

Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes

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Introduction

This submission is made by the American Civil Liberties Union (ACLU) and Princeton University Policy Advocacy Clinic¹ to inform the United Nations Human Rights Committee (CCPR) review of the U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR), which was ratified in 1992.

While the ICCPR was ratified nearly 30 years ago, the United States has yet to fully comply with the treaty. In fact, in certain areas such as the criminal legal system—the focus of this submission—the United States has grossly violated its obligations and failed to take the appropriate steps to build the domestic infrastructure necessary to fulfill its human rights commitments.

This submission briefly covers several criminal legal system issues which the CCPR had recommended, often multiple times, to the United States to make significant changes to its laws and policies and bring them in line with the treaty's standards. These issues include excessive use of force and lack of accountability for police violence; pretrial detention and cash bail; use of solitary confinement; the imposition of the death penalty; and voting rights violations in the context of felony disfranchisement. The submission covers other civil and political rights issues that deserve more attention including the use of facial recognition technologies by law enforcement; unfair and disproportionate sentencing in the context of the “war on drugs” and mass incarceration; police and disciplinary practices in schools; and prison labor.

While the Biden administration has taken some important steps and made policy changes to address the troubling backsliding on human rights done by the Trump administration, there is still much more it can do using executive powers to positively impact federal policy and encourage more human rights-compliant actions at state and local levels.

The Biden administration should use the ICCPR review as an opportunity to address the existing gaps between U.S. laws and policies and the human rights standards it often preaches worldwide. As this review is likely to be the last UN human rights review during President Biden's first term, it is critical to use the review as a meaningful opportunity for engaging in honest reflection and taking bold action to address U.S. failure to adhere to basic human rights norms and principles. We look forward to working with the CCPR and United States government delegation next month and hope that the concerns and recommendations raised in this submission and other civil society submissions will be meaningfully addressed by the government and lead to transformative change.

Use of Facial Recognition Technology by Law Enforcement

Summary

The CCPR has not added the use of facial recognition technology to its 2019 list of issues the United States must report on. Nonetheless, due to the increased concerns by civil and human rights advocates and the significant data on the discriminant nature of facial recognition technology and the threat it poses to privacy and non-discrimination rights, it is important for the CCPR to raise this issue during the CCPR review on October 17th and 18th.

Facial recognition technology is a biometric system that uses artificial intelligence and machine learning algorithms to attempt to identify or verify individuals based on their facial features. The artificial intelligence used in facial recognition technology captures, analyzes, and compares patterns based on a person's facial features, such as mapping distinct characteristics like the distance between the eyes, the shape of the nose, and the contour of the jawline. Once the face is analyzed, the software generates a mathematical "faceprint," compares the input faceprint to faceprints in a database, calculates similarity scores, and attempts to generate one or more possible matches. The technology's accuracy depends on the quality of the input image as well as the representation of race, gender and other characteristics in the photosets algorithms are trained on, among other factors.

Most facial recognition companies used by government and private entities in the United States require users to supply their own matching database of facial images—for law enforcement agencies, this is often databases of arrest photos or driver's license photos. Multiple studies show that face recognition algorithms have markedly higher misidentification rates for people of color, women, and children, especially people who are Black. Indeed, there are a number of documented cases of Black people being wrongfully arrested by police or ejected from commercial premises² based on incorrect facial recognition "matches."³

A 2019 study conducted by the National Institute of Standards and Technology examined the racial and gender disparities in facial recognition algorithms' results by assessing the demographic effects on facial recognition technology accuracy.⁴ The study found that the false positive rates were higher for African American and Asian faces compared to Caucasian faces, with the highest error rates observed for African American females. In some algorithms, the false non-match rates for African American women were 10 to 100 times higher than those for Caucasian women.⁵ Numerous studies by independent researchers have likewise identified disparities in false match rates by skin tone, race, or gender.⁶ But even when facial recognition algorithm developers are able to narrow these disparities in test conditions, problems will persist in real-world applications; variations in photo quality, training and reliability of human facial recognition technology operators, and other factors are likely to exacerbate disparities. Indeed, no reliable testing has been conducted on the accuracy of face recognition technology in conditions reflective of how it is actually used by police.⁷

But one company that has aggressively marketed its product to law enforcement relies on an especially troubling business model. Clearview AI has amassed more than 30 billion images of faces scraped from the internet, including social media sites and other websites, without individuals' consent. This massive privacy violation has resulted in large fines against Clearview by privacy regulators across the globe. In the United States, however, where there is no comprehensive federal data privacy law, many government agencies have signed contracts with Clearview without compunction.

While, on May 25, 2022, President Biden directed the National Academy of Sciences to conduct a study on facial recognition technology,⁸ no such study has come out and the Biden administration has not taken

any significant steps at the federal level to mitigate the discriminatory impact of reliance of facial recognition technology or to end violations of the privacy rights of people living in the United States caused by the technology. A number of jurisdictions at the state and federal level have banned or curtailed use of facial recognition technology by law enforcement, but federal regulation remains lacking.

Recommended Questions

1. What steps are being taken to eliminate the racial and gender disparities in error rates among facial recognition technologies?
2. Does the United States plan to require facial recognition companies to report the error rates of their algorithms disaggregated by demographic information, including testing and reporting those error rates in conditions reflective of how the technology is applied in the real world?
3. Should people living in the United States need to give their consent before private companies use facial recognition technology to extract their biometric identifiers from images of them, including from photos posted on the internet?
4. How is the United States working to increase transparency in the deployment of facial recognition technology, specifically for law enforcement?
5. Is the United States considering the adoption of a comprehensive federal policy to protect privacy rights as it relates to facial recognition technology, including a halt to law enforcement use of the technology?

