

**SUBMISSION FROM THE AMERICAN CIVIL LIBERTIES UNION
AND HUMAN RIGHTS WATCH ON THE US CERD REVIEW
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Introduction

The United States signed the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD” or “Convention”) in 1966. President Lyndon Johnson’s administration [noted at the time](#) that the United States “has not always measured up to its constitutional heritage of equality for all” but that it was “on the march” towards compliance. The United States finally ratified the Convention in 1994 and first reported on its progress in implementing the Convention to the Committee on the Elimination of Racial Discrimination (“CERD” or “Committee”) in 2000. In August 2022, the Committee will examine the combined 10th – 12th periodic reports by the United States on compliance with the Convention. This report supplements the submission of the government with additional information in key areas and offers recommendations that will, if adopted, enhance the government’s ability to comply with ICERD.

In its 2000 report, the United States admitted that discrimination remained “pervasive,” due to “subtle [and elusive] forms of discrimination” that “persist[ed] in American society.” The forms of discrimination reported to the United Nations by the United States included inadequate enforcement of existing anti-discrimination laws; ineffective use and dissemination of data; economic disadvantage experienced by minority groups; persistent discrimination in employment and labor relations; segregation and discrimination in housing leading to diminished educational opportunities for minorities; lack of equal access to capital, credit markets and technology; discrimination in the criminal legal system; lack of adequate access to health insurance and health care; and discrimination against immigrants, among other harmful effects. The United States also noted the heightened impact of racism on women and children.

It has now been more than 50 years since the US signed the ICERD, nearly 30 years since it ratified the Convention, and more than 20 since it identified the extensive foregoing list of impediments to its effective implementation. Yet progress towards compliance remains elusive—indeed, grossly inadequate—in numerous key areas including reparative justice; discrimination in the US criminal legal system; use of force by law enforcement officials; discrimination in the regulation and enforcement of migration control; and stark disparities in the areas of economic opportunity and health care. Structural racism and xenophobia persist as powerful and pervasive forces in American society.

During his first days in office, President Joseph Biden [called](#) for urgent action to advance equity for all, calling this a “battle for the soul of [the] nation” because “systemic racism” is “corrosive,” “destructive” and “costly.” As this report and its annex, jointly authored by the American Civil Liberties Union and Human Rights Watch, demonstrate, the US has a great deal of work ahead to realize the promises of the ICERD. This report therefore includes important recommendations in areas in which our organizations have specialized expertise, for addressing some of the US’s most flagrant violations of the Convention. Additionally, although we recognize the political challenges facing the Biden Administration as it seeks to promote racial equity, we note that its recent declarations on racial justice are disconnected from the government’s longstanding human rights obligations under the ICERD. The attached annex therefore identifies additional, more targeted measures to align President Biden’s commitments with the ICERD. These measures are both fully within the control of the executive branch of the federal government and powerful enough to give life to the President’s stated commitment to put “every branch of the White House and the federal government” to work in the effort to “eliminate systemic racism” in the United States.

President Biden has [declared](#) that racism, xenophobia, nativism and other forms of intolerance are “global problems.” The ICERD is an important part of the solution and to confront these global problems effectively, the US [should fulfill](#) its obligations under the treaty. This report and its detailed annex offer an initial roadmap for the US to do exactly that.

Reparative Justice for the Legacy of Enslavement

Article 6 of the ICERD establishes the right to remedy and to seek just and adequate reparation for acts of racial discrimination such as enslavement, the many post-emancipation crimes against Black people in the United States, and the insufficiently remediated ongoing discriminatory structures. The US government has never adequately addressed the gross human rights violations perpetrated against Black people as part of chattel slavery or the exploitation, segregation, and violence unleashed on Black people that followed. The discrimination against Black people that is a legacy of enslavement persists and is perpetuated by economic, health, education, law enforcement, and housing, and other policies and practices that fail to adequately address racial inequities -- part of the ongoing structural racism and racial subjugation that prevents many Black people from advancing, and facilitates police violence, housing segregation, and a lack of access to education and employment opportunities, among other things. States are obligated under the [ICERD](#) to overcome such structural discrimination, both through effective remedies—such as reparations and “special measures”—and through the Convention’s obligation to “[t]ake steps to remove all obstacles that prevent the enjoyment of economic, social and cultural rights by people of African descent especially in the areas of education, housing, employment and health.”

The [ICERD requires](#) States Parties to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination” and to ensure “the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” The CERD has [noted](#) that the right to seek just and adequate reparation “is not necessarily secured by the punishment of the perpetrator of the discrimination” and that “the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.” The [UN has also established](#) principles on the right of victims to remedies and reparations, and specifically set forth the right to reparations for people of African descent. Although States generally only incur international responsibility for acts that are both internationally wrongful and attributable to the State, [this principle](#) does not apply to slavery and its legacy. While since the 1950s the US has enacted civil rights statutes, such legislation has been largely ineffective at curbing structural discrimination and racial inequality because of judicial decisions that significantly undermined their scope and meager government enforcement and investment, as well as the onerous requirements of discriminatory intent instead of discriminatory effect. Further, the US has [consistently indicated](#) in its ICERD reporting that “inadequate funding” is one of the central reasons for insufficient federal enforcement. The failure of the US to expand enforcement efforts and resources while acknowledging these widespread disparities over the last twenty-two years since it became a party to ICERD requires immediate redress.

Reparative intervention for historical and contemporary racial injustice is urgent and required by ICERD. The deep racial harms and unequal structures that are inextricably rooted in chattel slavery remain unremedied, perpetuating systemic inequality. [Scholars have estimated](#) that the US benefited from 222,505,049 hours of forced labor between 1619 and the end of slavery in 1865, which would be valued at \$97 trillion today. In 1860 alone, there were four million enslaved Africans whose labor is valued [at least \\$3 billion](#), more than all the capital invested in railroads and factories in the United States [combined](#). Enslaved people were subjected to brutal [forced labor](#) as well as formal and informal state-sanctioned discrimination that resulted in severe economic damage, in addition to psychological, social and political harm.

Black people in the US continue to endure [severe economic disadvantages](#) in wealth and income, and to suffer from [discriminatory policies](#) in land and home ownership, [denial of health care](#), and [segregation in education](#). The [resulting disparities](#) are staggering: The average white family has roughly ten times the wealth of the average Black family, and white college graduates have over seven times more wealth than Black college graduates. With the current pace of growth in wealth among Black families, it will take an [estimated](#) 230 years for Black families to obtain the same amount of wealth that white families currently have. About [21 percent](#) of

Black people in the United States live in poverty, more than double the rate for white people (8.8 percent). Although “these wealth disparities are rooted in [historic injustices](#) and carried forward by recent and ongoing practices and policies that fail to reverse inequitable trends,” to date the US government has not done nearly enough to address the lasting and contemporary racially discriminatory effects of structures of inequality and racial subordination. It has also openly admitted to failing to provide sufficient resources for civil rights enforcement even though ICERD requires restitution, compensation, and restoration.

While the CERD has not yet made specific recommendations to the US with regard to reparative justice, the UN High Commissioner for Human Rights, in her [2021 report](#) on systemic racism in law enforcement, urged the US (alongside other governments) to initiate reparations. Although some localities have implemented [reparation initiatives](#) or commissions to address past racially motivated harms, there remains no formal nationwide federal initiative to advance reparations. Neither US courts nor other tribunals have provided [reliable remedies](#) for the descendants of enslaved people. [H.R. 40](#) on the Commission to Study and Develop Reparation Proposals for African Americans Act, a bill currently before the House of Representatives, would establish a commission to study the effects of slavery and recommend appropriate remedies. But [no progress](#) has been reported as of this writing. In sum, the US federal government continues to neglect its ICERD commitments to remedy the systemic, longstanding and grave legacy of enslavement and racial discrimination.

To address the ongoing structural racism and legacy of enslavement, the US should:

- Establish a federal commission by legislative action or executive order to study and develop reparations proposals for the descendants of enslaved people.
- Appropriate effective resources for federal economic and civil rights programs to address long-term structural racism and provide assistance to low-wealth and low-income Black communities.

