

United States of America

Submission to the United Nations Universal Periodic Review

Ninth Session of the Working Group on the UPR
Human Rights Council
1-12 November 2010

From Civil Rights to Human Rights: Implementing US Obligations Under the International Convention on the Elimination of All forms of Racial Discrimination (ICERD)

Submitted by:

CERD Task Force¹

Cidadao Global

Women's HIV Collaborative*

Women of Color United*

Atlanta Public Sector Alliance*

Professor Thandabantu Iverson*

Malcolm X Grassroots

Endorsed by the following 57 Organizations and 37 Individuals:

Organizational Endorsements: Advocates for Environmental Human Rights; Afrolatina Forum; American Civil Liberties Union of Mississippi (ACLU-MS); Amigos Multicultural Services Center; Anti-Racism Committee of the National Lawyer's Guild; Arab-American Association of New York; Atlanta Public Sector Alliance; Black People Against Police Torture; Black Workers for Justice; CADRE*; Casa Esperanza; Center

¹ This report was written by Ramona Ortega for the CERD Task Force. The CERD Task Force is made up of human rights and civil rights advocates, lawyers, and organizations dedicated to the full implementation of the Convention on the Elimination of All Forms of Racial Discrimination within the United States. The Task Force is a sub-group of the U.S. Human Rights Network.

* Denotes membership of the CERD Taskforce of the U.S. Human Rights Network.

for Community Alternatives; Center for Constitutional Rights; Center for Law & Social Justice of Medgar Evers College, CUNY; Center for the Human Rights of Users and Survivors of Psychiatry; Center for Women's Global Leadership at Rutgers University; Center of Housing Rights and Evictions (COHRE); Champaign-Urbana (Illinois) Citizens for Peace and Justice; Chicago Anti-Eviction Coalition To Protect Public Housing; Data Center; Dominican Development Center; Emory University Institute of Human Rights; Families United for Economic Justice; First Peoples Human Rights Coalition; Gideon's Army Grassroots Army for Children; Green Worker Cooperatives; Harlem Tenants Council; Human Rights Caucus at Northeastern University School of Law; Human Rights Project of the Urban Justice Center*; INDIGENOUS; Indigenous Peoples and Nations Coalition; International Indian Treaty Council; Jewish Council on Urban Affairs; Justice Now; Latina & Latino Critical Legal Theory, Inc. (LatCrit, Inc.); Latin American and Caribbean Community Center; Lawyers Committee for Civil Rights*; Leonard Peltier Defense Offense Committee; Malcolm X Center for Self Determination; Mayday New Orleans; Meiklejohn Civil Liberties Institute; Metro Atlanta Task Force for the Homeless; Midwest Coalition for Human Rights Ministries in Economic Justice; Picture the Homeless; Poverty and Race Research Action Council*; Public Interest Projects; Rainbow PUSH Coalition; Restaurant Opportunities Center of New York (ROC-NY); Society of American Law Teachers (SALT); South Asian Americans Leading Together (SAALT); South Asian Forum; South Bay Communities Alliance; The Kirwan Institute for the Study of Race and Ethnicity at Ohio State University; The Praxis Project; The Rita Fund; Three Treaties Task Force of the Social Justice Center of Marin; World Organization for Human Rights USA

Individual Endorsements: **Abdulai Bah**; **Ana A Tobar**; **Anita L. Beaty**, Board member of Habitat International Coalition; **Betsy Foss-Campbell**, Affordable Housing Task Force in Waukesha County; **Britt Wegner**; **Chandra Bhatnagar**, ACLU*; **Christine Garza**; **Deanna Richarson**; **Deborah LaBelle**, Attorney; **Diana Salas**; **Dr. Kwame-Osagyefo Kalimara**, NAPO/MXGM; **Genora Reed**; **George E. Edwards**, Indiana University School of Law; **JB Davis**; **Jevon Nicholson**; **Joanna Samuelson**; **Joel M. Ritsema**, Loyola University Chicago; **Johnnie L. Bobb**; **Joyce Carruth**; **Julia Kleppin**; **Kristofer Rios**; **Laura Pemberton**; **Meetali Jain**, American University; **Melenie M. Eleneke**; **Michael Calderon-Zakas**; **Michelle Matos**; **Molly Talcott**, PhD.; **Otto Santa Ana**, UCLA; **Paul McLennan**, Atlanta Public Sector Alliance; **Perfecto Caparas**; **Rev. Eric Wilson**, North Congregational United Church of Christ in Columbus, OH; **Stephen Menendian**, Kirwan Institute for the Student of Race and Ethnicity; **Sylvanna Falcon**, UCalifornia; **Ute Ritz-Deutch, Ph.D**, Tompkins County Immigrant Rights Coalition; **Vernellia Randal***, UDayton School of Law; **Victoria Sawicki**, CLUW; **Wade Rosenthal**, National Lawyer's Guild