Recommended Solutions

1. Implement a federal moratorium on the use of facial recognition technology by federal agencies and state or local recipients of federal funding. If a full moratorium cannot be implemented immediately, ensure immediate prohibition on use of facial recognition technology to analyze live or recorded video.
2. Support a strong biometric privacy law requiring notice, consent, and other protections for private use (the Illinois Biometric Information Privacy Act provides a strong model).
3. Require companies developing and deploying facial recognition technology to disclose information about their algorithms, training data, and accuracy rates, as well as any potential biases in their systems. In criminal cases where facial recognition technology was used, require robust disclosures to criminal defendants from prosecutors and law enforcement about the algorithms and how they were used.

Police and Disciplinary Practices in Schools

Summary

The 2019 questions from the CCPR to the United States did not include the topic of the school-to-prison pipeline. However, the topic's intrinsic ties to the criminal legal system and racial equity render the topic relevant to the Committee's review.

The school-to-prison pipeline describes a set of policing and disciplinary practices that channel students from the classroom into the U.S. criminal legal system or place them at greater risk of later involvement with the criminal legal system. These practices are most apparent in schools with law enforcement officers onsite (known as School Police Officers, School Resource Officers, or School Safety Officers); at least one out of every two schools in the United States routinely has an armed law enforcement officer present on school grounds.⁹ The school-to-prison pipeline is also evident in schools without adequate student support services, such as counselors, school psychologists, and that have harsh disciplinary policies.¹⁰ Policing and disciplinary practices, along with inadequate support services, are most prevalent in schools with higher percentages of Black and Brown students.¹¹

The most recently released nationwide data on police in schools, arrests in schools, and exclusionary disciplinary practices covers the 2017-2018 school year, before the Biden administration came into office. These data show a clear trend that students in the United States continue to be overpoliced. From the 2015-2016 to the 2017-2018 school year, school-related arrests increased by 5% while referrals¹² to law enforcement increased by 12%.¹³ It is also critical to note that referrals and arrests are typically undercounted by the Civil Rights Data Collection.¹⁴ While more current nationwide data has not been released, the Biden administration has spent hundreds of millions of dollars directly and indirectly to increase the number of police in schools. Moreover, a May 2023 resource published by the U.S. Departments of Education and Justice concludes that discrimination based on race, color, or national origin *continues* to be an urgent problem.¹⁵

School-related arrests disproportionately impact students with disabilities,¹⁶ Black students,¹⁷ Native American/Alaska Native students, and boys¹⁸. A U.S. government agency has concluded that Black students, boys, and students with disabilities were disproportionately disciplined in K-12 public schools in all major categories of discipline—out-of-school suspension, in-school suspension, referral to law enforcement, expulsion, corporal punishment, and school-related arrest—regardless of grade level of school or income level.¹⁹ Black students were the only racial group for which both boys and girls were disproportionately disciplined across all categories of discipline.

Along with police in schools, exclusionary disciplinary measures such as out-of-school suspensions and expulsions preserve and feed the school-to-prison pipeline. Out-of-school suspensions are issued at similarly racially disparate rates as arrests, disproportionately impacting students with disabilities and Black students. For example, students with disabilities account for about 25% of all suspensions and Black students account for 27% of suspensions.²⁰ 40% of Black students with disabilities in secondary schools have been suspended at least once.²¹ Recent research has documented the role of racial bias in the administration of school discipline²² and has identified some promising interventions.²³ The ACLU's work had found high rates of racial disparity in student arrests for offenses that involve greater subjective determinations, such as "disorderly conduct," or "disruption," in which there is an increased potential for biases to effect enforcement.²⁴

The Biden administration has taken some positive first steps to address this problem by stepping up enforcement of the nation's anti-discrimination Civil Rights laws. But much more is needed to eliminate

the school to prison pipeline.

Recommended Questions

1. What stance does the United States take on eliminating zero tolerance policies in schools?
2. Will the United States support reducing the number of police in schools, if not ultimately removing all police from being permanently stationed in schools?
3. Will the United States stop providing federal funding for police in schools, as requested by civil rights organizations?
4. Will the United States increase funding for schools to invest in social workers, mental health professionals, and alternative disciplinary practices in schools?
5. Does the United States commit to restricting the use of arrests and criminalization of students at school?
6. Does the United States support reducing the use of out-of-school suspensions, expulsions, and other exclusionary discipline practices that have a racially disparate impact?

Recommended Solutions

1. Create and enhance federal grant initiatives for schools to hire more school social workers, mental health professionals, and other staff to support students, and implement alternative disciplinary models that maintain and strengthen students' school connectedness, are culturally affirming, and improve the climate for the entire school community.
2. End the permanent placement of police in schools and law enforcement involvement in student discipline.
3. End funding for police in schools by eliminating the federal Community Oriented Policing Services (COPS) grant program for schools and redirecting funding towards hiring personnel such as school counselors and mental health professionals.
4. Fund research to continue documenting the impact of police and out-of-school suspensions. This will help local decision-makers to make the most informed decisions on whether to continue the presence of police in schools.
5. Increase funding for recruiting and hiring teachers to reduce the student-staff ratios in classrooms. Provide funding to teacher development in critical skills such as culturally responsive teaching and positive behavior management techniques, thus providing teachers with more capacity to address student needs and behaviors and reduce racial bias in school discipline.

