

# AMERICAN DREAM? AMERICAN REALITY!

A REPORT ON RACE, ETHNICITY, AND THE LAW IN THE UNITED STATES



# **AMERICAN DREAM? AMERICAN REALITY!**

## **A REPORT ON RACE, ETHNICITY, AND THE LAW IN THE UNITED STATES**

**IN RESPONSE TO THE SECOND PERIODIC REPORT OF THE UNITED STATES OF  
AMERICA ON COMPLIANCE WITH THE CONVENTION ON THE ELIMINATION OF  
ALL FORMS OF RACIAL DISCRIMINATION**

**AND**

**IN PREPARATION FOR REVIEW OF THE UNITED STATES BY THE UNITED  
NATIONS COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL  
DISCRIMINATION**

Submitted and prepared by:

**LEADERSHIP CONFERENCE ON CIVIL RIGHTS  
LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND  
JANUARY 2008**

**COPYRIGHT © 2008 BY LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND  
All Rights Reserved.**

No part of this report may be reproduced, in any form,  
without written permission from the publisher.

**AMERICAN DREAM? AMERICAN REALITY!**  
**A REPORT ON RACE, ETHNICITY, AND THE LAW IN THE UNITED STATES**

In Response to the Second Periodic Report of the United States of America on Compliance with the  
Convention on the Elimination of All Forms of Racial Discrimination

and

In Preparation for Review of the United States by the United Nations Committee on the  
Elimination of All Forms of Racial Discrimination

LEADERSHIP CONFERENCE ON CIVIL RIGHTS  
LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND

---

LEADERSHIP CONFERENCE ON CIVIL RIGHTS  
1629 K STREET NW  
SUITE 1000  
WASHINGTON, DC 20006  
202.466.3311

[www.civilrights.org](http://www.civilrights.org)



LEADERSHIP CONFERENCE ON CIVIL RIGHTS

**LC** Education  
**CR** Fund

LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND

## FOREWORD

The Leadership Conference on Civil Rights (LCCR) is the United States' premier civil and human rights coalition. It consists of nearly 200 national organizations that represent people of color, women, children, labor unions, individuals with disabilities, older Americans, people of faith, and gays and lesbians. Its mission is to promote the enactment and enforcement of effective civil rights laws and to advance policies that further the cause of equal opportunity for all. The Leadership Conference on Civil Rights Education Fund (LCCREF) is the education and research arm of the coalition.

The Leadership Conference was established in 1950 by leaders of the civil rights movement to promote the passage and implementation of civil rights laws designed to end racial discrimination and achieve equal opportunity for all Americans. For more than 50 years, LCCR has coordinated the national legislative campaign on behalf of every major civil rights law since 1957, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Civil Rights Restoration Act of 1987, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Reauthorization of the Voting Rights Act in 2006. LCCREF was founded in 1969 to promote, through research and public education, the need for national policies that support civil rights and social and economic justice.

Despite the progress of the last 50 years, however, urgent threats to our civil rights remain, which disproportionately impact people of color. Discriminatory election systems and voter ID laws continue to deny millions of racial and ethnic minority citizens their fundamental right to vote. Many are still denied jobs or promotions, while others face excessive barriers to owning their own homes due to racial discrimination. Millions remain incarcerated as a result of a "War on Drugs" that disproportionately targets people of color for law enforcement. Meanwhile, in the wake of September 11, 2001, citizens and immigrants alike have become targets of hate crimes and discrimination under the guise of preserving "homeland security." And as the tragic aftermath of Hurricane Katrina revealed in 2005, a national commitment to eradicating persistent poverty among communities of color lies dormant.

Dramatic shifts over the past decade in social welfare policies and economic conditions have contributed significantly to the increasing difficulty that people of color face in realizing their civil rights. Growing reliance on policies that redistribute power to the states and localities, combined with a decrease in federal enforcement of anti-discrimination law, has amounted to an abdication of the federal role in ensuring equal opportunity. In recent years, the judiciary has further eroded our national commitment to equality. Federal courts have increasingly adopted narrow understandings of rights and new restrictions on access to effective legal remedies that together leave victims of racial discrimination without justice.

The Leadership Conference and the members of its coalition are committed to the belief that government has the power to protect and enhance the rights of racial minorities. In accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, we embrace international human rights strategies to connect the struggle for racial justice in the United States to a broader movement for human rights around the world. We hope that this report will be useful to the international community in assessing U.S. compliance with the Convention, and that it serves as a public education tool to aid in protecting and promoting justice throughout the United States.



**WADE HENDERSON**  
PRESIDENT, LCCR



**KAREN MCGILL LAWSON**  
PRESIDENT, LCCREF

## ACKNOWLEDGMENTS

*AMERICAN DREAM? AMERICAN REALITY!* is an initiative of the Leadership Conference on Civil Rights and the Leadership Conference on Civil Rights Education Fund's Civil Rights Enforcement Project and the ReclaimCivilRights.org campaign. This campaign is part of the work of LCCREF's Public Policy Department, directed by Nancy Zirkin. In releasing this report, our goals are to educate the public on the importance of using international tools to draw attention to issues related to domestic civil rights enforcement.

We would especially like to thank the authors of the report: Katie McCown, LCCREF Policy Associate, and Antoine Morris, LCCREF Communications Researcher. We express sincere gratitude to Julie Fernandes, former Leadership Conference Senior Policy Analyst and Senior Counsel, for her direction and substantive input throughout the process. Our thanks also go out to Leadership Conference policy counsel who contributed to the content of this report: David J. Goldberg, Senior Counsel and Senior Policy Analyst; Rob Randhava, Counsel; and Paul Edenfield, Counsel and Policy Analyst. We also appreciate the time and energy of the LCCR staff who provided invaluable assistance in the editing, design, layout, and finalization of the report: Corrine Yu, Senior Counsel and Managing Policy Director; Karen DeWitt, Vice President for Content and Framing; Tyler Lewis, Content and Publications Manager; Juan Carlos Ibarra, Associate Multimedia Developer and Web Strategist; Robert Schwartz, Intern; and Janel Johnson, Intern.

The Leadership Conference on Civil Rights expresses profound gratitude to Amanda Fuchs of Seventh Street Strategies, Inc., for her invaluable contributions to the research for this report. We also acknowledge the National Campaign to Restore Civil Rights and the National Fair Housing Alliance for their substantive input to the content and framing of various sections of the report. We also thank Lisa Crooms of Howard University School of Law and Margaret Huang of the Rights Working Group for their counsel. Cristóbal Josh Alex of the National Campaign and Ryan S. King of The Sentencing Project deserve special thanks for their guidance and continued support throughout the process. Lastly, the attorneys at White & Case LLP who contributed legal research to LCCR's 2001 submission merit special mention. Without their substantive input in 2001, this recent submission would not have been possible.

\* \* \*

# TABLE OF CONTENTS

|                                                               | PARAGRAPH | PAGE |
|---------------------------------------------------------------|-----------|------|
| <b>I. INTRODUCTION</b>                                        |           |      |
| A. MANDATING AND MONITORING CERD COMPLIANCE.....              | 3         | 1    |
| Domestic vs. International Law: Demanding Accountability..... | 3         | 1    |
| Ensuring Complete and Accurate Data Collection.....           | 5         | 1    |
| B. THE STATE OF RACIAL JUSTICE IN THE UNITED STATES.....      | 7         | 2    |
| C. 9/11 AND HURRICANE KATRINA: ASSESSING CERD COMPLIANCE..... | 17        | 3    |
| 9/11: Conflating Immigration and Terrorism.....               | 18        | 3    |
| Hurricane Katrina: Conflating Race and Class.....             | 22        | 4    |
| <b>II. RACIAL JUSTICE</b>                                     |           |      |
| Defining Disparate Impact.....                                | 26        | 5    |
| Defining Affirmative Measures.....                            | 28        | 6    |
| A. <b>CRIMINAL JUSTICE</b> .....                              | 32        | 7    |
| Racial Profiling, Arrests, and Investigations.....            | 35        | 7    |
| Policing the Police.....                                      | 40        | 8    |
| Sentencing and Corrections.....                               | 42        | 9    |
| Legal Assistance for the Poor.....                            | 47        | 10   |
| The Death Penalty.....                                        | 50        | 10   |
| Justice for Immigrants.....                                   | 54        | 11   |
| Doing “Katrina Time”: Justice in New Orleans.....             | 59        | 12   |
| B. <b>EDUCATION</b> .....                                     | 62        | 13   |
| School Desegregation.....                                     | 63        | 13   |
| Closing the Achievement Gap.....                              | 68        | 14   |
| The School-to-Prison Pipeline.....                            | 72        | 15   |
| Affirmative Measures in Higher Education.....                 | 76        | 15   |
| Educational Access for Children of Immigrants.....            | 79        | 16   |
| The State of Education after Katrina.....                     | 81        | 16   |
| C. <b>HOUSING</b> .....                                       | 82        | 17   |
| Residential Segregation.....                                  | 83        | 17   |
| Affordable Housing.....                                       | 86        | 18   |
| Enforcement of Fair Housing Laws.....                         | 90        | 19   |
| The Post-Katrina Housing Crisis.....                          | 93        | 19   |

|                                                        |     |    |
|--------------------------------------------------------|-----|----|
| <b>D. EMPLOYMENT AND LABOR</b> .....                   | 97  | 20 |
| Poverty and Wealth.....                                | 98  | 21 |
| Union Participation .....                              | 101 | 21 |
| Enforcement of Employment and Labor Laws.....          | 103 | 22 |
| Remedies for Employment and Labor Violations.....      | 106 | 23 |
| Protections for Immigrants.....                        | 110 | 23 |
| Post-Katrina Labor Practices.....                      | 114 | 24 |
| <b>E. VOTING</b> .....                                 | 115 | 24 |
| Reauthorization of the Voting Rights Act.....          | 116 | 25 |
| Voter ID Laws.....                                     | 119 | 25 |
| Enforcement of Voting Rights Laws .....                | 123 | 26 |
| Felon Disenfranchisement.....                          | 126 | 27 |
| The Disappearing Electorate: Voting after Katrina..... | 129 | 28 |

### **III. RECOMMENDATIONS**

|                                     |     |    |
|-------------------------------------|-----|----|
| Data Collection and the Census..... | 130 | 29 |
| Disparate Impact.....               | 133 | 29 |
| Affirmative Action.....             | 134 | 29 |
| Criminal Justice.....               | 135 | 29 |
| Education.....                      | 141 | 30 |
| Housing.....                        | 143 | 30 |
| Employment and Labor.....           | 146 | 30 |
| Voting.....                         | 149 | 30 |

# INTRODUCTION

1. We welcome the second periodic report (Government Report) of the United States of America (U.S.) to the United Nations Committee (Committee) on the Elimination of All Forms of Racial Discrimination. The U.S. Report outlines legislative, judicial, and other measures it believes give effect to its undertakings under the International Convention on the Elimination of All Forms of Racial Discrimination (Convention or CERD Treaty), in accordance with Article 9 thereof.
2. While the Government Report highlights various advances achieved since the submission of its Initial Report to the Committee in 2000 (Initial Report), it does not fully evaluate existing and potential approaches for sustained involvement of all levels of government in the elimination of ongoing individual and institutionalized racism in the U.S. This report supplements the Government submission with additional information and offers recommendations for actions that will, if adopted, enhance the government's ability to comply with the Convention. We hope this will assist the Committee in evaluating compliance and in creating its own recommendations to bolster U.S. commitments to ending all forms of racial discrimination.

## A. MANDATING AND MONITORING CERD COMPLIANCE IN THE U.S.

### Domestic vs. International Law: Creating an Accountability Mechanism

3. As in 2000, the U.S. has interpreted its CERD commitments in a way that fundamentally limits its obligation to comply with parts of the Convention. Citing a constitutional requirement to limit the powers of the federal government, the U.S. has again relinquished its responsibility to adhere to some provisions not explicitly "mandated" by the Constitution or federal law,<sup>1</sup> even when compliance is constitutionally permissible.
4. We note with great concern the recent Government response to the Committee's 2001 Observations critiquing the U.S. for exempting itself from harmonizing domestic and international law to end racial discrimination. The Committee emphasizes that: "[I]rrespective of the relationship between the federal authorities...and the States, which have extensive jurisdiction and legislative powers...with regard to its obligation under the Convention, the Federal Government has the responsibility to ensure its implementation on its entire territory."<sup>2</sup> There is currently no national body within the U.S., however, tasked with monitoring CERD compliance, and the federal government has done little to ensure state and local compliance.

### Ensuring Complete and Accurate Data Collection

5. It is projected that people of color will make up roughly half the U.S. population by 2050, as the number of non-Hispanic Whites in the U.S. continues to decline.<sup>3</sup> Accurate data collection is imperative as we undergo these demographic changes. The Committee has requested that State Parties report "on the demographic composition" of their populations,<sup>4</sup> specifically with respect to their "race, colour, descent and national or ethnic origin."<sup>5</sup> In the U.S., a census is undertaken every ten years to count the total population, the results of which are used to reapportion the House of Representatives and to redistrict political jurisdictions at all levels of government. Census racial and ethnic data is used by many federal agencies and private litigants to help determine where disparities exist, and therefore, where remediation is required by law.