A) Executive Summary

1. Equality and Non-Discrimination are among the most fundamental entitlements in the human rights framework. Non-Discrimination is non-negotiable and an immediate right given to all by virtue of their humanity. The right to non-discrimination is found in the Universal Declaration of Human Rights and numerous treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination [hereinafter ICERD]. The United States adopted ICERD on November 20, 1994.
2. The CERD Task Force, a subgroup of the US Human Rights Network, was formed in 2007 to coordinate a national civil society shadow report that was submitted to the U.N. Committee on the Elimination of Racial Discrimination in 2008. The Task Force is made up of organizations that represent the leading voices in human rights and racial justice. Our core mission is to ensure the effective implementation of the ICERD and its key obligations at the national and local level.
3. The CERD Task Force is calling on the United States to introduce a federal plan of action on racial discrimination, similar to other nation states and in compliance with the Durban Plan of Action, to eliminate persistent racial disparities found in American society. Despite weak constitutional protections for disparate impact under US law, there are several policy measures, which must and should be taken under ICERD.
4. Reduction of racial disparities in poverty, education, health, and incarceration are essential to a healthy and vibrant democracy and will put the US on the path to eliminating racial discrimination. A Plan of Action, similar to the Millennium Development Goals, creates concrete and measurable progress in reducing disparities and promotes a more proactive and systemic approach to policy. Trillions of dollars have been spent to activate the national economy and those dollars must be used to create a more equitable society. In line with developed nations around the globe, a National Plan of Action on Racial Discrimination is not only an obligation under ICERD but also recognizes the continuing impact of past injustices.
5. The United States' record on racial discrimination and racial disparities is discouraging. In his 2009 visit to the US, the Special Rapporteur on Racism noted that "Socio-economic indicators show that poverty and race and ethnicity continue to overlap in the United States. This reality is a direct legacy of the past, in particular slavery, segregation, the forcible resettlement of Native Americans, which was confronted by the United States during the civil rights movement. However, whereas the country managed to establish equal treatment and non-discrimination in its laws, it has yet to redress the socio-economic consequences of the historical legacy of racism."²
6. In every indicator of human development as measured by three core areas of well-being: living a long and healthy life, having access to knowledge, and enjoying a decent standard of living, racial minorities fall below the mark in comparison to their white counterparts.³
7. Full implementation and compliance with ICERD would go a long way in remedying stark racial disparities. The United States' failure to recognize article 1(1) and General Recommendation XIV "to undertake to prohibit and to eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect" is a major impediment to full

² A/HRC/11/36/Add.3. 28 April 2009. para. 88-89.

³ Measure of America. Available at: <http://measureofamerica.org/wp-content/uploads/2008/07/ahdr-execsumm.pdf>

compliance with ICERD.

Civil Society Participation in the Universal Periodic Report

8. Robust civil society participation in the Universal Periodic Review process has produced a number of thematic reports which highlight racial dimensions of key human rights issues. This report focuses on racial discrimination and disparate impact under ICERD, with a particular emphasis on Article 5 and provides recommendations for full compliance.

B) Background and Normative Framework

Human Rights Framework

9. The United States has undergone two reviews by the Committee on the Convention on the Elimination of All Forms of Racial Discrimination; in 2001 and 2008 respectively.⁴ In both instances US civil society contributed shadow reports that provided substantial factual information about the reality of racial discrimination in the United States. In 2001 and 2008 the committee included several important recommendations in its final reports [A/56/18 and A/63/18] many of which remain unfulfilled.
10. The two reports of the Committee overlap in their attention to several topics. These include the need for additional affirmative action measures aimed at increasing opportunity for minority group members; pervasive obstacles to access for minority group members in the areas of education, housing, and health care; the impact of disparate treatment of minorities at all stages of criminal legal proceedings, including police brutality and violence towards members of minority groups, higher rates of incarceration and death penalty sentences for members of minority groups, and political disenfranchisement due to felon voting prohibitions; US treatment of indigenous peoples; and the need for stronger US efforts to publicize the work of the Committee and US obligations under the Convention.
11. The U.S.'s narrow interpretation of the definition of racial discrimination as proposed under the Convention continues to be a major impediment towards its full implementation. Under the Convention and other customary human rights law, racial discrimination is understood to mean both intentional and *de-facto* discrimination. With few exceptions cognizable racial discrimination in the US requires evidence of *intent* to discriminate. This requirement is contrary to the Convention's framework and does not reflect the real-world operation of discriminatory behavior in contemporary American society.⁵
12. As recognized by both the Convention and the Committee, discrimination includes policies and practices that produce outcomes that have a disparate impact, including those impacts in the areas of education, health, housing, and other economic, social, and cultural rights as elaborated in Article 5 of ICERD.
13. The Committee expressed concern in both 2001 and 2008 that the US law, policy, and court practice

