

# RACE & ETHNICITY IN AMERICA

## Turning a Blind Eye to Injustice

Racial and ethnic discrimination and inequality remain ongoing and pervasive in the United States, and the U.S. government has not done enough to address these important problems. Hurricane Katrina exposed to the world many of America's grave, persistent economic and social disparities, and their impact on African-American and other minority communities. U.S. policies and practices at the federal, state and local level continue to disproportionately burden the most vulnerable groups in society: racial and ethnic minorities, immigrants and non-citizens, low-wage workers, women, children, and the accused.

Minorities are unfairly victimized by racial profiling, a practice law enforcement uses that is based on race, ethnicity, nationality, religion, or perceived immigration status. Authorities investigate, stop, frisk, search, or use force against individuals based on subjective, personal characteristics, rather than on concrete evidence of unlawful behavior. People of color are profiled while they drive, shop, pray, stand on the sidewalk waiting for work, or travel on airplanes, trains, and buses. While it has most frequently been associated with African-Americans and Latinos, racial and ethnic profiling continues to have a devastating impact on Asians, Native Americans and, increasingly after 9/11, Arabs, Muslims, and South Asians. According to recent government data concerning the profiling of drivers, while Hispanic, black, and white drivers were stopped by the police about as often, Hispanic drivers or their vehicles were searched 8.8% of the time, black drivers 9.5% of the time, and white drivers only 3.6% of the time.



In 2003, the number of juveniles incarcerated in the U.S. alone reached nearly 100,000.

Immigrants have become the targets of frequent racially discriminatory acts and statements, as well as a governmental crackdown that includes workplace raids. Cities and towns across the country have enacted ordinances to penalize those who offer immigrants employment or accommodation and, in some cases, to prohibit the speaking of languages other than English at work. Immigrant workers of color are particularly vulnerable. Most of the industries that employ immigrant workers pay low wages, maintain dangerous working conditions, and frequently violate labor, environmental, and anti-discrimination laws. In the wake of the U.S. Supreme Court's *Hoffman Plastic* decision, undocumented workers have lost anti-discrimination protection, available remedies when injured or killed on the job, overtime pay, workers' compensation, family and medical leave,



Photo courtesy of the Farmworker Association of Florida (www.floridafarmworkers.org)

Labor protection laws need to apply to domestic workers and farm workers.

and other fundamental safeguards. Low-wage South Asian and Muslim workers are particularly vulnerable, as they face anti-immigrant hostility, employment abuse, and post-9/11-related discrimination.

Further compromising their status, the government does not provide non-citizens the right to counsel in immigration proceedings, with the large majority of immigrants having to challenge their immigration detention and deportation *pro se*. Even if an immigrant has access to counsel, recent legislative actions and court decisions have sharply limited their right to challenge the basis for their detention in the courts, and have created a second class system of justice for non-citizens, especially those held in the so-called “War on Terror.”

Women of color face overlapping forms of racial and gender-based discrimination and structural inequalities. Although the CERD Committee requires States Parties to report any impediments to women’s equal enjoyment of Convention rights, social conditions and government policies disproportionately burden minority women of color, who continue to face unequal treatment in the educational, employment and criminal justice systems. Female victims of domestic violence remain unprotected

against discrimination in housing and employment; low-wage migrant women workers are discriminated against and economically and sexually exploited; and female domestic workers are sometimes held in indentured servitude. Moreover, domestic and agricultural laborers — most of who are migrants and racial or ethnic minorities — are not afforded many basic worker protections under either the National Labor Relations Act or under other federal and state labor laws.

Even children’s rights are not sacrosanct. The U.S. government continues to detain disproportionate numbers of children of color in juvenile detention and relies on incarceration as a means of addressing children’s social, mental or behavioral issues. In 2005, UNICEF estimated that one million children and adolescents are in confinement worldwide. In 2003, the number of juveniles incarcerated in the U.S. alone reached nearly 100,000.

