them to end the widespread practice of prosecuting immigration offenses in criminal court, returning to reliance on the civil immigration system to process those apprehended on immigration charges, whether at the border or in the nation's interior.
2. The DOJ should undertake a thorough review of privately-operated, segregated federal prisons for immigrants. Pending findings of this review, any new contracts for these facilities should be halted. If this review finds conditions unequal to those in publicly operated facilities, contracts with private prison corporations should be terminated.

Basis of the Recommendations:

Since 2000, with the initiation of “Operation Streamline,” offenses under statutes criminalizing migration have become the most prosecuted offenses in the federal court system. Prior to Operation Streamline, which mandated criminal prosecution for nearly all border crossers on the U.S.-Mexico border if apprehended without proper documentation, border crossers were primarily processed through the civil immigration system. Over the last decade, the proportion of people who are non-citizens sentenced in the federal courts has increased to 45 percent of total prosecutions in 2013.²⁴⁷ Of the people serving time for an immigration violation in the federal prison system, 91.6 percent are Hispanic or Latino.²⁴⁸

To handle the increasing number of Mexican migrants sentenced to federal prison after the passage of the North American Free Trade Agreement, the federal Bureau of Prisons (BOP) launched a massive privatization initiative in 1999. BOP officials carved out a population of federal prisoners: so-called “criminal aliens,” designated for segregation from the rest of the prison population in private contract prisons (CARs). Currently non-citizens comprise 25.1 percent of the total BOP prison population, with 17.4 percent of the total made up of Mexican nationals. CAR prisons are notoriously plagued with human rights violations. A multi-year investigation of five “CAR” prisons in Texas found that, “men held in these private prisons are subjected to shocking abuse and mistreatment, and discriminated against by BOP policies that impede family contact and exclude them from rehabilitation programs.” Excessive numbers of these prisoners are held in solitary confinement, nearly double the rate of prisoners in BOP-operated prisons. Some have been subjected to racist language from guards. Access to both routine and emergency medical treatment is limited. Conditions are squalid, especially at one of the largest CAR prisons, the Willacy Correctional Institution, where prisoners are warehoused in large tents.²⁴⁹ BOP officials have admitted to treating immigrants like second-class prisoners, in part because these prisoners face deportation at the end of

²⁴⁷ U. S. Sentencing Commission's 2013 *Annual Report*, <http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2013/annual-report-2013>

²⁴⁸ Marc Motivans. (July 2012) *Immigration Offenders in the Federal Criminal Justice System, 2010*. Washington, DC: Federal Justice Statistics Program.

²⁴⁹ Carl Takei *et. al.* (June 2014) *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*. Washington DC: American Civil Liberties Union.

their sentences.²⁵⁰

ICERD Articles Implicated: 1, 5(b)

Correlation to U.S. Government Report:

The U.S. report does not address criminal prosecution of migrants and their imprisonment in private prisons.

Report Informing this Section:

Grassroots Leadership, & Justice Strategies: *Shadow Report of Grassroots Leadership and Justice Strategies to the International Convention on the Elimination of All Forms of Racial Discrimination Regarding Criminal Prosecutions of Migrants for Immigration Offenses and Substandard Privately-Operated Segregated Prisons*

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Racial Discrimination and Sexual Violence Against Women of Color

The recent federal racial justice initiative *My Brother's Keeper* (MBK) excludes remedies to address persistent racial discrimination against women and girls of color; while under *The Violence Against Women Act* (VAWA) communities of color continue to receive a disproportionately lower share of resources than that required for the law to have more impact where it is most needed.

Suggested Recommendations:

1. The U.S. Government should revamp the federal initiative “My Brother’s Keeper” (MBK) as a “My Brother’s and Sister’s Keeper Initiative,” and follow the recommendations in the African American Policy Forum letter(s),²⁵¹ to ensure issues impeding healthy development of women and girls of color are highlighted and addressed on a scale comparable to plans under MBK.
2. The U.S. Government should allocate adequate funding to communities of color for community-driven and sustained responses to sexual violence.
3. The U.S. Government should significantly increase funding for communities of color under the federal Violence Against Women Act (VAWA), and ensure it is consistently reauthorized in a form consistent with its objectives of addressing disproportionate rates of violence against women and girls in the U.S. Additional funding under VAWA should be used for a major initiative to train 911 telephone emergency response operators to reduce under-reporting of rape and other cases of sexual violence.
4. The U.S. Government should address racial discrimination against victims and all people of color by providing specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and medical personnel.

²⁵⁰ Forrest Wilder and Priscilla Mosqueda, “Immigrants in Federal Prisons ‘Subjected to Shocking Abuse and Mistreatment,’” *Texas Observer*, June 9, 2014; Judith Greene. “Bailing Out Private Jails,” *American Prospect*, September 2001.

²⁵¹ African American Policy Forum, “Why We Can’t Wait: Women of Color Urge Inclusion in My Brother’s Keeper,” <http://aapf.org/2014/06/woc-letter-mbk/>

5. The U.S. Government should eliminate Mandatory Arrest and Prosecution policies that perpetuate racial discrimination and do not protect victims from harm.
6. The U.S. Government should undertake information campaigns to raise awareness among women belonging to racial, ethnic and national minorities about the human rights mechanisms and procedures provided for in national legislation on racism and discrimination.

Basis of the Recommendations:

Racial discrimination and gender-based violence continue to be significant issues in the United States as women of color, including lesbians, bisexual or transgender women, are impacted in ways that demand closer examination and warrant exposure to public scrutiny and policy-makers. Women and LGBTQ people of color face persistent racial discrimination, including in the form of disproportionately high rates of un- and underemployment, with African American women suffering an acutely high gender pay gap as compared to that of white women. Women and LGBTQ people of color also face skyrocketing rates of arrest and imprisonment.²⁵² The U.S. President created the “My Brother’s Keeper Initiative” in February 2014 to provide opportunities for young men of color in education, employment, and other arenas; failing to target ongoing disparities and deteriorating conditions for women and girls of color.²⁵³ Additionally, the U.S.’ heavy reliance on criminal system approaches to violence is not making women of color safer, and the U.S. fails to adequately provide resources to address sexual violence and abuse suffered by women and LGBTQ people of color,²⁵⁴ within a racial justice framework.²⁵⁵

ICERD Articles Implicated: 1-6, and particularly 5(b)

Correlation to U.S. Government Report:

It is laudable that the U.S. Government mentions the discrimination and violence disproportionately faced by women and LGBTQ people of color in its report,²⁵⁶ and this should provide a springboard for future action. In particular, the U.S. recognizes that “the best response to violence against women—the response most likely to empower survivors and hold offenders accountable is a response driven and defined by the community itself.”²⁵⁷ However, the U.S. Government needs to take steps to address the ways in which institutional racism—including police brutality, mass incarceration, under-resourced education, and poverty—hamper the ability of women of color to address violence in their communities. It also must account for the substantial harm and violence from law enforcement and the judicial system that women and LGBTQ people of color face.

Report Informing this Section:

²⁵² “Quick Facts: Women and Criminal Justice - 2009,” Institute on Women and Criminal Justice <http://www.wpaonline.org/resources/quick-facts>; Simmons, Aishah Shahidah, “Who Will Revere Us? (Black LGBTQ People, Straight Women and Girls)” (Part 3), *The Feminist Wire* 4/25/14 <http://thefeministwire.com/2012/04/who-will-revere-us-black-lgbtq-people-straight-women-and-girls-part-3/>; Richie, Beth E., *Arrested Justice: Black Women, Violence, and America’s Prison Nation*, New York University Press, 2014, http://nyupress.org/books/book-details.aspx?bookid=3170#.U7Hc_14flA4.

²⁵³ “FACT SHEET: Opportunity for all: President Obama Launches My Brother’s Keeper Initiative to Build Ladders of Opportunity For Boys and Young Men of Color,” The White House, Office of the Press Secretary, 2/27/14, <http://www.whitehouse.gov/the-press-office/2014/02/27/fact-sheet-opportunity-all-president-obama-launches-my-brother-s-keeper>.

²⁵⁴ African American Women Disproportionately At Risk For Death by Domestic Violence,” HG Legal Resources, <http://www.hg.org/article.asp?id=31238>.

²⁵⁵ Farah Tanis, L. Michelle Odom, & Aishah Shahidah Simmons, *Black Women’s Blueprint: Report on Racial Discrimination and Sexual Violence Against Women of Color, Including Those Identifying as LGBTQ and the Impact of Inadequate Racial Justice Initiatives and Violence Prevention Policy Implementation in the United States*, at 4-5.

²⁵⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 186-88 (13 June, 2013).

²⁵⁷ *Id.*, at ¶ 187.

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RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Imprisoned Political Activists & Human Rights Defenders

For decades, the U.S. has unjustly and unlawfully imprisoned human rights defenders of color, many of them incarcerated as a result of an unlawful federal program designed to suppress movements for racial justice during the U.S. Civil Rights Era.

Suggested Recommendations:

1. The U.S. and its state governments must immediately and unconditionally release all COINTELPRO/ Civil Rights Era political activists, especially all those who are critically or chronically ill.
2. The U.S. Government should, together with civil society organizations, form a National Truth and Reconciliation Commission to address the persecution of COINTELPRO/ Civil Rights Era political activists.
3. The U.S. Government must name a Special Prosecutor to investigate the deaths and imprisonment of all COINTELPRO/ Civil Rights Era human rights defenders and political activist to identify human and civil rights violations, and fulfill its obligation to ensure victims' right to compensation.

Basis of the Recommendations:

The U.S. continues to imprison human rights defenders of color, many of them aging and infirm, who were active in racial and economic justice struggles during the Civil Rights era in the U.S. Many of these individuals were imprisoned as a result of the Counter Intelligence Program (COINTELPRO), a program of the U.S. Federal Bureau of Investigation that was designed to target and repress political dissent in the U.S., and in particular, movements for racial justice. Under COINTELPRO, activists, particularly Black and Native American human rights defenders, who were working for racial justice, were subjected to harassment, government monitoring and intimidation, organizational infiltration, unlawful arrests, malicious prosecution, lengthy imprisonment, and assassination at the hands of local, state, and federal law enforcement officials.²⁵⁸ While a small number of political prisoners have been exonerated after spending years behind bars, most have not, and many face cruel, inhuman and degrading conditions, including lack of medical care and prolonged solitary confinement.

ICERD Articles Implicated: 1(4), 2(1) (a & b), 2(2), 4(c), 5, 5(a), (b), (d)(vii-ix), 6, & 7

²⁵⁸ Ward Churchill and Jim Vander Wall, *THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DISSENT IN THE UNITED STATES* (1990).