4 The use of the term "minority" throughout this document indicates reference to racial, ethnic, and national minority groups, which are the same groups addressed in the CERD Committee's concluding observations. The use of the term "Convention or ICERD" throughout this document refers to the International Convention on the Elimination of All Forms of Racial Discrimination. The use of the term "Committee" throughout this document refers to the Committee on the Elimination of Racial Discrimination.

5 A Summary of U.S. NGO responses to the U.S. 2007 Combined Periodic Reports to the International Committee on the Elimination of All Forms of Racial Discrimination, February 2008, 6. Available at http://www.U.S.hrnetwork.org/files/U.S.hrn/images/linkfiles/CERD/0_Executive%20Summary.pdf

relies on a definition of racial discrimination at odds with their obligations under article 1, paragraph 1 of the Convention to ensure prohibition of conduct not only discriminatory not only in purpose but also in effect.⁶ It recommended in both years that the US review its legislation and practices to ensure protection against all forms of racial and ethnic discrimination and any unjustifiably disparate impact upon persons from different racial and ethnic backgrounds.

14. Numerous U.N. human rights monitors, including the Special Rapporteur on Education, Racism, and Housing have highlighted the challenge of racial disparities in combating racial discrimination in the United States.⁷
15. Each of the Special Rapporteur's noted the presence of racial disparities and highlighted the importance of policies to reduce these disparities.

National Framework

16. The US has an extensive constitutional and legislative framework to address intentional discrimination by public and private actors but lacks adequate protections and remedies related to the racially disparate impact of “neutral” policies and practices.
17. The fourteenth amendment of the Constitution contains an Equal Protection Clause that formally recognizes the principle of equality before the law. The fifteenth amendment further extends the right to vote to all races.
18. The advent of the “intent” doctrine, established through a 1976 court ruling, essentially narrowed the fourteenth amendment by requiring that victims of discrimination to prove “intent” to discriminate as a condition to getting a remedy; this is in direct conflict with the Convention.
19. The United States has robust legal protections for racial discrimination as defined and understood under the Civil Rights Act of 1964.⁸ The challenge in remedying contemporary manifestations of racial discrimination under the Civil Rights Act is the limited scope of protections and narrow definition of racial discrimination.
20. Various governmental agencies including the Justice Department Civil Rights Division, The Equal Employment Opportunity Commission, Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity among others are charged with authority to investigate and challenge patterns or practices of employment discrimination. The Voting Rights Act, as well as Titles VI and VII of the Civil Rights Act of 1964 are vehicles through which disparate impact claims may be litigated yet recent Supreme Court cases have limited the extent to which these statutes provide viable remedies for individuals injured by the racially disparate impact of racially neutral laws.⁹

6 As defined in Article 1 and General Recommendation XIV, racial discrimination includes distinctions and exclusions that have an “unjustifiable disparate impact” upon the rights of freedoms of particular racial or ethnic groups.

7 Special Rapporteur on the Right to Education Katarina Tomasevski visited the United States from 24 September to 10 October 2001. Her report (E/CN.4/2002/60/Add.1) was submitted on 17 January 2002. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, visited the U.S. from 19 May to 6 June 2008. His report (A/HRC/11/36/Add.3) was submitted on 28 April 2009. Special Rapporteur on Adequate HoU.S.ing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, visited the U.S. from 22 October to 8 November 2009. Her report was submitted on 12 February 2010.

8 The Civil Rights Act of 1964 prohibits discrimination in the areas of employment, housing and housing finance, access to public accommodations, and education.

9 Title VII prohibits tests that have a disparate impact on the basis of race or national origin that cannot be shown to be related to the job in question.