According to the U.S. Bureau of Justice Statistics, in June 2004, an estimated 7,083 persons under the age of 18 were held in adult jails, accounting for 1% of the total jail population. Once in state custody, children are victimized by sexual abuse, denied adequate education, denied adequate physical or mental healthcare, subjected to physical and emotional violence, improperly housed with adult populations, and provided insufficient contact with their parents and families. Children’s right to counsel in is in jeopardy with courts permitting “waiver of counsel” in delinquency proceedings even before a child consults with an attorney. As a result, American society’s most vulnerable individuals – children of color – are often left without any form of defense in an already discriminatory criminal justice system.

For those who are detained, a disproportionately minority population, inhumane and cruel conditions of confinement remain pervasive. Guards, law enforcement officials and correctional authorities continue to use restraint chairs and electro-shock weapons, including taser guns, in prisons, jails, juvenile facilities and immigration detention centers. The result is the loss of many lives. Before, during, and after Hurricane Katrina, in Orleans Parish Prison and in other Gulf Coast facilities,

incarcerated people were denied adequate food, water and medical care; locked in unsafe and unsanitary conditions; transported unsafely; victimized by guards' pervasive and widespread racial discrimination, violence and brutality, and denied contact with families.

Even before they encounter the criminal justice system, minorities are selectively targeted, and disproportionately arrested, charged, indicted, and prosecuted. For poor, largely minority citizens, the right to counsel in criminal cases has become illusory, with indigent defense systems woefully inadequate and under funded in many parts of the country, resulting in inadequate legal representation for the indigent. The absence of oversight by either the federal, state or local governments has perpetuated a system that lacks accountability and fundamental fairness and, unsurprisingly, minorities are convicted in greater numbers and greater proportions than whites. Moreover, sentencing disparities have resulted in the discriminatory overrepresentation of minorities in jails and prisons. While more than 8 out of 10 individuals prosecuted by the U.S. under the crack cocaine mandatory minimum laws is African-American, only one-third of crack cocaine users is African-American.

The system of education in the U.S. is fraught with inadequacies and inequities. More than fifty years after the seminal U.S. Supreme Court decision in *Brown v. Board of Education* mandated educational desegregation, many students of color throughout the U.S. continue to struggle

in racially isolated, under funded and inadequate schools. Too often, schools, especially those with high minority concentrations, do not have the resources to provide students with an adequate education. As a result, students fare poorly under the high-stakes testing mandated by federal law, and their rates of graduation from high school suffer. Minority students are also subjected to discriminatory discipline, usually for non-violent behavior, and, often have special educational needs. Policies and practices also known as the “school to prison pipeline” channel these youths out of schools and into the juvenile and criminal justice systems.

Affirmative action, policies designed to close the gap between American ideals of equal opportunity and the stubborn realities of structural racism, sexism and institutional exclusion in education, employment and contracting practices, is once again under attack. This carries enormous implications for the lives of women – white and minority – as well as African-Americans, Latinos, Native Americans, Asians, South Asians and Arabs, all historic and contemporary beneficiaries of the policy. Opponents of affirmative action, including the current U.S. administration, have attacked the policy in the federal courts, and highly funded and well-organized detractors have financed referenda to repeal programs in several states. Most recently, in 2006, the state of Michigan passed a ballot amendment to the Michigan Constitution that eliminates affirmative action at the state's public colleges and in government contracting.



Destruction like this was common in New Orleans after Hurricane Katrina.



Regarding the purportedly cherished right to vote, America is far out of step with the world, barring 5.4 million disproportionately minority citizens from voting in federal and state elections, sometimes for no more than writing a bad check. Federal laws banning racial discrimination in elections are barely enforced, and the government has obstructed private citizens' use of laws aimed at improving the administration of elections. Additionally, there is a long history of racial discrimination against Native Americans in voting and political representation.