Correlation to U.S. Government Report:

In response to paragraph 15 of the Committee's 2008 concluding observations, the U.S. Government states that it "is committed to using all the tools at its disposal to address disparities in outcomes, across a host of indicators, that disproportionately impact members of racial and ethnic minorities.... Under the U.S. Constitution, classification by race is permissible in some circumstances for certain purposes, such as redressing past racial discrimination..."²⁵⁹ The U.S. also describes its Access to Justice Initiative under the DOJ, designed to "help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status," and adds, "ATJ has worked to expand research and funding to improve the delivery of indigent defense services."²⁶⁰ However, the report fails to mention human rights defenders detained from the COINTELPRO era. Furthermore, in 2011, the Obama administration requested that Congress increase funding for the Legal Services Corporation and remove restrictions on class actions, but Congress did not act on this. Meanwhile, state indigent defense budgets have been cut.

Report Informing this Section:

Malcolm X Center for Self Determination, National Jericho Movement for Amnesty and Freedom for All U.S. Political Prisoners, and Yamasi People: *Political Prisoners: No Access to Justice- Political Repression- Imprisoned COINTELPRO/ U.S. Civil Rights Era HR Defenders and Political Activists, State Repression, Criminalization of Dissent*

* * * * *

RIGHT TO POLITICAL PARTICIPATION

Obstacles to Voting Rights

Widespread racial voting discrimination persists in the U.S., via obstacles to voting that disproportionately impact individuals belonging to national or ethnic minorities, such as voter identification laws, district gerrymandering and disenfranchisement of felons.

Suggested Recommendations:

1. The federal government should act to enforce all provisions of federal voting rights law, and urge Congress to pass a law that prevents the implementation of racially discriminatory voting changes.
2. The U.S. Department of Justice (DOJ) should take action against states that have not integrated voter registration into the protocols of its covered agencies under the National Voter Registration Act (NVRA), as well as states that have done so only episodically. The federal government should encourage implementation by additional public agencies now covered as a result of the exchanges under the Affordable Care Act.
3. The U.S. Census Bureau must address the problem of prison-based gerrymandering nationally by ensuring that incarcerated people are counted as residents of their home communities.

²⁵⁹ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 33 (13 June, 2013).

²⁶⁰ *Id.*, at ¶ 63.

4. The U.S. government must vigorously enforce the Voting Rights Act, on behalf of language minority voters to ensure their access to the process and to eradicate discrimination against language minority voters.

5. The U.S. Congress should pass legislation granting the citizens of the District of Columbia the right to full congressional representation.

Basis of the Recommendations:

In June 2013, in *Shelby County v. Holder*, the Supreme Court struck down a core provision of the 1965 Voting Rights Act.²⁶¹ The decision made millions of voters of color more vulnerable to voting discrimination by opening the door for formerly covered area governments to implement new and onerous restrictions on voting. For example, shortly after the decision, North Carolina's legislature added numerous procedural barriers to voting. Additionally, since 2012, more than 40 states have passed laws to require voters to show photo identification prior to casting a vote during an election.²⁶² These laws have a disproportionate impact on communities of color. Also disproportionately impacting people of color, the U.S. Department of Justice (DOJ) has done little to enforce the National Voting Rights Act (NVRA), which requires voting registration opportunities at public agencies.²⁶³ Additionally, many states prohibit convicted felons from voting, with laws that in large part proliferated as part of Jim Crow-era efforts to suppress minority voting, and that act in tandem with the racially discriminatory criminal system to diminish the voting power people of color.²⁶⁴

Because the U.S. Census Bureau currently tabulates people in prison as residents of their prison cells, not their homes, and since incarcerated persons are disproportionately Black and Latino, and most prisons are built in disproportionately White rural areas, this method enhances the voting strength of predominantly White rural districts and dilutes minority voting strength statewide. Post-registration citizenship checks pose another voting rights barrier. Americans of color are disproportionately likely to lack the kinds of documents accepted as proof of citizenship.²⁶⁵ Citizens who are language minorities and are not yet fluent in English, particularly those who are also racial or ethnic minorities, also face discrimination when attempting to vote, in the form of hostile and unwelcoming environments or the outright denial to vote. They may also have difficulty understanding complex voting materials and procedures and are often denied needed assistance. Also hindering equal political participation is the fact that the District of Columbia lacks full voting representation in Congress, which has a disparate racial impact, given that half of the city's population is Black.

ICERD Articles Implicated: 2, 5(c)

Correlation to U.S. Government Report:

²⁶¹ *Shelby County v. Holder*, 570 U.S. ____ (2013).

²⁶² Sarah Childress, "Unprecedented" Number of Restrictive Voting Laws Being Introduced, PBS (May 31, 2012), <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/unprecedented-number-of-restrictive-voting-laws-being-introduced/>.

²⁶³ The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America* at 30.

²⁶⁴ Jean Chung, The Sentencing Project, Felony Disenfranchisement: A Primer 2 (June 2014), available at http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

²⁶⁵ E.g., Brennan Ctr. for Justice at NYU Sch. of Law, Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification 2 (2006), available at http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf; Matt A. Barreto et al., Rates of Possession of Valid Identification, and Public Knowledge of the Voter ID Law in Pennsylvania 34-35, Table 1, Table 3 (July 16, 2012), available at <http://www.aclupa.org/downloads/BarretoReport.pdf>; Matt A. Barreto and Gabriel R. Sanchez, Rates of Possession of Accepted Photo Identification, Among Different Subgroups in the Eligible Population, Milwaukee County, Wisconsin 25-26, 44, 46, Table 14, Table 16 (April 23, 2012), available at <http://www.aclu.org/files/assets/062-10-exhibitexpertreport.pdf>.

The U.S. Government describes federal statutes and efforts to protect voters' rights, but fails to address the problems deriving from the recent U.S. Supreme Court's decision to strike down a core part of the Voting Rights Act of 1965; inadequately addresses the other obstacles to voting described here; and in particular, states that states are responsible for felony disenfranchisement while failing to address how the federal government will ensure and promote states' compliance with ICERD.²⁶⁶

Report Informing this Section:

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

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RIGHT TO LEAVE ANY COUNTRY AND RETURN TO ONE'S OWN COUNTRY

Confiscation or Revocation of Passports of American Citizens of Yemeni Origin

In cases involving coercive interrogations and blatant due process violations, U.S. State Department officials have been confiscating the passports of Yemeni-Americans who visit the U.S. embassy in Sana'a to file routine paperwork, leaving many stranded abroad.

Suggested Recommendations:

1. The State Party should instruct personnel at the U.S. Embassy in Sana'a to treat Certificates of Citizenship, Certificates of Naturalization, and Consular Reports of Birth Abroad belonging to Yemeni-Americans as *prima facie* proof of U.S. citizenship as required by U.S. law. Yemeni-Americans who approach the Embassy for routine consular paperwork should not be subjected to intrusive investigations concerning the validity of their U.S. citizenship on the basis of their national origin.
2. The State Party should promptly investigate allegations of discriminatory and unfair conduct at the U.S. Embassy in Sana'a (including but not limited to due process violations, forced confessions, coercive interrogations, and inappropriate stereotyping and generalizations by Embassy Staff) and should publicly release its findings (including the findings of prior investigations or reviews). The State Party should also implement appropriate remedies, including: i. re-instate U.S. passports for those wrongfully confiscated; ii. hold staff responsible for misconduct accountable; iii. provide appropriate compensation to individuals whose rights were violated; and iv. implement appropriate training to avoid repetition of these acts.
3. The State Party should implement measures at the U.S. Embassy in Sana'a to prevent coercive interrogations and forced confessions in the future, including but not limited to: i. advising all U.S. citizens of their rights prior to any interview or interrogation; and ii. providing any U.S. citizen whose passport has been revoked or confiscated with information about how to exercise their right

²⁶⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 99-102 (13 June, 2013).

to return to the United States and how to challenge the passport revocation through the administrative hearing procedure.

Basis of the Recommendations:

Civil rights and community organizations have documented over a dozen instances since August 2013 where U.S. State Department officials revoked or confiscated passports of U.S. citizens of Yemeni origin at the U.S. Embassy in Sana'a, in processes that blatantly violated constitutional due process rights. The State Department has yet to respond to Freedom of Information Act requests for more information, but media reports suggest the total number of passport confiscations is much higher. When Yemeni-Americans visited the U.S. embassy to file routine paperwork, officials interrogated them for hours with no lawyer present and made them sign confessions suggesting they or their parents misrepresented their family's name when they migrated to the U.S. Officials forced them to sign confessions in exchange for false promises their passports would be returned if they signed, and threatened them with jail if they did not sign. Officials then confiscated their passports, leaving them stranded abroad. Since February 2014, the State Department has issued travel documents permitting single-entry travel back to the U.S., but only to some of the Yemeni American individuals whose passports it revoked. The actions by the State Department bypass normal procedural safeguards extended to U.S. citizens when their citizenship is challenged,²⁶⁷ and subject many Yemeni Americans to administrative hearings that involve a lesser standard of evidence and considerable expense on the part of those whose passports were challenged.²⁶⁸ An untold number are still stranded abroad.

ICERD Articles Implicated: 5, 5(d)(ii), and 5(e)(i), (ii), and (v), amongst others

Correlation to U.S. Government Report:

The U.S. government did not address this issue in its June 2013 report.

Report Informing this Section:

Asian Americans Advancing Justice (Advancing Justice)—Asian Law Caucus, and Advancing Justice—Los Angeles, Arab Resource and Organizing Center, Center for Constitutional Rights, the Creating Law Enforcement Accountability & Responsibility project at CUNY School of Law, Council on American-Islamic Relations—California Chapter, the Muslim Legal Fund of America, the American Civil Liberties Union (ACLU) of Northern California and the ACLU of Southern California: *Stranded Abroad: Shadow Report on Coercive Interrogations and Due Process Violations in the Confiscation or Revocation of Passports of American Citizens of Yemeni Origin*

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²⁶⁷ See *Kungys v. United States*, 485 U.S. 759 (1988).

²⁶⁸ See 8 U.S.C. § 1504; 22 C.F.R. § 51.65(a), 51.70(a).

RIGHT TO REMEDIES & EFFECTIVE REPARATION

Migrant Farmworkers' Access to Justice and Healthcare

Migrant farmworkers, the majority of them people of color, are particularly vulnerable to abuse by employers, yet outreach workers are denied meaningful access to migrant labor camps to provide legal aid, healthcare, and other services.

Suggested Recommendations:

1. The U.S. Government should take all reasonable measures under applicable international human rights instruments and domestic law to protect, respect, and fulfill the rights of migrant workers, and specifically to ensure access to migrant labor camps by community service providers – including legal services, health, educational, and religious providers.
2. The U.S. must ensure strengthened enforcement of the rights of migrant farmworkers by all appropriate federal, state, and local agencies in the United States.
3. The U.S. Government must ensure education and training of the public, as well as and especially local law enforcement, about the rights of migrant farmworkers who live and work at the migrant labor camps to receive outreach services from community providers on employer property.