21. The United States is under an obligation to prohibit and eliminate laws, policies, and programs “which [have] the purpose or effect” of impairing rights or freedoms based on race.” The United States did not reserve this definition of discrimination. However, plaintiffs alleging racial discrimination in United States courts must prove that the defendant was motivated by racial animus, and that this discriminatory intent caused the plaintiff’s harm.¹⁰
22. One of the more substantive yet often overlooked obligations under ICERD is the requirement of states to collect and disaggregate data related to government policies and practices. CERD Committee’s General Recommendations IV and XXIV elaborate on extent of this obligation. While the US collects substantial data at the federal level by race, it is often difficult to access at the state level or within particular agencies. For example there is no national disaggregated data on Native Americans on death row even though where data is kept on Native Americans they suffer the grossest disproportion of executions than those of all other races. In data kept in most states of the Union they are listed as “other.”¹¹
23. The electoral college, the process by which presidents become elected in the US, continues to be a highly contested policy. The historical roots of the electoral college, creating rules that used slave bodies to be counted as three-fifths of a person with no voting rights, gave slaveholders and southern states increased representation in the house of representatives and consequently in the electoral college. As a result, 32 of the Constitution's first 36 years, a white slaveholding Virginian occupied the Presidency.¹² The legacy of this slave era policy continues to have disparate impacts of privilege and discrimination. Under the Electoral College, each state gets a fixed number of electoral votes based on population and congressional representation, so a state has no incentive to expand voting rights-as in states where formerly incarcerated individuals have no right to vote.¹³ As Harvard law professor Lani Guinier reports, in Wyoming, one Electoral College vote corresponds to 71,000 voters, while in large-population states (where the votes of people of color are more numerous) the ratio is one electoral vote to over 200,000 voters.¹⁴
24. In its report to the Committee the United States claimed to satisfy obligations to review policies and practices “through its ongoing legislative and administrative processes at all levels of government, as well as through court challenges brought by governmental and private litigants. Laws and regulations in the United States are under continuous legislative and administrative revision and judicial review.”¹⁵
25. The piecemeal and fragmented approach taken by the US to comply with Article 2 (1) (c) of the convention impedes the protection of victims of racial discrimination and often excludes them from seeking justice under the law.

C) Key Impacts of Racial Discrimination in the United States

26. Despite a clear understanding of Article 5 of the Convention, the United States continues to negate

10 See “Structural Racism in the United States.” A Shadow Report to the U.N. Committee on the Elimination of Racial Discrimination. February 2008. Prepared by: Stephen Menendian, Marguerite Spencer, Lidija Knuth, John Powell, Sara Jackson, Fran Fajana, Andrew Grant-Thomas, Jason Reece, Eva Paterson, and Kimberly Rapp.

11 See, e.g., Death Penalty Information Center, <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976>. visited April 15, 2010

12 Presidency: Why We Should Junk the Electoral College. By Akhil Reed Amar and Vikram David Amar. Full article: <http://hnn.us/articles/436.html>

13 Nationwide, approximately 7% of African Americans, and 13% of Black men, are unable to vote. More than 30% of African American men in Alabama are prevented from voting by felon disenfranchisement laws. Statistic found at: <http://www.eji.org/eji/node/360>

14 Making Every Vote Count By Lani Guinier. December 4, 2000 edition of The Nation.

15 CERD/C/U.S.A/6, para. 82

obligations related to economic, social and cultural rights. “As noted in the Initial U.S. Report, some of these enumerated rights [in Article 5] which may be characterized as economic, social, and cultural rights, are not explicitly recognized as legally enforceable “rights” under U.S. law. However, article 5 does not affirmatively require States parties to provide or to ensure observance of each of the listed rights themselves, but rather to prohibit discrimination in the enjoyment of those rights to the extent they are provided in domestic law. In this respect, U.S. law fully complies with the requirements of the Convention.”¹⁶

27. The data provided in this section clearly illustrates that the US has not lived up to its obligations to protect the right to non-discrimination in the enjoyment of rights enumerated under Article 5 and in fact discrimination in the enjoyment of these rights is increasing.