Remedies for civil rights violations have also been "rolled back." Beginning in the 1980s, federal courts, in a series of decisions in key areas of the law such as educational equality, employment discrimination, sexual harassment and prison abuse, have limited the ability of people to file and win cases. These decisions restrict access to courts and erode remedies for practices that discriminate against racial and ethnic minorities, women, and other vulnerable populations.

Finally, the U.S. asserts that information about state-level implementation is present throughout its report and refers the Committee to an annex on four states. It is

not only the federal government that is bound by the Convention. State and local governments are equally bound. While state-level information is scattered throughout the report, the four states the U.S. has chosen to draw the Committee's attention to — Illinois, New Mexico, Oregon and South Carolina — are highly unrepresentative. In addition, the information provides a highly misleading portrait of racial discrimination in those four states because it is incomplete. Even more notably, it excludes populous California and Texas, states with large migrant communities and the locus of some of the nation's most egregious racial discrimination. The U.S. Report also blatantly overlooks states with large Native American populations. We further regret that the U.S. chose to disregard racial discrimination in the Gulf Coast states of Louisiana and Mississippi where Hurricane Katrina exposed the terrible social and economic inequities attendant upon those states' minority and underprivileged populations.

The ACLU calls upon the U.S. to improve its abysmal performance in these areas and to take immediate, robust action to bring the U.S. into compliance with its obligations under this vital Convention.



A rally for voting rights.

# RECOMMENDATIONS TO THE UNITED STATES

## ARTICLE 1

### DEFINITION OF RACIAL DISCRIMINATION

- Enact federal, state and local legislation adopting the Convention’s definition of “racial discrimination.” That definition protects all minority groups, indigenous communities and non-citizens under U.S. jurisdiction and control, from both *de jure* and *de facto* discrimination.

## ARTICLE 2

### ELIMINATE DISCRIMINATION & PROMOTE RACIAL UNDERSTANDING

- Conduct concerted, routine reviews of federal and state policies to analyze their discriminatory impact on minorities and non-citizens.
- Continue to monitor and enforce all school desegregation orders, and review policies with the goal of dismantling the “school-to-prison” pipeline.
- Eradicate racial profiling and racial disparities in investigation, prosecution and sentencing.
- Eliminate discriminatory housing policies and practices, including in lending to minorities, and in affording housing to minority women victims of domestic violence, as well as members of racial and ethnic groups with criminal convictions.
- Promote affirmative measures and policies to ensure the full enjoyment of human rights by members of minority groups; to eliminate structural racism, sexism and institutional exclusion; and expand its use in redressing past discrimination suffered by minorities including women and indigenous communities, particularly in the areas of education and employment.
- Remove barriers to affirmative action policies and programs including barriers to school desegregation and equitable pay for minorities.
- Effectively plan for crises such as Hurricane

Katrina, including by seeking the meaningful participation of the impacted community in reconstruction efforts.

- Eradicate the persistent poverty in the Katrina region, and increase efforts to provide equal access to housing, education, and health care to minority communities in the Gulf Coast areas.

## ARTICLE 3

### CONDEMN AND ERADICATE ALL RACIAL SEGREGATION

- Amend housing and zoning policies and adopt specific measures with the goal of eliminating *de facto* housing segregation.
- Increase the availability of affordable public housing for minorities.
- Develop and implement policies and projects aimed at avoiding separation of communities, in particular in the areas of housing and education.

## ARTICLE 5

### EQUAL TREATMENT BEFORE THE LAW

#### *Respect the Rights of Criminally Accused & Disproportionately Confined Minorities*

- Require states to properly fund and supervise their indigent defense systems.
- Prohibit waiver of counsel and pre-adjudication detention for juveniles.
- End the disproportionate confinement of people of color, including women and children of color, in prisons, jails, and immigration and juvenile detention facilities.
- Ensure that the arrest, detention or imprisonment of children is used only as a measure of last resort, and for the shortest appropriate period of time.
- Improve medical and psychiatric care, and educational services, in prisons, jails, immigration detention and juvenile detention facilities for minorities, including women and children of color.
- Develop policies and practices that

acknowledge the unique needs of girls of color in juvenile detention, eliminate dangerous and excessively punitive practices, and establish meaningful and independent oversight and accountability mechanisms.