Basis of the Recommendations:

Between 1 and 3 million migrant farmworkers, including at least 100,000 children, are estimated to labor every year in U.S. fields.²⁶⁹ Most are poor and many live and work in dangerous and dehumanizing circumstances.²⁷⁰ About 89% of farmworkers are racial minorities (Hispanic and African American), while 72% of migrant farmworkers are foreign-born and only 30% speak English well.²⁷¹ Approximately 21% live in employer-owned and -provided housing.²⁷² Routinely, farmworkers' employers use various tactics to deny access to outreach workers who attempt to provide migrant farmworkers living on labor camps or ranches in the U.S. with legal assistance, health care, education, and social and other basic services. Outreach workers regularly experience harassment and are threatened with arrest and even violence²⁷³ by owners and operators of migrant labor camps. Farmworkers also face threats of deportation, sexual violence,²⁷⁴ violence against security of the person, and inhumane treatment and abuse by their employers.

The U.S. has no comprehensive or uniform federal and state legal framework concerning migrant farmworkers' right to receive visits and information from outreach workers on agricultural labor camps. Moreover, farmworkers have historically been discriminated against under U.S. law for racist

²⁶⁹ National Center for Farmworker Health, *Farmworker Health Factsheet: Demographics 1* (Sept. 2012), <http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf>; Christine Ahn, Melissa Moore & Nick Parker, *Migrant Farmworkers: America's New Plantation Workers*, 10(2) BACKGROUNDER (Spring 2004), <http://www.acequianstitute.org/researchreports.html>.

²⁷⁰ See generally Oxfam America, *Like Machines in the Fields: Workers Without Rights in American Agriculture* (March 2004), <http://www.oxfamamerica.org/files/like-machines-in-the-fields.pdf>.

²⁷¹ Findings from the National Agricultural Workers Survey (NAWS) 2007 -2009, <http://www.doleta.gov/agworker/naws.cfm>; National Center for Farmworker Health, *supra* note 2.

²⁷² Southern Poverty Law Center, *Who Are Farmworkers?* (2010), <http://www.splcenter.org/sexual-violence-against-farmworkers-a-guidebook-for-criminal-justice-professionals/who-are-farmworker>.

²⁷³ See Colorado Legal Services, Migrant Farm Worker Division, *Overworked and Underpaid: H-2A Herders in Colorado* (2010), <http://users.frii.com/cls/Overworked%20and%20Underpaid.pdf>.

²⁷⁴ See generally Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the U.S. to Sexual Violence and Sexual Harassment* (2012), <http://www.hrw.org/news/2012/05/15/us-sexual-violence-harassment-immigrant-farmworkers> (describing the particularly dehumanizing effect of sexual violence and sexual harassment on farmworkers).

reasons. That racism in U.S. labor and employment laws, endures and continues to have racist impact.²⁷⁵ Congress recognized the barriers agricultural workers face in accessing legal assistance and the legal system²⁷⁶ and recommended “outreach” as the “principal activity” to break down these barriers,²⁷⁷ yet has taken no action to actualize that recommendation.

ICERD Articles Implicated: 5, 6

Correlation to U.S. Government Report:

The U.S. Government’s report acknowledged that the U.S. “faces challenges in both its provision of legal representation to indigent criminal defendants and its provision of free and affordable civil legal services to the poor and middle class.” It stated that the Government “recognize[s] that these challenges are felt acutely by members of racial and ethnic minorities.” It also described establishment of the U.S. Department of Justice (DOJ)’s Access to Justice Initiative (ATJ) in 2010 and its ongoing work to strengthen civil legal services.²⁷⁸ With additional funding and staff, ATJ would likely be able to work with other agencies and make great progress on these access to justice issues, as well as others. However, establishment of ATJ is not enough to address the issue of migrant labor camp access for outreach workers.

Report Informing this Section:

Texas RioGrande Legal Aid, Center for Human Rights & Humanitarian Law Local Human Rights Lawyering Project, Worker Justice Center of New York, Hispanic Affairs Project (HAP), Public Justice Center, National Law Center on Homelessness & Poverty, Global Workers Justice Alliance, California Rural Legal Assistance Foundation, Farmworker Justice, Colorado Legal Services, Northwest Workers' Justice Project, El Comité de Apoyo a los Trabajadores Agrícolas (CATA), Centro de los Derechos del Migrante, Inc. (CDM), & Sarah Paoletti, Esq.: *Illegally Denied: Migrant Farmworkers Fight for Access to Justice and Health Care in the United States*

* * * * *

Access to Counsel in Civil Cases, Including Immigration Proceedings

A lack of a constitutional right to counsel in civil cases, combined with defunding of federal legal aid, leaves millions of poor and low income people, disproportionately people of color, with no legal counsel in crises such as evictions, termination of subsistence income, or deportations.

Suggested Recommendations:

1. The U.S. Government should support and fund research to assess the disproportionate impact that the lack of a generally-recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities, including those in immigration proceedings.

²⁷⁵ See e.g., Juan E. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95 (2011); *Race & Immigration Symposium: Mexicans, Immigrants, Cultural Narratives, and National Origin*, 44 Ariz. St. L.J. 305, 328 (2012).

²⁷⁶ Legal Servs. Corp., *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers, Individuals in Sparsely Populated Areas: A Report to Congress As Required by Section 1007(h) of the Legal Services Corporation Act of 1974, As Amended* 34-36 (1978) (on file).

²⁷⁷ *Id.*

²⁷⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 62-64 (13 June, 2013).

2. The U.S. Government should provide adequate funding for the federal Legal Services Corporation and lift restrictions that prevent legal services lawyers from providing necessary services.
3. The U.S. Government should intensify the Department of Justice Access to Justice Initiative's activities with respect to civil legal services, including immigration proceedings, and provide it with necessary leadership, funding and other support to reach its full potential.
4. The U.S. Government should support and coordinate efforts to expand and establish a right to counsel at the state level in civil cases implicating basic needs by: funding state access-to-justice initiatives, developing, evaluating, and disseminating "best practices" for state and local governments, and filing supportive amicus briefs in right-to-counsel litigation in state courts.
5. The U.S. Government should prioritize establishing a right to legal counsel for immigrants in civil immigration proceedings and indigent litigants in other federal civil cases where liberty interests or basic human needs are at stake.

Basis of the Recommendations:

The U.S. Constitution does not recognize a categorical right to counsel in civil cases, including in immigration removal proceedings. Thus, millions of poor or low-income people cannot obtain legal representation for crises such as evictions, foreclosures, domestic violence, workplace discrimination, termination of subsistence income or medical assistance, loss of child custody, or deportation.²⁷⁹ This civil justice gap has a disparate impact on racial, ethnic and national minorities.²⁸⁰ In immigration cases, Latin American immigrants are disproportionately targeted for removal proceedings.²⁸¹ They are also significantly more likely to be poor²⁸² and unable to afford counsel. Lack of access to counsel results in less favorable outcomes for low-income litigants, and serves to keep families poor.²⁸³ The Legal Services Corporation, the primary delivery system for federal legal aid for poor people, has experienced crushing budget cuts.²⁸⁴ LSC-funded programs have nowhere near the resources necessary to respond to the need for services.²⁸⁵ LSC-funded organizations are also unable to meet the legal needs of immigrants and low-income and poor clients because of restrictive federal rules governing who may receive their legal services and the types of activities they may engage in.

²⁷⁹ Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans*, 1 (Sept. 2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

²⁸⁰ While research results point in a consistent direction, research on this issue has been uncoordinated and therefore not comprehensive. *See, e.g.*, Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WISC. L.REV. 101, 110 (2013) (stating that we "know little of the impacts of inequality in access to justice on other forms of social inequality," including race). *See also* Amelia T. Lafont et al., *Civil Legal Needs of Low-Income Arkansians: 2013 Needs Assessment Final Report* 6-8 (2013), available at http://lri.lsc.gov/sites/default/files/LRI/pdf/13/LAA_needsassessment_2013.pdf (describing wide variety of research approaches adopted by legal needs studies).

²⁸¹ More than 65% of noncitizens in removal proceedings in 2013 were from just four countries: Mexico, Guatemala, El Salvador, and Honduras. U.S. Dep't of Justice, Exec. Office for Immigration Review, *FY 2013 Statistics Yearbook* D1 (2014), available at <http://www.justice.gov/eoir/statpub/fy13syb.pdf>. Combined, all Latin American and Caribbean immigrants made up 55% of the immigrant population of the U.S. in 2013. Pew Research Ctr., *Changing Patterns of Global Migration and Remittances* 8 (2013), available at <http://www.pewsocialtrends.org/2013/12/17/changing-patterns-of-global-migration-and-remittances/>. On the disproportionate targeting of Hispanic communities for immigration enforcement, *see also* Adam B. Cox & Thomas J. Miles, *Policing Immigration*, 80 U. CHI. L. REV. 87, 112-115 (2013) (finding that Obama administration's "Securing Communities" program, which claimed to focus on removing "criminal aliens" focused on heavily Hispanic communities, rather than high crime communities).

²⁸² Pew Research Ctr., *Statistical Portrait of the Foreign-Born Population in the United States, 2012* (2014), available at <http://www.pewhispanic.org/2014/04/29/statistical-portrait-of-the-foreign-born-population-in-the-united-states-2012/>.

²⁸³ Wade Henderson & Jonathan Smith, *The Right to Counsel and Civil Rights: An Opportunity to Broaden the Debate*, CLEARINGHOUSE REV. 210, 213 (July-Aug. 2006).

²⁸⁴ Legal Servs. Corp., *LSC Funding*, <http://www.lsc.gov/congress/lsc-funding>.

²⁸⁵ John G. Levi, *Opening Remarks at the 2013 White House Forum on Increasing Access to Justice* (April 16, 2013), available at <http://www.lsc.gov/board-directors/chairmans-page/statements/lsc-chairman-john-levis-remarks-2013-white-house-forum>.

ICERD Articles Implicated: 5(a), 6

Correlation to U.S. Government Report:

In its report, the U.S. government notes, “there is no right to counsel at government expense for civil matters.”²⁸⁶ Under U.S. law, the same is true for immigration proceedings.²⁸⁷ Against this backdrop, the government acknowledges that it “faces challenges in . . . its provision of free and affordable civil legal services to the poor and middle class” and “recognize[s] that these challenges are felt acutely by members of racial and ethnic minorities.”²⁸⁸ Chief among mechanisms the Government identifies for mitigating the justice gap are the Legal Services Corporation (“LSC”) and the Department of Justice’s Access to Justice Initiative (“ATJ”).²⁸⁹ However, due to lack of funding and staff, as well as restrictive measures on who LSC can represent, these measures are insufficient to address the serious justice gap in the United States.