Discrimination in the Criminal Legal System

Mass Incarceration

Article 2(1) of ICERD states that States Parties need to pursue the elimination of racial discrimination in all its forms. [ICERD prohibits](#) discriminatory practices and requires that States Parties “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws which have the effect of creating or perpetuating discrimination.” Additionally, [Article 5 guarantees](#) equality before the law, including “the right to equal treatment before tribunals and all other organs administering justice”; and [article 6 requires](#) states to guarantee “effective protection and remedies, through competent national tribunals,” against acts of racial discrimination.

The CERD [has broadly articulated](#) that “the mere fact of belonging to a racial or ethnic group . . . is not a sufficient reason, de jure or de facto, to place a person in pretrial detention” and that [States should](#) “ensure that the courts do not apply harsher punishments solely because of an accused person’s membership of a specific racial or ethnic group.” Additionally, the UN, in its 2021 common position on incarceration, [stated that](#) “incarceration should be used as a last resort,” and recommended shifting to non-custodial alternatives.

The CERD has repeatedly emphasized profound concerns with the US criminal legal system, [first articulated](#) in its 2001 Concluding Observations to the US, in which it noted that “the incarceration rate is particularly high with regard to African-Americans and Hispanics.” It thus [recommended](#) that the US take “firm action to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin,” to equal treatment before all organs administering justice. [In its most recent review](#), the Committee went further, expressing its concern that “members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty.” It specifically [recommended](#) that the US amend “laws and policies leading to racially disparate impacts in the criminal justice system” at all levels of government and implement “effective national strategies or plans of action aimed at eliminating structural discrimination.” In

its 2021 submission, the [US reported](#) that the federal prison population had dropped to its lowest level since 2000, “declining almost 31% since 2013,” though it is worth noting that the federal prison population only represents [about 10 percent](#) of the total US prison population. Further, the federal prison population [has grown under President Biden](#). The US also cited the [First Step Act](#), enacted by Congress in December 2018, as central in making reductions possible. In its 2021 submission the US reported that of the total number of people who received reduced sentences as a result of the First Step Act, [91% were Black](#), which is consistent with the historic overpolicing and overcharging of Black communities. At the same time, the US failed to mention that its own Department of Justice (DOJ) found the risk assessment tool “PATTERN,” created by DOJ in connection with the First Step Act, resulted in racial disparities. Despite repeated attempts at reform, the tool continues to overestimate the number of Black women who will engage in recidivism, compared to white women, and produces other racial disparities.

While some reforms have taken effect over the last decade, the US has failed to systematically address the immense breadth and depth of harm caused by its criminal legal system – some of which, especially with regard to drug policy, are the product of [deliberate legal and policy choices](#) made by white policymakers in the context of white supremacy culture.

US authorities hold almost two million people in detention and correctional facilities across the [United States](#), and they imprison Black people at a rate three times higher than [white people](#). Black women are imprisoned [at a rate that is 1.7 times](#) the rate of white women. While systemic discrimination against Black people is particularly blatant, the US also disproportionately punishes Indigenous and Latinx people. Racial discrimination is also deeply woven into the policing and charging practices that harass, target, and subject Black people and other people of color to the most severe punishments available. One out of seven people in prison are [serving a life sentence](#), and [nearly half](#) of that group is Black. US authorities continue to apply the death penalty both discriminatorily and arbitrarily. In 2021, more than half of people executed were Black, and approximately 60% of people sentenced to death were [Black or Latinx](#). Nearly 200 people on death row have been [exonerated](#) since 1972—1 for every 8.3 people executed. In fact, both death-row exonerees in 2021 were Black men imprisoned in Mississippi for nearly three decades because of [false forensic testimony](#).

Mass incarceration harms not only those incarcerated, disproportionately people of color, but entire communities. About [half of adults](#) in the US have had an immediate family member incarcerated in jail or prison. Black people are 50% more likely to have experienced familial incarceration than whites, and they are three times as likely to have had a family member incarcerated for [a year or longer](#). [Research also shows](#) that nearly half of incarcerated people in state prisons and almost 60% in federal prisons are parents with minor children, and Black children are six times more likely than their white peers to have had a [parent behind bars](#).

One of the most damaging aspects of mass incarceration in the United States is the harm caused to incarcerated people by dangerous and degrading conditions in prisons, jails, and other places of detention. Practices such as [solitary confinement](#), [denial of adequate medical and mental healthcare](#), and [sexual and other violence](#) cause lasting injury, and sometimes death, to those exposed to them. Because of space limitations, this report does not discuss these conditions of confinement in detail, but they are an inseparable element of the harm caused by mass incarceration.

To address the discriminatory impact of mass incarceration, the US should:

- Reduce the role of police in addressing societal problems (including homelessness, mental health, and poverty) and invest instead in community-based non-carceral solutions to such societal problems.
- Abolish the death penalty and consider the elimination of life, and virtual life, sentences; eliminate sentence enhancements and minimum-time-served requirements; and expand access to early-release mechanisms such as good-time credits, parole, and clemency. These legal changes should be extended to offenses classified as violent and applied retroactively.

- Invest in crime prevention programs and alternatives to incarceration including community-based crisis intervention services that are trauma-informed, culturally competent, and do not exclude offenses classified as violent.
- Record, maintain, track, and publicly disseminate data on convictions, sentencing, and incarceration including racial and ethnic demographics.

Youth/Juvenile Justice

The [ICERD requires](#) States to “pay the greatest attention possible with a view to ensuring that [children from racial minorities] benefit from the special regime to which they are entitled in relation to the execution of sentences.” Other prominent human rights bodies have reinforced this message. The Committee on the Rights of the Child (CRC) [has stated that](#) “particular attention must be paid to de facto discrimination and [racial] disparities” and [urged states](#) to provide “appropriate support and assistance” to reintegrate young people who commit crimes. In its most [recent recommendations](#) to the US, the CERD urged the US to intensify efforts to address the “school-to-prison pipeline,” ensure that young people are not placed in adult criminal settings, and abolish life-without-parole sentences for people under eighteen.

Racial inequities pervade every stage of the juvenile legal system. Black and brown young people are more likely than their white peers to be [stopped and harassed by the police](#). This increases the likelihood of future arrest: Black young people with police contact by eighth grade have eleven times greater odds of being [arrested in young adulthood](#). Once arrested, Black young people are four times as likely to be [detained](#) as white young people. Black young people comprise just fifteen percent of the US youth population, but forty-one percent of those [confined in juvenile facilities](#). Black children are also disproportionately likely to be [charged as adults](#). Indeed, eighty percent of young people [serving life sentences](#) are children of color, and more than fifty percent are Black. The [traumas of incarceration](#)—which are [especially acute for children in adult prisons](#) and include sexual abuse, solitary confinement, and death by suicide—therefore fall too often on children of color, especially Black youth.

To address the discriminatory impact of policies criminalizing youth:

- Provide supportive services for and investment in child-centered, trauma informed youth programs, education, and mental health care.
- Refrain from prosecuting children in adult court, utilizing incarceration as a last resort after other interventions have been tried, and instead treat them as children, with a focus on opportunities for education, healing, and healthy development instead of punishment.

Criminalization of Poverty – Homelessness, Bail, Fines, and Fees

Beyond the [general requirement](#) that “all public authorities and public institutions, national and local” eschew racial discrimination, the ICERD contains provisions that bear specifically on homelessness and poverty. Article 5(e) of the Convention [addresses discrimination](#) in protections against unemployment and the provision of social security and social services. Additionally, [Article 5\(f\) articulates](#) a “right of access to any place or service intended for use by the general public.” In 2014, the CERD [expressed concern](#) over the “high number of homeless persons, who are disproportionately from racial and ethnic minorities,” and the “criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging and lying down in public spaces.” [The Committee recommended](#) abolishing laws criminalizing homelessness, and “intensify[ing] efforts to find solutions for the homeless, in accordance with human rights standards.”