6. Unfortunately, every U.S. census in recent years has resulted in an undercount. Typically, the undercount has been most significant in communities of color, and among children and the poor.<sup>6</sup> Although the Census Bureau improved its performance for 2000 relative to 1990, the count was still incomplete.<sup>7</sup> The current administration, however, has cancelled various census dress rehearsal programs in FY2008 and delayed funding for Bureau activities, thwarting preparations that could make the upcoming 2010 census more accurate.

#### **B. THE STATE OF RACIAL JUSTICE IN THE U.S. – CONCERNS FOR THE COMMITTEE**

7. CERD Article 5 requires States to “prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.”<sup>8</sup> According to the U.S., the “Constitution meet[s] this fundamental requirement, as do laws, policies, and objectives of government at all levels.”<sup>9</sup> However, recent shifts in executive and legislative priorities, social welfare policies, economic conditions, and judicial philosophy have largely limited access to the rights enumerated in these laws and to remedies for violations of these rights, especially for racial and ethnic minorities.
8. For the last 50 years, there has been a bipartisan national consensus regarding a need to remedy discrimination through robust federal protection and enforcement. But today, that consensus is being unraveled. President Bush and his allies, by touting the rhetoric of “states’ rights,” which has long been code for racial segregation, have eroded the enforcement of existing civil rights laws and impeded the creation of new ones. Redistributing power to states with little national oversight amounts to an abdication of the federal role in monitoring and enforcing civil rights.
9. Inadequate federal protections threaten the progress made during the 1950s, 1960s, and 1970s toward dismantling *de jure* segregation and discrimination. With respect to housing, the government continues to turn a blind eye to racial steering, discrimination in real estate sales, and land use practices that exclude or limit housing opportunities for people of color.<sup>10</sup> Consequently, residential segregation increased for low-income Blacks in the 1990s,<sup>11</sup> who are now the most residentially segregated group in the U.S.<sup>12</sup>
10. The notion that education is the great equalizer remains an unrealized dream. A resurgence of residential segregation over the last 20 years has led to the re-segregation of our nation’s schools. Rather than encourage schools to integrate, however, the Supreme Court recently struck down two voluntary school desegregation plans in *Parents Involved v. Seattle School District No. 1*. This ruling undercuts concerted efforts to diversify the racial and ethnic composition of our schools. Furthermore, students of color still bear the brunt of discrimination, poverty, and lack of access to quality education, making them increasingly vulnerable to high dropout rates, poor performance on high stakes exams, and punitive disciplinary policies.
11. In higher education, attacks on affirmative action limit racial diversity in school enrollment. The Supreme Court held in 2003 that universities may consider race as a factor in admissions, so long as its use is limited and necessary to achieving diversity,<sup>13</sup> yet, the Bush administration has repeatedly pressured colleges and universities to abandon all their race conscious policies.<sup>14</sup>
12. Disparities in the criminal justice system continue to disadvantage people of color. Despite the fact that Blacks, Whites, and Latinos use and sell drugs at similar rates, Blacks and Latinos are still more likely than Whites to be searched, detained, prosecuted, given harsher sentences, and to face the death penalty. What was billed for the past 20 years as a systematic effort to target

people with high-level involvement in the drug trade has instead resulted in a mass incarceration of nonviolent first-time and low-level offenders – primarily people of color. One of the most disconcerting collateral consequences of mass imprisonment is that millions of minority citizens are disenfranchised – often for life – by state laws regarding certain classes of offenders.<sup>15</sup>

13. We commend Congress for reauthorizing the Voting Rights Act in 2006, which extends for another 25 years the arsenal of tools available at the federal level to promote voter access. But by advocating discriminatory voter ID laws and engaging in widespread voter purges, our political leaders have also shown great hostility toward access to the fundamental right to vote.
14. Regretfully, since the Initial Report, we have continued to see a rise in reported incidents of hate crimes across the U.S. Though the House of Representatives recently passed legislation to facilitate more comprehensive hate crimes reporting and stronger federal protections, organized opposition to the bill from the Bush administration has blocked its enactment.<sup>16</sup>
15. For many victims of discrimination, the judiciary is the last resort. Although the courts once played a crucial role in safeguarding our civil rights, an extremist tendency within the judiciary to adopt narrow understandings of rights increasingly leaves victims of discrimination without accessible legal remedies. Recent Supreme Court decisions have diminished the efficacy of landmark anti-discrimination legislation such as Title VI and VII of the 1964 Civil Rights Act. These rollbacks are in clear violation of the Convention for erecting insurmountable procedural barriers for victims in court. If states and private actors cannot be sued when they discriminate based on race, our civil rights lack the federal protections guaranteed by the U.S. Constitution.
16. We believe the Government can reverse its current hostility toward issues of racial justice. A steadfast commitment at the federal level to applying innovative legal remedies and legislative tools will help to end all remaining vestiges of racial discrimination in accordance with CERD.

### **C. 9/11 AND HURRICANE KATRINA: ASSESSING CERD COMPLIANCE**

17. Since the 2000 Report, two watershed events have occurred in the U.S. that have fundamentally altered the way we look at race: the terrorist attacks on September 11, 2001, and the tragedy of hurricane Katrina in August 2005. Whereas Katrina highlighted many pre-existing race and class divisions in the public mind, 9/11 opened the door to codifying a whole new demographic and transnational dimension of American racism. Each presented a window of opportunity for the government to aggressively mobilize a nationwide effort to combat patterns of racial discrimination, old and new; but the government fundamentally failed on both accounts.

#### **9/11: Conflating Immigration and Terrorism**

18. The U.S. identifies two major developments since 2000 that have slowed progress to end racial discrimination: 1) a post-9/11 increase in hate crimes against people perceived to be Muslim or of Arab, Middle Eastern, or South Asian descent, and 2) an influx in immigration.<sup>17</sup> Rather than combat discrimination against these targeted groups, however, the U.S. has drawn political linkages between immigrants and a perceived ongoing threat of terrorism, which has allowed it to encroach on their civil and human rights under the guise of preserving homeland security.
19. The Convention requires that the fight against terrorism “not discriminate, in purpose or effect” and that “non-citizens are not subjected to racial or ethnic profiling.”<sup>18</sup> After September

11, however, violence and racial profiling<sup>19</sup> increased exponentially against citizens, immigrants, and visitors of Middle Eastern and South Asian descent, as well as those believed to be Muslim, such as Sikhs.<sup>20</sup> Reported anti-Muslim hate crimes increased 1700 percent from 2000 to 2001.<sup>21</sup>

20. Immigrants have historically strengthened our nation's fabric. Today, more than one in five U.S. residents is either foreign-born or born to immigrant parents.<sup>22</sup> Nevertheless, the government has yielded to post-9/11 nativist rhetoric and anti-immigrant violence. The federal government now severely limits immigrants' right to challenge the basis for their detention, and it "discriminates against them in prisons, detains them for longer periods, and provides them no right to counsel."<sup>23</sup> A vast array of regulations has also been enacted in recent years that make entry into the U.S. more difficult and limit the ability of those already in the country to remain.
21. Ironically, at a time when the U.S. is aggressively promoting democracy abroad, it is surreptitiously undermining it at home. Since 9/11, the administration has undertaken a series of low-visibility actions through regulation, litigation, and budgetary policy that amount to a pattern of hostility toward core civil rights laws and the ideal of non-discrimination.<sup>24</sup>

#### Hurricane Katrina: Conflating Race and Class

22. When hurricane Katrina struck the Gulf Coast in August 2005, it precipitated the worst ecological disaster in recorded U.S. history. After destroying the Mississippi coastline, the storm wrought unprecedented havoc when the levees broke in New Orleans, Louisiana, a city that was two-thirds African American.<sup>25</sup> News of the sluggish federal response quickly became widespread public knowledge.<sup>26</sup> Katrina had unearthed deeply entrenched, albeit overlooked, issues of race and poverty in New Orleans and elevated them to the national stage.
23. Initially, there was a renewed sense that the U.S. would respond to Katrina by providing federal assistance for the poor not seen since Roosevelt's New Deal or Johnson's Great Society.<sup>27</sup> In a matter of weeks, however, Katrina became a quickly forgotten story and a politically inconvenient reality. Despite the ongoing racial impact of this tragedy, the U.S. references Katrina only once in its Report, and reduces its profound impact on New Orleans communities of color to issues of class rather than race, thereby circumventing its CERD obligations.
24. Instead of capitalizing on abundant opportunities to work with affected communities to end the race and class disparities exacerbated by Katrina, the government has displayed unyielding indifference. Although authorities have adopted few policies that explicitly discriminate, the discriminatory impact of post-Katrina policy is still felt by those whose rights it violates.<sup>28</sup> The federal response to Katrina has been identified within the international community as a flagrant violation of international law. The UN Human Rights Committee (HRC) so noted in 2006 after reviewing U.S. compliance with the International Covenant on Civil and Political Rights.<sup>29</sup> It is regrettable that, given the great "test of the American racial unconscious"<sup>30</sup> that was Katrina, the government continues to bypass confronting the racial implications head on.
25. The remaining sections of this report further explore the patterns of hostility toward domestic civil rights enforcement that we highlight in this discussion of 9/11 and Katrina. It is our hope that situating these events within a larger political context will afford the Committee the most comprehensive understanding of how *de jure* and *de facto* racial discrimination continue to operate in the U.S. with respect to the following areas of public policy: criminal justice, public and higher education, fair housing, employment and labor practices, and access to voting.

# RACIAL JUSTICE CONCERNS

## Defining Disparate Impact

### Article 2(1)(c)

Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the *effect* of creating or perpetuating racial discrimination wherever it exists

### General Recommendation XIV

In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate *impact* upon a group distinguished by race, colour, descent, or national or ethnic origin...

### 2001 Concluding Observations of the Committee, ¶ 393

The Committee recommends that the State party take all appropriate measures to review existing legislation and federal, State and local policies to ensure effective protection against any form of racial discrimination and any unjustifiably disparate *impact*.

26. Article 1(1) of the Convention defines “racial discrimination” to be “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.” By including “effect” in this definition, the Committee recognizes that both *de jure* and *de facto* discrimination are societal problems that the Treaty is designed to help solve. Central to the Convention’s mission is elimination of the cumulative outcome over time of unintentional but deeply entrenched racial discrimination. Compliance requires defining discrimination as comprehensively as possible.
27. To comply with Article 2(1)(c), the Government claims that “legislation and executive branch actions are constantly being assessed by the judiciary for their consistency with the U.S. Constitution,” and that the “same ongoing executive, legislative, and judicial review occurs in the states and territories of the U.S. with regard to their civil rights laws and enforcement activities.”<sup>31</sup> Constitutionality is not tantamount to CERD compliance, however. Some obligations under CERD are broader than U.S. constitutional law. Thus, some laws that meet U.S. constitutional standards do not necessarily comply with the government’s obligations under CERD. And despite U.S. Reservations related to disparate impact, the Convention still requires that the U.S. review and henceforth “amend, rescind or nullify” all laws and practices that result in disparate racial impact.

## Defining Affirmative Measures

### Article 2(2)

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, 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...

### 2001 Concluding Observations of the Committee, ¶ 398

...the Committee is concerned about persistent disparities in the enjoyment of...the right to adequate housing, equal opportunities for education and employment...The Committee recommends that the State party take all appropriate measures, including special measures according to article 2, paragraph 2...to ensure the right of everyone...to the enjoyment of the rights contained in article 5 of the Convention

### 2001 Concluding Observations of the Committee, ¶ 399

...the Committee notes with concern the position taken by the State party that the provisions of the Convention permit, but do not require States parties to adopt affirmative action measures to ensure the adequate development and protection of certain racial, ethnic or national groups. The Committee emphasizes that the adoption of special measures by States parties when the circumstances so warrant, such as in the case of persistent disparities, is an obligation stemming from article 2, paragraph 2...

28. In addition to challenging disparate impact, implementing special measures is paramount to ensuring adequate remedies for past and present violations. The Committee has repeatedly emphasized the importance of special measures, urging the U.S. government after its Initial Report to implement affirmative actions to remedy persistent disparities. Regrettably, the government has in many ways exempted itself from this requirement.
29. Of greatest concern to racial justice advocates, as noted by the Committee in its 2001 Concluding Observations, is that the U.S. interprets the Convention to permit but not *require* the adoption of affirmative action measures. In its 2007 Report, the U.S. does, in fact, state that Article 2(2) “requires State parties to take special measures.”<sup>32</sup> However, it claims for itself the power to define “when such measures are in fact warranted,” as well as whether or not such measures may be race-based, thus contradicting its prior concession that the measures are in fact required.<sup>33</sup> While the Convention does not explicitly state whether protections to ensure the advancement of racial groups should be race-based, the Committee suggests in 2001 that special measures be invoked “when the circumstances so warrant, such as in the case of persistent disparities,” making evident its encouragement of race-based policies – particularly with respect to housing, education, and employment.
30. Beyond a short list of existing measures that may or may not be race-based, however, the government has largely ignored or thwarted efforts to overcome remaining barriers to ending racial discrimination. More often than not, the federal government has challenged affirmative action policy in court, arguing that it violates the U.S. Constitution.