Report Informing this Section:

Columbia Law School Human Rights Institute, Northeastern University School of Law Program on Human Rights and the Global Economy, National Legal Aid & Defender Association, Sargent Shriver National Center on Poverty Law, Detention Watch Network, National Center for Access to Justice, Make the Road New York, Northern Manhattan Coalition for Immigrant Rights, American University Washington College of Law Center for Human Rights & Humanitarian Law Local Human Rights Lawyering Project: *Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings*

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Failure to Protect Minority Groups From Hate Crimes

The U.S. Government has failed to protect minority communities from hate crimes through a combination of inadequate data collection, limited training of law enforcement to investigate and document hate crimes, and by failing to devote resources to monitor domestic extremists with supremacist ideologies.

Suggested Recommendations:

1. The U.S. Government should mandate reporting of hate crimes by all law enforcement agencies, so that local jurisdictions are compelled to accurately reflect the number of hate crimes in their jurisdiction; and encourage states to include voluntarily provided victim demographics including age, gender, race, ethnicity, sexual orientation, disability, and religion in hate crimes data collection efforts. Victims, should at a minimum, be counted and not excluded because the perpetrator(s) perceived target group is different than the victim's group.
2. The U.S. Government should mandate law enforcement training for all new recruits regarding investigating and reporting hate crimes, with periodic follow-up training; and allocate sufficient resources to states to provide comprehensive training for officers to identify bias indicators in crime

²⁸⁶ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 61 (13 June, 2013).

²⁸⁷ 8 U.S.C. § 1229a(4)(A).

²⁸⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 62 (13 June, 2013).

²⁸⁹ *Id.*, at ¶ 61, 63-64.

and incorporate hate crimes investigation procedures in *Patrol Guides* used by law enforcement.

3. The U.S. Government should revitalize collaboration between Hate Crimes Task Forces and civil society in every major city across the nation, and have FBI and local law enforcement bridge the hate crimes documentation gap by working with a broad coalition of stakeholders, including civil society, to identify innovative solutions for more robust data collection; recognizing that combating hate crimes must be a shared burden.

4. The U.S. Government should strengthen Department of Homeland Security and FBI monitoring of non-Islamic extremist groups and use Behavioral Threat Assessments (BTAs) to identify individuals or groups who display supremacist ideology to prevent bias-motivated crimes against vulnerable communities.

5. The U.S. Government should “[s]upport research assessing the prevalence, incidence, predictors, and outcomes of hate crimes, as well as the psychological impact of hate crimes on victims, their families, and the community.”²⁹⁰

Basis of the Recommendations:

The FBI has never reported more than 10,000 hate crimes in any given year.²⁹¹ In contrast, the Bureau of Justice Statistics' 2013 Special Report on hate crime victimizations, relying on data from the National Crime Victimization Survey (NCVS), found an average of 259,700 hate crime victimizations occurred each year from 2007-2011.²⁹² According to NCVS, victims did not notify law enforcement about hate crime victimizations in 65% of the cases it documented.²⁹³ Also, significant underreporting of hate crimes by law enforcement to the FBI arises from the voluntary nature of local law enforcement compliance with the FBI's request for hate crime data.²⁹⁴ The Department of Justice in 2005 observed that some law enforcement agencies “prefer [] not to acknowledge the role of hate in certain offenses.”²⁹⁵ In 2009, a senior analyst in the U.S. Department of Homeland Security (DHS) authored a report warning of the dangers of violent rightwing extremism in the U.S. Following the report's publication and ensuing backlash, he reported that “DHS ... cancel[ed] all of its domestic-terrorism-related reporting and training for law enforcement,” and that “the Department not only decided to stop all of our work, but they also disbanded the unit, reassigned us to other areas ..., and then made life increasingly difficult for us.”²⁹⁶ During a Senate hearing on hate crimes, he testified that “domestic rightwing extremists trumped all other forms of ideologically motivated violence in the U.S. for number of deaths” since September 11, 2001. Despite this, disproportionate resources have been used on surveillance and monitoring of Islamic extremism, leaving the U.S. with a blind spot for domestic hate groups. The U.S. has taken some steps to

²⁹⁰ American Psychological Association, *The Psychology of Hate Crimes*, at 2, available at:

<https://counseling.uoregon.edu/DNN/LinkClick.aspx?fileticket=Y6V365uld4w%3d&tabid=420>.

²⁹¹ Federal Bureau of Investigation, U.S. Department of Justice, Uniform Crime Reports: UCR Publications, <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Hate>.

²⁹² Nathan Sandholtz, et al., U.S. Dep't. Of Justice, *Hate Crime Victimization, 2003-2011*, 4 (Mar. 2013), <http://www.bjs.gov/content/pub/pdf/hcv0311.pdf>. note 18, at 1.

²⁹³ Peter P. Lynch, et al., *Understanding Crime Statistics: Revisiting the Divergence of NCVS and UCR*, Cambridge University Press, 5 (2007).

²⁹⁴ See generally, Human Rights First, First Submission to the Office of the High Commissioner for Human Rights, Universal Periodic Review: United States of America (Nov. 26, 2010), http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/HRF_HumanRightsFirst.pdf; Nicole Krasavage, et al., *Are Victims Falling Through America's Hate Crime Data Gap?*, CNN (March 23, 2013), <http://www.cnn.com/2013/03/15/justice/hate-crime-statistics>.

²⁹⁵ Michael Shively, Study of Literature And Legislation On Hate Crimes In America, Abt Associates, Inc., iii (March 31, 2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>.

²⁹⁶ Brian Levin, *U.S. Hate and Extremist Groups Hit Record Levels, New Report Says*, Huffpost Politics (Mar. 8, 2012), http://www.huffingtonpost.com/brian-levin-jd/hate-groups-splc_b_1331318.html; Daryl Johnson, *Daryl Johnson: I Tried to Warn Them*, SALON, http://www.salon.com/2012/08/17/daryl_johnson_i_tried_to_warn_them/; Amy Goodman, *Former DHS Analyst Daryl Johnson on How He Was Silenced for Warning of Far Right Militants in US*, Democracy Now!, http://www.democracynow.org/2012/8/9/former_dhs_analyst_daryl_johnson_on.

address hate crimes since 2006, but has not addressed failure of proper data collection, law enforcement training, and monitoring of domestic hate groups.

ICERD Articles Implicated: 2, 4, 5(a), 5(b), 6

Correlation to U.S. Government Report:

The U.S. Government report recognizes that “hate crimes and the intolerance that breeds them remain all too prevalent in the United States.” It reports 2011 FBI statistics on the extent of crimes motivated by bias,²⁹⁷ and describes significant expansion of federal hate crimes law in the U.S. in 2009.²⁹⁸ It also stressed the importance of federal, state, and local authorities and community organizations forming coalitions to track, prevent and combat hate crimes, and noted that in 2010 the FBI devoted some additional resources to combating hate crimes in areas most at risk for them.²⁹⁹ However, the U.S. Government did not acknowledge the disparity between numbers of hate crimes recorded by the FBI’s Uniform Crime Reporting program and the number recorded by the Bureau of Justice-compiled National Crime Victimization Survey. Nor did it recognize underreporting of hate crimes by law enforcement to the FBI.

Report Informing this Section:

Hansdeep Singh, Esq., Jaspreet Singh, Esq., & Murtaza Khwaja, International Center for Advocates Against Discrimination (ICAAD): *Perpetuating Discrimination: How the U.S. Government’s Compliance with the Underreporting of Hate Crimes Leads to a Failure to Protect Minority Groups and Effectively Combat Hate Crimes*

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF DESCENDANTS OF AFRICANS ENSLAVED IN THE U.S.

Descendants of Africans Enslaved in the United States

Descendants of Africans Enslaved in the U.S. (DAEUS) face a system of oppression that results in ongoing disparate outcomes in health and wellbeing. The U.S. fails to know the status of DAEUS and has reconstructed through its laws another system of oppression.

Suggested Recommendations:

1. The U.S. Government should amend census and data collection category to have more ethnic categories for Blacks including a category for Descendants of Africans Enslaved in the United States (DAEUS).
2. The U.S. Government should conduct racial impact study on all policies and laws with particular attention to impact on DAEUS.

²⁹⁷ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 52 (13 June, 2013).

²⁹⁸ *Id.*, at ¶ 51.

²⁹⁹ *Id.*, at ¶ 55.

3. The U.S. Government should require any federal, state, county and city that receives any federal funding to collect data on impact of programs using federal funds on DAEUS and publish that data electronically for the public.
4. The U.S. Government should require government agencies and federal contractors to be trained on dismantling anti-black racism, on systemic racism analysis and on ICERD obligations.
5. The U.S. Government should revise anti-discrimination law to include negligent discrimination.

Basis of the Recommendations:

The U.S. was established with a distinctive legal framework that espoused freedom and democracy while brutally suppressing people of African descent who were regarded as property and chattel. Over 396 years the law has been used to oppress people of African descent: the invention of racial slavery, the re-creation of slave-like conditions through legal Apartheid (also known as Jim Crow), and the re-creation of Jim Crow through the new American Apartheid through which this historical legacy of oppression continues. The CIA says that the quality of life in a country can be measured by life expectancy. In the case, of Black Americans then, the quality of life is worse than many developing countries, including Barbados, Cuba and Jamaica.³⁰⁰ This poor health status represents the result of continuing discrimination that DAEUS communities face in wealth and income, healthcare access, housing, education, food security, land access, and employment.³⁰¹ In addition to disproportionate arrest and imprisonment, DAEUS face extrajudicial killings that approximate the lynchings during the Jim Crow era.³⁰² This system of oppression continues in large part because the U.S. has blocked direct access to the court for disparate impact discrimination and does not allow any remedy for negligent discrimination.³⁰³ Finally, the U.S. has failed to collect data on DAEUS so their true status is unknown.

ICERD Articles Implicated: 2, 2(1)(a-b) & (d), 3, 5

Correlation to U.S. Government Report:

The U.S. Government does not mention categorization of issues specific to DAEUS.

Report Informing this Section:

Professor Vernellia R. Randall & Ms. Zakiya Sankara-Jabar, Racial Justice Now and 62 organizations and 212 individuals: *Status of Descendants of Africans Enslaved in the United States and the United States' Violation of the Convention on the Elimination of All Forms of Racial Discrimination*

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³⁰⁰ Vernellia Randall, *Dying While Black* (2006).

³⁰¹ Professor Vernellia R. Randall & Ms. Zakiya Sankara-Jabar: *Status of Descendants of Africans Enslaved in the United States and the United States' Violation of the Convention on the Elimination of All Forms of Racial Discrimination* 28-29.

³⁰² *Id.*, at 26.

³⁰³ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

LABOR AND EMPLOYMENT RIGHTS

Legal Child Labor in U.S. Agriculture

The U.S. exempts the agriculture industry from most worker protections, including those protecting children, resulting in hundreds of thousands of primarily Latino children working in fields in harsh and dangerous conditions.