- Eliminate discrimination against non-citizens, especially against undocumented migrant workers. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens.

*Repeal Laws with Disproportionate Impact on Minorities*

- Repeal all 21 states’ “three strikes” laws.
- Amend the federal sentencing guidelines to prevent any discriminatory impact on minorities including by further reducing the disparity in penalties for crack and powder cocaine offenses.
- Require that all labor protection laws, such as the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Health and Safety Act apply to domestic workers and farm workers.

*Conduct Independent and Prompt Investigations of Allegations of Abuse*

- Thoroughly and promptly investigate all allegations of discriminatory abuse of minorities in U.S. prisons, jails and detention facilities.
- Establish independent oversight bodies to investigate complaints by minorities of discriminatory abuse by law enforcement and correctional officers, and to monitor conditions in all prisons, jails, and detention centers.
- Hold accountable all individuals, including government officials, members of the armed forces, correctional officers, police, prison guards, medical personnel, and private government contractors who have authorized, condoned or committed torture and other cruel, inhuman or degrading treatment or punishment against citizens and non-citizens held in U.S. custody.

- Effectively investigate, prosecute and punish perpetrators of acts of sexual violence, including rape, of Native American women.

*End Racial & Ethnic Profiling*

- Ban all ethnic and racial profiling practices by state law enforcement officers, and ensure that states comply with bans already in place, and collect racial profiling data where required.
- Urge the U.S. Congress to pass the End Racial Profiling Act of 2005.
- Ensure that all air-traffic related searches of individuals are based on suspicion and conducted within appropriate parameters and employ the least intrusive measures possible.

*End Capital Punishment and Juvenile Life Without Parole*

- Ban all capital punishment, and impose a national moratorium on its use until race bias in the application of federal and state death penalty statutes has been eliminated.
- Abolish the sentence of life without parole for children convicted of federal crimes. Enable child offenders serving life without parole to have their cases reviewed by a court for reassessment with the possibility of parole.

*Cease Discrimination & Violence against Muslims, Migrants & Women*

- Halt government programs and policies that target Muslims without a basis for suspicion, including FBI interrogations and delays by ICE in processing U.S. naturalization applications.
- Ban the use of tasers by law enforcement officials and correctional officers at the federal, state, and local levels pending the outcome of an independent inquiry into their safety and use, including racial disparities in their deployment.
- Return jurisdiction of sexual offenses to tribal courts allowing these courts to prosecute cases of sexual violence against indigenous women, and provide indigenous communities adequate resources to prevent and care for rape victims.
- Take effective measures to provide culturally-sensitive training for all law enforcement officers that accounts for the



Photo courtesy of AP Wide World Photos

Prisoners await rescue on the Broad Street overpass after Hurricane Katrina.

specific vulnerability of Native women, and racial and ethnic minority women, to gender-based violence.

- Take measures to address the situation of intersectional discrimination, in particular regarding women and children from the most disadvantaged and poor racial and ethnic groups.
- Urge the UN to adopt codes of conduct regulating the treatment and protection of migrant domestic workers and require their staff to abide by that code, taking disciplinary action in the event of its violation.

#### *Expand and Enforce Political Rights*

- Allow all citizens, regardless of their criminal history, to vote. In the alternative, require all states to restore voting rights to people upon release from prison.
- Enforce the primary anti-discrimination provision of the Voting Rights Act, and allow

private parties to always enforce rights under the Help America Vote Act.