Police Excessive Use of Force Without Accountability

Summary

The United States has yet to properly and adequately address excessive and deadly force by police, including the lack of accountability for police use of force. In its 2019 questions, the United States was asked to comment on various aspects of this issue, most prominently on racial disparities in police use of force. While the United States cited numerous attempted reforms, the data shows that police violence towards civilians remains an all too frequent, and too often deadly, occurrence.

There is still no government-maintained national data on use of force by police. Instead, this gap in data is filled by media outlets and non-government organizations such as the Washington Post and the Mapping Police Violence Project.²⁵ The Washington Post estimates that the deadliest years of police violence, 2021 and 2022, have been under the Biden administration.²⁶ In each year, police shot and killed approximately 1,200 civilians, a trend that is on track to continue in 2023.²⁷

These killings and instances of violence disproportionately affect Black civilians. In 2022, Black people made up 24% of the victims of deadly police violence while being only 13% of the United States population.²⁸ In some cities, such as Minneapolis and Boston, police use deadly force against Black people at rates as much as 28 times higher than their white peers.²⁹ This inequality was so apparent and brazen that the Justice Department found the Minneapolis Police Department engaging in a pattern of violations of the United States Constitution and federal law.³⁰

These figures are even more concerning when considering that the vast majority of police who engage in deadly violence face no repercussions. One estimate by Mapping Police Violence finds that 98.1% of police officers who used deadly force against a civilian faced no consequences at all.³¹ In 2021, 21 officers were charged with murder or manslaughter in the United States for killings they committed on duty, the highest number since tracking began in 2005.³²

Accountability for acts of police violence remains difficult to attain. The low legal standard for police use of force as well as the doctrine of qualified immunity often impede accountability in criminal and civil courts, frequently dissuading the families of victims from even attempting to seek civil remedies including reparations in the first place.

The Biden administration has begun some of the work necessary to incentivize police to use other measures than deadly force. By investing hundreds of millions of dollars into alternative responses to mental health crises and for de-escalation trainings for police, some progress has begun, but much more is needed, including for President Biden to use his executive authority to raise the use of force standard for federal law enforcement to conform with human rights standards.

Recommended Questions

1. Does President Biden support increasing the use of force standard from “reasonable” to “necessary” to conform with human rights standards?
2. As of July 31, 2023, at least 663 civilians have been killed at the hands of police. In fact, the United States is an outlier when compared to other western democracies with respect to police use of deadly force. What is the federal government doing to reduce excessive use of force by police?

3. What is the federal government doing to ensure that when police officers do engage in wrongdoing, they are held accountable, including but not limited to unjustified killings?
4. Will the federal government commit to reducing racial disparities in police use of force?
5. What is the Biden administration doing to follow through on the launch of a police use of force database?

Recommended Solutions

1. President Biden should strengthen Executive Order 14074, issued last year, by raising the standard for when federal police can use force so that the standard complies with human rights standards.
2. The White House should push Congress, including the United States Senate, to pass the George Floyd Justice in Policing Act.
3. The Biden administration should further incentivize the creation of local, alternative response mechanisms to emergency calls, such as for people suffering mental health crises or a substance use disorder, as well as for traffic violations.
4. The federal government should incentivize local law enforcement agencies to report misconduct to its registry and provide clarifying guidelines on what data must be reported.
5. The Department of Justice should incentivize the creation of more democratic processes to review police misconduct such as civilian complaint review boards equipped with adequate authority, including subpoena and disciplinary powers.
6. President Biden should use his convening powers to bring renewed attention to the problem of excessive use of force by police and should allocate more resources to the Department of Justice to increase its capacity to conduct pattern or practice investigations of police departments engaged in systemic racism as well as constitutional, civil and human rights violations.

Drug Arrests

Summary

The “war on drugs,” including arrests, sentencing, and incarceration policies and practices, continues to feed mass incarceration in the United States and disproportionately impacts low income and Black and Latino communities across the nation. This is despite continued evidence showing these practices fail to effectively combat drug use, overdose deaths, or crime.³³

American prisons and jails incarcerated 353,000 people for drug offenses at the end of last year—one in five incarcerated people is locked up for a drug offense.³⁴ Police in the United States make 1.16 million arrests a year for drugs.³⁵ The vast majority of these arrests, 87%, are for personal possession or use of drugs, meaning that police arrest a person for drug possession every 32 seconds, a rate six times the number of arrests for the sale of drugs. Drug arrests represent the number one activity that police engage in, at nearly 2.5 times the volume of arrests for all FBI-classified violent offenses combined (homicide, rape, robbery and aggravated assault). Drug convictions represent 44.5% of all offenses by people incarcerated in federal prison, by far the largest category of offenses in federal prison.³⁶

The racial disparities in arrests are even more troubling. Despite people of all races using drugs at similar rates, Black people comprise 27% of all drug-related arrests even though they comprise 13.6% of the U.S. population.³⁷ It’s even worse for marijuana. In 2020, Black people accounted for 38.8% of marijuana possession arrests even though they consume marijuana in similar rates to white people. Black people are arrested at rates four times that of white people for possession of marijuana.³⁸

Despite significant spending on drug enforcement efforts—in the magnitude of \$37 billion in 2021 by the federal government alone—drug-related deaths are at an all-time high in the United States. There were 108,000 drug overdose fatalities last year.³⁹

President Biden committed to marijuana decriminalization and a public health approach to substance use during his campaign, but his administration has failed to act.⁴⁰ President Biden did issue an executive order on October 6, 2022⁴¹ that pardoned prior federal offenses for simple possession of marijuana and asked the Secretary of Health and Human Services and the Attorney General to initiate a process to review how marijuana is scheduled under federal law, but these few actions do not live up to his campaign promises. Moreover, President Biden’s position to impose tough penalties on fentanyl has drawn criticism from harm reduction advocates, who argue that imposing strong criminal penalties would exacerbate the problem.⁴²

Recommended Questions

1. What steps is the United States taking to reduce arrests for drug possession and revise mandatory minimum sentencing policies for drug offenses?
2. Does the United States plan to work towards legalization of recreational marijuana?
3. How will the United States explore alternative law enforcement approaches in drug-enforcement that prioritize public health and harm reduction?
4. Does the United States plan to promote public awareness and education about drug addiction, treatment, and alternatives to incarceration?