Suggested Recommendations:

1. The U.S. Government should increase the minimum age for harvesting and for hazardous work in agriculture under The Fair Labor Standard Act to meet ILO standards. The Executive Branch should act to execute a change at the federal level to equalize child labor laws in agriculture to match those with all other industries.
2. The U.S. Government should act to improve labor conditions and equalize labor laws so that agricultural and domestic work receives the same protections as all other work under the FLSA.
3. The U.S. government should consider promoting non-soil based farming when applicable to produce, such as vertical hydroponic farming, to offer agricultural workers stability, less pesticides, and more oversight of working conditions.

Basis of the Recommendations:

An estimated 300,000-500,000 predominately Hispanic children, sometimes younger than twelve, harvest produce in intense hot weather, exposed to toxic pesticides, and using repetitive motions for 10-14 hours a day, in exploitative and poorly regulated work conditions. The high school dropout rate for these children is four times the national rate.³⁰⁴ Work is grueling and low paid, and if minimum wage is paid, the workers may be obligated to a quota, requiring more hours than they are paid. Fields may lack water, shade and basic sanitary features. Due to exemptions in the Fair Labor Standards Act, U.S. federal child laws are minimal for agriculture. Farm workers are exempt from minimum wage, overtime pay, and the right to unionize. The U.S. Federal standard for youth in non-agriculture work is age 16 with limits on hours and restrictions for their health until age 18 to protect their education, but these standards do not apply to child laborers in agriculture.

ICERD Articles Implicated: 5(e)(i), (ii), (iv), & (v), 6

Correlation to U.S. Government Report:

The U.S. Government claims, “all workers in the United States, regardless of immigration status, are entitled to the protections of U.S. labour and employment laws, including those related to minimum wage, overtime, child labour, workplace health and safety, compensation for work-related injuries...,”³⁰⁵ yet fails to mention its minimal labor standards, regulations or enforcement in agriculture, including for child laborers.

Report Informing this Section:

³⁰⁴ <http://www.hrw.org/support-care>.

³⁰⁵ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 61, 63-64 (13 June, 2013).

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Attacks on Workers' Rights and Political Participation in Indiana

In the political climate developed following passage of legislation that suppresses voting by minorities, Indiana also passed anti-union legislation and government officials ignore community and worker rights in negotiating public-private partnerships for economic development.

Suggested Recommendations:

1. The U.S. Government should investigate the involvement of Indiana officials in the executive and legislative branches for involvement in the media campaign of disinformation used to sway voter opinions regarding “right-to-work” anti-union legislation in Indiana.
2. The U.S. Department of Justice should investigate the activities of Indiana state, regional and municipal officials in their use of funds secured for expansion of construction at the Gary-Chicago International Airport, all publicly-funded projects, and all private-public partnerships.

Basis of the Recommendations:

Indiana's has a history of racist, anti-worker campaigns, which have led to lowered wages and standards of living in Indiana. The campaign for “Right-to-Work” (RTW) legislation, and its passage into law in Indiana 2012, marked an intensification of anti-worker politics in Indiana. RTW laws stop employers and employees from negotiating an agreement, known as a union security clause, requiring all workers who receive the benefits of a collective bargaining agreement to pay their share of the costs of unions representing them. Thus, RTW laws leave dues-paying members in the unfair position of paying costs for non-dues-paying employees.³⁰⁶ Since RTW became law in Indiana, conditions for workers and their ability to advocate on behalf of themselves through unions have deteriorated.³⁰⁷

RTW legislation passed after a number of voter suppression measures were enacted in Indiana. For example Indiana passed one of the first voter-identification (I.D.) laws in the nation despite studies having shown that voter fraud was negligible and unworthy of legislative attention. The U.S. Supreme Court declared the Indiana voter I.D. law constitutional in 2008, despite the fact that the law imposes unjustified burdens on the elderly, poor and minorities. In the current political climate in Indiana, worker's rights and rights for low-income communities continue to be dismissed in public-private plans for economic development, including expansion of the Gary-Chicago airport.³⁰⁸

ICERD Articles Implicated: 1(1), 2(1), 5(c), 5(e)(i), (ii), & (v)

Correlation to U.S. Government Report:

³⁰⁶ MINN. AFL-CIO, “Right to Work” Laws: Get the Facts, <http://www.mnafcio.org/news/right-work-laws-get-facts>.

³⁰⁷ Rev. Dwight Gardner & Rev. Cheryl Rivera, Northwest Indiana Federation of Interfaith Organizations; Renee Hatcher, Esq.; Chicago Lawyers' Committee for Civil Rights Under Law; Rev. Dr. John E. Jason, Sr.; Trinity United Church of Christ, Gary; & M. Thandabantu Iverson, PhD.: *Workers' Human Rights in Indiana: A Critical Look at Recent Violations*, at 1.

³⁰⁸ *Id.*, at 1-2.

The U.S. report does not directly address voter-ID vote suppression laws or “Right to Work” anti-union laws.

Report Informing this Section:

Rev. Dwight Gardner & Rev. Cheryl Rivera, Northwest Indiana Federation of Interfaith Organizations; Renee Hatcher, Esq.; Chicago Lawyers’ Committee for Civil Rights Under Law; Rev. Dr. John E. Jacson, Sr.; Trinity United Church of Christ, Gary; & M. Thandabantu Iverson, PhD.: *Workers’ Human Rights in Indiana: A Critical Look at Recent Violations*

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Racial Discrimination in Employment

People of color in the U.S. face disproportionately high rates of unemployment, due in part to mis- and over-use of arrest records and wrongful use of credit checks in employment; and lack of access to the court system for low-wage workers. LGBT people of color, in particular face high rates of employment discrimination.

Suggested Recommendations:

1. The U.S. Government should become a “model employer” with respect to the use of credit history and criminal background checks when screening applicants for employment, and follow guidance from the EEOC and DOL.
2. U.S. President Obama’s administration should support, and Congress should pass, employment legislation including the Equal Employment for All Act (H.R. 645/S.1837), the Fairness & Accuracy in Employment Background Checks Act (H.R. 2865), and the Accuracy in Background Checks Act of 2013 (H.R. 2999).
3. The Department of Labor’s (DOL) Office of Federal Compliance Programs should increase the utilization goals to reflect the overall population of women and minorities working in the modern workforce; update and revise its affirmative action requirements and require construction contractors to document their efforts to recruit and retain women and minorities; and increase its oversight of large construction sites including on-site monitoring in order to assess job conditions, job assignments and overall equal opportunity procedures.
4. The DOL should update the long overdue Equal Employment Opportunity in Apprenticeship Regulations without further delay and enforce them with both incentives and penalties.
5. The Equal Employment Opportunity Commission (EEOC) should issue guidance on the scope of protections for LGBT people under Title VII of the Civil Rights Act of 1964, and DOL should adopt rules explicitly prohibiting discrimination based on sexual orientation and gender identity in federally-funded job training and workforce development programs.
6. The Obama administration should support, and Congress should pass, explicit sexual orientation and gender identity workplace non-discrimination protections. Anti-LGBT discrimination should be treated the same as race, color, sex, national origin, age, disability, or genetic information under federal workplace laws.

7. The Obama administration should support, and Congress should pass, legislation to address the *Hoffman Plastics* decision by making clear that nothing in immigration law prevents courts and agencies from fully enforcing core labor laws; and to address the *Sandoval* decision to restore a private right of action to challenge disparate impact race discrimination in federal programs.

8. U.S. President Obama should support, and Congress should pass, legislation to provide and restore adequate remedies and access to the courts limited by recent Supreme Court cases, including the Fair Employment Protection Act,¹⁶⁸ the Protecting Older Workers Against Discrimination Act,¹⁶⁹ the Equal Employment Opportunity Restoration Act,¹⁷⁰ Civil Justice Tax Fairness Act,¹⁷¹ and the Arbitration Fairness Act.¹⁷²

Basis of the Recommendations:

The 2008 - 2009 recession exacerbated the existing wealth gap between Whites and communities of color.³⁰⁹ While the recession affected the entire population, the current unemployment rate for African Americans is roughly double the rate for Whites.³¹⁰ The overuse and misuse of criminal and arrest records and credit checks have a discriminatory impact on people of color seeking employment.³¹¹ Even the U.S. Office of Personnel Management requires applicants for a swath of government positions undergo credit and criminal background checks, contravening guidance from federal agencies. Moreover, in a series of recent cases, The U.S. Supreme Court has made it increasingly difficult for workers, and particularly low-wage workers and workers of color, to access the court system, bring collective action, and seek remedies through the judicial process.³¹²

ICERD Articles Implicated: 5(e)(i)-(ii) & (v), 6

Report Informing this Section:

The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America*

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ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF INDIGENOUS PEOPLE

Historic and Current Removal of Indigenous Children from Their Families and Communities

The U.S. Government abducted American Indian and Alaska Native children from their families and subjected them to abusive boarding schools throughout the 19th and 20th centuries, leaving legacies of social disruption that have yet to heal or be redressed. Additionally, Indigenous children

³⁰⁹ Rebecca Tippet, et al., Ctr. for Global Policy Solutions, Why Closing the Racial Wealth Gap is a Priority for Economic Security, *available at* http://globalpolicysolutions.org/wp-content/uploads/2014/04/BeyondBroke_Exec_Summary.pdf

³¹⁰ Bureau of Labor Statistics, Household Dated Annual Averages, *available at* <http://www.bls.gov/cps/cpsaat24.pdf>.

³¹¹ See The Leadership Conference Education Fund, The Leadership Conference on Civil and Human Rights, Lawyers' Committee for Civil Rights Under Law, & National Association for the Advancement of Colored People: *Falling Further Behind: Combating Racial Discrimination in America* 17-19.

³¹² See *Id.*, at 19-20.

continue to be disproportionately targeted for removal from their families and communities through the U.S. child welfare system.

Suggested Recommendations:

1. The U.S. Government should rescind and nullify laws and regulations relating to the establishment of Indian boarding schools, reform schools or similar that remain “on the books.”
2. The U.S. Government should facilitate gathering of data and statistics relating to the era of Indian boarding schools, including but not limited to the number of children who were forced to attend, and the number of children that disappeared while attending.
3. The U.S. Government should, in conjunction with impacted Indigenous Peoples, develop and provide a mechanism with regard to Indian boarding schools to determine ongoing damages and impacts, collect relevant data, information and testimonies and implement appropriate responses and remedies. This should include individual harms experienced by boarding school attendees, intergenerational harms experienced by their descendants, residual harms communities face as historical trauma, and systemic forms of discrimination that are a byproduct of the bias perpetuated by the boarding school era.
4. The U.S. Government should, in consultation with Indigenous Peoples, establish a robust federal review system to ensure that ICWA is fully implemented and enforced, including promulgating federal regulations to ensure that individual states are complying with their ICWA obligations.
5. The U.S. Government should provide Indigenous Peoples with sufficient funding to provide family and child care services; and provide individual states’ protection and child welfare systems with sufficient funding to ensure ICWA compliance.
6. The U.S. Government should conduct an investigation into the biased treatment of Indigenous families in individual states’ child protection and child welfare systems.