Although the [US has previously acknowledged](#) the CERD’s concerns, the criminalization of homelessness remains a pressing social problem across the United States—and one that continues to burden people of color disproportionately. In 2020, there were an estimated [580,000 unhoused people](#) in the United States, 39 percent of whom were Black, despite only being 12 percent of the US total population. Fifty-three percent of unhoused families with children were Black. Native American, Native Hawaiian, and Pacific Islander people made up 1 percent of the US population, but 5 percent of the unhoused. Many localities persist in [criminalizing](#)

the presence of homeless persons in public places—in essence, [punishing people](#) for lacking a home by prohibiting sleeping outside, loitering, or requesting assistance from others. For instance, in one town near Los Angeles, California, only 1.3% of the population is homeless, but that group received a staggering 26% of all [citations](#) issued in the town by the Los Angeles Sheriff’s Department. Zealous [targeting of homeless populations](#) essentially for being homeless inexorably feeds a vicious cycle of escalating enforcement, generating misdemeanors, warrants, unpayable fines, and incarceration. The criminalization of homelessness [now includes](#) arrests, citations, and forced banishment of people through encampment clearances and property destruction by sanitation workers and police. In cities like Los Angeles as well as elsewhere in the US, a long history of racial discrimination in housing, lending, employment, policing, and other factors (government policies like “urban renewal” and freeway construction included) [have led to](#) high levels of Black homelessness.

Poverty implicates issues of concern to CERD outside the context of homelessness as well. The US has conceded that, within the criminal legal system, some rights are contingent upon ability to pay. Although variation occurs across US states, the [US has noted](#) that “persons with felony convictions may [] have to pay any outstanding fees, fines, or restitution before [voting] rights are restored” upon release from incarceration. While this statement indicates some recognition of the problem, the federal government’s current actions are inadequate to remedy the immense [harm to poor individuals](#) stemming from the criminal legal system, a system that keeps the already marginalized in poverty. In its most recent response to the CERD, the [US fails to address](#) the crushing effects of fines and fees accompanying low-level infractions, the accumulation of which affect the poorest in society, who pay the vast majority of these penalties. [A study in Tulsa, Oklahoma](#) found that Black residents were disproportionately subject to county-based warrants that are often issued for minor infractions such as failure to pay court costs, fines, and fees. The threat of rearrest for one’s inability to afford mounting debt keeps people in a [cycle of incarceration](#) and forces families to decide between paying fines and fees and purchasing necessities such as diapers and formula for their children. Mothers are [separated for lengthy periods](#) of time from their children as a result of being held in custody, sometimes lengthened due to the fines and fees.

Furthermore, pretrial incarceration, often ordered by judges setting unaffordable money bail, disproportionately harms low-income and low-wealth people of color. In the case of bail, wealthy defendants are more able to secure their freedom while poor ones are forced to [remain incarcerated](#), affecting their livelihoods and family ties. [Pretrial incarceration leads](#) to [increased likelihood](#) of convictions and harsher sentences. People held in jail pretrial are [pressured to plead guilty](#) to secure their release, regardless of their actual guilt or innocence. Additionally, pretrial incarceration can result in even [more fines and fees](#), as some jails bill detained people for each day of their detention. These inequalities have troubling [racial implications](#), as Black people are 2.5 times more likely than white people to live in poverty and face much higher arrest rates.

To address the criminalization of poverty, US states should:

- Stop criminalizing homelessness and its inevitable consequences, which only further serves to penalize disadvantaged individuals already suffering from inadequate allocation of governmental resources.
- Reduce the circumstances in which courts can order pretrial incarceration, though bail setting or other means, only to those in which there is strong evidence of imminent harm if a person is released pretrial, and only following a rigorous hearing to evaluate that evidence.
- Invest in pretrial services programs providing court date reminders, transportation, and other support to ensure court appearances.
- Drastically reduce the number and amounts of fines and fees in the US criminal legal system. Further, establish national standards for criminal-legal system debt, including guidelines on ability- to- pay determinations and collection practices.

Probation and Parole

[Probation and parole](#) are portrayed as alternatives to incarceration, but in reality they drive high numbers of people—particularly Black and brown people—into jail and prison. About [4 million people](#) in the US are on probation or parole, and nearly half of all state prison admissions stem from [violations of the conditions of probation or parole](#). Black people are [4.15 times more likely to be under supervision](#) than white people, and remain on supervision longer than similarly situated whites.

Black people are also more likely to be incarcerated for supervision violations. Due to generations of structural racism, Black and brown people are [less likely to have resources](#), such as housing, wealth, reliable transportation, and jobs, that make it feasible to complete the onerous requirements of supervision. Meanwhile, they are disproportionately stopped, searched, and arrested by police—making them more likely to be [incarcerated for probation or parole violations](#). And some supervision conditions—such as requirements to stay away from people with felony records—disproportionately [burden Black men](#), one in three of whom have a felony conviction.

To address racial disparities in probation and parole, US authorities should:

- Drastically reduce the use of supervision sentences for youth and adults and instead utilize real alternatives to incarceration.
- Where supervision is used, shorten supervision periods, narrowly tailor conditions, and stop incarcerating people for violations that would not otherwise be a crime.

Reentry Issues – Impact of Criminal Records on Housing and Unemployment

The [ICERD requires](#) States to take “special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms,” including the right to work and the [right to housing](#). The [Committee has raised concerns](#) about persistent housing and employment racial disparities in the US.

The [United States imposes](#) more than 48,000 legal restrictions on people with criminal records—barring them from work, housing, jobs, and civic engagement. These barriers disproportionately impact Black and brown people, who are more likely to have [criminal records](#) and to [face discrimination](#) when attempting to access housing and employment. Sixty-four percent of unemployed men in their thirties have criminal records, and Black men are almost twice as likely as white men to be [unemployed](#). Additionally, the high rate at which the US subjects Black people to correctional control results in their [underrepresentation in the US electorate](#), as many US jurisdictions deny voting rights to people on probation and parole, and nearly all deny those rights to people in prison.

To address racial discrimination in re-entry, US jurisdictions should:

- Repeal US laws allowing and facilitating discrimination and/or exclusions based solely on an individual’s arrest or conviction, including restrictions or exclusions from employment, housing, access to social benefits, and voting.

Racist Drug Laws and Racism in Public Health Approaches

The [ICERD guarantees](#) the right to equal treatment generally and, under Article 2(c), requires States Parties to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination wherever it exists.” In its General Recommendation XXXI, the [CERD recommended](#) that States “pay the greatest attention” to “proportionately higher crime rates attributed to persons belonging to [racial minorities], particularly as regards petty street crime and offenses related to drugs” as an indication of the “non-integration of such persons into society.” Additionally, the [Joint United Nations Programme on HIV/AIDS \(UNAIDS\) has called for](#) the “decriminalization of drug possession for personal use” and the “elimination of stigma and discrimination

against people who use drugs.” In its 2014 concluding observations to the US, the [CERD expressed concern](#) over “the application of mandatory minimum drug-offense sentencing policies” that exacerbate racial disparities in the criminal legal system. Additionally, the UN Special Rapporteur on extreme poverty and human rights highlighted the “confused and counterproductive drug policies” in the US in his 2018 country report. The report described how, in the context of drug addiction in the US, the “main responses have been punitive,” rather than the appropriate response of “increased funding and improved access to vital care and support.” The report [further suggested](#) that this “urge to punish” has “racial undertones,” noting the disparities in sentencing between Black users of crack cocaine and white users of opioids. Similarly, the [UN Working Group of Experts on People of African Descent has urged the US](#) to amend any judicial policies that disproportionately target Black people, stating that “the war on drugs has operated more effectively as a system of racial control than as a mechanism for combating the use or trafficking of narcotics.”

In its 2021 report to the CERD, the US pointed to the 2018 enactment of the [First Step Act](#), a law that reduced racial disparities in sentences for certain drug crimes. While these reforms are helpful, they do not do nearly enough to remedy past discriminatory treatment or change laws, policies and practices in ways that would prevent it in the future.

Nearly 400,000 people are in prison for drug crimes. The vast majority of individuals incarcerated in federal prison are there on a drug charge, and by some estimates, nearly eighty percent of people in federal prison for drug offenses are Black or Latinx. Though Black and white people [use drugs at similar rates](#), Black people are imprisoned for drug crimes at [five times the rate of white people](#). “Black people [a]re arrested at over [three times the rate](#) of white people, and up to eight times as often in some states,” for marijuana offenses. Additionally, police have targeted Black people [specifically for federal prosecution](#), because “federal drug laws carry harsher punishment—including mandatory minimum sentences—than charges brought in state court.” Though some authorities have begun to embrace a less punitive, more health-based approach to substance use disorders, this shift, still far too limited, only began to take place after years of especially [harsh treatment of Black people](#) as part of the War on Drugs and during an opioid crisis associated primarily with white people. Further, drug arrests—the vast majority for possession—remain the leading cause of arrest in the US.