Poverty and Employment

27. In 2008, 24.7 % of blacks and 23.2 % of Hispanics were poor, compared to 8.6 % of non-Hispanic whites. The poverty rate for black and Hispanic children was 33.9 and 30.6 % respectively compared with 10 % of white children¹⁷. The wealth gap between whites and people of color, particularly women, creates an extreme burden on those most vulnerable in US society. A recent study found that for every dollar of wealth owned by the average white family the average family of color owns a mere 16 cents. Single black and Hispanic women are even more disproportionately affected by this wealth gap. Black and Latina women have just one penny of wealth for every dollar of wealth owned by their male counterparts and a tiny fraction of a penny for every dollar of wealth owned by white women.¹⁸
28. Nationally, the unemployment rate among blacks climbed in January 2010 to 16.5 %, while it declined for other groups. Unemployment is 12.6 % for Latinos and 8.7 % for whites.
29. Poverty is influenced by a number of factors, including housing segregation, transportation, and regional infrastructure. For many suburban dwellers, lack of adequate public services, like public transportation affects their ability to find and keep employment.
30. In Atlanta, Georgia, home to the civil rights movement, structural racism and a legacy of Jim Crow is responsible for the historic under-funding of city services and public institutions. For example, the Metropolitan Atlanta Rapid Transit Authority (MARTA) is the ninth largest transit system in the country and is the largest system in the U.S. that receives no operating help from the state.¹⁹ According to MARTA’s own research, 76% of its 500,000 daily transit riders are African American and low-income.
31. Lack of state support for transit has also led to the elimination of service in suburban Clayton County on March 31, 2010 to riders who were majority people of color yet the state is paying \$28 million toward a \$121-million expansion of the Xpress bus system for more affluent white suburban commuters.²⁰
32. The economic vulnerability of people of color in the US is the cumulative effect of slavery, apartheid, and discriminatory policies and practices of the United States government. The persistent impacts of racial discrimination between institutions and among private and public actors aggravate structural

16 CERD/C/U.S.A/6, para. 148.

17 National Poverty Center. Available at: <http://www.npc.umich.edu/poverty/#4>

18 Lifting as we Climb: Women of Color, Wealth, and America’s Future. Spring 2010. Insight: Center for Economic and Community Development.

19 Robert D. Bullard, “Highway Robbery” (2004), South End Press

20 CTRAN Reaches End of the Line,” Atlanta Journal-Constitution, March 29, 2010 <http://www.ajc.com/news/clayton/c-tran-reaches-end-416424.html>

racism.²¹

Housing

33. The average white American residing in a metropolitan area lives in a neighborhood that is 80 % white and just 7 % African American.²² The majority of whites also enjoy housing conditions that diverge drastically from those found in many communities of color. Minority groups live disproportionately in areas of concentrated poverty characterized by substandard housing, high rates of crime and violence, and inadequate access to education, health care, and employment opportunities.
34. In 2008, three of four non-Hispanic Whites owned homes, while fewer than half of all Blacks and Latinos did.²³
35. Residential racial segregation in the U.S. was systematically promoted by federal programs such as the Home Owners Loan Corporation and the Federal Housing Authority. “The development of the segregated housing market provides an example of the influence of public actions on private decision-making.”²⁴ From 1938 through the end of the 1950s, the FHA insured mortgages on nearly one-third of all new housing produced annually in the United States. But the FHA’s Underwriting Manuals considered blacks’ adverse influences’ on property values and instructed personnel not to insure mortgages on homes unless they were in ‘racially homogenous’ white neighborhoods.
36. The US Secretary for Housing and Urban Development stated in 2009 that concentrations of poverty across the American landscape have “resulted not in spite of government policy - but in many cases because of it.”²⁵
28. The recent sub-prime mortgage crisis, while further decreasing the availability of affordable housing, has harmed persons of color in disproportionate numbers. Subprime loans were made in African American communities at a rate five times greater than in white communities. In addition, approximately 47 % of Latinos received subprime loans, compared with just 17 % of whites.
29. The CERD Committee observed in General Recommendation 19 that racial segregation may be a product of government policies as well as the actions of private persons. In fact, in 2008 the Committee noted with great concern the disparate impact that Hurricane Katrina had on low-income African American residents in affected areas, particularly the fact that many of these persons continued to be displaced more than two years after the hurricane.

21 “As a signatory to the Convention on the Elimination of Racial Discrimination (CERD), 1 the United States is under an obligation to condemn and pursue a policy of eliminating racial discrimination, in all its forms (art. 2, ¶1). The U.S. has not taken seriously the duty under Article 2 of CERD to affirmatively address racial discrimination. Instead, the U.S. has rationalized racial discriminatory effects as not covered by U.S. law. Sometimes these effects are caused by explicit government policies. At other times they are caused by private actors. Frequently, it is a combination of both.” See Structural Racism in the United States: A Report to the U.N. Committee on the Elimination of Racial Discrimination, 2008. Available at: http://www.U.S.hrnetwork.org/files/U.S.hrn/images/linkfiles/CERD/1Structural_Racism.pdf.