Basis of the Recommendations:

Beginning in 1879, and through the 19th and 20th centuries, the U.S. Government forcibly separated American Indian and Alaska Native children from their families and communities, with the intent of destroying their culture, language and community ties; abducting them to attend Christian boarding schools.³¹³ In the boarding schools, children were subject to abuse, epidemics, and death.³¹⁴ Many laws to facilitate forcible removal of Indigenous children remain in force.³¹⁵ The legacy of this assimilation era and the actions by child welfare systems to remove Indigenous children from their families and culture continue to pose serious risk to Indigenous children’s identities.

In 1978, the U.S. enacted legislation to address long-standing practice of removing Indigenous children from their families and placing them with non-indigenous families in an effort to assimilate them non-indigenous culture. By advancing a strong presumption of Indigenous custody for

³¹³ Lajimodiere, Denise K. “American Indian Boarding Schools in the United States: A Brief History and Their Current Legacy” in Stamatopoulou, Elsa and Wilton Littlechild *Indigenous Peoples’ Access to Justice, Including Truth and Reconciliation Processes* Institute for the Study on Human Rights at Columbia University, 2014 pp. 255-261.

³¹⁴ For a case study on the high numbers of deaths at one boarding school in the United States, see “A Blueprint for Death in US Off-Reservation Boarding Schools: Rethinking Institutional Mortalities at Carlisle Indian Industrial School, 1879-1918”, A Thesis by Preston McBride May 15, 2013, available on request.

³¹⁵ See “6 Boarding School Laws Still on the Books,” by Christina Rose, *Indian Country Today* 4/30/14 online at: <http://indiancountrytodaymedianetwork.com/2014/04/30/6-boarding-school-laws-still-books-154579>.

Indigenous children, the Indian Child Welfare Act of 1978 (“ICWA”) marked a significant change and recognition of Indigenous peoples’ right to self-determination.³¹⁶ However, recent studies show widespread non-compliance with the law. Indigenous children are still being removed from their homes and communities at disproportionate rates,³¹⁷ preventing them from fully exercising their rights to culture and community. Contributing factors include lack of federal oversight; lack of education and understanding of ICWA on the part of state social workers, judges and other officials; lack of binding regulations on ICWA; and inadequate funding for tribes to ensure ICWA compliance and Indigenous Peoples’ ability to care for their children as sovereign entities.³¹⁸

ICERD Articles Implicated: 1.1, 2, 2(c), 5, 5(e) 6

Correlation to U.S. Government Report:

The U.S. does not address issues related to removal of Indigenous children from their families and communities in its report.

Reports Informing this Section:

National Native American Boarding School Healing Coalition, International Indian Treaty Council, National Indian Child Welfare Association: *Indigenous Children and the Legacy and Current Impacts of the Boarding School Policies in the United States and the Lack of Redress, Restitution and Restoration by the United States to Address these Impacts or to Acknowledge Responsibility for Them*

National Native American Boarding School Healing Coalition, International Indian Treaty Council, National Indian Child Welfare Association: *The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture*

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STATE AND LOCAL MULTI-ISSUE REPORTS

Disparities and Solutions in Minnesota

Racial disparities abound in Minnesota, including in the areas of food access and criminal justice. However, state and local initiatives, if fully implemented, are promising steps and offer guidance for decision-makers throughout the U.S on how to implement ICERD.

Suggested Recommendations:

1. The State of Minnesota and the City of Minneapolis should be commended for developing high-level governmental reports that are consistent with the requirements of ICERD Article 2. Minnesota’s decision-makers at the state and local levels should adopt policies and practices

³¹⁶ For more details from the legislative hearings that lead to the passage of ICWA see H.Rep. 95-1386 at www.narf.org/icwa/federal/lh.htm for a summary see: <http://www.narf.org/icwa/federal/lh.htm>.

³¹⁷ Hill, R. B. Casey-Center for the Study of Social Policy Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat. (2007), *An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels*. Seattle, WA: Casey Family Programs; Woods, S. & Summers, A. (2014). Technical assistance bulletin: Disproportionality rates for children of color in foster care (FY 2012). National Council of Juvenile and Family Court Judges: Reno, NV <http://www.ncjfcj.org/resource-library/publications/disproportionality-rates-children-color-foster-care-fiscal-year-2012>.

³¹⁸ See National Native American Boarding School Healing Coalition, International Indian Treaty Council, National Indian Child Welfare Association: *The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture* 8-10.

consistent with the state's *Health Equity Report*. Furthermore, other states should adopt similar policies and practices.

2. In light of the federal government's obligation to ensure fulfillment of the treaty by state and local governments, the U.S. Government should report to the Committee within a year, detailing 1) effective steps it has taken to ensure fulfillment of the treaty in this regard, and 2) progress made in this regard by any state and local governments.

3. Federal state and local officials should adopt the recommendations by the Special Rapporteur on the Right to Food,³¹⁹ and deliver a progress report on the development of state and national food rights action plans within a year.

4. Regarding Disparity in Minority Contact (DMC) with law enforcement, the federal and state legislators should a. strengthen implementation of the established coordinating bodies to oversee efforts to reduce the DMC, b. create systems to collect local data at every point of contact youth have with the juvenile justice system (disaggregated by descriptors such as race, ethnicity and offense) to identify where disparities exist and causes, c. develop and implement plans to address disparities that include measurable objectives for change and publicly report findings, and d. restore funding for Minnesota's anti-DMC activity, which has dropped from \$6,152,300 in 2002 to \$836,490 in 2012.

5. Regarding the racially disparate impact of drug and crime control policies and practices, the Minnesota Supreme Court's Committee on Equality and Justice should file a report within a year using the ICERD Article 2 framework, assessing the affect that incarceration rate disparities have on three of its principal goals: 1) to promote equal treatment before the tribunals and all other organs administering justice; 2) to promote a high level of trust and public confidence in the judicial system; and 3) to implement and monitor the recommendations of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System's Final Report,³²⁰ providing the opportunity for stakeholder comment during preparation of the report.

6. To end the school discipline racial disparities, Minnesota decision-makers should formally consider for implementation, the recommendations listed in the Policy Brief *Solutions Not Suspensions*,³²¹ which call in part for school discipline policies that align with a restorative framework, and limits the use of law enforcement in schools.

Basis of the Recommendations:

While racial disparities and systemic disadvantages for people of color abound in Minnesota, particularly in the areas of employment, housing, health, access to nutritious food, income, and incarceration rates, the state and a major municipal government recently took initial steps toward addressing this, in line with obligations under the Convention. The Minnesota Department of Health released a report to the legislature: *Advancing Health Equity in Minnesota*,³²² which identifies Minnesota's severe racial disparities across multiple sectors, acknowledges that these disparities result in significant measure from practices and public policies that have advantaged European-Americans while disadvantaging communities of color and Indigenous people, and calls for

³¹⁹ Report of the Special Rapporteur on the right to food, Olivier De Schutter, ¶ 44 U.N. Doc. A/HRC/25/57 (24, Jan. 2014).

³²⁰ Minnesota Supreme Court Task Force on Racial Bias in the Judicial System's Final Report (1993)

http://www.mncourts.gov/documents/0/Public/Court_Information_Office/Race_Bias_Report_Complete.pdf.

³²¹ MINNESOTA MINORITY EDUCATION PARTNERSHIP, SOLUTIONS NOT SUSPENSIONS- ENDING THE DISCIPLINE GAP IN MINNESOTA PUBLIC SCHOOLS (2013), available at http://mmep.org/wp-content/uploads/2014/03/official_sns_research-policy_brief.pdf.

³²² Advancing Health Equity in Minnesota, http://www.health.state.mn.us/divs/chs/healthequity/ahe_leg_report_020414.pdf.

government decision-makers at all levels to examine their policies for impact on the disparities and take effective corrective action. In Minneapolis, Minnesota's largest city, a City Council Task Force chaired by the Mayor is currently working on recommendations from its Civil Rights Department and community groups to develop a mechanism for reviewing its budget-making process/recommendation and internal operations (hiring, etc.) to formally and routinely consider racial equity implications of its decisions and operations. The City Council also adopted a Resolution recognizing the ratified human rights treaties, including the ICERD, and urging Minneapolis residents to "apply the human rights framework to issues in the United States, the State of Minnesota, the City of Minneapolis."

ICERD Articles Implicated: 2(1)(c), 2(2),

Report Informing this Section:

Ad-Hoc Work Group- Minnesota Re: US Compliance with Human Rights Treaties: *Shadow Report From Minnesota: A Human Rights Perspective on the Land of 10,000 Lakes Disparities*

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Municipal Bankruptcy, Privatization Policies and Denial of Services in Detroit, Michigan

The primarily African American population of the City of Detroit is detrimentally impacted by a system of un-elected emergency management, forced bankruptcy and restructuring of the city, imposed by the government of the State of Michigan.

Suggested Recommendations:

1. The U.S. Government must take measures to cancel illegitimate debt owed by the City of Detroit to banks.

Basis of the Recommendations:

In November 2012, Michigan voters rejected a proposal designed to allow the state to impose non-elected emergency managers, appointed by the state Governor, and empowered to privatize and control public properties, homes, school systems, municipal pension funds and healthcare programs. However, the state government passed Public Act 436, essentially the same legislative proposal rejected by the electorate, and designed it to be referendum-proof. In 2013, appointed emergency manager Kevyn Orr filed for municipal bankruptcy, despite overwhelming local opposition. This led to cancellation of healthcare coverage for over 30,000 municipal retirees and their families. As part of an effort by the emergency manager and other officials to privatize the publically owned water system, there has been a massive shut off of water services to thousands of households throughout Detroit. The state has seized a large public park, has privatized the Detroit Public Works, and is privatizing the Detroit Public Lighting System. The backdrop to this is an historical favoring of banks and corporate interests over those of city residents. Resources to help homeowners who were subject to predatory lending, for example, have not been utilized to prevent mortgage or tax foreclosures, but are being used to identify homes to tear down. Currently the emergency manager is threatening cuts to public pensions of municipal retirees. Much of the city debt is related to illegitimate interest rate swap deals, for which no banks or corporations have been held responsible.

ICERD Articles Implicated: 2, 5(a), 5(c), 5(d)(v), 5(e)(i-v)

Correlation to U.S. Government Report:

The U.S. Government's report does not mention conditions or measures specific to Detroit, Michigan, nor to the racially disparate impacts of "emergency management" paradigms for cities.

Report Informing this Section:

Michigan Emergency Committee Against War & Injustice, & Moratorium Now! Coalition to Stop Foreclosures, Evictions and Utility Shut-Offs: *A Call for Assistance in the Efforts to Halt Racism, Racial Discrimination and Acts of Genocide Directed Towards the People of the City of Detroit in the United States of America*

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COMPREHENSIVE ICERD IMPLEMENTATION

Coordination and Support for State & Local Governments

The U.S. Government lacks a national human rights infrastructure, with no transparent, institutionalized mechanisms to coordinate and support human rights education, monitoring or implementation at the federal, state and local levels.