5. How will the United States involve individuals with drug convictions in the development of policies addressing the consequences of the “war on drugs?”
6. Will the Biden administration do everything in its power to secure passage of the EQUAL Act in Congress, which would end sentencing disparities between crack and powder cocaine?
7. How does the United States plan to repair harm to communities caused by the “war on drugs?”

Recommended Solutions

1. Legalize recreational marijuana at the federal level including adopting The MORE Act, which does so and includes reparative provision for the “war on drugs.”
2. End racial disparities in cocaine sentencing and overhaul mandatory minimums.
3. Decriminalize possession of drugs for personal use at the federal level.
4. Create incentives for states to invest in mental health and addiction services.
5. Increase federal funding for research on reducing addiction without relying on the criminal legal system.
6. Encourage and work with states to eliminate mandatory minimum sentences.
7. Encourage and work with states to remove legal barriers for individuals living with drug convictions and provide treatment when necessary.

Cash Bail and Pretrial Detention

Summary

In its 2019 list of questions to the United States, the CCPR asked the United States to provide information regarding its steps taken to address racial disparities in the criminal legal system, including the disproportionate representation of people of color in pretrial detention on account of cash bail. Yet the United States *failed to respond* to the Committee’s questions and continues to employ racially unequal practices in pretrial detention.

The last 25 years have seen a steady increase in the total jail population in the United States—with the exception of an unprecedented, temporary decrease towards the beginning of the COVID-19 pandemic. This growth results directly from a rise in pretrial detention. In 2002, 29% of people in jails were held pretrial.⁴³ By 2023, 71% of people incarcerated in jails have not been convicted of a crime and are presumed innocent, many incarcerated for sole reason of inability to afford cash bail.⁴⁴ About 451,400 people are detained pretrial on any given day—more than most countries have in their jails and prisons combined.

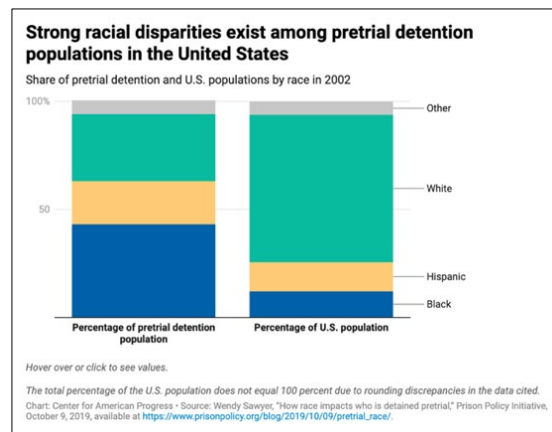
National demographic data on pretrial detention and cash bail is severely outdated, with the last government data collected in 2002, which found that 69% of people detained pretrial were people of color—with Black people representing 43% of the pretrial detention population but 12.2% of the total U.S. population at the time. Other studies have also found that Black and Brown defendants receive cash bail amounts that are twice as high as white defendants and are less likely to afford cash bail.⁴⁵

Moreover, most states in the United States employ a for-profit cash bail system, where people pay private companies a nonrefundable fee of about 10% of the total cost of bail in return for posting the full cash bail amount. Commercial bail accounted for nearly 80% of releases with monetary conditions in 2009, the last year of government data. Only one other country—the Philippines—has a for-profit cash bail system. In the United States, the cash bail industry is estimated to collect \$2 billion in profit each year.⁴⁶

In contrast to President Trump, who during his 2020 campaign denounced New York’s bail reform initiatives as “killing our cities,” President Biden described cash bail as a “modern-day debtors’ prison” and promised to end it.⁴⁷ But after two and a half years in office, he has barely mentioned it. On the federal level, the pretrial detention rate stands at 68.5%, a dramatic increase from the 24% rate in 1983, representing an increase in 2022 from 64.6% of all federal cases.⁴⁸

Recommended Questions

1. Since 2002, the federal government has not collected demographic data, including race and ethnicity, on people awaiting trial. Will the U.S. commit to collecting updated demographic information on pretrial detention?
2. Does the United States support ending for-profit bail systems, understanding that the only other country in the world that allows such systems is the Philippines?



3. What is the Biden administration doing to reduce pretrial detention rates in the federal system?
4. What steps has the United States taken to address the disproportionate representation of people of color in pretrial detention?
5. Does the United States support alternative systems of pretrial release that do not rely on cash bail?
6. Does the United States support bail reform efforts in the states, like Illinois eliminating cash bail this year and New Jersey in 2017 making cash bail a matter of last resort?
7. Will the Biden administration support the No Money Bail Act, the Community First Pretrial Reform and Jail Decarceration Act, the Bail Reform Act of 2020, and/or the Pretrial Integrity and Safety Act?
8. Will the federal government support laws requiring access to counsel in bail hearings?