Black people have in fact been hit the hardest by the opioid crisis in recent years, one that has only worsened since the Covid-19 pandemic began. [One study](#) shows a thirty-eight percent increase in overdoses among Black people between 2018 and 2019 across four states. Additionally, some states have responded to the opioid crisis by passing drug-induced homicide laws, which seek to charge people with murder for selling drugs that may have led to an overdose. Such laws can [result in the disproportionate prosecution](#) of Black and Latinx people—providing another basis for subjecting individuals of color to lengthy prison terms for drug-related offenses.

To make drug policy more rights-respecting, the US should:

- End sentencing disparities between crack cocaine and powder cocaine offenses.
- Eliminate mandatory minimum sentences for drug offenses and repeal drug-induced homicide laws.
- Decriminalize possession of drugs for personal use.
- Enact laws or otherwise encourage processes to review and clear past drug convictions, including a process to expunge convictions for marijuana sales as marijuana is legalized for sale and a means to invest resources obtained from marijuana licensing to communities most harmed by past prohibitions on marijuana.
- Invest in treatment and harm-reduction programs to provide trauma-informed and culturally competent support to people living with substance use disorders.

Prison Labor

[ICERD Article 5 includes](#) the rights to work, free choice of employment, just and favorable conditions of work, equal pay for equal work, and just and favorable remuneration. Further, the [guidelines](#) for prison labor set out

in the UN Standard Minimum Rules for the Treatment of Prisoners (the "Rules") prohibit work "of an afflictive nature," require permitting incarcerated people to "choose the type of work they wish to perform," and mandate that such labor be supplemented with vocational training. [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."

Almost one million people are currently [working while confined in US prisons](#). They often work in [grueling and degrading conditions](#) for little to no pay—often pennies on the hour—and under threat of punishment (including solitary confinement) for refusing to work. US law [explicitly excludes](#) incarcerated workers from the most basic workplace safety guarantees, including the constitutional prohibition against involuntary servitude. The US prison labor system involves [present-day involuntary servitude](#). Prison labor is also a legacy of slavery, and [racial inequities persist today](#). Black people are disproportionately incarcerated and thus [overrepresented](#) among those working in prison. Black people also work lower-wage and unpaid agriculture and maintenance jobs at a disproportionate rate in prison, while a higher proportion of white people work in [higher-paying prison-industries jobs](#). Indeed, across the deep south, agricultural workers, largely Black, pick and harvest crops in prisons located on the sites of former slave plantations.

To eliminate racial inequities in prison labor, the US should:

- Abolish the Thirteenth Amendment's exclusion that allows forced labor as a punishment for a crime.
- 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.
- Adopt legislation and regulations providing incarcerated workers in all prisons with the same labor protections afforded to other US workers including minimum wage, overtime pay, health and safety standards, unionization and collective bargaining, and protection from discrimination and retaliation.
- Initiate oversight investigations into federal and state prisons to eliminate forced labor of incarcerated people and discriminatory pay, allocation of work assignments, conditions and related practices.

Discrimination and Excessive Force by Law Enforcement Officials

Racially-Disparate Policing and Enforcement Practices

Article 5(b) of the [ICERD requires](#) States Parties to ensure equity in the right to be free from "violence or bodily harm, whether inflicted by government officials or by any individual group or institution." Accordingly, the [CERD has called on States Parties](#) to improve the training of their law enforcement officials, and it has long [expressed concern](#) about police profiling, [bias](#) and [brutality](#) (as well as [attendant impunity](#)) that disproportionately harms people of color in the United States. [The Committee even issued](#) an Early Warning and Urgent Action Procedures Resolution after the police murder of George Floyd sparked unprecedented protests against police violence in 2020.

[Despite warnings](#) from the Committee and other international human rights bodies, US police agencies have failed to meet their obligations under the ICERD. The [US has discussed](#) bringing federal lawsuits against problematic police agencies and [proposed](#) some federal legislation that may (if passed) help to address some of these issues, but legislation failed in the US Senate, and the executive order President Biden passed in response does not go nearly far enough to save lives.

People of color continue to bear the brunt of aggressive and discriminatory policing. [Estimates](#) attribute over 1,000 killings per year to the police, and new research suggests that more than half of police killings are not reflected in official statistics. Police also continue to kill Native Americans, Latinxs and Black people at [significantly higher rates](#)—as much as 350% more frequently—than white people. Even greater racial disparities attend [nonfatal uses of force](#) by police, and police likewise [target people of color](#) (especially Black people) for stops and arrests at much higher rates than white people. The goal of limiting police violence in the

US is linked to the need to correct imbalances between investment in services that directly address societal problems such as substance use disorders or poverty and [investment in policing](#).

These substantial, persistent imbalances notwithstanding, [impunity for abuse](#) remains a widespread problem. There are over [18,000 policing agencies](#) across the US, but the US Department of Justice opened only [70 civil investigations](#) into police departments for the possible violation of civilians' rights between 1994 and January 2020. More broadly, police [rarely face prosecution](#) or other legal consequences after engaging in brutality. Additionally, [much of the data needed](#) to discern the extent of police compliance with the ICERD remain undisclosed. For instance, federal efforts to create a use-of-force database for police have faltered due to [widespread noncooperation](#) from police departments—though President Biden's executive order on policing aims to address this problem. In many US states, the disciplinary records of abusive officers are also largely [hidden from the public](#), and civil society groups and universities have had to take it upon themselves to cobble together a [national database](#) on police stops of civilians.

To address excessive use of force in law enforcement, the US should:

- Prohibit police from enforcing a range of non-serious offenses, including issuing fines and making arrests for non-dangerous behaviors, thus eliminating many of the unnecessary interactions between the police and community members that have led to so much violence and so many deaths.
- Invest in communities to prioritize health and quality of life over law enforcement and surveillance.
- Implement enforceable legal constraints so that there will be only rare instances in which police officers can legally use force against community members;
- Create independent oversight structures with robust enforcement and subpoena powers that ensure that when officers use force in violation of the law, policies, or training, they are held accountable.

Racial bias and abuse by law enforcement in immigration control

ICERD's prohibition of discrimination, including in [Article 5\(b\)](#) also bears on law enforcement at the US border and in interior immigration enforcement. The [CERD has recommended](#) that "all officials dealing with non-citizens receive special training, including training in human rights," to combat ill-treatment and discrimination against non-citizens by police and law enforcement agencies. In its 2008 [concluding observations](#) to the US, the CERD expressed concern over the excessive use of force against migrants, recommending that the US establish "adequate systems for monitoring police abuses" and develop "further training opportunities for law enforcement officials." In 2014, the Committee went further, [reiterating concern](#) about "increased use of racial profiling" by law enforcement to determine immigration status and recommending an end to specified immigration enforcement programs, including the [Secure Communities program](#) and the [INA § 287\(g\) program](#). The United States [replied](#) that Department of Homeland Security (DHS) policy prohibits racial profiling and that it issued new use of force policies and training.

Despite these policies and purported reforms, US Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) officers continue to commit acts of violence and other serious abuses against migrants. Internal [DHS reports revealed](#) testimony regarding "over 160 cases of misconduct and abuse of asylum applicants," including physical and sexual abuse. [Reports and statements](#) from former CBP agents illustrate a departmental reluctance to "hold agents and others within the agency accountable." Further, [reports and images](#) emerged in 2021 of "horse-mounted agents maneuvering their horses in a menacing way toward migrants, wielding lariats [whips], and using derogatory and xenophobic language" against primarily Haitian migrants, "including families with small children." ACLU tracking has documented at least 230 fatal encounters with CBP since the agency was created. Finally, while President Biden's administration has attempted to limit deportations of people from the interior of the United States through an initial moratorium on deportations and subsequent "enforcement priorities" memos, it has maintained programs that facilitate racial profiling in immigration enforcement such as the 287(g) program, Operation Stonegarden, and the Secure Communities program, the 287(g) program is still [widespread](#) across the country. Through these

programs, the Biden administration is partnering with xenophobic, anti-immigrant law enforcement agencies across the countries, including those with extensive records of civil rights violations.