Suggested Recommendations:

1. The U.S. Government should provide education and training to state and local officials on their obligations under the CERD, including dissemination of Concluding Observations by federal agencies in coordination with the State Department, within one year of the review, along with appropriate guidance on how they relate to state and local policy and effective means of implementation.
2. The U.S. Government should ensure a federal focal point exists to coordinate and liaise with state and local actors regarding human rights reporting and implementation, including by sharing effective practices at the state and local level and ensuring recommendations from international bodies are communicated to state and local governments.
3. The U.S. Government should provide state and local governments with funding to engage in civil and human rights monitoring and implementation, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and implementation.
4. The U.S. Government should establish institutionalized, transparent and effective mechanisms mandated to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.

Basis of the Recommendations:

In ratifying ICERD, the U.S. indicated that state and local governments share authority to implement the treaty.³²³ However, the U.S. Government has taken few steps to educate state and local governments about international human rights obligations or to support state and local efforts to implement human rights. No federal entities are tasked to coordinate and support human rights education, monitoring or implementation at any level of government. Many state and local officials are unaware of their obligations with respect to human rights treaty implementation,³²⁴ and resource and staffing constraints further impede promotion and protection of human rights at the local level. What exists at the federal level is an ad hoc approach to implementation without meaningful avenues for state and local government engagement.³²⁵ While U.S. law may prevent the federal government from compelling state and local compliance with human rights obligations,³²⁶ it has many tools to encourage state and local implementation.³²⁷ These include education, resources and funding to incentivize state and local human rights monitoring and compliance with ICERD.

ICERD Articles Implicated: 2, 5, 7

Correlation to U.S. Government Report:

In its Report, the U.S. Government acknowledged “that mechanisms designed to strengthen coordination are critical,” and that it is “examin[ing] ways to improve human rights treaty implementation at all levels of government.” The U.S. report further discusses “complementary [federal, state and local] protections and mechanisms” that foster human rights protections.³²⁸ Yet, these are not oriented around international human rights treaty standards nor adequately resourced to monitor or promote compliance with these standards. To date, the federal government has not disseminated U.N. Concluding Observations or UPR recommendations to state and local governments, nor offered guidance on how they relate to state and local policy or on effective practices to comply with these recommendations. While the U.S.’s one-year follow-up response to the Committee in 2009 noted that some agencies would incorporate CERD into trainings, there is no information available on whether this has occurred. Permanent federal human rights institutions and focal points are essential to address these gaps.

Report Informing this Section:

Columbia Law School Human Rights Institute & International Association of International Human Rights Agencies: *The Need for Effective Federal Outreach and Mechanisms to Coordinate and Support Federal, State and Local Implementation of the Convention—Response to the Seventh to Ninth Periodic Report of the United States of the Committee on the Elimination of all Forms of Racial Discrimination*

³²³ The U.S. ratified ICERD subject to the following understanding: “this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfilment of this Convention.” 140 CONG. REC. 14326 (1994).

³²⁴ As one example, in 2008, Human Rights Watch sent letters to the Attorneys General of every state to identify whether they were aware of ICERD and their states’ responsibilities under the treaty. Responses were limited but illuminating. The Attorney General of Kansas, for example, responded: “It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government” and requested a “cite to the pre-emptive federal law and/or Kansas Statute...creating a legal duty.” Human Rights Watch, *Submission to the Committee on the Elimination of all Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session* 64 (Feb. 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/HRW.pdf>.

³²⁵ Columbia Law School Human Rights Institute & International Association of Official Human Rights Agencies (IAOHRA) report, *Closing the Gap: The Federal Role in Respecting and Ensuring Human Rights at the State and Local Level: Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee* 18-19 (2013), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20\(ecopy\).pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20(ecopy).pdf).

³²⁶ *Medellin v. Texas*, 552 U.S. 491 (2008).

³²⁷ See, e.g., Risa E. Kaufman, “By Some Other Means”: *Considering the Executive’s Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971 at 2009.

³²⁸ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 31-32 (13 June, 2013).

U.S. Federalism & Impact on ICERD Obligations

By framing its recommendations in ways that directly acknowledge and leverage the U.S.’ federalist structure, the Committee can best facilitate the U.S.’ meaningful compliance with its ICERD obligations.

Suggested Recommendations:

The following example recommendations account for the federalist structure:³²⁹

1. With respect to immigration, the U.S. Department of Justice (DOJ), Office of Legal Counsel should issue an opinion clarifying that federal immigration law enforcement falls within the exclusive jurisdiction of the federal government, and rescind its 2002 opinion asserting that states have “inherent authority” to enforce federal immigration law.³³⁰
2. With respect to education, the Department of Education should require all states to ensure that schools in minority neighborhoods have the resources they need to ensure equitable implementation of existing Common Core State Standards as a condition of their continuing receipt of Title I funding. It should also develop programs and policies to incentivize racial and socioeconomic educational integration, as well as school improvement. DOJ should require school districts to collect and report enhanced discipline data disaggregated by race, ethnicity, and English Language Learner status.

Basis of the Recommendations:

The principles of American federalism do not excuse the U.S. from performance of its obligations under ICERD. However, the federalist structure may impact the manner in which performance is carried out. While the scope of the power to implement legislation pursuant to treaties was traditionally understood to be broad in the U.S., the extent of that power is less certain today. Nonetheless, the U.S. retains effective tools at its disposal to achieve state cooperation with federal efforts to combat racial discrimination beyond legislation. These include the creation of additional federal-state coordination entities; the use of spending conditions to incentivize states to act in accordance with federal policy prerogatives; the robust use of existing statutory, regulatory and constitutional authority; and persuading the states to act on their own, either through affirming its support for anti-discrimination initiatives or leading by example. Through these and other avenues, the U.S. can continue to make progress toward the elimination of racial discrimination in a way that is consistent with both its obligations under ICERD and its federal structure.

ICERD Articles Implicated: 1-7

Correlation to U.S. Government Report:

³²⁹ For more examples, see Lawyers’ Committee for Civil Rights Under Law: *U.S. Federalism and its Impact on ICERD Compliance* at 6-8.

³³⁰ U.S. DEPT. OF JUSTICE, OFFICE OF LEGAL COUNSEL, MEMORANDUM FOR THE ATTORNEY GENERAL RE: NON-PREEMPTION OF THE AUTHORITY OF STATE AND LOCAL LAW ENFORCEMENT OFFICIALS TO ARREST ALIENS FOR IMMIGRATION VIOLATIONS (2002), available at <https://www.aclu.org/files/FilesPDFs/ACF27DA.pdf> (last visited Jul. 1, 2014). For a detailed refutation of the 2002 Office of Legal Counsel memo’s analysis and conclusions, see ACLU IMMIGRANTS’ RIGHTS PROJECT, 2002 OLC OPINION ON STATE AND LOCAL IMMIGRATION ENFORCEMENT (2009), available at <https://www.aclu.org/files/assets/olc-exp-ag-4.pdf> (last visited Jul. 1, 2014).

The U.S. responded to paragraphs 12 and 13 of the Committee's 2008 Concluding Observations, by reaffirming its position that numerous mechanisms already exist to ensure adequate coordinated approaches to ICERD implementation at the federal, state and local levels. For example, it again cited enforcement agencies at the federal level and mentioned the recently established UPR Working Groups and Equality Working Group.³³¹ However, its report provides very little detail on how these groups intend to accomplish their goals, especially regarding coordination between federal, state, and local governments. Instead, it recites their goals on a general level, without providing much explanation of their approach or actions to date.

Report Informing this Section:

Lawyers' Committee for Civil Rights Under Law: *U.S. Federalism and its Impact on ICERD Compliance*

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INDEPENDENT INDIGENOUS PEOPLES' HUMAN RIGHTS

Submission by Yamasi People

Yamasi are a Southeast Indigenous People, but the U.S. continues to impose on Yamasi the structure of its Bureau of Indian Affairs, fails to recognize the Yamasi extended family network for caring for Yamasi children, and causes violence to Yamasi people in numerous ways.

Suggested Recommendations:

1. The U.S. Government should immediately prioritize dialogue with Indigenous Peoples with the U.S. state department as a part of US plans for peace, ending the U.S. refusal to negotiate treaties with female indigenous leaders and the systematic exclusion of Indigenous Peoples with traditions of female leadership from political participation, especially prioritizing dialogue for the protection of children.
2. The U.S. Government should end the use of apartheid 'Indian law,' use of Natives as mascots, and forced affiliation of Indigenous Peoples with US criminal agency: BIA.
3. The U.S. Government should promote the climate change mitigation efforts of all Indigenous Peoples protecting ecosystems where the US occupies.
4. The U.S. Government should deal with Indigenous children in local, state, and federal institution or child services equally, allowing all Native children to retain their language, culture, family, People, and identity, regardless of their ancestral orientation to the U.S. Bureau of Indian Affairs.

Basis of the Recommendations:

Yamasi People (YP) are a free and independent Indigenous People, governed and protected by the constitution and laws of Gule Nation. Yamasi are not "Indian" and at no time have been consensually affiliated with the U.S. Bureau of Indian Affairs (BIA). 'Indian law' is an apartheid

³³¹ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 31-32 (13 June, 2013).

construct that applies different rules, penalties, taxes, and obligations to citizens based on their ancestry. The U.S. has continued to impose on Indigenous Peoples its BIA. U.S. apartheid 'Indian law' violates ICERD in relegating Indigenous people to a separate legal system that deprives them of the right to govern themselves, and thus prevents them from accessing healthy food, water, education, shelter, and health opportunities. This discrimination is the U.S.' primary basis for dispossessing, defrauding, and attacking Indigenous Peoples, including YP, in the continued U.S. war of aggression to appropriate the natural blessings of Indigenous Peoples. As an example, the U.S. is enrolling indigenous citizens and entire Indigenous Peoples in the BIA, which promotes casinos and the transnational criminal corporations that profit from and control them. This policy and practice is exploiting Indigenous Peoples of the Americas by enrolling them, without their knowledge or consent, as beneficiaries in BIA casino scams.

ICERD Articles Implicated: 2, 5, 7

Correlation to U.S. Government Report:

The U.S. Government report does not address issues related to Indigenous Peoples governed by their own nations.

Report Informing this Section:

Yamasi People: *Original Nations' Laws Supersede US Law*

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Impact of the Border Wall on Lipan Apache (Ndé) Peoples

U.S. construction of the U.S.-Mexico border wall has had, and will continue to have a racially discriminatory and negative impact on the Lipan Apache People in Texas.