22 John Logan, Lewis Mumford Ctr. For Comparative Urban & Reg’l Research, Ethnic Diversity Grows, Neighborhood Integration Lags Behind 1 (2001), available at <http://www.s4.brown.edu/cen2000/WholePop/WPreport/MumfordReport.pdf>.

23 Census Bureau Reports on Residential Vacancies and Homeownership,” February 3, 2009 at 8. <http://www.census.gov/hhes/www/housing/hvs/qtr408/files/q408press.pdf>.

24 Ibid “ Structural Racism in the United States” pg. 8

25 Prepared Remarks for Secretary of Housing and Urban Development Shaun Donovan at the Brookings Institution Metropolitan Policy Program’s Discussion – “From Despair to Hope: Two HUD Secretaries on Urban Revitalization and Opportunity.” National Press Club, Washington, D.C., Tuesday, July 14th, 2009.

Education

30. In the 2006/2007 academic year 76.8 % of whites held a Bachelors degree compared with 8 % and 5.3 % of black and Hispanics respectively.²⁶ The rate is substantially lower for more advanced degrees. Students living in low-income families were approximately 10 times more likely to drop out of high school between 2006 and 2007 than were students living in high-income families.²⁷ The high correlation between poverty and race creates a disproportionate impact on the right to education for racial minorities.
31. One out of every six African American public school students and one out of every nine Latino public school students attends a school with nearly 100 % minority students.²⁸ Moreover, minority public school students are more likely to attend schools with high numbers of poor students. In 2002-2003, 71 % of all African American public school students and 73 % of all Latino public school students attended high-poverty schools. For the same period, only 28% of all white public school students attended a high-poverty school.²⁹ Schools with high numbers of poor students face a host of attendant challenges for creating a productive learning environment.
32. The disparities in racial makeup and quality of public schools are inextricably linked to the similar imbalances in the housing context. Local property taxes typically make up a substantial portion of public school funding. For example, schools in inner-city neighborhoods of New York receive an average of \$4,000 annually, while suburban New York schools on average receive \$40,000 per year.³⁰
33. Schools with smaller budgets face heightened barriers to providing variety and quality of educational opportunities, in turn decreasing students' chances of attaining higher education and narrowing their range of eventual employment opportunities. This correlation between race, neighborhood, and prospects for upward mobility is directly at odds with the principles of equal opportunity and meritocracy purported to characterize US political and social systems. Despite this dissonance, however, the US Supreme Court in 2007 ruled unconstitutional school district efforts to implement race-conscious affirmative action policies aimed at reducing de-facto segregation along racial and socio-economic lines.³¹

Criminal Justice and Juvenile Detention

34. As explored in numerous studies and reports submitted to United Nations bodies, the disproportionate number of black and Latino men, and increasing numbers of women, in the criminal justice system puts the United States out of compliance and in clear violation of ICERD and ICCPR. The urgent nature of this problem is found in both state and national data.
35. The United States has the largest incarceration rate in the world.³² As of December 21, 2008, there were

26 U.S. Department of Education, National Center for Education Statistics. (2009). Condition of Education 2009, Indicator 24 (NCES 2009-081)

27 High School Dropout and Completion Rates in the United States: 2007, National Center for Educational Statistics 2009064. Cataldi, E.F., Laird, J., and KewalRamani, A

28 Gary Orfield & Chungmei Lee, Civil Rights Project, Why Segregation Matters: Poverty and Educational Inequality, (2005), note 93, at 12-13.

29 *Id.*, at 19, tbl.7 (2005). Note that these figures exclude millions of private school students, who are disproportionately white. Data from the U.S. Department of Education shows that, of 5,122,772 private school students nationwide, 76.2% are non-Hispanic whites, even though non-Hispanic whites comprise only 59% of children in the United States. See U.S. Dep't Of Educ., Characteristics of Private Schools in the United States: Results from the 2003-2004 Private School Universe Study 13 Tbl.7, 19 Tbl.13 (2006); Child Trends Databank, Racial and Ethnic Composition of the Child Population 5 (2006).

30 Department of Education, Digest of Education Statistics, 2000 edition (www.doe.gov).

31 *Parents Involved in Community Schools v. Seattle School District No. 1 Et Al.*, 551 U.S. 701 (2007).