31. Article 2(1)(e) requires State Parties to encourage “integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.” With respect to the role of affirmative measures in dismantling these barriers, the recent increase in the number of “reverse discrimination” cases (i.e. where the plaintiff is White) is in direct contravention with the thrust of Article 2(2) and this requirement to discourage that which may strengthen racial division. In its discussion of affirmative measures, the Government reports that “a number of recent lawsuits” have placed the issue of “reverse discrimination” before the court, claiming that special remedial measures are unfair to those who do not benefit from them. It is curious that the U.S. government, in trying to distance itself from the use of special measures that are race conscious generally, admits to promoting its race-conscious work in cases that protect Whites.

### A. CRIMINAL JUSTICE

32. Disparate treatment of individuals based on race, ethnicity, or national origin pervades the criminal justice system. A profound political shift in the 1980s to employ “war on drugs” and “tough on crime” tactics fueled a wave of racially tinged media hysteria and frenzied attempts to combat crime that have allowed law enforcement to use race and ethnicity as a proxy for criminality. Minorities and immigrants are subsequently more likely than Whites to be searched, arrested, detained, prosecuted, given harsher sentences, and to face the death penalty. Beyond its affect on racial minorities, disparate impact taints the image of law enforcement in the public mind as the great protector of civil rights. It imposes ongoing costs on innocent people, reinforces and perpetuates stereotypes, and often leads to race-based physical violence.
33. In the 2007 Report, the U.S. looks to faulty academic research to suggest that “the disparities [in the justice system] are related primarily to differential involvement in crime by the various groups (with some unexplained disparities particularly related to drug use and enforcement), rather than to differential handling of persons in the criminal justice system.”<sup>34</sup> Factually unsubstantiated, this assertion is reminiscent of arguments circulated during slavery and Jim Crow that people of color, particularly Blacks, are predisposed to higher involvement in crime. This persistent attitude informs a host of racial stereotypes that continue to color our laws.
34. The Committee requested that States “implement national strategies or plans of action aimed at the elimination of structural racial discrimination,” and argued that they “should include... assessment of the level of satisfaction among all communities concerning their relations with the police and the system of justice.”<sup>35</sup> To achieve the most comprehensive grasp of the causes and effects of crime in the U.S., we must look to the social, economic, and political factors contributing to long-standing patterns of disparate racial impact in our communities.

#### Racial Profiling, Arrests, and Investigations

35. Police officers, whether federal, state, or local, exercise substantial discretion when determining whether an individual’s behavior is suspicious enough to warrant further investigation. Too often, police officers exercise this discretion in a manner that discriminates against racial and ethnic minorities. Profiling worsened after the Supreme Court ruled in 1996 that police officers could use traffic stops to investigate suspicious individuals or activities, even if the offense they were investigating did not have anything to do with the offense for which the individual was stopped.”<sup>36</sup> As one commentator notes, “[A]s long as the officer or the police department does

not come straight out and say that race was a reason for a stop, the stop can always be accomplished based on some other reason – a pretext.” Police are thus free to use Blackness, and race and ethnicity generally, as a surrogate indicator or proxy for criminal propensity.<sup>37</sup>

36. Data from 2005 show that Hispanic drivers were most likely to receive a ticket and Blacks were most likely (and twice as likely as Whites) to be arrested during a traffic stop.<sup>38</sup> Hispanics and Blacks were also more likely to be subjected to police force. Overall, Blacks accounted for an alarming 25 percent of contacts with police when force was used.<sup>39</sup> Whites, on the other hand, were most likely to receive a warning.<sup>40</sup> With respect to drug offenses, people of color are not charged commensurate with their proportion of the general population and their share of monthly drug users. Although Blacks, Hispanics, and non-Hispanic Whites make up 14 percent, 12.4 percent, and 69.2 percent of monthly drug users, respectively (in line with their 12.8 percent, 14.4 percent, and 66.9 percent of the population),<sup>41</sup> only 25.8 percent of federal defendants in 2006 were White. Thirty percent were Black and an astounding 41.7 percent were Hispanic.<sup>42</sup> Law enforcement has all but codified racially disparate arrest patterns into the law.
37. Since 9/11, *de facto* discrimination by law enforcement has increased exponentially toward citizens and immigrants of Middle Eastern and South Asian descent, as well as those perceived to be Arab or Muslim.<sup>43</sup> The government, however, has done little to intervene and has, in some cases, reversed efforts at protections. In 2002, a Customs Service reauthorization bill expanded legal immunity for Customs officers engaged in unconstitutional searches, despite government evidence of their history of racial profiling.<sup>44</sup> Moreover, the government put an alien registration program in place for foreign visitors to the U.S. to keep law enforcement apprised of their whereabouts. This disproportionately targets nations with large Arab or Muslim populations.<sup>45</sup>
38. Minorities are also disproportionately targeted by law enforcement for gang-related activity. Though law enforcement sources believe that 90 percent of gang members are people of color, youth survey data show that Whites account for 40 percent of all gang members.<sup>46</sup> Young men of color, however, “are disproportionately identified as gang members and targeted for surveillance, arrest and incarceration,”<sup>47</sup> exposing a fundamental disconnect between the people and the government. In 2007, Congress considered the Gang Prevention, Intervention, and Suppression Act, which would increase disparities in the juvenile and criminal justice systems. Instead of focusing on meaningful prevention, drug treatment, and job opportunities and training for youth – which would yield a systematic effort to combat disparate impact – the bill would expand culpability of the accused and enhance penalties. It would also create a National Gang Activity Database that would demonize youth and damage community-police relations.
39. A 2003 Department of Justice Guidance outlawed the use of race and ethnicity by federal law enforcement as an element of suspicion, absent any suspect-specific information. However, it contains a blanket exception for national and border security, does not cover profiling based on religion,<sup>48</sup> and is neither legally binding nor applicable to state and local law enforcement.<sup>49</sup>

#### Policing the Police

40. Racial discrimination by law enforcement violates Articles 5(a) and (b) of the Convention. Luckily, the federal government is in a strong position to regulate state and local police departments because virtually every department receives federal aid to increase staffing and

resources and to assist in carrying out responsibilities. The Pattern or Practice of Police Misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141) is designed to address discrimination by police officials. However, anemic enforcement of this law has weakened the ability of the Department of Justice (DOJ) to protect jurisdictions from patterns and practices of police misconduct. This has had the overall effect of undermining DOJ's law enforcement work to protect against racial discrimination.<sup>50</sup>

41. Of the 11 DOJ investigations that have yielded an agreement under Section 14141, including racial profiling, six resulted in consent decrees and five were settled with a Memorandum of Agreement. Of the agreements entered into under the current administration, only one involves a case that was actually undertaken during this administration. All other decrees and settlements listed in U.S. Report are investigations begun under the Clinton administration. The Division has not entered into a single consent decree or settlement for alleged violations of the civil police misconduct statute since January 2004;<sup>51</sup> and the number of lawyers bringing these cases under jurisdiction of the Civil Rights Division has dramatically declined since 2005.<sup>52</sup>

#### Sentencing and Corrections

42. Due to the “war on drugs,” Blacks and Latinos are more likely than Whites to face harsher sentences. Blacks in particular have been disproportionately affected for two reasons. First, police have focused investigative efforts on inner city communities where drugs are used and sold in “open air” markets,<sup>53</sup> rather than on suburban communities – mostly majority White – where drug transactions are more often conducted indoors. Secondly, an individual convicted of selling one gram of crack cocaine is treated under U.S. law the same in sentencing as an individual convicted of selling 100 grams of powder cocaine.<sup>54</sup> Given that Blacks are more likely to deal in crack as opposed to powder cocaine, this disparity in sentencing for the two pharmacologically identical drugs has a devastating impact on Blacks. It is the primary cause of the growing disparity between the sentences for Black and White federal defendants.
43. The U.S. reports that the 2005 ruling in *U.S. v. Booker*<sup>55</sup> “instructed lower courts to consider the [federal sentencing] guidelines, but to tailor sentences in light of other statutory concerns. It also instructed appellate courts to review the sentences imposed by trial courts to determine their reasonableness.”<sup>56</sup> According to the U.S., the Sentencing Commission has undertaken a review of the guidelines’ impact based on race and education level. We welcome the results.
44. The Committee has noted with concern that “the majority of federal, state and local prison and jail inmates...are members of ethnic or national minorities, and that the incarceration rate is particularly high with regard to African-Americans and Hispanics.” It recommended that the U.S. ensure this is “not a result of the economically, socially and educationally disadvantaged position of these groups.”<sup>57</sup> Instead of exploring discriminatory patterns in its report, however, the U.S. relies on the incorrect notion that people of color have higher involvement with crime. When it comes to incarceration, the Government claims that “under U.S. regulations...federal inmates may not be discriminated against on the basis of race, religious, nationality, sex, disability, or political belief.”<sup>58</sup> However, we see the same disparities and discrimination in both federal and state prisons that we see in preceding stages of the criminal justice system.
45. There are currently more than 2 million people incarcerated in state or federal prisons and local jails. It is estimated that 836,000 are Black males and 68,800 are Black females, meaning that

nearly half of all prison inmates are Black. This is in gross disproportion to their 13 percent of the general population.<sup>59</sup> As a percentage of arrests, three times as many Blacks as Whites become prisoners at some point in their lives,<sup>60</sup> and Blacks are incarcerated at a rate 5.6 times that of Whites. For Hispanics, it is about twice the rate.<sup>61</sup> Hispanics accounted for one-fifth of the state and federal prison population in 2005 – a rise of 43 percent since 1990. At present, one of every six Hispanic men and one of 45 Hispanic women born today can expect to go to prison at some point in their lives,<sup>62</sup> largely due to racial disparities in sentencing for drug offenses. In general, Blacks now serve almost as much time in federal prison for drug offenses – 58.7 months – as do Whites for violent offenses.<sup>63</sup>

46. The Committee invited the U.S. to provide information on complaints and subsequent action regarding racial discrimination in state and federal prisons.<sup>64</sup> The U.S. did not comply with this request. Instead, it details enforcement efforts related to the Civil Rights of Institutionalized Persons Act (CRIPA). Pursuant to CRIPA, it argues, the Civil Rights Division investigates conditions in state prisons and local jails. In accordance with CRIPA and Section 14141, DOJ brings “legal actions for declaratory or equitable relief for a pattern or practice of unconstitutional conditions of confinement.”<sup>65</sup> However, not one DOJ investigation of a prison or jail has prompted a new enforceable court order since 2002.<sup>66</sup> We encourage the U.S. to satisfy the Committee’s initial request to highlight complaints, recourses of action, and success rates instead of merely an overview of laws that would be applicable if properly enforced.

#### Legal Assistance for the Poor

47. The U.S. says that “by law, counsel for indigent defendants is provided without discrimination based on race, color, ethnicity, and other factors.”<sup>67</sup> However, only 22 states administer and fund all indigent defense services at the state level.<sup>68</sup> This violates Article 5(a), which protects the right to “equal treatment before the tribunals and all other organs administering justice,” and various provisions of General Recommendation XXI that supply strategies to ensure access to legal information, conciliation and mediation services, language interpreters, and a fair trial.
48. A DOJ survey in 2000 compared rates of public and private attorneys in state and federal court. Three quarters of Blacks and 73 percent of Hispanics incarcerated in state prisons report that they relied on assigned counsel or public defenders, and more Blacks than Whites had publicly-financed attorneys.<sup>69</sup> Only half of those represented by public defenders or assigned counsel were released from jail before trial, as compared to 75 percent of those with a private attorney.<sup>70</sup>
49. The state of Mississippi, which has a large population of color, contributes nothing to represent poor defendants except in cases of capital punishment. It is one of only five states that require counties to pay the entire cost of non-capital indigent defense. This puts an undue burden on localities, as many poorer counties cannot or will not foot the bill.<sup>71</sup> Throughout Mississippi, individuals represented by part-time assigned counsel were 40 percent less likely than those with full-time counsel to be released from jail before trial and spent, on average, 96 more days in jail.

#### The Death Penalty

50. Statistical evidence reveals that a disproportionately high number of racial and ethnic minorities are sentenced to death in the U.S. Between 1977 and 2005, Blacks made up 41 percent of those receiving a death sentence and Hispanics made up 9 percent.<sup>72</sup> At the end of 2005, Blacks made up 42 percent of those held under a death sentence in state and federal prisons.<sup>73</sup> In 2001, the

Committee noted with concern the “disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty.”<sup>74</sup> Indeed, DOJ, under U.S. Attorneys General Janet Reno, John Ashcroft, and Alberto Gonzales, was shown to seek the death penalty in White victim cases (35 percent) at almost double the rate of cases with victims of color (19 percent).<sup>75</sup> Moreover, while about half of all murder victims are White, about 80 percent of cases involving White murder victims result in the death penalty.<sup>76</sup>

51. Because of these profound disparities, the Committee urged the U.S. to “ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.”<sup>77</sup> Importantly here, the Committee has expressed the likelihood of causality between: 1) socioeconomic status and the overrepresentation of racial minorities in the criminal justice system; and 2) racially disparate impacts at all levels of the criminal justice system and imposition of a death sentence.
52. Additionally, poor defendants of color who receive substandard counsel at the trial level face the prospect of limited federal appeals and few opportunities for assistance from competent counsel at the post-conviction stage. The 2007 Report claims that “all criminal defendants... especially those in potential capital cases, enjoy numerous procedural guarantees, which are respected and enforced by the courts.”<sup>78</sup> There is no constitutional right, however, to an attorney for state and federal habeas corpus proceedings; the right only extends to trial and to direct appeal.<sup>79</sup> Many states do not appoint counsel for post-conviction proceedings.<sup>80</sup>
53. In recent years, public support for the death penalty has plummeted. According to a June 2007 Gallup Poll, the overall percentage of people who support it nationwide has declined from 78 in the early 1990s to 65 percent in 2007.<sup>81</sup> Unsurprisingly, a majority of Blacks oppose the death penalty,<sup>82</sup> and almost 70 percent of the public at large believe that criminal justice reforms will not eliminate all wrongful convictions.<sup>83</sup> Due to increasing doubt about purpose and innocence, a significant majority now believe it is time for a moratorium on the death penalty. We applaud the December 2007 decision by the state of New Jersey to outlaw the death penalty state-wide.