Recommended Solutions

1. Commit to reducing the federal pretrial detention rate, which has increased 185% since 1983.
2. Collect up-to-date data on the race and ethnicity of people awaiting trial across the United States, and the reasons people are awaiting trial, and provide recommendations for reductions in racial and ethnic disparities.
3. Ensure access to counsel for federal bail hearings and incentivize states to provide early access to counsel, including at bail hearings, which should also be provided for all arrestees facing pretrial detention.
4. Support the No Money Bail Act, the Community First Pretrial Reform and Jail Decarceration Act, the Bail Reform Act of 2020, the Smarter Pretrial Detention for Drug Crimes Act, and/or the Pretrial Integrity and Safety Act.
5. If eliminating money from the bail system appears unlikely, end the for-profit bail system.
6. Garner attention for the importance of reducing the harmful effects associated with the pretrial detention system.

Solitary Confinement

Summary

The United States *did not respond* to the CCPR's questions on imposing strict limits on the use of solitary confinement and on abolishing the use of solitary confinement on minors and people with serious mental health conditions. Instead, the United States broadly claimed that there are occasions when correctional officials have no choice but to segregate people in prison and claimed that solitary confinement should be used rarely and fairly and subjected to reasonable constraints.

The most recent data published by the federal government found 75,505 individuals in solitary confinement in the nation's prisons.⁴⁹ This figure reflects the number of people held on a single day in "restricted housing," across federal facilities, "defined as a placement requiring confinement of a prisoner to a cell for at least 22 hours per day."⁵⁰ More recent reports by non-governmental organizations found 122,840 people in federal and state adult prisons and federal and local jails in solitary confinement on any given day (defined as spending 22 hours or more in a cell),⁵¹ and between 41,000-48,000 people in solitary confinement for 15 days or longer.⁵² Of the people in solitary confinement for 15 days or longer, more than 75% were held between 15 days and a year.⁵³ The remaining quarter were reported to have been in solitary confinement for more than a year, with 14.4% for one to three years, 4.0% for three to six years, 2.1% for six to 10 years, and 3.7% for more than a decade.⁵⁴

According to a 2021 United States Department of Justice report, Black people constituted 39% of all people in federal confinement units,⁵⁵ despite representing about 33% of the sentenced population.⁵⁶ The Yale Law School and Correctional Leaders Association report found that Native Americans or Alaskan Native people constituted 6.8% of solitary confinement in women's prisons, as compared to 3.4% of total custodial populations.⁵⁷

The number of people in solitary confinement continues to grow despite federal promises to mitigate the use of solitary confinement. President Biden campaigned on the promise to end the use of solitary confinement, with very few exceptions. In May 2022, he issued an executive order that articulated the administration's commitment to ending solitary confinement in the federal system and directed the United States Department of Justice to report on steps taken to reduce the use of solitary confinement in the Bureau of Prisons.⁵⁸ Yet the use of solitary confinement has risen 29% since December 2015 for people in the federal Bureau of Prisons and at least 11.5% in the federal Bureau of Prisons under the Biden administration.⁵⁹

While the First Step Act of 2018 included a prohibition against the use of solitary confinement on juveniles in federal custody,⁶⁰ there remain many steps to be taken at the federal level to address the concerns raised by the Committee.

Recommended Questions

1. How is the United States monitoring the use of solitary confinement at the local, state, and federal level?
2. How is the United States working to ensure that the use of solitary confinement aligns with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)?
3. What alternatives to solitary confinement are being explored by the United States?

4. How is the United States addressing racial and other disparities in the use of solitary confinement (e.g., disabilities, pregnant people, elderly populations, youth, LGBTQ people)?
5. What measures have been explored to help the reintegration of people in solitary confinement to the general prison population as well as the outside world?
6. The United States responded to the CCPR stating that “solitary confinement should be used rarely, applied fairly, and subjected to reasonable constraints.” Please elaborate on what recent specific measures have been taken to implement these principles.

Recommended Solutions

1. End solitary confinement for all people, other than for periods of minutes or hours for emergency de-escalation.
2. Implement alternative methods for addressing safety concerns in custody, such as conflict resolution and therapy, which help create a safer and more rehabilitative custodial environment. Examples include the Resolve to Stop the Violence Project (RSVP) in San Francisco jails,⁶¹ the Merle Cooper Program in New York State,⁶² and the CAPS Program in New York City.⁶³
3. Provide due process protections before any separation from the general prison population, including access to independent decision-making and legal representation.
4. Require all correctional and detention facilities to collect and report data on the use of solitary confinement, including reasons for use, duration, conditions, and demographics.
5. Develop a reintegration program for people released from solitary confinement to re-acclimate to social settings (both in the general population and the community).
6. Prohibit the placement of people with serious mental health conditions in solitary.
7. Establish independent monitoring bodies that operate at the state and federal levels to regularly assess the use of solitary confinement across all correctional and detention facilities.

Death Penalty

Summary

The United States *failed to respond fully* to the CCPR's questions on the death penalty, especially as it relates to racial bias and wrongful convictions.

Since ratifying the ICCPR in 1992, the United States has made some progress on the death penalty—namely reducing the frequency of executions and forbidding the execution of minors and people with intellectual disability. However, the United States remains out of step with human rights norms, standing out as an outlier internationally due to its continued use of the death penalty.