32 Walmsley, Roy (2009). "World Prison Population List. 8th edition" International Centre for Prison Studies. School of Law, King's College

754 inmates per 100,000 U.S. residents.³³ According to the U.S. Bureau of Justice Statistics, “in 2008, over 7.3 million people or 1 in every 31 adults, were on probation, in jail or prison, or on parole.”³⁴ While one in 30 men between the ages of 20 and 34 is behind bars, for black males in that age group the figure is one in nine.³⁵ The devastating impact of incarceration on families and communities is profound; affecting future income, opportunities for employment, civic engagement and well-being into the future.

36. According to The Sentencing Project, the incarceration rates of women of color, in particular mothers, is staggering. “The number of incarcerated mothers has more than doubled (122%) from 29,500 in 1991 to 65,600 in 2007” with evident racial disparities impacting their children: “One in 15 black children and 1 in 42 Latino children has a parent in prison, compared to 1 in 111 white children.” Estimates indicate, “Black women represent 30 percent of all females incarcerated under state or federal jurisdiction and Hispanic women 16 percent” with black women being “three times as likely as white women to be incarcerated” and “Hispanic women 69 percent more likely.”³⁶
37. In its last report to the Committee, the United States noted that reasons for such [racial] disparities in the criminal justice system are complex and “do not necessarily indicate differential treatment of persons in the criminal justice system.”
38. Although only 1 % of the U.S. youth population in 2003, Native youth made up a full 2 % of the cases referred to juvenile courts. This is the single greatest increase among any racial group in the U.S. Similarly, in 2003, Native American youth had a higher percentage of petitioned cases waived to adult criminal court, at 1.2 % of all Native American cases formally processed, than any other racial group in the US. Twenty-six out of every 100,000 African American youth are serving time in adult prison while for white youth the rate is only 2.2 per 100,000.
39. While the juvenile death penalty has been struck down in the U.S., the Juvenile Life Without Parole (JLWOP) condemns children to die in prison. Stark racial disparities in the imposition of the JLWOP sentence are evident nationwide: under age 17, African American youth are 19% of the population but 65% of youth serving JLWOP sentences.
40. The school-to-prison pipeline is a well documented phenomenon that criminalizes youth of color within the educational system by using punitive discipline policies that lead to exclusion and increased juvenile arrests. The school-to-prison pipeline not only denies students the right to a quality education, it directly increases the rate of juveniles in the criminal justice system. In 2003, African American youth made up 16% of the nation’s overall juvenile population, but accounted for 45% of juvenile arrests³⁷

Health Disparities

42. Research has shown that African Americans’ continuing experiences with racism and discrimination may lie at the root of the many well-documented race-based physical health disparities that affect this population.

London. Available at: http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf

33 Sabol, William. J et al, “Prisoners in 2008”. <http://bjs.ojp.us.doj.gov/content/pub/pdf/p08.pdf>

34 Total correctional population". United States Bureau of Justice Statistics. Available at: <http://bjs.ojp.U.S.doj.gov/index.cfm?ty=tp&tid=11>.

35 “One in 100: Behind Bars 2008”. Pew Center on States. Available at <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>

36 The Sentencing Project. “Women in the Criminal Justice System” (May 2007). Available at:

<http://www.sentencingproject.org/template/page.cfm?id=136>. See also Paige M. Harrison and Allen J. Beck, Prisoners in 2005, Bureau of Justice Statistics, November 2006.

37 School-to-Prison Pipeline Taking Points: ACLU. Available at: <http://www.aclu.org/racial-justice/school-prison-pipeline-taking-points>

43. Access to healthcare and disparate rates of chronic illness, including diabetes, hypertension, high blood pressure, and obesity are just a few ways health intersect with race and class.
44. In a recent report by the Office of Women's Health and the Office of Health Assessment & Epidemiology, it was found that African American women were far more likely to suffer from sexually transmitted diseases, including AIDS, and to die from chronic illnesses. Additionally, although white women had a higher incidence of breast cancer, African American women were more likely to die from the disease.
45. According to the National Indian Health Board, “Native Americans are nearly three times more likely to be diagnosed with diabetes;” health problems, which are exacerbated by disproportionately high rates of poverty, compared to the national average. On the Yakama Indian reservation in Washington state, estimates indicate at least “one in five Yakama tribal members older than age 50 are affected by diabetes.”³⁸
46. Latina's reported the poorest health status of women in all ethnic groups, with disproportionately higher death rates from diabetes. Their obesity rate increased from 27% in 2005 to 31% in 2007 and they reported less access to healthcare, with more than a third lacking health insurance and about 41% reporting difficulty accessing care.³⁹
47. African Americans and other communities of color bear a severely disproportionate burden of the AIDS/HIV epidemic. Though blacks represent 12 % of the U.S. population between 2001 and 2004 they accounted for 51 % of newly diagnosed HIV infections in the 33 states that had used confidential, name-based reporting of HIV and AIDS since 2001.
48. Black Americans living with HIV have not seen equal benefits from AIDS treatment: from 2000 to 2004, deaths among whites living with HIV declined 19 % compared to 7 % for blacks. Survival time after an AIDS diagnosis is lower on average for blacks than for other racial/ethnic groups.⁴⁰