#### Justice for Immigrants

54. The U.S. is under obligation “to guarantee equality between citizens and non-citizens in the enjoyment of [the rights outlined in Article 5] to the extent recognized under international law.”<sup>84</sup> These include the right to “equal treatment before...tribunals and all other organs administering justice” and to “security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution.”
55. With respect to U.S. detention of immigrants, General Recommendation XXX requires State parties to “ensure the security of non-citizens, in particular with regard to arbitrary detention” and to “ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law.” The U.S. must also “ensure that laws concerning deportation or other forms of removal of non-citizens...do not discriminate in purpose or effect among non-citizens...and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed to effectively pursue such remedies.” In its 2007 report, the U.S. professes to ensure, through National Detention Standards, “consistent treatment and care for detainees that are in ICE custody anywhere in the country.”<sup>85</sup> However, the standards are neither legally enforceable nor adequately met, thus violating the Convention.

56. A 2003 internal DOJ report found countless failures and abuses regarding the treatment of non-citizens held on post-9/11 charges. Analysis by the Office of the Inspector General revealed that only 60 percent of 9/11 detainees were served with Notices to Appear by the INS within the legally mandated 72 hours. Instead, the average length was seven days and often ranged up to weeks or a month. Moreover, the report concluded that the FBI indiscriminately and haphazardly labeled many immigrants with no terrorist ties as “high interest,” “of interest,” or “of undetermined interest.” Detainees subsequently complained of physically and verbally abusive treatment by detention officers. Given inadequate priority, the detainee clearance process was both understaffed and insufficiently coordinated by the FBI.<sup>86</sup>
57. Failure to meet ICE Detention Standards has deprived over 230,000 immigrants each year of access to visitation, legal materials, and phones, has severely limited the ability to win cases for relief from removal, and has made them vulnerable to abuse.<sup>87</sup> From 2004 to June, 2007, 62 immigrants died while in federal detention.<sup>88</sup> Moreover, a 2005 bipartisan federal commission identified acute disparities based on national origin with respect to who was granted asylum.<sup>89</sup>
58. We have also witnessed an erosion in the ability of immigrants to challenge the constitutionality of their detention using the writ of *habeas corpus* in court. The Treaty requires the U.S. to ensure “access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered” from denial of equal protection under the law.<sup>90</sup> Last year, however, in the wake of a Supreme Court decision to invalidate military commissions at Guantanamo Bay for violating the Geneva Conventions,<sup>91</sup> Bush requested that Congress pass the Military Commissions Act to legalize the military commission trials. Section 6 of the Act “strips any non-citizen declared an ‘enemy combatant’ by any president, of the right to be heard in court,” regardless of amount of time held without charge.<sup>92</sup> Denial of *habeas corpus* to detainees fundamentally violates due process of law guaranteed to non-citizens under the Convention.

#### Doing “Katrina Time”: Justice in New Orleans

59. Regrettably, hurricane Katrina exacerbated pre-existing racially discriminatory treatment in the Louisiana justice system. Since the disaster, many law enforcement officials have adopted unofficial policies of racial profiling that systematically target Black and Latino homeowners, drivers, and business people. A new law criminalizing undocumented drivers has profoundly impacted the Latino community, and police checkpoints have drawn increasing criticism for disproportionately impacting Blacks.<sup>93</sup> Unfortunately, resources to combat police misconduct through training programs and building relationships with communities are sorely lacking.
60. In the wake of hurricane Katrina and its devastating impact on the social, political, and financial health of New Orleans, the New Orleans public defender system, which represented 80 percent of defendants pre-Katrina, has been forced to function with only six attorneys. Three of every four staff members were laid off after the storm, and in October 2006, “11 attorneys in the public defender’s office in New Orleans [still] shared 3,000 cases.”<sup>94</sup>
61. Perhaps more than any other demographic in New Orleans, prisoners have experienced the most egregious violations of domestic and international law. Both before and after Katrina, Orleans Parish Prison (OPP) has been “but one product of a larger pattern of racially differentiated incarceration practices in the United States.”<sup>95</sup>

## B. EDUCATION

62. Access to quality education has long been a central goal of the U.S. civil rights movement. However, due to continuing racial and economic segregation, it remains an unrealized dream. Massive “opportunity gaps” persist, which trap students of color and low-income backgrounds in schools with grossly inferior resources and facilities, and teachers with lower qualifications and less experience. Opportunity gaps result in achievement gaps, whereby students of color and low-income students have lower test scores and graduation rates, and are over-represented in “negative outcomes” such as suspensions and expulsions, special education, failure to pass high-stakes exams, and the school-to-prison pipeline. The U.S. acknowledged in its 2000 Report that despite advances made over the past 30 years, tremendous racial disparities remain in educational attainment in the U.S.<sup>96</sup> Seven years later, we are still struggling to provide fair and equal opportunities for all children. The ongoing failure of states to provide equal resources regardless of race at the primary and secondary level also exacerbate the difficulties that minorities face in higher education admissions.

### School Desegregation

63. General Recommendation XIX “prohibits all forms of racial segregation in all countries.”<sup>97</sup> This also includes eliminating “the consequences of such practices.” The U.S. is thus required to focus federal efforts not only on eliminating racial segregation in schools, but to remedy the effects that historically entrenched segregation have rendered on communities of color, such as lower educational attainment for those who were forcibly excluded from the benefits of public education over the years. The Committee recognizes that ongoing systematic segregation may have been caused and maintained in part by a combination of governmental policies and the actions of private persons, but the onus for combating the results rests with the government.
64. In its discussion of Article 5(e)(v), the Government is silent on the issue of school desegregation except to proclaim that “*de jure* racial segregation in education has been illegal in the United States since the landmark decision in *Brown v. Board of Education*.”<sup>98</sup> However, what matters for ensuring equality is the implementation and enforcement of desegregation. Under Article 2(1)(b), the Government discusses its enforcement efforts, outlining a substantial docket of open desegregation cases – most of which have been inactive for years. But it does so with a goal to “return control of constitutionally compliant public school systems to local officials.”<sup>99</sup> Unfortunately, in recent years, striving for local control has meant an abdication of the federal role in monitoring and enforcing desegregation and equality.
65. Students in public schools across the country experience widespread *de facto* racial segregation. In 2005, 73 percent of Black students and 78 percent of Latino students attended schools where students of color made up more than half the population. Meanwhile, the average White student attended schools with a White enrollment of about 77 percent.<sup>100</sup> Although many districts have made significant progress over the years, schools are more racially segregated now than they were 30 years ago.<sup>101</sup>
66. The Education Section of the Civil Rights Division at DOJ is entrusted with enforcing desegregation through the central constitutional principle of equal educational opportunity established in *Brown*. In the 1990s, the Section filed a brief in one case to defend a voluntary desegregation policy against attack from a White parent displeased with his child’s assignment

to a particular school. More recently, however, the government filed a brief in the Supreme Court, in *Parents Involved in Community Schools v. Seattle School District No. 1*, arguing that race-conscious desegregation policies violate the Constitution.” The unconscionable spectacle of the Civil Rights Division effectively switching sides and arguing against desegregation profoundly damages efforts to achieve the racial justice mandate of *Brown*.<sup>102</sup>

67. In the *Parents Involved* case, the Supreme Court held that while diversity is a compelling state interest for public schools, the programs at issue in Seattle, Washington, and Louisville, Kentucky, were not narrowly tailored to meet that interest. Thus, the Court struck down both plans as unconstitutional. The negative impact of the Seattle and Louisville rulings will be felt nationwide, predominantly in communities of color. On average, segregated minority schools “are inferior in terms of available resources, quality of teachers, rigor of the curriculum, availability of college-level classes, test scores, and graduation rates.”<sup>103</sup> Schools segregated by race tend also to be segregated by income, which leads to concentrations of both minority and impoverished students in the same schools. The combination of poverty and racial and ethnic isolation in segregated schools typically leads to lower levels of educational attainment.

#### Closing the Achievement Gap

68. Despite attempts to ensure equal access to quality education, staggering racial disparities in educational achievement remain. Investment of resources – financial and otherwise, still overwhelmingly favors wealthier, primarily White school districts. The federal government takes responsibility for less than 10 percent of the cost of the public education system, with the rest approximately equally divided between state and local governments. Local governments rely on their property tax base to fund schools, which perpetuates the gross financial inequities facing many urban areas that are predominantly of color and prevents them from equal opportunities in education.<sup>104</sup> Because the quality of neighborhood public schools is intimately linked with community financial investment, suburban schools attended by wealthier families have the strong advantage of their tax base when acquiring resources for students. Poverty and persistent disparities in the accumulation of wealth are overwhelmingly responsible for the inability of many communities of color to close the achievement gap without federal intervention. Studies suggest that the majority of states actually provide fewer dollars per student to the highest minority school districts as compared to the lowest minority school districts.<sup>105</sup>
69. Lack of financial resources, due to inadequate state investments and lower accumulated wealth in communities of color diminishes the potential for higher education as well. Taking pre-calculus doubles the odds of earning a bachelor’s degree, yet only 33 percent of Black students take pre-calculus, as compared with a majority of Whites.<sup>106</sup> Also, 62 percent of all high schools offer one or more Advanced Placement (AP) courses. In 2006, Black students made up only seven percent of the participants.<sup>107</sup> AP courses impart invaluable academic experience and dramatically increase the likelihood that students will attend college. At present, however, minority students are often taught by teachers who have not themselves graduated college.<sup>108</sup>
70. Disparities in educational attainment mirror disparities in funding and educational resources. As of March 2005, only 17.7 percent of Blacks over 25 and 12 percent of Hispanics over 25 had a bachelor’s degree or higher, as compared with over 30 percent of Whites.<sup>109</sup> According to 2004 data, approximately 70 percent of White high school students graduate on time, compared to only about 55 percent of Black, Hispanic and American Indian students combined.

71. According to the U.S., the No Child Left Behind Act of 2001 (NCLB) “was designed to bring all students up to grade level in reading and math, to close the achievement gaps between students of different races and ethnicities within a decade, and to hold schools accountable for results through annual assessments.”<sup>110</sup> Despite these promises, however, NCLB has not yet yielded the intended results. The 2005 National Assessment of Educational Progress (NAEP) reveals that Black and Hispanic students continue to perform at proficiency far less frequently than Whites. Forty-seven percent of White students in the fourth grade perform at or above proficient in math, compared to only 13 percent of Blacks and 19 percent of Hispanics.<sup>111</sup>

#### The School to Prison Pipeline

72. At present, there is a crisis in our public schools that reflects larger racial injustices penetrating our communities. Beginning in the 1980s, the government engaged in strong rhetoric around mounting a “war on drugs” and being “tough on crime.” These tactics crept into our schools, resulting in the criminalization of typical adolescent behavior. The burden of this shift has fallen most heavily on students of color. In many schools of color, zero tolerance disciplinary policies and heightened law enforcement presence are the norm. Early transfer of many students of color from schools into the juvenile justice system often results in their forcible exclusion from a quality education and the social and economic capital that flow from educational attainment.
73. In the U.S., Black students are far more likely than Whites to be suspended, expelled, or arrested for similar school conduct. Though Blacks represented only 17 percent of public school enrollment nationwide in 2000, they accounted for 34 percent of suspensions.<sup>112</sup> Over the course of their education, approximately 35 percent of Black children and 20 percent of Latinos can expect to be suspended or expelled, as compared with only 15 percent of Whites;<sup>113</sup> these numbers are especially high for young boys. Children who have been suspended are more likely to be held back, to drop out, to commit a crime, and to be incarcerated as an adult.<sup>114</sup>
74. Racial discrimination, lack of resources, and dwindling investment in students of color result in a decision in many schools to outsource discipline from the classroom to law enforcement, who often operate through school areas resembling police stations. In addition to expulsion, many students of color find themselves arrested or referred to law enforcement or juvenile court to be prosecuted for behaviors that twenty years ago were viewed as typical adolescent conduct.
75. At every stage of the criminal justice system, racially disparate treatment compounds the problem. Though they make up only 34 percent of all youth, youth of color now comprise 63 percent of the detained population nationwide.<sup>115</sup> Blacks now represent 26 percent of juvenile arrests, 44 percent of youth who are detained, 46 percent of youth who are judicially waived to criminal court, and 58 percent of the youth admitted to state prisons.<sup>116</sup> Of youth subjected to drug charges, Blacks are an astonishing 48 times more likely than Whites to be incarcerated.<sup>117</sup>

#### Affirmative Measures in Higher Education

76. Disparities persist in access to and success in higher education for Blacks and Hispanics. Thirty percent of Blacks and 29 percent of Hispanics enrolled in four-year colleges in the 1995-1996 school year dropped out, compared to 18.8 percent of Whites. Only 36.4 percent of Blacks and 42 percent of Hispanics attained a BA in five years, compared to 58 percent of Whites.<sup>118</sup>

77. Though the Supreme Court held in 2003 that universities may consider race as a factor in admissions, so long as its use is limited and necessary to achieving diversity, anti-affirmative action groups<sup>119</sup> and the federal government<sup>120</sup> have put severe pressure on colleges to abandon race conscious policies. Article 2(2) of the Treaty mandates the use of affirmative measures in education as well as other arenas to ameliorate systemic disparities. Hostile to using even narrowly targeted affirmative measures, however, the Bush administration has thwarted the remedial capacity of these programs and has often worked to eliminate them altogether.
78. In recent years, the U.S. government has expressed a strong commitment to “race neutrality” rather than to race conscious measures to promote equality. In reality, however, their willful blindness to the continuing effects of discrimination effectively perpetuates the status quo. In 2004, the government released a report promoting race-neutral alternatives employed in public schools nationwide, many of which operate to the detriment of students of color. And in 2006, DOJ threatened to sue Southern Illinois University (SIU) on the grounds that some of their graduate student fellowships aimed at racial and ethnic minorities and women were discriminatory.<sup>121</sup> Though the scholarships in question comprised less than two percent of the entire list of graduate student fellowships, DOJ is now monitoring SIU for two years.