More than 70% of the world's countries have abolished capital punishment in law or practice. In contrast, the death penalty still exists in 27 American states, the federal system, and the military. Since the 1970s, 1,571 people have been executed in the United States, and 2,414 people live on death row today.⁶⁴ Since the CCPR received the Trump administration's response on January 15, 2021, 44 people have been executed in the United States.⁶⁵

As in the rest of the criminal legal system in the United States, racial bias permeates almost every aspect of the death penalty. Although Black people represent just 13.5% of the U.S. population, Black people comprise 41% of people on death row.⁶⁶ Moreover, Black people are more likely to be falsely convicted and take longer to exonerate.⁶⁷

Innocent people in the United States continue to be killed by the state.⁶⁸ Since 1973, 191 people formerly on death-row have been exonerated.⁶⁹ For every 8.3 people put to death in the United States since capital punishment resumed, one person who has been sentenced to death has been exonerated.

The United States is the only country in the world in which the felony murder rule—when someone can be sentenced to death solely for participating in a crime resulting in a death, even without intent to kill—still exists. Twenty-four states⁷⁰ as well as the federal government and the military may prosecute people with the death penalty under felony murder laws. Since 1985, there have been 12 people executed for felony murder, with the most recent felony murder execution taking place in 2021 under the Trump administration.⁷¹

While President Biden pledged to “work to pass legislation to eliminate the death penalty at the federal level and incentivize states to follow the federal government's example,”⁷² the United States continues to hold 43 people on federal death row and President Biden has taken few steps to abolish the death penalty. While the Justice Department has instituted a temporary moratorium on federal executions, it continues to pursue death sentences, such as for Dzhokhar Tsarnaev, Dylan Roof, and Sayfullo Saipov, and has stayed silent on legislation to repeal the death penalty.

Recommended Questions

1. In light of the significant human rights concerns the death penalty continues to raise as well as President Biden's campaign pledge to work towards abolishing the death penalty, will the Biden administration commit to abolishing the death penalty?
2. Will President Biden review cases of innocence for people on federal death row and consider commutations of sentence to life imprisonment for all people on death row?

3. Will the Biden administration support the federal Death Penalty Prohibition Act?
4. Does the Biden administration intend to support legislation that would allow statistical evidence of systemic racial bias to prove a death sentence unlawful, as enacted in Kentucky, North Carolina and California, and as previously considered by Congress?
5. Will the United States condition the provision of justice-related federal funds on states abolishing the death penalty, or at least proving that they are providing robust defense to indigent persons facing the death penalty, from trial through all subsequent appeals?
6. Does the United States support abolishing federal felony murder laws?
7. Will the United States government take a stand against secrecy statutes in executions?
8. Will the United States support reversal of reduced appeals under the 1996 AEDPA?

Recommended Solutions

1. Commute the sentences of all people on federal death row and grant pardons to the innocent.
2. Stop prosecuting death penalty cases, including those approved under prior administrations.
3. Conduct a top to bottom review of the death penalty, focusing on the role of race of defendant and victim in deciding who receives the death penalty, the exclusion of jurors of color in death penalty trials, exonerations, the disproportionate costs of wrongful convictions on communities of color, and botched executions.
4. Support the Federal Death Penalty Prohibition Act.
5. Encourage states to abolish the death penalty and to enact racial justice acts.
6. Provide support to indigent defendants who are facing the death penalty.
7. Require DNA testing in death penalty prosecutions.
8. Support legislation to eliminate felony murder statutes.

Felony Disenfranchisement

Summary

The United States *failed to respond fully* to the CCPR’s questions on felony disenfranchisement, leaving out important context on state policies and shirking responsibility for a national strategy to reform or abolish harmful disenfranchisement practices.

While progress has been made in some states since 2019, numerous states have experienced regressions in voting rights and millions of formerly incarcerated individuals continue to face burdensome hurdles in reclaiming their right to vote—disproportionately impacting people of color and lower-income individuals—and contributing to a decreased sense of civic engagement.

Despite the ICCPR’s requirement of equal voting rights for all citizens, the United States still renders upwards of 4.5 million otherwise eligible citizens unable to vote—two percent of the adult voting-age population.⁷³ Across the country, 48 states maintain policies stripping at least some citizens of the right to vote after receiving a felony conviction, many long after their sentence has been served and the period of carceral punishment has ended. In fact, in 2023, 77% of disenfranchised Americans are post-incarceration and living in their communities.⁷⁴

Overall, fewer than half of the states afford the right to vote for citizens on probation and parole and nearly a quarter continue to prohibit at least some portion of their population from voting even after serving a prison sentence and a term of probation or parole. Under this system, Americans continue to experience restrictions in their political rights merely due to moving between states—creating an unnecessarily and prohibitively arbitrary system—since states fail to give full faith and credit to the other states’ voting determinations.

The rate of disenfranchisement among people of color remains far higher than their white peers, with approximately 5.3% of the adult Black population denied the right to vote in 2022—a rate of disenfranchisement 3.5 times that of the general population. In eight states, one in ten Black men are disenfranchised. For Latinx citizens, they experience rates of higher than the average in more than 31 states.⁷⁵

Moreover, many states continue to wield financial and legal impediments, called “legal financial obligations” (LFOs), to prevent citizens from regaining their voting rights after they have completed all other criteria for restoration—somewhere in the range of hundreds of thousands.⁷⁶ In total, 12 states still deny restoration based on outstanding fines, fees, court costs, and restitution.⁷⁷ This is coupled with a pervasive lack of voter education efforts, wherein formerly incarcerated individuals are unaware even when their restored right to vote is protected legally.⁷⁸

There are three core ways for the federal government to improve voting rights for people living with a criminal conviction in accordance with the ICCPR: expand eligibility, streamline the process of restoration, and increase voter education.