To address racial discrimination by law enforcement in border control and interior immigration enforcement:

- Federal, state and local authorities should reduce their reliance on policing agencies and instead adopt a humanitarian approach to border reception and regulation, ensuring for example the primacy of human dignity, due process, family unity, non-discrimination, and the right to seek asylum.
- The US should immediately review, investigate, and remedy all internal and external allegations of abuse by government officials at the border or in an immigration detention facility and initiate an investigation of a pattern and practice of rights violations by CBP. In addition, the US government should immediately end immigration detention that is unnecessary or prolonged with the aim to gradually abolish immigration detention and should close any immigration detention facility in which [persistent abuses](#) are committed.
- The US should end immigration programs that facilitate racial profiling, including the 287(g), Operation Stonegarden, and Secure Communities programs.

Discrimination in the Regulation and Enforcement of Migration and Refugee Laws

ICERD protects non-citizens against discrimination on the basis of race, colour, descent, and national or ethnic origin, *regardless of whether they are lawfully admitted to the territory of a State Party*. The [text of the Convention](#) does not explicitly prohibit differential treatment on the basis of citizenship, but the CERD has clearly stated that, “differential treatment on the basis of citizenship or immigration status will constitute discrimination” under the Convention “if the criteria for such differentiation . . . are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.” [Article 5 of ICERD](#) further binds parties to eliminate discrimination and guarantee equality before the law in relation to several rights fundamental to non-citizens, including the right to equal treatment before tribunals, the right to freedom of movement within the borders of a state, and the right to leave any country, including one’s own. [Article 6 additionally requires](#) States Parties to “assure to everyone within their jurisdiction effective protection and remedies” for instances of discrimination; this extends to non-citizens as well as citizens.

The [United States has long acknowledged](#) that “discrimination against immigrants” is one of the principal causative factors of the “subtle and elusive” forms of discrimination that “persist[s] in American society.” Indeed, the United States’ combined first, second and third report noted that there is a long history of “discriminatory provisions in US immigration law and policy,” dating to the 19th century. Notwithstanding the passage of anti-discrimination laws protecting non-citizens in and since 1965, the [government has confirmed](#) that “recent immigrants often encounter discrimination in employment, education and housing as a result of persistent racism and xenophobia.” According to the United States, discrimination against non-citizens has not meaningfully abated or diminished since it became a party to ICERD; indeed, in its combined fourth, fifth and sixth periodic reports, the [United States noted](#) “an increase in bias crimes and related discriminatory actions against persons perceived to be Muslim, or of Arab, Middle Eastern, or South Asian descent.” In its most recent report, the [United States highlighted an additional threat](#) from violent domestic extremists driven by “long-standing racial and ethnic tension, including opposition to immigration.”

The CERD has made a series of recommendations about how the United States should more effectively protect non-citizens from discrimination. In 2014, the Committee called on the United States to [ensure that the rights of non-citizens](#), “are fully guaranteed in law and in practice,” including by “abolishing ‘Operation Streamline’ [a program of mass criminal prosecution of migrants for unauthorized entry and reentry] and dealing with any breaches of immigration law through [a] civil, rather than criminal immigration system”; undertaking “thorough and individualized assessment concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters”; reviewing “laws and regulations in order to protect

migrant workers from exploitative and abusive working conditions”; and [ratifying](#) several International Labor Organization conventions. As set out below, the US has failed to implement these recommendations and has both failed to protect migrants from prohibited discrimination and actively contributed to worsening of the discriminatory situation since last undergoing CERD review.

Multiple United States federal district courts have recently deemed the racist, xenophobic history of the US criminal reentry statute (one of two laws used in Operation Streamline) as relevant in analyzing the statute’s application; one judge [dismissed criminal charges](#) based on a finding that the law was originally “enacted with discriminatory purpose” – indeed, would not have been enacted absent racial animus – and “has a disparate impact on Latinx persons.” Despite the CERD’s recommendation that the US regulate migration exclusively as a civil and not a criminal matter, the United States continues to prosecute criminal entry and reentry crimes under these laws.

Naked xenophobia has been a major factor in US immigration policy since the last CERD review of the United States. Most significantly, former [President Donald Trump actively promoted discrimination](#) against migrants through a range of changes to US immigration law and policy, a number of which President Biden continues to enforce. Ongoing and increased discriminatory treatment of non-citizens have taken the form of efforts to restrict access to the United States; disparate treatment of migrants in the custody of US immigration authorities and in conferring immigration benefits; and the mistreatment of non-citizens by US state and local governmental authorities.

Workplace protections under international human rights law apply to all workers, regardless of citizenship status. However, fear of retaliation, including deportation, causes many workers who are unauthorized, who have family members who are undocumented, or otherwise have tentative immigration status [to hesitate about speaking up in the workplace](#) or reporting abusive employers and working conditions. These fears therefore have a massive impact on Black and brown workers’ rights to fair pay and decent work conditions to the right to organize.

To address racial discrimination against migrants, the US should:

- Conduct a [thorough review of all current immigration laws](#) to determine racial or discriminatory motivations or effects. Repeal or reform immigration laws enacted to effectuate racial animus or those with a racially discriminatory impact.
- Establish a mechanism providing full and effective reparation, proportional to the gravity of the violation and the harm suffered, to those who were subjected to discriminatory expulsion, family separation, prosecution and imprisonment, arbitrary detention, detention in inhumane conditions or other rights violations as a result of the racially discriminatory impact of US immigration laws.

Restrictions on Entry and Access to Territory

In the reporting period there have been three particularly significant policies imposing discriminatory restrictions on entry and access to territory. First, the “discriminatory bans” (often called the “Muslim bans”) on entry to the United States that first targeted “primarily Muslim countries” and then “African [countries](#).” In January 2021, the United States officially acknowledged that there were “[discriminatory bans](#)” on entry to the United States, which had been implemented by former President Trump and rescinded by President Biden. Commentators [have pointed](#) to the way in which anti-Muslim animus long operated as a form of racial discrimination in the US immigration system, prior to these bans on entry. While the current administration rescinded the “discriminatory bans,” the administration [has failed](#) to adequately remedy past discriminatory exclusions implemented under the policy and the ongoing consequences of the discriminatory order for migrants currently seeking to enter the US.

Second, the “[migrant protection protocols](#)” (MPP) (also known as “remain in Mexico”) policy forces migrants and asylum-seekers attempting to enter the US at the US-Mexico land border to remain outside the United

States until an administrative proceeding is held to consider their status. This results in harm in Mexico, heightened risk of refoulement to the country of origin and inadequate access to administrative proceedings including asylum hearings (in fact, in many instances, rulings by US immigration authorities occur *in absentia*, resulting in a denial of due process rights). The MPP mostly affects those nationalities that Mexico refused to permit the US to expel under Title 42 (see below), including Central Americans, Cubans, Ecuadorians, and Venezuelans. Additionally, human rights reporting has [established](#) that migrants subjected to this policy face discriminatory treatment in Mexico. This includes, for example, indigenous migrants who do not speak Spanish as their primary language and [face mistreatment in Mexico](#). While the Biden administration attempted to end this policy, a lawsuit brought by conservative governors in Texas and Mississippi forced the administration to reinstate it. On June 30, 2022, the US Supreme Court -- which did not review how the program exposed migrants to discrimination -- held that the Biden Administration is able to end the program.

The third discriminatory policy involves the expulsion of asylum-seekers who approach the southern land border under a dated public health directive codified at Title 42 of the US Code. Title 42, when applied in this manner, conflicts with the right to seek asylum set out in Title 8; nonetheless the government [continues to use](#) this public health law to expel asylum-seekers. The United States has carried out [over 1.2 million expulsions](#) under Title 42, a practice that has disproportionately impacted Black, Indigenous, and Latinx asylum-seekers, particularly from Central America, Africa, and Haiti as these migrants typically cannot access visas to enter the US via air travel). In one high-profile instance, after a large number of Haitian asylum-seekers arrived in Del Rio, Texas in September 2021, the Biden administration [sent a series of Title 42 expulsion flights](#) to Haiti, exposing well over 10,000 asylum-seekers to conditions the US government previously recognized as being too dangerous and precarious for safe return. In 2021, CBP officers were videotaped [whipping Haitian asylum seekers](#) from horseback. The use of [Title 42](#) denies vast numbers of asylum-seekers arriving at the border the opportunity to demonstrate their claim of persecution and/or challenge their refoulement. Title 42 expulsions stand in stark contrast to the actions the Biden administration has taken to [grant exemptions](#) to the application of Title 42 for the (primarily white) people fleeing from Ukraine. Aspects of Title 42 are being litigated in various cases and the US Court of Appeals for the District of Columbia Circuit has held that [aspects of the policy are likely unlawful](#), although not on the basis of disparate or discriminatory impact.