#### Educational Access for Children of Immigrants

79. The Government notes that Title III of NCLB “specifically requires states to develop and implement English language proficiency standards and to carry out annual assessments” of English language learners (ELL). Additionally, all ELL students “must, under Title VI of the Civil Rights Act of 1964, receive from their state and local educational agencies instructional services...appropriate to their level of English proficiency.”<sup>122</sup>
80. At schools with a high percentage of ELL students, overall achievement is low and dropout rates are high. Latino ELLs aged 16-19 have a dropout rate of almost 60 percent. In the 2003-2004 school year, almost two-thirds of states “failed to meet their own academic benchmarks set under NCLB for ELL student achievement.”<sup>123</sup> And in 2005, only 29 percent of ELL students scored at or above the basic level for reading, as compared with 75 percent of other students.<sup>124</sup> These students, who are forced to attend schools predominantly characterized by “larger enrollments, larger class sizes, higher incidences of student poverty, student health problems, greater reliance on unqualified teachers and lower levels of parental involvement,”<sup>125</sup> deserve assurance that the government will be held accountable if it continues to let these systemic problems fall through the cracks.

#### The State of Education after Katrina

81. Hurricane Katrina destroyed most of the New Orleans public education system and severely damaged many other schools throughout Louisiana and Mississippi resulting in hundreds of thousands of displaced students. As the floods receded from the area, so too did the state and local tax bases from which New Orleans school districts drew their revenues. To date, “only a few dozen teachers have returned to the city.”<sup>126</sup> Now, more than two years after the hurricane, fewer than half of all public and private schools in New Orleans have reopened. Only 3 of 15 schools in St. Bernard Parish are operational, and as of May 2007, only 58 of 128 schools in Orleans Parish have reopened.<sup>127</sup> This is a massive failure of the local, state, and federal governments. Student achievement across the region in the few remaining schools has dramatically declined. In the spring and summer of 2006, the number of fourth graders who

passed the high-stakes Louisiana Educational Assessment Program exam in New Orleans dropped from 61 to 49 percent, and the number of eighth graders who passed plummeted from 64 to 43 percent after Katrina.<sup>128</sup> The students in these affected areas are predominantly children of color.

## C. HOUSING

82. Although for most Americans a home is the “most-valuable asset and, sometimes, their only real asset,”<sup>129</sup> racial discrimination prevents many people from accessing the American dream. Forty years since the enactment of the Fair Housing Act in 1968, ongoing *de facto* segregation and housing discrimination continue to render the escape from historic patterns of poverty and racial isolation difficult. Racial discrimination remains an unfortunate obstacle facing minorities who seek to buy a home or to find adequate and affordable housing, either public or private. Discrimination in real estate sales, racial steering in lending and zoning, and land use practices that limit or exclude the housing opportunities of minorities all continue virtually unchecked.<sup>130</sup> Article 5(e)(iii) of the Convention requires the U.S. to guarantee the “enjoyment of...the right to housing.” But the government fails to do so equally and often fails to do so at all when it comes to racial and ethnic minorities.

### Residential Segregation

83. The U.S. concedes in its Initial Report that “for many years, the federal government itself was responsible for promoting racial discrimination in housing and residential segregation.”<sup>131</sup> For decades, the federal government built and maintained segregated housing developments across the country. Through policies promoting suburbanization, the federal government and local housing authorities laid the foundation for the concentration of poverty in segregated, urban majority-minority neighborhoods, where homelessness continues to afflict many people of color. Though Blacks make up only 12 percent of the total U.S. population, they represent 45 percent of the homeless; people of color make up almost 60 percent of the total sheltered homeless population.<sup>132</sup>
84. The reality of housing segregation both mirrors and feeds ongoing socioeconomic disparities between Whites and people of color. At present, Blacks tend to live in neighborhoods where the median income is only 70 percent that of Whites. The Northeast and Midwest have higher levels of Black-White segregation than the South and West, which accentuates various types of racial inequalities in those regions. But unfortunately, income serves as no protection in any region; for Blacks and Latinos making above \$60,000, disparities among neighborhoods are “almost as large as...overall disparities.”<sup>133</sup> Blacks in particular have integrated some White neighborhoods, but “the black middle class overall remains as segregated from Whites as the black poor.”<sup>134</sup> Economic success, therefore, does not alone alleviate the geographical confinement and isolation caused by racial discrimination.
85. Deeply entrenched housing segregation is still largely responsible for ongoing racial segregation in U.S. public schools. Although the Supreme Court has, over the years, pointed to housing desegregation as intimately linked to racially integrated schools, the government has turned a blind eye to real attempts at integration in both these areas. It is telling that residential integration between 1970 and 1990 occurred at twice the national average in communities with metropolitan school desegregation programs.<sup>135</sup> Because there is little incentive for Whites to

racially segregate once their children attend integrated schools, the federal government must support voluntary school integration plans more fully as a central strategy for dismantling *de facto* segregation in both schools and housing.

#### Affordable Housing

86. Currently, the gap between Whites and Blacks with respect to homeownership is greater today than it was in 1940.<sup>136</sup> The homeownership rate for Blacks has declined over the last two years.<sup>137</sup> In addition to experiencing difficulty owning homes, Blacks and other racial minorities have yet to close the gap in median home value due to historical exclusion from avenues of accumulating wealth, as well as ongoing discrimination. According to 2000 census data, the median home value for Black homeowners was \$80,000, as compared with \$105,600 for Latinos and \$123,400 for non-Hispanic Whites.<sup>138</sup> Because people of color experience a more severe housing cost burden than Whites, the availability of affordable housing is increasingly crucial.
87. In the U.S., people of color disproportionately receive subprime mortgages and are subject to predatory lending practices, to which the Government has failed to adequately respond. Acknowledging that “race has no place in determining creditworthiness”<sup>139</sup> is a necessary basis for promoting non-discrimination in housing, but the government must ensure that predatory lending practices and the allocation of subprime mortgages are not discriminatory. Subprime mortgages are generally higher-cost home loans made to borrowers with less-than-ideal credit. Unfortunately, Black borrowers receive 52 percent of subprime loans and Latinos receive 40, as compared to only 19 percent of Whites.<sup>140</sup> Racial and ethnic disparities persist even when credit scores and income levels are taken into account.<sup>141</sup>
88. At the end of 2006, more than 2 million stakeholders in the subprime market had lost their homes to foreclosure or held subprime mortgages that will fail in coming years, all of which will cost homeowners up to \$164 billion.<sup>142</sup> The financial effects of foreclosures disproportionately hurt Black and Latino homeowners; over half of loans to Black borrowers and 46 percent to Latinos were high-cost.<sup>143</sup> In response to this current crisis, President Bush has offered a new rate freeze plan for the subprime mortgage industry. However, it would only be available to people who have not missed any mortgage payments and to those whose loans were taken out between 2005 and July 31, 2007, and are due rate boosts between January 1, 2008 and July 31, 2010.<sup>144</sup> Because of this limited scope, it is estimated to help only about 3 percent of subprime borrowers.<sup>145</sup> It also relies heavily on voluntary decisions by individual mortgage servicers and investors, which yields tremendous space for racial discrimination without a reporting mechanism to provide oversight and accountability.<sup>146</sup> More government action is needed.
89. A bill recently passed by the House – the Mortgage Reform and Anti-Predatory Lending Act of 2007 – could address some of these impending problems, but it lacks adequate enforcement mechanisms. Congress is also considering allowing troubled borrowers to restructure their debts in Chapter 13 bankruptcy proceedings. Currently, most other debts – including second homes – can be reworked in bankruptcy, but primary home mortgages cannot be included in this process. Changing the law would potentially allow hundreds of thousands of borrowers to keep their homes, benefiting borrowers and lenders alike. The lending industry, however, has strongly opposed such measures. Congress, as well as President Bush, has also discussed increasing the number and size of mortgage loans that can be guaranteed by the Federal Housing Administration, or purchased by federally-backed corporations. Congress has yet to

take any action in this direction, however; and because any such remedy could be branded as a “bailout” by opponents, it may be reluctant to do so in the future.<sup>147</sup> By next year, however, a greater number of subprime mortgages are scheduled to reset at higher interest rates, possibly leading to an even greater number of foreclosures for people of color. More definitive legislative action and enforcement mechanisms are necessary, therefore, to prevent further disparate impact of the housing crisis on people of color.

#### Enforcement of Fair Housing Laws

90. According to the U.S., the Department of Housing and Urban Development’s (HUD) Office of Fair Housing and Equal Opportunity (FHEO) “includes an enforcement arm that receives complaints and investigates cases.” In many regions, it also “funds state or local government fair housing enforcement agencies.”<sup>148</sup> The Government’s proof of HUD enforcement, however, is a simple list of three court cases, two of which remain in litigation. With respect to the mandate of the Civil Rights Division to ensure fair access to housing, the Government outlines a commitment to a 2006 fair housing initiative called Operation Home Sweet Home, but provides no data on the overall number of cases successfully undertaken.
91. The efforts detailed in the U.S. report fail to convey a committed effort to fair housing. While the U.S. acknowledges that “the problem of housing discrimination persists in many parts of the nation,” it does not provide sufficient detail on its program to solve the problem.<sup>149</sup> The Fair Housing Act requires HUD to process cases within 100 days or less, but HUD continues to face a substantial case load, much of which has been open for months or years without any investigation. According to HUD’s annual report to Congress, 1,172 cases in FY2006 passed the 100-day mark.<sup>150</sup> With respect to DOJ enforcement, the Fair Housing Amendments Act requires DOJ to pursue any cases charged to it by HUD; but DOJ has cut back enforcement by claiming that it may merely perform additional investigations and is thus not required to file such cases.<sup>151</sup> It also announced in 2003 that “it would no longer file disparate impact cases involving housing discrimination” – a direct violation of Article 2(1)(c) of the Convention.
92. The number of cases undertaken by both HUD and DOJ has plummeted in recent years. Out of 2,830 fair housing complaints in FY2006, HUD only issued 34 charges of illegal discrimination, which is down from the 88 it filed in 2001. DOJ only filed 31 cases in 2006, down from 53 in 2001.<sup>152</sup> Studies estimate that at least 3.7 million instances of racial discrimination against Blacks and Latinos alone occur each year, but less than one percent of these violations are detected or reported. Even fewer get processed as complaints. HUD and DOJ, in combination with state and local government and private fair housing groups processed 27, 706 complaints of discrimination in 2006. “Public agencies (HUD, state and local governments) reported 10, 328 complaints,” which is up 48 percent from 2001.<sup>153</sup>

#### The Post-Katrina Housing Crisis

93. Hurricane Katrina left in its wake what would charitably be termed a housing disaster. The one reference that the Government makes to Katrina in its 2007 report touches on this housing crisis. Though it absolves itself of any responsibility to address the aftermath as it relates to patterns of racial segregation (it argues that “the post-Katrina issues were the result of poverty...rather than racial discrimination), the Government commits to helping “all victims.” In that regard, it highlights its 2006 Operation Home Sweet Home initiative, which it claims to

be “inspired by victims of Hurricane Katrina, who lost their homes and were seeking new places to live,” but “is nationwide in scope.”<sup>154</sup>

94. According to DOJ, the Operation Home Sweet Home initiative “conducted a record number of undercover housing discrimination investigations, filed 30 lawsuits alleging unlawful housing discrimination, and obtained settlements and judgments requiring the payment of over \$5 million in monetary damages to victims of discrimination and civil penalties.”<sup>155</sup> With respect to Katrina, however, the Government has not indicated here or in any fair housing publications that the initiative has alleviated issues related to the mass displacement of people living on the Gulf Coast. Studies completed after Katrina indicate that racial discrimination is still widespread. Throughout the New Orleans areas of Orleans, Jefferson, St. Bernard, and St. Tammany Parishes, 57.5 percent of landlords discriminated against Black testers searching for rental housing: “[E]ven when African American applicants have the same jobs, credit, and income required to rent a home, more often than not, it is more difficult for them to do so than for their similarly qualified White counterparts.”<sup>156</sup>
95. Before the storm hit, the waiting list for public and Section 8 housing was already 18,000 people long. The pre-existing lack of affordable housing for many people, predominantly poor people of color, was exacerbated by a series of government actions that severely limited the right of victims of Katrina to return to what was left of their homes.<sup>157</sup> Housing in New Orleans was at 100 percent occupancy by December 2006. By November, 2007, “out of the nearly 186,000 families who applied for Road Home assistance – created to help Louisiana residents affected by Hurricane Katrina or Rita get back into their homes as quickly and fairly as possible – more than 118,000 homeowners had yet to receive aid.”<sup>158</sup> And more than 46,000 families continue to live in FEMA trailers throughout Louisiana.<sup>159</sup>
96. Despite the overwhelming lack of affordable housing in the Gulf Coast region, after Katrina, HUD announced plans to demolish 4,534 garden-style public housing apartments.<sup>160</sup> Recently, a group of civil rights activists filed suit to stop HUD from demolishing the public housing units and replacing them with mixed-income housing due to the disproportionate impact the action would have on poor Blacks in New Orleans. The case alleges that HUD “intentionally failed to reopen undamaged public housing units whose residents were African American, ... [and] failed to repair damaged units.”<sup>161</sup> Government actions suggest an effort to prevent poor Blacks from returning to New Orleans, which violates fair housing laws, equal protection, and guarantees by international law to a right to return home after Katrina.