Recommended Questions

1. Does the United States support all adult citizens having the right to vote, regardless of their criminal record?

2. What measures will the United States implement to monitor and evaluate state-level progress in reforming felony disenfranchisement policies?
3. When states exhibit resistance to reform, how does the federal government respond?
4. Does the United States have plans to conduct comprehensive research on the long-term effects of felony disenfranchisement and re-enfranchisement?
5. Can the United States commit to promoting increased public awareness and public education about the process of restoring voting rights in different states?
6. How, if at all, does the United States intend to engage with organizations and groups advocating for felony disenfranchisement reform?
7. Similarly, how does the United States intend to involve individuals living with felony convictions as well as communities most impacted by incarceration in the process of voting rights restoration?

Recommended Solutions

1. Support legislation, such as S.481, “Democracy Restoration Act” in Congress, which would ensure all citizens regain the vote after serving their criminal sentence.
2. Encourage studies on the consequences of felony disenfranchisement.
3. Encourage states to provide robust voting rights information to released individuals.
4. Endorse public education and awareness initiatives across all 50 states.
5. Support state efforts to diminish felony disenfranchisement via federal incentives.
6. Advocate for the elimination of financial and legal barriers to re-enfranchisement.

Prison Labor⁷⁹

Summary

Almost one million people are currently working while confined in US prisons.⁸⁰ They often work in grueling, dangerous, and degrading conditions for little to no pay—often pennies per hour—and under threat of punishment, including solitary confinement, for refusing to work. US law explicitly excludes incarcerated workers from the most universally recognized workplace protections, including minimum wage laws, workplace safety guarantees, and the constitutional prohibition against involuntary servitude. The U.S. prison labor system involves present-day involuntary servitude and results in systemic exploitation and abuse.⁸¹ Prison labor is also a legacy of chattel slavery.

ICCPR Article 10 provides that “[a]ll persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.”⁸² The ICCPR also states that the essential aim of the criminal justice system “shall be their reformation and social rehabilitation.”⁸³ The CCPR has further stated that the ICCPR “imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty.”⁸⁴ While the ICCPR does allow for the sentencing of imprisoned individuals to “hard” labor, it does not allow for that labor to be exacted under exploitative circumstances that violate basic tenets of human dignity.⁸⁵

Further, the guidelines for prison labor set out in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela “Rules”) prohibit work “of an afflictive nature,” require permitting incarcerated people to “choose the type of work they wish to perform,” and mandate that “prisoners shall not be held in slavery or servitude.”⁸⁶ The Rules stipulate that “[t]here shall be a system of equitable remuneration of the work of prisoners” and require that such labor be supplemented with vocational training.⁸⁷ The Rules also state that the “precautions laid down to protect the safety and health of free workmen shall be equally observed in [correctional] institutions,” and that “[p]rovision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favorable than those extended by law to free workmen.”⁸⁸

Recommended Questions

1. What measures is the US government taking to eliminate forced labor in correctional facilities and curb the exploitation of incarcerated workers, who are forced to work for little or no pay and are excluded from the most basic workplace protections against exploitation and abuse?
2. What measures is the US government taking to implement the International Labour Organization (ILO) Abolition of Forced Labour Convention No. 105 (ratified in 1991) and to ratify the ILO Forced Labour Convention No. 29?

Recommended Solutions

1. Abolish the Thirteenth Amendment’s exclusion that allows forced labor as a punishment for a crime.
2. Ensure that all work in prisons is fully voluntary by eliminating any laws and policies enabling forced labor and that punish incarcerated people who are unable or unwilling to work.

3. Adopt legislation and regulations providing incarcerated workers in all prisons with the same labor protections afforded to other workers in the United States including minimum wage, overtime pay, health and safety standards, unionization and collective bargaining, and protection from discrimination and retaliation.
4. Initiate oversight investigations into federal and state prisons to eliminate forced labor of incarcerated people, discriminatory pay and allocation of work assignments, unsafe and inhumane conditions, violations of federal disability rights laws, and related practices.

Specific Agency Recommendations

To the President and the Executive Office of the President:

1. Establish a Commission by executive order to (1) study the need to abolish the Thirteenth Amendment's exclusion allowing forced labor as punishment for a crime and to (2) bring federal and state prison labor programs in line with ICCPR and other relevant international law to address the widespread problem of prison labor abuses in the US.
2. Encourage Congress to pass the Combating Workplace Discrimination in Correctional Facilities Act, the Correctional Facilities Occupational Safety and Health Act, the Ensuring Work Opportunities in Correctional Facilities Act, and the Fair Wages for Incarcerated Workers Act, a package of bicameral bills to address unfair and abusive labor practices in U.S. correctional facilities.
3. Encourage Congress to pass the Abolition Amendment, pending bicameral legislation that would repeal the exception clause of the 13th Amendment to the U.S. Constitution allowing slavery and involuntary servitude to be used as punishment for a criminal conviction.