To address discriminatory restrictions on entry and access to territory, the US should:

- Ensure non-discriminatory access to US territory and to individual status determination procedures run by US officials with trauma-informed training in US asylum law and whose mission is humanitarian and not focused on border security.
- Repeal and replace orders, statutes and regulations that have been used to exclude and/or expel migrants and asylum-seekers in a discriminatory manner.
- Publicly track and report data demonstrating the effect of border policies by race and ethnicity.

Border Enforcement, Detention and the Granting of Immigration Benefits

In addition to border policies seeking to prevent migrants and asylum-seekers from ever setting foot in the United States, US immigration enforcement at the border and in the interior of the US has a disparate impact on the basis of race. This is caused in part by the [failure](#) of US constitutional interpretation to prohibit racial profiling in immigration enforcement and the continued reliance on racial profiling in border and national security enforcement. It is also the product of the intersection between structural discrimination in the US criminal legal system and deportation law. One [recent study](#), reviewing over 13,000 stops by law enforcement officials in the US State of Michigan, found clear evidence that CBP uses “racial profiling to target immigrants from Latin America and other people of color.” As Arnulfo Gomez [described](#) in relation to one such stop, “there was no reason for us to have been pulled over just because of the color of our skin. Everything that happened to us was wrong. We were being targeted just because we are Hispanic.” Another [recent study](#) found that Black immigrants are more likely to be detained in connection with criminal convictions than the immigration population overall and ultimately more likely to be removed due to a criminal conviction, often despite having lived in the United States for long periods and having strong community ties. Evidence

demonstrates that the United States consistently returns Black and Latinx migrants to countries where they are at risk.

Once apprehended, asylum-seekers and other migrants are subjected to prolonged and arbitrary immigration detention, often in abusive conditions and without adequate health care. Most migrants are also forced to navigate civil proceedings related to their status without legal representation. The United States operates the largest immigration detention system in the world. On a given day, tens of thousands of immigrants are [detained](#) on the basis of their status as a migrant. [US law mandates detention](#) in many cases. Myriad [reports](#) have documented the abysmal conditions to which immigration detainees are subjected. Many detention facilities are operated by private corporations under contracts with the US government; approximately 80 percent of immigrant detainees are held in detention facilities owned or operated by private prison companies. [Research has shown](#) that failures by ICE aggravated the risk of Covid-19 infections and that ICE transfers of detainees without prior testing effectively amplified contagion. Detainees who have protested unsafe living conditions, including through the use of hunger strikes, have been [subjected to retaliation](#), violence, and involuntary medical procedures, including force feeding and forced urinary catheterization. While the US does not adequately make available relevant data disaggregated by race or ethnicity, Black and brown migrants are disparately impacted by the harms of immigration detention. While Black immigrants make up only 4.8% of detained immigrants facing deportation before the Executive Office for Immigration Review (EOIR), they make up 17.4% of detained immigrants facing deportation before the EOIR on criminal grounds. [Data shows](#) that ICE disproportionately places Black migrants in solitary confinement and subjects them to disproportionately long periods in detention.

The [US represented to CERD](#) that it had made changes in response to the Committee's 2014 recommendations regarding legal counsel and individualized status assessments, noting that ICE hired a "Legal Access Coordinator" who seeks to "enhance detained individuals' access" to legal counsel. The US, however, continues to constrain access to [legal counsel](#) for detained migrants, requiring them to "secure legal representation at their own expense, find pro bono representation," or navigate the system alone. Moreover, a recent report found that ICE systematically restricts the most basic modes of communication, such as in-person legal visits, telephones, and legal mail, that detained people need to use to connect with legal counsel. The vast majority of detained immigrants are [without counsel](#). This is problematic not only because those detained are disproportionately Black and brown, but also because [detained immigrants](#) who have lawyers obtain relief from removal at a rate of more than ten times higher than those who do not. Calls for universal representation have [pointed out](#) that provision of counsel can help eliminate bias and discrimination in the allocation of legal services.

ICERD's mandate that States Parties "take effective measures" to ensure that their policies accord with the treaty cannot be accomplished without accurate data. Unfortunately, the US government does not publish or collect adequate data about border deaths, distress calls, and other border enforcement actions, nor about immigration enforcement, detention, use of force incidents, removals, or DHS civil rights and civil liberties complaints or investigations. Such information should be collected and disaggregated by race, ethnicity, nationality, immigration status, gender, age, disability and other criteria.

To address discrimination in border and immigration enforcement, the US should:

- Revise guidance on the use of racial profiling by federal law enforcement to eliminate the existing border and national security loopholes and prohibit discrimination based on actual or perceived race, ethnicity, religion, nationality, and English proficiency.
- Gradually abolish immigration detention. As first steps, repeal laws mandating detention and invest in community-based social services as alternatives to detention without furthering surveillance of immigrants as an alternative to detention.
- Establish, by statute or regulation, binding minimum standards for conditions of detention, and access to government-provided counsel for all migrants in proceedings regarding their status as a migrant,

and ensure timely and confidential access to in-person, telephone and video conferencing as well as legal mail in detention.

- Publicly track and report data demonstrating the effect of immigration enforcement and benefits policies by race, ethnicity and other disaggregated bases.
- Prioritize and facilitate country visits by the UN Special Rapporteur on the human rights of migrants and provide unimpeded access to all places of detention.

Actions by State and Local Governments

Currently, one of the most high-profile areas of concern is [immigration enforcement](#) by certain US state and local governments. In Texas, for example, the state [governor claimed](#) that the state is under threat from migrants “from countries you haven’t even heard of before” and has repeatedly used the rhetoric of “invasion.” The state’s [Operation Lone Star](#), just one part of anti-immigrant actions taken by the state, has aggressively used selective enforcement of the misdemeanor offense of criminal trespass to justify the arrest and detention of thousands of alleged migrants in a newly created segregated criminal legal system with separate dockets, public defender assignments, jails and booking facilities. As of March 2022, Texas had deployed state troopers and mass-mobilized members of the National Guard, who made at least [208,000 arrests](#). Affidavits of arresting officers [reveal](#) that arrests are based on racial and national origin profiling, repeatedly describing those arrested as “Hispanic” and “undocumented.” These criminal proceedings have resulted in prolonged detention in [egregious conditions](#); many cases have been dismissed for lack of probable cause. Most recently, in an aggressive escalation of these policies, the state of Texas announced it would return those suspected of being migrants to the border--[raising a host of legal concerns](#).

To address racial discrimination at the border, US jurisdictions should:

- Expand the federal investigation into discriminatory treatment of non-citizens under Operation Lone Star to encompass Texas’ new EO authorizing state law enforcement officials target, arrest, and detain suspected migrants and transport them to the US-Mexico border.
- Issue guidance from DHS to its components affirming a policy of non-cooperation between DHS and the Operation Lone Star trespass arrest program.
- Take all measures, including litigation, to compel Texas to end Operation Lone Star and other discriminatory abuse of migrants.
- Immediately end federal funding for the agencies and counties engaged in the abusive Operation Lone Star border initiative, even as the Justice Department conducts an inquiry into the operation.

Racial Discrimination in Public Services and Social Protection

Article 5 of ICERD provides that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone” to economic and social rights, including protection against unemployment, the right to medical care, social security, social services, and education, and just conditions of work and equal pay for equal work. Article 2 of ICERD further requires concrete state action to eliminate disparities in economic rights. However, racial minorities in the United States continue to suffer a lack of economic security compared to their white counterparts.