## **D. EMPLOYMENT**

97. Article 5(e)(i) requires State parties to guarantee the enjoyment of the “rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, [and] to just and favourable remuneration.”<sup>162</sup> In order to ensure these protections, the government must address past and present discrimination in the workplace as well as institute remedial structures to account for practices that undergird the historic inability of many people of color to acquire and accumulate wealth. Article 2(2) and the Committee’s Concluding Observations in 2001 all require the government to take all “appropriate measures” to eliminate persistent disparities and ensure equal opportunity.

## Poverty and Wealth

98. In 2004, Blacks had the highest poverty rate of any group at 24.3 percent, followed by Latinos at 21.9 percent, compared to 8.6 percent of all Whites. More than one in three Black children and more than one in four Latino children lived in poverty, compared to one in ten of all White children.<sup>163</sup> The racial disparities are nearly as stark with respect to employment: “Blacks made up 11 percent of the U.S. labor force in 2006, [and] they accounted for 22 percent of the unemployed and 28 percent of the long-term unemployed (persons unemployed for 27 weeks or longer).”<sup>164</sup> Jobless rates for Whites, on the other hand, are not only lower than for Latinos (15 percent), but also about half that of Blacks, according to the Bureau of Labor Statistics.<sup>165</sup>
99. Racial discrimination in employment practices produces racial disparities in median household income, unemployment rates, and accumulated wealth. According to the U.S. Census, between 2005 and 2006, median household incomes of Blacks and Hispanics were \$32,000 and \$37,800, respectively, which were only 61 percent and 72 percent of the median household income of non-Hispanic Whites (\$52,400).<sup>166</sup> Far fewer Blacks than individuals of other races appear in the top income range, making more than \$100,000. Instead, Blacks are disproportionately represented in the lowest income bracket, making less than \$15,000.<sup>167</sup> The Pew Hispanic Center found that the median net worth of Hispanic households in 2002 was \$7,932 – only nine percent that of non-Hispanic Whites (\$88,651). Black households fared even worse with a median net worth of \$5,988. Subsequently, Black and Hispanic household wealth is less than one-tenth that of Whites.<sup>168</sup> These figures underscore persistent *de facto* discrimination in employment practices and a lack of equal access to certain sectors of the job market that lead to an inability of many racial and ethnic minorities to accumulate wealth over time.
100. These practices contribute to the overall tenuous position of the Black middle class, which hovers far closer to the Black poor than the White middle class does to its lower income brackets. “Financial market participation for Hispanic and Black households is well below the norm for White households. More than 25 percent of Latino and Black households, and only 6 percent of White households own no assets other than a vehicle or unsecured liabilities.”<sup>169</sup> Blacks own only three percent of all assets in the U.S., which is astonishingly low considering their proportion of the population. This maldistribution of wealth also has far reaching implications within racial minority groups and their ability to gain a toehold in the middle-class. The Pew Hispanic Center found that the wealthiest 25 percent of Hispanic and non-Hispanic Black households own 93 percent of the total wealth of their respective groups.<sup>170</sup> Among non-Hispanic White households, the top 25 percent own 79 percent of total wealth. Consequently, 45 percent of Black children in the middle-income group “fall to the bottom of the income distribution in one generation.”<sup>171</sup> Whites are more likely for every parental income group to move ahead of their parent’s socioeconomic status, while Blacks are more likely to fall behind.

## Union Participation

101. Article 5(e)(ii) of the Convention guarantees “the right to form and join trade unions.” In the 2007 Report, the Government boasts that “U.S. law guarantees all persons equal rights to form and join trade unions.”<sup>172</sup> To back up this claim, the Government praises the Labor-Management Reporting and Disclosure Act (LMRDA), which protects the right to free speech and assembly, and the right to be free from violence or coercion while exercising rights protected under LMRDA.<sup>173</sup> It then notes that the U.S. Department of Labor enforces

“portions” of the LMRDA. The Government does not detail beyond these few statements how LMRDA functions in practice, what the level of enforcement is, and what accountability mechanisms, if any, are in place to ensure its efficacy.

102. In recent years, unionization rates for Blacks have dropped off more quickly than for the rest of the workforce. Between 1983 and 2006, the number of Blacks who were either represented by a union or were members of one reduced by half – from 31.7 percent of all Black workers to 16.<sup>174</sup> Recent legislation in the form of the Employee Free Choice Act (EFCA) would level the playing field for workers and employers to help reduce racial and other disparities in union participation and help disadvantaged groups begin to build up accumulated wealth. The bill would guarantee workers' freedom to choose a union, as protected by Article 5 of the Convention, by imposing stiffer penalties for labor rights violators, and protecting the rights of workers who seek to form a union, especially during first-contract negotiations. Though EFCA has garnered the support of a bipartisan coalition in Congress, the Bush administration has taken steps that demonstrate hostility toward ensuring this important right.

#### Enforcement of Employment and Labor Laws

103. In recent years, the Employment Litigation Section of DOJ's Civil Rights Division has systematically decreased its enforcement of Title VII of the Civil Rights Act of 1964 – the law that prohibits discrimination in employment based upon race, sex, religion, and national origin. Since January 2001, the Bush administration has filed only 35 Title VII cases – an average of approximately six cases per year.<sup>175</sup> In FY2007, the Equal Employment Opportunity Commission (EEOC) was expected to have a backlog of 47,516 charges of employment discrimination – a significant increase from the past two years.<sup>176</sup> Meanwhile, the EEOC's full time staff was reduced by more than 19 percent between 2001 and 2006.
104. In contrast to the current administration's six cases per year, the previous administration filed 92 complaints, which amounted to more than 11 cases per year.<sup>177</sup> The enforcement record of both these administrations is lacking in comparison to the level of enforcement needed to guarantee employment protections granted by the Convention; however, the dramatic decline from the current administration is indicative of a systemic pattern of lax enforcement within various Sections of the Civil Rights Division to live up to its promise of equal opportunity.
105. Emblematic of the administration's change in vision for the Division's work is a recent shift in the types of Title VII cases that DOJ has chosen to pursue. Since 2000, the EEOC has referred over 3,000 individual cases of discrimination to the Employment Section, but the Section has filed only 25 of those cases since 2001 – less than one percent of referred cases. Indicative of a priority shift away from protecting racial minorities, only six of the 25 cases involved allegations of racial discrimination. In recent years, the Employment Litigation Section “has filed fewer cases on behalf of Blacks and has directed a portion of its resources to ‘reverse discrimination’ cases on behalf of White individuals.”<sup>178</sup> It is curious that the Government distances itself so heavily from the use of special measures in areas such as employment, where significant racial disparities persist due to past and present discrimination, but that it commits to bringing cases on behalf of Whites. These approaches contradict the thrust of the Convention's purpose to ameliorate the cumulative outcome over time of *de jure* and *de facto* racial discrimination.

## Remedies for Employment and Labor Violations

106. Article 6 of the Convention requires that State parties afford “effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination...as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered.” To challenge an employer’s practice under Title VII of the Civil Rights Act and receive a just remedy, employees must file a complaint with the EEOC within a statutorily-prescribed period of time, either 180 or 300 days after the alleged unlawful practice occurred, depending on the state. According to the EEOC compliance manual, Title VII is to be interpreted by the EEOC such that challenges to discriminatory pay decisions may be filed each time a paycheck is received.<sup>179</sup>
107. In a 5-4 decision in 2007, the Supreme Court ruled in *Ledbetter v. Goodyear Tire & Rubber*<sup>180</sup> that employees claiming pay discrimination based on race or gender must file their lawsuit within 180 days of the *original* discriminatory action, not within 180 days of their last discriminatory paycheck. In *Ledbetter*, the Solicitor General failed to advocate for longstanding EEOC regulations and instead sided with the employer. The EEOC’s well-established position was that every paycheck that compensates an employee less than a similarly situated employee because of sex constitutes a new violation of Title VII.<sup>181</sup> In other words, the Supreme Court rejected the EEOC’s interpretation of the statutory period in favor of an understanding that fundamentally dismisses the reality of pay discrimination. Most people are unaware of what their co-workers earn and are typically unable to detect discrimination. The impact of the Court’s recent decision will be widespread, affecting pay discrimination cases under Title VII that affect racial and ethnic minorities and women. Many meritorious claims will not even be adjudicated.
108. This decision is unfortunate for both males and females of color who may have recently or may realize in the future that they have been discriminated against. The segregation of Black women into lower paying occupations extends historic trends of a racial wage gap. Black women also experience the negative wage penalty for working in a female-dominated job to a higher degree than White women. Of full time workers in 2000, Black women’s median weekly income, at \$429, was only 64 percent of the income of White men.<sup>182</sup> Black women who have a Bachelor’s degree make only \$1545 more per year more than White males with only a high school degree. In 2000, the median income for Hispanic women, at \$20,527, was only 52 percent of that of White men. Hispanic women with a high school diploma earn a third less than White men with the same education. Decisions such as *Ledbetter* that affect the ability of people who suffer pay discrimination to receive remedies fundamentally contradict the intent of the Convention.
109. One other significant case, *Alexander v. Sandoval*, severely impacts the right of racial minorities to remedies. In this 2001 case, the Supreme Court found no private right of action for disparate impact claims under Title VI of the Civil Rights Act, which prohibits federally funded entities from discriminating based on race, religion, or national origin. Instead, it requires victims of discrimination to prove discriminatory intent, imposing an often insurmountable burden on those seeking to vindicate their rights. It also profoundly violates Article 2(1)(c) and Article 6 of the Treaty, and will dramatically limit the enforceability of a host of other civil rights laws.

## Protections for Immigrants

110. In 2006, foreign-born individuals accounted for 15.6 percent of the U.S. civilian labor force. This percentage nearly tripled between 1970 and 2006, as the influx in the total population

expanded. According to a 2006 Current Population Survey (CPS), 8.5 percent of employed foreign-born wage and salary workers age 16 and older were members of labor unions. This percentage has increased substantially over the last 10 years.<sup>183</sup> Under the H-2 program, which is the current U.S. guestworker system, employers brought in 121,000 workers from other nations in 2005. Unlike U.S. citizens, however, guestworkers do not enjoy the most fundamental protections afforded citizens in the competitive labor market.

111. Studies show that guestworkers are, in fact, “systematically exploited and abused.”<sup>184</sup> These immigrants face deportation, blacklisting, and other forms of retaliation. Although the Constitution protects these workers from discrimination based on their race or national origin, recent legislation and government attitudes have eroded all protection. Enforcement of Department of Labor laws regarding H-2 guestworkers is sorely lacking, and immigrants do not receive the same access to legal resources. Guestworkers are “routinely cheated out of wages; forced to mortgage their futures to obtain low-wage, temporary jobs; held virtually captive by employers or labor brokers who seize their documents; forced to live in squalid conditions; and denied medical benefits for on-the-job injuries.”<sup>185</sup> Rising resentment over illegal immigration and prolonged hysteria with respect to the war on terror have combined to infuse hostility into immigration legislation.
112. Employers and contractors who rely on undocumented immigrant labor often bypass U.S. workplace laws, which provides them a substantial economic advantage over employers who treat their workers equitably.<sup>186</sup> In some industries, contractors deliberately misclassify undocumented workers as “independent contractors,” which allows them to avoid responsibilities such as providing workers’ compensation insurance. It is estimated that misclassification can save employers upwards of 30 percent in payroll costs.<sup>187</sup>
113. In 2002, the Supreme Court rolled back the rights of undocumented workers in *Hoffman Plastics Compounds v. NLRB*.<sup>188</sup> The Court ruled that undocumented workers are not entitled to back pay if there are victims of unfair labor practices under the National Labor Relations Act. This ruling provides yet another incentive for employers to recruit and exploit them. Back pay had previously been the only monetary remedy available to undocumented workers under the National Labor Relations Act. In effect, employers who discriminate face no financial cost for continued illegal action.<sup>189</sup>

#### Post-Katrina Labor Practices

114. In the wake of Hurricane Katrina, the Bush administration appeared to use the disaster as an excuse to undermine civil rights protections for workers. Within a week or two of the hurricane, the Department of Labor suspended government requirements that first-time government contractors retain an affirmative action plan to address the post-Katrina employment of racial minorities, women, Vietnam veterans, and the disabled in New Orleans.<sup>190</sup>

### E. VOTING

115. Article 5(c) of the Convention requires state parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...political rights, in particular the right to participate in elections – to vote and to

stand for – election on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service.”