To the Bureau of Prisons

1. Ensure that all work in prisons is fully voluntary by eliminating any rules, policies, and procedures enabling forced labor or imposing disciplinary measures for work-related infractions such as refusal to work or failure to complete work in a satisfactory manner.
2. Ensure incarcerated workers who seek exemptions from work duties are granted such exemptions when they are unable to carry out their assigned jobs due to illness, injury, disability, or other physical or mental limitations.
3. Adopt policies protecting against arbitrary decision-making in work assignments with a right to review; and guaranteeing all workers' rights, including fair wages (guaranteeing the higher of federal or state minimum wage), fair treatment (including non-discrimination), workplace safety and health, and fair conditions of work for people engaged in prison labor.
4. Expand and invest in prison work programs that provide incarcerated workers with marketable skills and training that will help them to find employment after release. Programs should provide opportunities for advancement, certifications of completed training and work performance achievements, and employment-based recommendation letters from supervisors. Programs should provide vocational training in professions that are forecast for job growth.

To the Department of Labor

1. Issue a regulation granting the Occupational Safety and Health Administration (“OSHA”) jurisdiction over the labor conditions of all workers incarcerated in federal, state, and local prisons.
2. Initiate rulemaking or, at a minimum, issue guidance to establish authoritatively that the Fair Labor Standards Act (FLSA) applies to all incarcerated workers. As a part of this process, update the Field Operations Handbook to clarify that all incarcerated workers are employees for FLSA purposes.
3. Investigate wage and hour violations related to incarcerated work and bring enforcement actions to ensure compliance with the FLSA.

To the National Labor Relations Board

1. Declare that incarcerated people are employees who are eligible to join a union.

¹ The views expressed in this submission are those of the faculty and students who worked on this document for the Princeton Policy Advocacy Clinic, and not that of Princeton University or the School of Public and International Affairs at Princeton University.

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³ See e.g., Sarlin, Jon. (2021). *A false facial recognition match sent this innocent Black man to jail*. CNN Business. Available at <https://www.cnn.com/2021/04/29/tech/nijeer-parks-facial-recognition-police-arrest/index.html>; Hill, Kashmir. (2020). *Wrongfully Accused by an Algorithm*. The New York Times. Available at <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>; Hill, Kashmir. (2023). *Eight Months Pregnant and Arrested After False Facial Recognition Match*. The New York Times. Available at <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>

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⁵ The false non-match rates for African American men were higher than those for Caucasian men by a factor of 3.5. Additionally, middle-aged individuals showed lower false positive rates compared to younger and older individuals. Id.

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⁹ “Percentage of Public Schools with Security Staff Present at Least Once a Week, and Percentage with Security Staff Routinely Carrying a Firearm, by Selected School Characteristics: 2005–06 through 2019–20,” National Center for Education Statistics, https://nces.ed.gov/programs/digest/d21/tables/dt21_233.70.asp.

¹⁰ *Q & A on Discipline and Policing*. End Zero Tolerance. Available at <https://www.endzerotolerance.org/discipline-q-a>

¹¹ “Pushed Out: Trends and Disparities in Out-of-School Suspension,” Learning Policy Institute, September 30, 2022, <https://learningpolicyinstitute.org/product/crdc-school-suspension-report>.

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¹³ An Overview of Exclusionary Discipline Practices in Public Schools for the 107-2018 School Year, U.S. Department of Education, Office for Civil Rights, July 2021, available at <https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf>

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⁶¹ The Resolve to Stop the Violence Project (RSVP) in San Francisco jails involves full days of out of cell congregate programming and engagement. It has shown dramatic reductions in violence [in jails](#) and [outside communities](#) after people returned home, all while achieving financial savings. The RSVP program included people who had carried out acts of assault, rape, other violent acts, and repeatedly carried out “heinous crimes,” and again led to a precipitous drop in violence among participants to the point of having zero incidents over a one year period.

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- ⁷⁹ The Princeton Policy Advocacy Clinic did not work on this section of the submission.
- ⁸⁰ American Civil Liberties Union and University of Chicago Global Human Rights Clinic, “Captive Labor: Exploitation of Incarcerated Workers,” June, 2022, https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf.
- ⁸¹ Nearly two-thirds of incarcerated people report working behind bars, or roughly 800,000 incarcerated workers in federal and state prisons, and US law explicitly excludes these workers from standard workplace protections against labor exploitation and abuse. From the moment they enter the prison gates, they lose the right to refuse to work. This is because the 13th Amendment to the United States Constitution, which generally protects against slavery and involuntary servitude, explicitly excludes from its reach those held in confinement due to a criminal conviction. More than three-quarters of incarcerated workers surveyed by the ACLU report facing punishment — such as solitary confinement, denial of sentence reductions, or loss of family visitation — if they decline or are unable to work. They have no right to choose what type of work they do and are subject to arbitrary, discriminatory, and punitive decisions by the prison administrators who select their work assignments. *Id.*
- ⁸² ICCPR, art. 10(1).
- ⁸³ ICCPR, art. 10(3).
- ⁸⁴ United Nations Human Rights Committee, General Comment No. 21: Art. 10, para. 3 (Apr. 10, 1992).
- ⁸⁵ While the Human Rights Committee has not yet addressed ICCPR article 8(3)(b) in its jurisprudence or general comments, the American Convention on Human Rights, which contains a similar provision in article 6, excludes hard labor when imposed as punishment by a competent court. The European Convention on Human Rights excludes “any work required to be done in the ordinary course of detention.” Art. 4(3)(a). The European Court of Human Rights does evaluate any difference in legal protections and entitlements granted to prisoners under the non-discrimination provisions (Article 14) of the Charter. *See Stummer v. Austria*, App. No. 37452/02, Eur. Ct. H.R. (Jul. 7, 2011).
- ⁸⁶ UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc. A/Res/70/175, Rules 97 and 98 (Jan. 8, 2016).
- ⁸⁷ *Id.*, Rules 98 and 103.
- ⁸⁸ *Id.*, Rule 101.