The median wealth of white households in the United States is significantly higher than that of Black, Indigenous or Latinx households. This so-called racial wealth gap has [grown](#) since the country ratified ICERD, and the median wealth of white household is now at least ten-times that of the median Black household. A disproportionate share of people who are Black, Indigenous, Latinx, or immigrants live under the poverty line. The [poverty rates](#) of Black and Latinx people are twice as high than among white people. [US Census Bureau](#) data from September 2021 found that some 19 million adults lived in households with insufficient food and 11.9 million adults were [behind on rent](#). According to data from the US Department of Agriculture, 19.1% of Black households and 15.6% of Hispanic households [experienced food insecurity](#) in 2019, compared to 7.9% of white Americans.

The Covid-19 pandemic has only deepened these sharp disparities. The impacts of the pandemic and the economic fallout have been widespread, but remain particularly [prevalent](#) among Blacks, Latinx, and other people of color. Gaps in preparedness and response to the Covid-19 pandemic have [disproportionately](#) negatively burdened people of color, which has deepened existing racial injustices in [health care](#), [housing](#), [employment](#), [education](#) and [wealth accumulation](#). Over the course of the pandemic, [poverty fell overall](#) due in part to the stimulus checks and unemployment benefits received by many. But the little progress made towards economic parity over the last year has stalled, [as relief measures](#) implemented in response to Covid-19 have been reduced, ended, or struck down by the courts. Today, the [Black-white wealth gap](#) is as big as it was in [1968](#). While the US has acknowledged these disparities, it has admitted to CERD that it has failed to invest sufficient resources to address them, leading to the persistence of deeply discriminatory health care, inadequate social safety nets, and segregated communities and schools.

Public Health during the Covid-19 Pandemic

Article 5 of ICERD [provides that](#) “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms” in the right to “public health” and “medical care” and provide equal access to healthcare services. CERD has specifically [mandated](#) that states address the disproportionate impact of the Covid-19 pandemic on racial minorities. Where there are persistent disparities, ICERD requires states to affirmatively adopt measures to address them.

The [Committee has expressed concern](#) over the failure of the US to address racial disparities in access to affordable health care, as many states have opted out of the Medicaid expansion program, excluding substantial numbers of racial minorities. In addition, the Committee expressed concern that many states have explicitly excluded migrants from health care. In 2014, it [recommended that the US](#) “take concrete measures” to ensure individuals, “in particular racial and ethnic minorities who reside in states that have opted out of the Affordable Care Act (ACA) and migrants have access to affordable and adequate health care. [CERD has recommended](#) that the US eliminate steep racial disparities in sexual and reproductive health, collect data, and improve monitoring and accountability systems. In the context of the Covid-19 pandemic, CERD has [made clear](#) that States are obligated to “ensure equal access” to medical care.

Black, Latinx, and Indigenous communities continue to [suffer profound disparities](#) in rates of chronic health conditions, health outcomes, and access to quality health care. For example, these communities are disproportionately impacted both by diabetes and its negative health outcomes, and are especially vulnerable to the harmful human rights impact of insulin prices in the US. The [Covid-19 pandemic](#) has deepened existing [racial injustices in health care](#): minorities are more likely to suffer severe illness and [die from Covid-19](#) and face [barriers to vaccine access](#).

Black people suffer from particularly acute racial disparities in [maternal mortality and cervical cancer](#) rates. The maternal mortality rate for Black women is [three times higher](#) than white women and rose further between 2019 and 2020, driven by significant increases in the [maternal mortality rate](#) of Black and Latinx women. These deaths, and those from cervical cancer, are preventable. Indeed, in 2020, 194 countries [committed](#) to eliminating cervical cancer globally. In the US, Black women are more likely than white women to have never been screened for [cervical cancer](#), are diagnosed at a later stage, and have lower survival rates. In the state of Alabama, Black women are nearly [twice as likely](#) to die of cervical cancer as white women.

Given this crisis in maternal mortality and access to care for people of color, the Supreme Court’s recent decision in *Dobbs v. Jackson Women’s Health Organization* to overturn the constitutional right to access an abortion in *Roe v. Wade* and related decisions will have a particularly profound and deadly impact on people of color. Black people have higher-risk pregnancies, are more than four times as likely to have had abortions as White pregnant people, are more likely to miscarry or have stillbirths compared to white pregnant people, and are more likely to live in states that restrict abortions.

Migrants also suffer from acute health disparities and some have no access to health care at all. Although some local [policies provide](#) undocumented immigrants with health care, the federal government continues to [prevent](#) undocumented and some legal immigrants from enrolling in ACA coverage and Medicaid. The lack of access to adequate health care has [exacerbated](#) the effects of Covid-19 for immigrants, particularly undocumented populations in frontline jobs.

State and federal prisons have [failed to offer](#) adequate health protection generally, and specifically against Covid-19. Covid-19 incidence and mortality rates were consistently higher among the prison population than the overall US population in the first year of the pandemic, and the cumulative toll of Covid-19 has been several times greater among the prison population than the overall US population. The US's response continues to be inadequate; in immigration detention centers, COVID-19 infections have increased by more than 940 percent since January 2022, while ICE has only administered booster shots to 671 of the 22,000 people in ICE detention. Given the rapid spread of the virus behind bars, and the racially disproportionate prison population, Black and Latinx people have been [particularly vulnerable](#). By May 2020, Black people accounted for [60% of Covid-19 deaths](#) in the New York State prison system, despite comprising [48% of detainees](#).

To eliminate racial disparities in public health, the US should:

- Improve the affordability and availability of health insurance for low- and middle-income earners. In particular, consider legislation to expand coverage for existing social protection programs like Medicaid and Medicare. In the absence of such legislation, Congress should take appropriate short-term remedial measures.
- Support community health workers and community-based approaches to reproductive health care that address healthcare access and the social determinants of health.
- Establish inclusivity policies that: support linguistic and racial diversity, including in federally qualified health clinics; and acknowledge, confront, and seek to remedy historic and current experiences of racial discrimination in public health, including by creating an official, confidential, and accessible complaint mechanism for patients who use federally qualified health facilities.

Inadequate Social Safety Net

ICERD requires states to guarantee the rights to social security and social services without distinction as to race, and the [Committee has made clear](#) that States are obligated to eliminate all forms of racial inequities, whether intentional or not. Despite these protections, Black and Latinx people continue to face underinvestment in social protection, which has contributed to profound disparities in poverty and economic security. While, in the past, America's public benefits system helped reduce and prevent poverty and racial disparities by providing basic economic, food, childcare, and housing support, thereby preventing the intergenerational transmission of poverty, it has [weakened substantially](#) over the past decades.

The inadequate support system has been driven by [racial animus](#), [community violence](#) and [discriminatory government policies](#) based on racist stereotypes as well as [federal delegation to states](#). Although most safety net programs are federally funded, state control over program design, rules, and benefit levels has resulted in inconsistent protection and racial inequalities. Similar to [problematic aspects](#) of the Medicaid provision, US regions with larger populations of color have weaker safety nets and [higher rates of economic hardship](#). For example, workers of color have [higher unemployment rates](#) and also are more likely to reside in states with weaker unemployment insurance systems and other safety net programs.

The Covid-19 pandemic [exacerbated the economic disparities](#) and underlying conditions driving these inequalities, as Black and Latinx communities have experienced more job losses (and ensuing loss of health insurance), higher rates of infection and mortality, and greater likelihood of evictions and hunger than their white counterparts. Similarly, women are disproportionately impacted by the economic fallout of Covid-19. For

example, 40.8 percent of Black, non-Hispanic women and 44.6 percent of Latinas faced housing insecurity in mid-July 2020 compared to 15.4 percent of white, non-Hispanic men. These rates were higher for households with children (45.2% for Black, non-Hispanic women with children and 48.8 percent for Latinas with children). In addition, in April 2020, less than half of the adult Black population was employed and the Black and white unemployment gap widened to 5.3 percentage points. Only 36% of households earning under \$50,000 that lost jobs received [unemployment benefits](#). Women, especially women of color, have disproportionately suffered from pandemic job losses. [As of late 2020](#), Black women's employment fell 18.2 percent from its peak compared with 16.7 percent for white women. In September 2020, white women's employment recovered while Black women's employment remained low. Latina women have also experienced dramatic employment and labor force declines.