Key Recommendations

1) Adopt National Action Plan on Racial Discrimination

The US government has made piecemeal efforts to reduce racial disparities in health and education but its disconnected approach to policy fails to address the systemic nature of the problem and the interconnectedness of rights. Additionally, no federal agency is accountable for reducing racial disparities despite public dollars being allocated to various programs. Victims of racial discrimination need and deserve an ambitious, innovative, and practical approach to contemporary forms of racial discrimination.

In line with the Vienna Declaration and Programme of Action, and modeled after other federal programs, the US should adopt a national action plan to reduce racial disparities which includes a national strategy with clear, reachable targets, a budget allocation, and measurable indicators. It should also encourage state jurisdictions to adopt such action plans and create a federal inter-agency working group, which includes civil society participation, to oversee implementation and report on its progress.

The federal racial disparities reduction strategy must include:

38 Phil Ferolito. “Dealing with Diabetes.” Yakima Herald. Available at <http://www.yakima-herald.com/stories/2008/05/27/dealing-with-diabetes>

39 Los Angeles County Department of Public Health, Office of Women's Health. *Health Indicators for Women in Los Angeles County: Highlighting Disparities by Ethnicity and Poverty Level*, February 2010.

40 Chris Collins. “Improving Outcomes: Blueprint for a National AIDS Plan for the United States”. Open Society Institute. 2007.

- Long-term strategic planning with appropriate funding;
- Consultation with stakeholders, including civil society;
- Federal coordination across national, state, and local agencies;
- Public benchmarks in key areas and steps for reaching long and short term objectives.
- Key areas of concern must include: poverty, employment, incarceration, health, housing, and education.

2) Ensure compliance with the obligations under ICERD:

- Adopt, where necessary, a definition of discrimination that complies with the definition found in article 1 of ICERD and General Recommendation XI.
- Implement a process by which policies and practices are reviewed for discriminatory impact. The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex) and ICERD General Recommendation 17 which recommends that State parties establish national commissions or other appropriate bodies to promote respect for the enjoyment of rights set out in Article 5. This could be done by passing legislation to establish such a body, which could be created by restructuring and strengthening the existing U.S. Commission on Civil Rights, and converting it into an effective U.S. Commission on Civil and Human Rights.⁴¹
- The Committee and civil society encourage the state to adopt and strengthen the use of special measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms and ensure the adequate development and protection of members of racial, ethnic and national minorities. The 2001 Committee report noted with disappointment the US's contrary viewpoint that the Convention merely permits, rather than requires, affirmative action measures aimed at developing and protection minority groups.

3) Ensure the full implementation of Committee recommendations from 2008 and 2001- including but not limited to:

- Adoption of the End Racial Profiling Act
- Adopt the Civil Rights Act of 2009
- Eliminate the National Entry and Exit Registration System (NEERS)
- Adopt the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295) as a guide to interpreting its Convention obligations with respect to indigenous people (para 500; arts. 5 (d) (v), 5 (e) (iv), and 5 (e) (vi)).

4) Ensure full implementation of ICERD throughout its jurisdiction, including at the state and local levels, including:

- Adopt implementing legislation at the federal level to ensure the justiciability of rights afforded under ICERD, including taking into consideration recommendations by the Committee in 2001 & 2008 to reconsider allowing for the optional declaration provided for in article 14 of the Convention.
- Implement meaningful efforts to coordinate compliance initiatives at the state and local level.
- Ensure public and private awareness of the Convention's rights and educate public officials at every level of obligations under ICERD.

41 Summary of Human Rights at Home: A Domestic Policy Blueprint for the New Administration, authored by Professor Catherine Powell of Fordham Law School and released by the American Constitution Society for Law and Policy. The full Blueprint is available at <http://www.acslaw.org/files/C%20Powell%20Blueprint.pdf>.