### Reauthorization of the Voting Rights Act

116. The Voting Rights Act of 1965 “was a new beginning for African American citizens” during the civil rights movement. For the first time, the federal government required states to comply with the 15th Amendment to the Constitution.<sup>191</sup> In many ways, the Voting Rights Act has been fundamentally successful. Black registration and voter turnout have dramatically increased since 1965. 2005 marked the 40th anniversary of the Voting Rights Act, which is regarded by many to be the most successful civil rights statute in U.S. history. This praise is due, in part, to Section 5 of the Act, which provides that in places with a long history of institutionalized racial discrimination in voting, no change in any voting law or procedure could be enforced until the change had been ‘pre-approved’ as nondiscriminatory by the federal government. This effectively shifted the burden of proof of nondiscrimination to the party who sought to initiate change, rather than the potential victims of discriminatory voting laws. In August 2007, Section 5, Section 203 (which requires translated election materials in areas with high concentrations of citizens who are not fluent in English) and Sections 6-9 (which allow for federal observers to monitor elections where there are allegations of voter intimidation directed at minority voters), were slated to expire. We commend Congress for renewing and strengthening the Voting Rights Act in 2006.
117. Despite these successes, we have seen the persistence of racially polarized voting, the frequent denial of bilingual assistance to language minorities, ongoing systemic efforts to intimidate voters, and voter ID provisions that discriminate against low-income, minority, elderly and disabled citizens. In the November 2004 election, for instance, minorities and students experienced higher levels of voter intimidation and harassment than other groups.<sup>192</sup> Since 2000, civil rights groups have found that many voters of color receive calls and fliers with false information regarding their polling places on Election Day, or that warn that their voting could result in the “imprisonment of immigrants.”<sup>193</sup> And due to registration problems and errors caused by outdated technology, as many as four to six million voters were disenfranchised in 2000.<sup>194</sup> In Florida, Black voters were found to be 10 times more likely than Whites to have their ballots rejected.<sup>195</sup> Thus, the centrality of the Voting Rights Act to confronting disparate racial impact remains clear.
118. In the U.S., the running of elections is a right reserved to the states. Historically, this has not favored Black voters because of discrimination. “With no federal guarantee of the right to vote, states are free to erect barriers to voting that often disproportionately impact black voters.”<sup>196</sup> It is imperative, therefore, that we continue to advocate for the enforcement of the Voting Rights Act in conjunction with other legislative measures and innovative practices in order to protect and promote equal access to the vote.

### Voter ID Laws

119. In recent years, many states have adopted provisions requiring voters to show identification at the polls in order to vote. These states contend, despite a lack of evidence, that such laws are necessary to prevent voter fraud. These laws disproportionately impact voters of color, who are far less likely than Whites to have photo ID. In 2005, the National Commission on Federal

Election Reform recommended federal legislation to require all voters to present a “Real ID” card in order to vote.<sup>197</sup> Because this type of identification would require documentary proof of identity with Social Security number, “there is strong evidence that such requirements will reduce political participation by otherwise eligible rural, elderly, disabled, poor and racial minority voters, who are less likely to have photo identification or the means to acquire one.”<sup>198</sup> Voting is a fundamental right in the U.S. Photo ID laws that place undue burden on people of color, therefore, violate the 14th Amendment, U.S. voting rights laws, and the Convention.

120. Eleven percent of all U.S. citizens – more than 21 million Americans – do not possess government-issued photo IDs.<sup>199</sup> One in four Black voting-age adults have no current government-issued photo ID, compared to only eight percent of Whites. In Louisiana, Blacks are five times less likely to have a photo ID than Whites.<sup>200</sup> Moreover, voters who earn less than \$35,000 per year are twice as likely to lack photo ID as those making more. The intersection of race with socioeconomic status with respect to identification makes people of color particularly vulnerable to having their right to vote challenged at the polls.<sup>201</sup>
121. Thus far, seven states have passed photo ID requirements for voting – Arizona, Florida, Georgia, Hawaii, Indiana, Louisiana, Ohio, and South Dakota.<sup>202</sup> In 2005, the Department of Justice approved a Georgia photo ID law over the objection of career staff in the Civil Rights Division’s Voting Section. The agency experts had explicitly highlighted the potential racial impact of the legislation. Later that year, a federal judge found the ID law unconstitutional, and likened it to a Jim Crow-era poll tax.
122. In September 2007, the Florida NAACP along with other NGOs filed a lawsuit to challenge a statute that would purge voters from the rolls if the state could not validate the driver’s license or Social Security number on voters’ registration forms.<sup>203</sup> The legislation would disenfranchise up to tens of thousands of eligible voters. The Supreme Court heard a case in January 2008 to challenge the constitutionality of an Indiana law that requires all voters to present a valid government-issued photo ID in order to vote. The federal government should amend, rescind, or nullify these laws as required by the Convention’s disparate impact provision in order to stop unconstitutionally burdening minority voters.

#### Enforcement of Voting Rights Laws

123. The mission of the Voting Section at the Civil Rights Division is to protect the voting rights of racial, ethnic, and language minorities, thus making it easier for them to access the political process. In their work to protect the rights of language minority voters through the enforcement of Section 203 of the Voting Rights Act, the Division has pursued a vigorous program. However, in recent years, overall priorities of the Voting Section have shifted away from robust enforcement, as the Division has more often used its authority to deny access and to promote barriers that prevent legitimate voters from participating in the political process.
124. The Division has recently rejected numerous requests from voting rights advocacy groups to enforce that part of the National Voter Registration Act (NVRA) that requires social service agencies to provide voter registration opportunities, despite substantial evidence that registration at social service agencies has plummeted. An Election Assistance Commission report from July 2007 concluded that many states continue to ignore the requirements of the NVRA that public assistance agencies offer voter registration to clients, and noted that

enforcement of the law by the Division has been virtually non-existent.<sup>204</sup> At the same time, the Division has shifted its enforcement priorities to the voter purge provisions of the law, which in many cases – as in Florida in 2000 – denied thousands of legitimate voters who were taken off the rolls the right to vote. The Division has also pushed states to implement the Help America Vote Act (HAVA) in an exceedingly restrictive way by advocating purges of eligible citizens off the voter rolls for typographical errors and other mistakes in registration forms made by election officials.<sup>205</sup>

125. The Department of Justice has turned up no evidence of organized efforts to skew federal elections. Despite criticism regarding the threat of fraud in corrupting the political process from conservative activists, most of those charged by DOJ “appear to have mistakenly filled out registration forms or misunderstood eligibility rules.”<sup>206</sup> By prioritizing prosecution of voter fraud over enforcing provisions of the Voting Rights Act and other protective laws, DOJ has strayed from its fundamental mission to protect minority voters trying to exercise their rights of citizenship. During the five-year period between 2001 and 2006, the Voting Section did not file any cases on behalf of Black voters, and no cases have been brought on behalf of Native American voters for the entire administration.<sup>207</sup> However, in 2005, prosecutors filed the first-ever lawsuit to enforce the Voting Rights Act to protect the rights of White voters in Noxubee, Mississippi. With respect to Section 5 of the Act, DOJ only posed objection to 48 voting changes, out of over 81,000 submitted between 2001 and 2005. This is a sharp decline from the 302 objections filed from 1991-1995.<sup>208</sup>

#### Felon Disenfranchisement

126. As the Committee notes in its Concluding Observations, one of the most disconcerting collateral consequences of mass imprisonment in the U.S. is that a large segment of the minority population has lost the right to vote – often for life – due to laws regarding the commission of certain criminal offenses.<sup>209</sup> In particular, a number of southern states have used felon disenfranchisement laws to prevent Blacks from exercising the right to vote.
127. An estimated 5.3 million people nationwide are denied the right to vote due to laws prohibiting voting by people with felony convictions.<sup>210</sup> Over two million of these have completed their sentences. These laws disproportionately affect Black and Latino communities because they are targeted by law enforcement and filtered through the pipeline of the criminal justice system at a far higher rate than Whites. Thirteen percent of all Black men are unable to vote – this demographic represents an astounding one-third of the entire disenfranchised population in the U.S.<sup>211</sup> At present, only 13 states and the District of Columbia restore voting rights automatically after release from prison. Five states restore voting rights automatically after release from prison and discharge from parole, and 20 states restore upon completion of sentence, including prison, parole, and probation. Eight states, however, disenfranchise permanently some people with criminal convictions unless a cumbersome process is undertaken to have the government approve individual rights restoration. Regrettably, two states permanently disenfranchise *all* people with felony convictions unless the state government approves individual restoration.<sup>212</sup>
128. A majority of the public supports the restoration of voting rights to people with convictions. Polls have found that 80 percent<sup>213</sup> of Americans favor returning voting rights to citizens who have completed their sentences and more than 60 percent<sup>214</sup> favor restoration for those on

parole or probation. Under Article 2(1)(c), as well as Article 5, the federal government has a responsibility to rescind or nullify all laws that precipitate disparate racial impact. It should comply with these provisions by rescinding all laws that disenfranchise ex-offenders.

#### The Disappearing Electorate: Voting after Katrina

129. In 2007, voter registrars purged more than 21,000 voters from the rolls throughout Louisiana under orders from Secretary of State Jay Dardenne.<sup>215</sup> When the state mailed out a 30-day notice to 55,000 voters it suspected to be registered in more than one state, it required mail or fax confirmation of registration in only one state in order to remain on the Louisiana rolls. Many were required to appear in person at their respective Registrar's Office to provide evidence to support their request not to be taken off the rolls. The purge occurred "despite the fact that certain procedures underlying the purge program are either pending for review by the U.S. Department of Justice or have not yet been submitted for review pursuant to Section 5 of the Voting Rights Act."<sup>216</sup>

# RECOMMENDATIONS

## Data Collection and the Census

130. The government should develop reliable and efficient means of gathering data on human rights, including the impact of government policies and programs on racial and ethnic minority groups.
131. In its statistical compilations, the government should compare the outcomes for racial and ethnic minorities to Whites, rather than to the “overall population,” thus not diluting the appearance of ongoing disparities.
132. The government must fully fund the Census Bureau, including the Partnership Program, which engages organizations from national and local levels to improve census counting among people of color, children, and non-English speakers.

## Disparate Impact

133. The government should affirm that proof of a disparate racial impact constitutes impermissible discrimination under U.S. and international law. It should further make clear that private individuals have a right to enforce the disparate impact regulations of Title VI of the Civil Rights Act of 1964, which prohibits discrimination by entities that receive federal funds.

## Affirmative Action

134. The government should aggressively promote the use of narrowly tailored affirmative action programs in education, employment, and contracting as a means of addressing continuing disparities based on race and ethnicity.

## Criminal Justice

135. The government should enact legislation to outlaw the practice of racial and ethnic profiling by law enforcement. While DOJ issued guidance on this issue in 2003, the guidance contains a blanket exception for national and border security, does not cover profiling based on religion, and is neither legally binding nor applicable to state or local law enforcement. The End Racial Profiling Act was introduced with bipartisan support in 2003, and again in 2007, to address pre- and post-9/11 concerns regarding racial profiling, but further Congressional action is required.
136. The government should enact legislation to enhance the ability of the federal government to prosecute hate crimes and to assist states in their hate crimes prosecutions. Such legislation has been pending before Congress for more than ten years.
137. The U.S. Department of Justice must increase its work to combat patterns and practices of police misconduct, including racial profiling, under existing statutes. Across our nation, racial and ethnic minorities bear the brunt of police abuse.
138. The government should guarantee *competent* counsel for all defendants in the criminal justice system, including for state and federal *habeas corpus*, as well as other post-conviction proceedings
139. The United States should abolish the death penalty.

140. The government must eliminate the disparities that exist under U.S. law that result in wildly disproportionate sentencing for Blacks, as compared to Whites, for drug crimes. This disparity is most egregious for crimes involving the possession of crack versus powder cocaine.

#### Education

141. The government should commit to ensuring equality of opportunity in our nation's primary and secondary schools, which must include enhancing and equalizing resources, facilities, and teacher quality across schools and school districts.
142. In order to help reverse the trend of re-segregation in our nation's schools, the government must commit to a program of assisting schools and school districts to develop plans for how they will achieve and maintain racial integration in the public schools.

#### Housing

143. The government should work to combat the problem of predatory lending directed at low income, minority and older borrowers, including creating greater accountability for lenders and brokers who trade in high risk loan products.
144. The government should reform its system of combating housing and lending discrimination to mitigate against the conflict of interest between the U.S. Department of Housing and Urban Development and the targets of their enforcement efforts.
145. The government should enforce the provisions of federal law that require state and local governments and other recipients of federal housing dollars to promote housing integration.