#### *Restore Rights of Non-Citizens*

- Reform immigration policy immediately; ensure its compliance with human rights standards; and ensure it does not have a disparate impact upon persons on the basis of race, color, descent, or national or ethnic origin.
- Eliminate the penalty of criminal incarceration for violation of immigration laws.
- Support and fully fund alternatives to detention programs so that the detention of migrant children and families with children is a measure of last resort and only for the most exceptional circumstances.
- Mandate states to refrain from enforcing federal immigration laws, especially during national and state crises and emergencies.
- Ensure that border protection activities are conducted in a manner consistent with the Convention and other human rights standards.
- Discontinue all federal and state efforts to target, stigmatize, stereotype or profile non-citizens, including workers, in the absence of individualized suspicion of wrongdoing.
- Discourage states and localities from enacting unlawful and/or mean-spirited anti-immigrant legislation.
- Ensure that counter-terrorism measures do not discriminate in purpose or effect on the grounds of race, color, descent, or national or ethnic origin.
- Take necessary measures to ensure access to justice for all persons within U.S. jurisdiction without discrimination.

#### *Assure Equal Access to Health Care & Equal Medical Treatment*

- Improve standards of government health programs and ensure equal access for all persons to public medical care, and the equal, non-discriminatory treatment of all persons.

#### *Reform Education Policies to Alleviate Discriminatory Impact*

- Ensure that Congress reauthorizes the No Child Left Behind Act with amendments to provide



accountability for “Push-Outs”; strong provisions for Out-of-District Transfers; improved accountability for graduation rates; and adequate support for schools and districts “in need of improvement.”

- Increase government funding of minority-attended schools.
- Require schools to develop adequate and fair disciplinary criteria and referral procedures, explain racial disparities in disciplinary referrals, maintain accurate discipline records, and report all incidents of racial and ethnic harassment.
- Encourage states to use voluntary integration programs and discourage rezoning of school districts adverse to minority students’ interests.
- Ban “zero tolerance” school discipline policies and prohibit the presence of armed police officers in schools except where legitimate security concerns require it.
- Discourage involuntary transfers to “alternative schools” that often fail to provide adequate educational services.

### ARTICLE 6

#### ENSURE EFFECTIVE PROTECTION & REMEDIES FOR RACE DISCRIMINATION

- Ensure that federal judicial remedies, supplementing state jurisdiction, be available to redress discrimination and denial of constitutional and related statutory rights of immigrants, minorities, women, undocumented persons, and persons detained in the “War on Terror”.
- Guarantee the right of every person within U.S. jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, as well as the right to seek just and adequate reparation for the damage suffered.
- Ensure the U.S. Department of Justice’s Civil Rights Division returns to prosecuting traditional anti-discrimination cases, including those based on employment, housing, education and voting laws.
- Increase Congressional oversight of the Civil Rights Division’s housing, employment, education and voting sections.
- Encourage expansion of federal and state laws that protect domestic violence victims from

housing and employment discrimination.

- Strengthen protections in state anti-discrimination, tort and workers’ compensation laws for undocumented persons.

### ARTICLE 7

#### MEASURES IN TEACHING, EDUCATION & CULTURE TO COMBAT DISCRIMINATION & PROMOTE TOLERANCE

- Undertake meaningful outreach to educate the federal, state and local judiciaries, as well as the American public, about U.S. government obligations under the Convention.
- Promulgate legally enforceable measures to combat all racial and ethnic profiling, and race and ethnicity-related hate crimes; implement a nationwide collection of disaggregated data based on racial and ethnic groups, as well as gender.
- Establish a national human rights institution for the promotion and protection of human rights with a firm mandate to combat all forms of discrimination. In doing so, the government should consider the Principles relating to the Status of National Institutions (Paris Principles).



Published December 2007

ACLU Human Rights Program  
 125 Broad Street, 18th Fl.  
 New York, NY 10004-2400  
 (212) 549-2500  
[www.aclu.org](http://www.aclu.org)