Although the US issued stimulus checks and other relief, these measures could not repair the social safety net shredded by decades of [budget cuts](#) and draconian rules. In addition, there were racial disparities in the provision of CARES economic impact payments. Undocumented immigrants were also largely left without [relief](#) during the pandemic as they and other immigrants were ineligible for pandemic-related stimulus checks, temporary family assistance (TANF), and food stamps. Many immigrants eligible for unemployment relief were effectively [denied relief](#) because many states failed to translate application forms and other essential documents. Child poverty increased by 41 percent within a month after the US let its expanded child tax credit expire at the end of 2021, pushing 3.7 million more children into poverty. Black and Latinx children experienced the highest percentage point increases in poverty – 5.9 percent and 7.1 percent respectively.

Without effective social safety nets, families are also at risk of lengthy separation. Nationally, more than 75 percent of child welfare cases [involve neglect](#), which occurs when a parent or caregiver fails to provide adequate food, clothing, shelter, or supervision to a child. Instead of assisting families by providing cash, food, housing, or childcare assistance, the US child welfare system uses indicators of poverty as bases for removing children from families while subsidizing and incentivizing foster care and adoption under the pretext of acting in the child's best interest. Due to systemic racism and other factors, this disproportionately impacts families of color.

To eliminate racial discrimination in the social safety net, the US should:

- Increase benefit levels for social assistance and social insurance programs, including cash or in-kind assistance, including relevant tax credits like the Earned Income Tax Credit and Child Tax Credit, to ensure benefit adequacy, and consider adopting a universal income security program, such as a universal basic income.
- Create federal standards optimizing eligibility for safety net programs. Where existing means-tested social assistance and insurance programs are not expanded universally, improve their eligibility requirements and accessibility. Means-tested programs should not include eligibility requirements that can unfairly exclude those in need, such as strict asset tests, or certain behavioral requirements like drug tests or work requirements. Review and amend the current models used to create the annual Federal Poverty Guidelines to ensure that they are effectively capturing populations facing poverty. Eliminate all benefit eligibility criteria for social protection programs tied to immigration status or criminal history.
- Desist from using indicators of poverty as a basis for child removals, prolonged family separation, and termination of parental rights.
- Create a federally funded system for paid family and medical leave.
- Enforce Title VI of the Civil Rights Act against agencies that do not provide language access services or discriminate in the provision of benefits to minorities.

US Education Policy

[Article 2\(2\) of ICERD provides](#) that States Parties shall take “special and concrete measures to ensure the adequate development and protection of certain racial groups..., for the purpose of guaranteeing them the full

and equal enjoyment of human rights and fundamental freedoms.” [Quality education](#) is central to the enjoyment of basic rights such as job procurement and political participation. The CERD has [underscored](#) that barriers in education “results in the transmission of poverty from generation to generation” for people of African descent.

Discrimination and segregation in the [education sector](#) remain rampant across the US, driving inequality in education and in life opportunities. Although the population is increasingly diverse, racial segregation in [US schools](#) is higher now than it has been in decades. Majority-minority schools continue to be underfunded and fail to provide adequate educational opportunities to [minority students](#). US schools are primarily funded by neighborhood-specific [property taxes](#), meaning that schools in poorer neighborhoods generate and receive less funding and resources than those in wealthier neighborhoods with higher property values. Racial disparities in education’s connection to US property tax policies built in part on racial discrimination, racial segregation, and the legacies of slavery has been widely recognized, including by some US courts. Poor conditions in these schools – such as “missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials” – correlate with lower student performance and low literacy rates, hampering minority individuals’ ability to [participate equally in democratic society](#).

In its 2008 and 2014 concluding observations addressed to the US, the [CERD expressed concern](#) about racial segregation in public schools, finding that prohibition of the use of race-conscious measures as a tool to promote integration inhibited progress. The Committee found that students from racial and ethnic minorities attend segregated schools with [unequal facilities](#), noting that even when students of color attend racially diverse schools, they are often relegated to “single race” classes, denied access to advanced courses, and unfairly disciplined. The [Committee recommended](#) that the US undertake a study to examine the reasons underlying *de facto* racial segregation, and “adopt all appropriate measures” to reduce the achievement gap between white and Black students “by improving the quality of education provided to [Black] students.” In 2014, the [Committee recommended](#) that the US intensify its efforts to ensure equal access to education by taking measures including developing a concrete plan with goals and timelines to address racial segregation in schools and neighborhoods and increasing federal funding for programs promoting racially integrated learning environments for students.

In its [2021 report to the CERD](#), the US made a number of claims regarding its efforts to promote diversity and equal opportunity in education, including [2021 American Rescue Plan’s funding](#) and [other legislation](#), as well as efforts by the Justice Department [Civil Rights Division](#) and the Department of Education ([DOE](#)). Nonetheless, the racial disparities in educational opportunities among students resulting from ongoing ICERD violations remain persistently and disturbingly high.

The [CERD has recommended](#) that measures be taken to reduce the school dropout and suspension rates for children of African descent. In its 2008 concluding observations, the [Committee highlighted](#) racial disparities in suspension and expulsion rates as exacerbating high dropout rates, as well as high rates of referrals of minority youth to the justice system. The [Committee expressed particular concern](#) about school districts’ use of “zero tolerance” school discipline policies and recommended that districts review these policies and seriously consider limiting suspensions and expulsions to the most serious cases of school misconduct, and recommended special training for school officers.

Nevertheless, disproportionate numbers of students of color continue to enter the criminal legal system. Schools with high populations of racial minority students have higher rates of suspension and expulsion, and students of color are more likely to be [arrested](#) as adults. In addition, students of color face discriminatory discipline and criminalization. Black students are punished more frequently and harshly in all categories of school discipline, even though many schools have removed the term “zero tolerance” from their policies—driven in part by differential treatment and support at school by race. A June 2021 report from the US Department of Education found that Black students are removed from school by being suspended or expelled

(long term removal), and are referred to law enforcement at rates that are more than twice their share of enrollment. Students of color are more likely to go to a school with a law enforcement officer, more likely to be referred to law enforcement, and more likely to be arrested at school. In addition, students who attend schools with high percentages of Black students and students from low-income families are more likely face security measures like metal detectors, random “contraband” sweeps, security guards, and security cameras, even when controlling for the level of misconduct in schools or violence in school neighborhoods.

Article 7 of ICERD requires states to adopt immediate and effective measures, specifically in teaching, education, culture and information, to promote tolerance and combat prejudice against national, racial, and ethnic groups. To combat prejudice and intolerance, the [CERD has urged](#) States to develop campaigns to educate the public about the history and culture of people of African descent and the importance of building an inclusive society. The Committee has also [urged affirmative efforts](#) to ensure that textbooks contain “chapters about the history and cultures of peoples of African descent,” and to “encourage and support the publication and distribution of books and other print materials, as well as the broadcasting of television and radio programs about their history and cultures.”

The US has [failed](#) to implement these recommendations. There are [no federal requirements](#) or standards for teaching the history or racial discrimination in the US or about the history and cultures of Black Americans and other people of color, and only a handful of states mandate that such history be taught. Even where mandates exist, each US state may teach in a way that leads to [historical inaccuracies](#). In the absence of any federal mandate, multiple states have [introduced and enacted](#) laws prohibiting schools from teaching about the reality of racism by [banning](#) “divisive concepts relating to race, racism and other topics.” Learning Black history is [beneficial](#) to all students: While enhancing the self-esteem of Black students, it conveys historical realities to all students and encourages empathy, understanding, and efforts to avoid repeating the racist violence of the past. Further, denying the historical and contemporary realities of racial discrimination impedes not only justice and accountability for historic wrongs, but the eradication of persisting structures of racial inequality that is the core purpose of ICERD.

To address discrimination in the US education system, the US should:

- Invest in underfunded schools to equalize public school funding throughout the US and continue to provide increased supplemental nutrition benefits for families with children during summer months when free or reduced-price school meals are not available.
- Expand access to free, quality pre-primary education.
- Expand the benefits of Pell Grants for low- and middle-income tertiary education students.
- Adopt a federal national standard mandating the teaching of the colonization, including forced displacement, dispossession and mass killings of Indigenous peoples, the history of slavery, Jim Crow laws, lynchings, redlining, and segregation, civil rights movements, and other racial justice civil and labor rights movements.
- The Justice Department and Education Department should enforce Title VI and relevant statutes to ensure non-discrimination in the implementation of such a national standard, and in particular prohibiting school districts or states from banning Critical Race Theory or from teaching about other forms of racial discrimination.