Suggested Recommendations:

1. The U.S. Government should consult immediately with the Lipan Apache concerning the impact of the border wall sections that have been erected and any future plans to expand the border wall; compensate Lipan Apache landowners for land taken that reflects the indigenous value of sacred land; and apply knowledge gained from consultation with the Lipan Apache concerning the border wall to restore access to and protect traditional lands, resources, and sacred sites.
2. The U.S. Government should assist the Lipan Apache Band of Texas as they navigate the complicated federal recognition application process to ensure speedy and successful recognition.
3. The U.S. Government should amend legislation to account for the rights of Lipan Apache and other stakeholders living in the affected border wall region to have access to land, consultation, remedies and fair compensation.

Basis of the Recommendations:

U.S. Congress began enacting legislation in 2005 to build a wall along the Texas-Mexico border.³³²

³³² REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (codified in scattered sections of 8 U.S.C.)

The wall has been erected through sensitive environmental areas, indigenous lands, and small private properties, but nonetheless skips some segments of the more lucrative properties owned by businesses, resulting in racially discriminatory impact to the Lipan Apache, whose territory is directly impacted.³³³ Using new, congressionally-granted power to waive any law that could possibly interfere with the construction of the wall,³³⁴ the U.S. Department of Homeland Security (DHS) waived 36 federal and state laws, including laws for the protection of indigenous peoples.³³⁵ Construction of the border wall has restricted access to traditional indigenous lands, resources and sacred places;³³⁶ has not reflected the necessary free, prior and informed consent of indigenous peoples; and has discriminated against indigenous peoples without providing effective compensation or remedies. Through takings of Lipan Apache land and the increased presence of armed border patrol agents, the wall threatens the Lipan Apache People's very existence.³³⁷ Additionally, Lipan Apache and other area indigenous families suffered exploitation, land grabs, and manipulation in the court system over subsequent generations.³³⁸ The U.S. still has not yet federally recognized the Lipan Apache Band of Texas, and has an unfair system for determining recognition,³³⁹ which denies members the right to seek benefits accorded to other indigenous peoples living within United States.

ICERD Articles Implicated: 2, 5, 7

Correlation to U.S. Government Report:

In its report, the U.S. Government recognized “the potential impact that physical security barriers may have on local communities and landowners,” but did not address CERD’s particular concern regarding the situation of the Lipan Apache People except to admit that it did not consult with the Lipan Apache People at all.³⁴⁰

Report Informing this Section:

The Human Rights Clinic at the University of Texas at Austin Law School, The Lipan Apache Band of Texas, Lipan Apache Women Defense, & Dr. Margo Tamez, University of British Columbia, *The Situation at the Texas-Mexico Border and the Racially Discriminatory Impact of the Border Wall on the Lipan Apache (Cúelcabén Ndé) Peoples in Texas*

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³³³ Leah Nedderman, Ariel Dulitzky and Denise Gilman, *Violations on the Part of the United States Government of the Right to Property and Nondiscrimination Held by Residents of the Texas Rio Grande Valley*, The Working Group on Human Rights and the Border Wall (June 2008), [hereinafter Working Group Report], available at <http://www.utexas.edu/law/clinics/humanrights/work/Border-Wall-right-to-property.pdf>.

³³⁴ Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (codified in scattered sections of 8 U.S.C.).

³³⁵ Notice of Determination for Illegal Immigration Reform and Immigration Responsibility Act of 1996, 73 Fed. Reg. 19078, 19079-80 (Apr. 8, 2008); 42 U.S.C. § 300f (2006); 5 U.S.C. § 551 (1946). See also Jenny Neeley, *Over the Line: Homeland Security's Unconstitutional Authority to Waive all Legal Requirements for the Purpose of Building Border Infrastructure*, ARIZ. J. ENV. L. & POL'Y, Vol. 1, No. 2 at 141 (2011).

³³⁶ Stephen R. Kelly, *A Bend in the River*, N.Y. TIMES, Nov. 7, 2013, available at http://www.nytimes.com/2013/11/08/opinion/a-bend-in-the-river.html?_r=0&hp=&rrref=opinion&adxnnl=1&adxnnlx=1383924276-GsJw3NSAWl4+eoccecR9Fg&_r=1&.

³³⁷ *¿Que Pasa?*, (Film of Eloisa García Tamez discovering a government and contractor meeting to construct the colossal Border Wall gate Feb. 2013) [hereinafter *¿Que pasa?* film], available at <http://lipancommunitydefense.wordpress.com/2013/02/28/que-pasa/>.

³³⁸ Margo Tamez, *Nádasí'né' Ndé' Isdzane Begozaabi' Shimaa Shini' Gokal Gowa goshjaa Ha'aná' idli Texas-Nakaiyé Godesdzog* [Translation: Returning Lipan Apache Women's Laws, Lands, & Power in El Calaboz Ranchería, Texas-Mexico Border] (May 2010) (unpublished Ph.D. dissertation, Washington State University) (on file with author) [hereinafter Ph.D. dissertation].

³³⁹ The Human Rights Clinic at the University of Texas at Austin Law School, The Lipan Apache Band of Texas, Lipan Apache Women Defense, & Dr. Margo Tamez, University of British Columbia, *The Situation at the Texas-Mexico Border and the Racially Discriminatory Impact of the Border Wall on the Lipan Apache (Cúelcabén Ndé) Peoples in Texas* at 10-13.

³⁴⁰ Committee on the Elimination of Racial Discrimination, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America, U.N. Doc. CERD/C/USA/7-9 ¶ 182 (13 June, 2013).

Violations of Juaneño Indigenous People's Rights

Federal, state and local officials are violating the human rights of the Juaneño Indigenous People in California, by allowing and encouraging construction on their sacred sites and failing to provide the Juaneño federal recognition.

Suggested Recommendations:

1. The U.S. Government must immediately notify U.S. Fish and Wildlife Service and the U.S. Army Corp of Engineers of their duties under ICERD to: a. deny any application by St. Michael's to use sacred land of the Juaneño Nation or to build thereon a school and athletic field; and b. to publicize the texts of ICERD and other human rights treaties throughout local offices.

Basis of the Recommendations:

The St. Michael's Nobertine Fathers of Orange County Project, in California, is in the final stages of federal permits to build a large high school/monastery and athletic fields on the Holtz Ranch site of the Juaneño Indigenous People. This land has both spiritual importance and is a high value cultural resource. Other key sites for the Juaneño People have already been destroyed. The U.S. Government fails to federally recognize the Juaneño People, as its requirements for recognition exclude Peoples under a certain number of members.

ICERD Articles Implicated: 2, 5, 6

Correlation to U.S. Government Report:

The U.S. Government's Report fails to mention human rights violations of the Juaneño Indigenous People.

Report Informing this Section:

Ann Fagan Ginger, Meiklejohn Civil Rights Institute: *Indigenous Peoples Rights Violated*

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COMPREHENSIVE U.S. COMPLIANCE WITH ICERD OBLIGATIONS

Racial Injustice in the U.S.

As described in-depth in the NAACP report cited below, the U.S. is violating its obligations under ICERD in multiple ways. This summary highlights lack of compliance regarding "Stand Your Ground" laws, but more information on the following areas are to be found in the full report: criminal justice, prisons, police brutality, juvenile justice, hate groups, death penalty, immigration rights—Haitian Asylum Seekers, wealth gap, residential segregation and housing discrimination, education, schools' use of force, health care, and voting rights.

Suggested Recommendations:

1. There must be a repeal of all U.S. State Stand your Ground laws, and the federal government must use its authority to require modification of state self-defense laws to include the removal of blanket immunity and a duty to retreat.
2. The U.S. Government must enact safe, sane, sensible and effective gun violence prevention legislation to include: a ban on military-style assault weapons; a ban on the manufacture or sale of high-capacity ammunition clips; an increase in the effectiveness and comprehensiveness of background checks; and a ban on 'straw purchasers' of all sizes.
3. The U.S. Government must pass and enact the End Racial Profiling Act to address the racially biased manner in which SYG and other laws are implemented through the U.S. criminal justice system.

Basis of the Recommendations:

Since 2005, twenty-one additional states have adopted “shoot first” statutes that generally permit the use of deadly force in public places with no duty to attempt retreat. The Florida law has particularly dangerous provisions, including one that enables a shooter to escape liability in a pretrial hearing, and another preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful. SYG laws are based on fear, which is often rooted in racism and explains the different outcomes and applications of the law. Florida, the first state to pass a “Stand Your Ground” (SYG) law in 2005, was the site of the controversial killing of a 17 year-old African American student, Trayvon Martin, in 2012. Though Martin was unarmed, George Zimmerman, his attacker, discharged a gun he had concealed in his waist, killing Martin. Nearly six weeks later, amidst public outcry around the failure to charge Zimmerman for murder, Zimmerman was finally taken into custody and charged by a special prosecutor, but ultimately a jury found him “not guilty” based on instructions derived from the SYG law. In 2010, Marissa Alexander, an African American woman, was sentenced to 20 years in prison after she fired a bullet at a wall to scare off her abusive husband. She claimed self-defense, tried to invoke Florida's SYG law and rejected plea deals that could have gotten her a much shorter sentence. A jury found her guilty as charged: aggravated assault with a deadly weapon. The local NAACP chapter and the district's African-American congresswoman say blacks more often are incarcerated for long periods because of overzealous prosecutors and judges bound by the wrong-headed statute.

ICERD Articles Implicated: 5(a) & (b), 6

Correlation to U.S. Government Report:

Despite a failed U.S. legislative effort in 2013 to address gun violence, the U.S. Government report does not mention “Stand Your Ground” or “shoot first” laws.

Report Informing this Section:

Leon W. Russell, Henry O. Shelton, Jotaka Eaddy, National Association for the Advancement of Colored People (NAACP): *Shadow Report of the National Association for the Advancement of Colored People to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*

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Weaknesses of the U.S. Report to the CERD Committee

As indicated in the report cited below, the U.S. Report to the CERD Committee inadequately addresses its obligations under the Convention, and fails to describe how the U.S. has fulfilled certain obligations under ICERD.

Suggested Recommendations:

1. The U.S. Government must take action to ensure compliance with ICERD at all levels of government, including by publicizing the text and requiring periodic reports from federal officials and lawmakers; as well as incentivizing reports from local and state level government officials. It should additionally take action to facilitate coordination between federal, state and local government agencies and officials, including by allocating resources towards this end.

Basis of the Recommendations:

The U.S. Report to the Committee does not indicate efforts to educate state and local officials and lawmakers about the text of ICERD, nor to facilitate their compliance with obligations under ICERD. While it indicates it has conducted some trainings, it does not give statistical information on how many trainings it has held. The report fails to mention the California State Legislature's passage of a resolution requesting the state Attorney General to publicize the text of treaties the U.S. has ratified, and to prepare templates for state compliance to be used by other states.

ICERD Articles Implicated: 1-7

Report Informing this Section:

Ann Fagan Ginger, Meiklejohn Civil Rights Institute: *Weakness of the U.S. Report*

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