#### Employment and Labor

146. The U.S. Department of Justice must return to vigorous enforcement of Title VII of the Civil Rights Act of 1964, the law that prohibits discrimination in employment based on race, sex, religion and national origin. In recent years, the enforcement of this statute has been anemic.
147. Congress must enact legislation restoring the ability of victims of pay discrimination based on race, ethnicity, age, gender or disability to bring and win lawsuits against their employers.
148. Congress should enact the Employee Free Choice Act, which would guarantee workers' freedom to choose a union by imposing stiffer penalties for labor rights violators. Union membership remains an important protection for many minority workers.

#### Voting

149. Rather than promote schemes that deny equal opportunity for citizens to vote, such as unjustified voter purges and burdensome voter ID laws, the U.S. Department of Justice should vigorously pursue enforcement of the Voting Rights Act of 1965, as amended, as well as combat voter ID laws that have a disparate impact on racial and ethnic minorities, and ensure that states comply with the voter access requirements of the National Voter Registration Act.
150. The government should initiate and support challenges to state disenfranchisement laws that deny former felons the ability to vote.

---

<sup>1</sup> INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (SEPTEMBER 2000), Annex I, 11 [hereinafter INITIAL REPORT].

<sup>2</sup> The CERD Committee references this concern as well. See CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION: UNITED STATES OF AMERICA, A/56/18, ¶ 383 (14 AUGUST 2001) [hereinafter CONCLUDING OBSERVATIONS].

<sup>3</sup> See Press Release, U.S. Census Bureau, Minority Population Tops 100 Million (17 May 2007). Available at: <http://www.census.gov/Press-Release/www/releases/archives/population/010048.html>. According to the Census Bureau Director, the nation's minority population just recently reached 100.7 million. This means that approximately one in every three U.S. residents is a minority. According to Harrison and Bennett (1995) and the U.S. Census Bureau (2001), the non-Hispanic White population declined from 83.5 percent in 1970 to 75.8 percent in 1990, and to about 69 percent in 2000.1 By 2050, the percent is projected to have declined to approximately 52.5 percent.

<sup>4</sup> UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, GENERAL RECOMMENDATION IV. [hereinafter GENERAL RECOMMENDATIONS].

<sup>5</sup> GENERAL RECOMMENDATION XXIV, *supra* note 4.

<sup>6</sup> *New York Times* editorial, "Short Changing the Census" (10 May 2007) Available at: <http://www.nytimes.com/2007/05/10/opinion/10thu2.html>.

<sup>7</sup> Paul M. Ong and Douglas Houston, "The 2000 Census Undercount in Los Angeles County" (18 December 2002). Available at: <http://lewis.sppsr.ucla.edu/research/workingpapers/LACensusUndercount.pdf>.

<sup>8</sup> INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, OPENED FOR SIGNATURE MAR. 7, 1966 (ENTERED INTO FORCE JAN. 4, 1969; ADOPTED BY THE UNITED STATES OF AMERICA (20 NOVEMBER 1994), Article 5. [hereinafter ICERD TREATY].

<sup>9</sup> SECOND PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (April 2007), ¶ 148, p.54 [hereinafter SECOND PERIODIC REPORT].

<sup>10</sup> Leadership Conference on Civil Rights Education Fund, "Long Road to Justice: The Civil Rights Division at 50" (September 2007), p. 36. Available at: [http://www.civilrights.org/press\\_room/press-releases/reports/long-road-to-justice.html](http://www.civilrights.org/press_room/press-releases/reports/long-road-to-justice.html).

<sup>11</sup> John Iceland et al., "Differences in African American Residential Patterns in U.S. Metropolitan Areas: 1990-2000" (2003), U.S. Census Bureau, p. 8, 16. Available at: [http://www.census.gov/hhes/www/housing/housing\\_patterns/pdf/paa\\_econseg.pdf](http://www.census.gov/hhes/www/housing/housing_patterns/pdf/paa_econseg.pdf).

<sup>12</sup> John Iceland et al., "Racial and Ethnic Residential Segregation in the United States: 1980-2000," U.S. Census Bureau (2002), p. 95. Available at: [http://www.census.gov/hhes/www/housing/housing\\_patterns/pdf/front\\_toc.pdf](http://www.census.gov/hhes/www/housing/housing_patterns/pdf/front_toc.pdf).

<sup>13</sup> NAACP-LDF, "Moving from Rhetoric to Reality in Opening Doors to Higher Education for African-American Students" (23 June 2005). Available at: [http://www.naacpldf.org/content/pdf/gap/Closing\\_the\\_Gap\\_-\\_Moving\\_from\\_Rhetoric\\_to\\_Reality.pdf](http://www.naacpldf.org/content/pdf/gap/Closing_the_Gap_-_Moving_from_Rhetoric_to_Reality.pdf).

<sup>14</sup> In 2003, the federal government filed an amicus brief in the Supreme Court case *Gratz v. Bollinger*. The question at hand was whether the University of Michigan's use of race-conscious measures in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The government argued that the University of Michigan program was tantamount to encouraging racial quotas. See the Brief for the United States as Amicus Curiae Supporting Petitioners, Available at: <http://www.usdoj.gov/osg/briefs/2002/3mer/lami/2002-0516.mer.ami.html>.

<sup>15</sup> The CERD Committee references this concern as well. See CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 397.

---

<sup>16</sup> In 2006, the overall number of reported hate crime incidents rose to 7,722, up from 7163 in 2005, a 7.8 percent increase. See U.S. Department of Justice Federal Bureau of Investigation, “Hate Crime Statistics, 2006” (November 2007). Available at: <http://www.fbi.gov/ucr/hc2006/index.html>. However, at the same time, the number people charged with a hate crime was down 71 percent from ten years ago. Justice Department figures show a 60 percent drop in annual referrals of hate crime investigations to prosecutors. See Paul Shukovsky, Tracy Johnson, and Daviel Lathrop, “FBI Opening Far Fewer Civil Rights Inquiries: Terrorism Supersedes Hate Crimes, Police Abuse,” *Seattle Post-Intelligencer* (25 April 2007). Of those that were reported in 2006, almost two-thirds of single-bias related hate crimes were based on race, ethnicity, or national origin. See U.S. Department of Justice Federal Bureau of Investigation, “Hate Crime Statistics, 2006” (November 2007).

<sup>17</sup> SECOND PERIODIC REPORT, *supra* note 9, at p. 15.

<sup>18</sup> GENERAL RECOMMENDATION XXX, *supra* note 4, at ¶ 10.

<sup>19</sup> Amnesty International USA, “Threat and Humiliation: Racial Profiling, National Security, and Human Rights in the United States,” Study from July 2003-August 2004, Available at [http://www.amnestyusa.org/racial\\_profiling/report/rp\\_report.pdf](http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf).

<sup>20</sup> September 11 has also become a catalyst for changes to already aggressive immigration policy changes passed in 1996. The USA Patriot Act, followed by the Homeland Security Act, is largely responsible for amplifying anti-immigration enforcement. Passage of the latter in 2003, as noted in the 2007 Report, created a new Department of Homeland Security (DHS) in response to 9/11, which combined several agencies and departments including the Federal Emergency Management Agency (FEMA) and the Immigration and Naturalization Service (INS). The INS thus ceased to exist as an independent agency within DOJ; its functions transferred to Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) – all part of the new DHS. See SECOND PERIODIC REPORT, *supra* note 9, at p. 13. This reconfiguration, in conjunction with heightened public and political hysteria with respect to post-9/11 national security, has yielded consistently substandard treatment of immigrants and little to no oversight.

<sup>21</sup> Human Rights Watch, “We Are Not the Enemy,” Human Rights Watch, Volume 14 No. 6 (14 November 2002). Available at: <http://www.hrw.org/reports/2002/usahate/>.

<sup>22</sup> Leadership Conference on Civil Rights Education Fund and American Bar Association Commission on Immigration, “American Justice through Immigrants’ Eyes,” (2004), p. 1. Available at: <http://www.abanet.org/publicserv/immigration/americanjusticethroughimmigeyes.pdf>.

<sup>23</sup> American Civil Liberties Union, “Dimming the Beacon of Freedom U.S. Violations of the International Covenant on Civil & Political Rights - Executive Summary,” ACLU Report to the ICCPR (June 2006). Available at: <http://www.aclu.org/intlhumanrights/gen/25937res20060620.html>. Many immigrants with no connection to 9/11 often “languished in federal lock-up for months at a time under an official ‘no bond policy.’” Clearance of any connection to 9/11 and subsequent release took an average of 80 days and took more than 200 in some cases. See Office of the Inspector General, “The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks,” (June 2003). Available at: <http://www.usdoj.gov/oig/special/0306/index.htm>.

<sup>24</sup> Leadership Conference on Civil Rights Education Fund, “The Bush Administration Takes Aim” (2004), p. 10.

<sup>25</sup> According to 2000 Census data, 67.3 percent of New Orleans was African American. See William H. Frey, Audrey Singer, and David Park, “Resettling New Orleans: The First Full Picture from the Census,” The Brookings Institution (12 September 2007). Available at: <http://www.brookings.edu/reports/2007/07katrinafreysinger.aspx>.

<sup>26</sup> Polls suggested that “large majorities of blacks believe[d] that the federal response ... would have been considerably speedier had those trapped in New Orleans been rich and white.” See Dan Froomkin, “Was Kanye West Right?,” A

---

special article to [www.washingtonpost.com](http://www.washingtonpost.com) (13 September 2005). Available at: <http://www.washingtonpost.com/wp-dyn/content/blog/2005/09/13/BL2005091300884.html>.

<sup>27</sup> Jonathan Alter, “The Other America,” *Newsweek* (19 September 2005). In September, after the initial debacle regarding the federal emergency response, President Bush gave a speech to that effect in New Orleans. He reassured the nation that “we have a duty to confront [New Orleans] poverty with bold action,” and promised that “we will do what it takes, we will stay as long as it takes to help citizens rebuild their communities and their lives.” See Portion of Bush’s speech quoted from Mike Davis, “Who Is Killing New Orleans,” *AlterNet* (4 April 2006). Available at: <http://www.alternet.org/katrina/34119/>.

<sup>28</sup> American Civil Liberties Union, “Broken Promises: 2 Years after Katrina” (August 2007), p. 11. Available at: [http://www.aclu.org/pdfs/prison/brokenpromises\\_20070820.pdf](http://www.aclu.org/pdfs/prison/brokenpromises_20070820.pdf).

<sup>29</sup> *Ibid.*, p. 35. See also “Dimming the Beacon of Freedom,” *supra* note 23. Available at: <http://www.aclu.org/intlhumanrights/gen/26268prs20060728.html>.

<sup>30</sup> Mike Davis, “Who Is Killing New Orleans,” *supra* note 27.

<sup>31</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 91, p.35.

<sup>32</sup> *Ibid.*, at ¶ 127, p.46.

<sup>33</sup> *Id.*

<sup>34</sup> *Ibid.*, at ¶ 165, p.59.

<sup>35</sup> GENERAL RECOMMENDATION XXXI, *supra* note 4, at ¶ I(A)(2)(B)(i).

<sup>36</sup> See *Whren v. United States*, 517 U.S. 806 (1996).

<sup>37</sup> David Harris, “The Stories, the Statistics, and the Law: Why ‘Driving While Black’ Matters,” *Minnesota Law Review* 84 (1999), p. 265, 291.

<sup>38</sup> Matthew R. Durose, Erica L. Smith, Patrick A. Langan, Ph.D. “Contacts Between Police and the Public, 2005”, Bureau of Justice Statistics Special Report (2007).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Id.*

<sup>41</sup> Marc Mauer and Ryan S. King, “A 25-Year Quagmire: The War on Drugs and Its Impact on American Society,” The Sentencing Project (September 2007), p. 21. Available at: [http://www.sentencingproject.org/tmp/File/Drug%20Policy/dp\\_25yearquagmire.pdf](http://www.sentencingproject.org/tmp/File/Drug%20Policy/dp_25yearquagmire.pdf).

<sup>42</sup> Office of National Drug Control Policy, “Minorities and Drugs,” Available at: <http://www.whitehousedrugpolicy.gov/drugfact/minorities/>. Last visited 25 December 2007.

<sup>43</sup> Amnesty International USA, “Threat and Humiliation,” *supra* note 19. Although the Community Relations Service (CRS) undertook initiatives post-9/11 “to calm immediate tensions,” such outreach has been limited in scope. The U.S. cites a CRS video entitled “The First Three to Five Seconds,” for instance, as proof of compliance with multiple Articles, but the video is just a video. It is not a comprehensive policy or an education campaign, nor is it a civil rights enforcement program that ensures non-discrimination. Available at [http://www.usdoj.gov/crs/training\\_video/3to5\\_lan/Intro.htm](http://www.usdoj.gov/crs/training_video/3to5_lan/Intro.htm).

---

<sup>44</sup> Evidence of prior Customs Service racial profiling came from the General Accounting Office. See Leadership Conference on Civil Rights, “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001,” (February 2003), Available at: [http://www.civilrights.org/publications/reports/racial\\_profiling/racial\\_profiling\\_report.pdf](http://www.civilrights.org/publications/reports/racial_profiling/racial_profiling_report.pdf).

<sup>45</sup> *Ibid.*

<sup>46</sup> Greene, Judith and Pranis, Kevin, Justice Policy Institute, “Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies,” (17 July 2007), Available at: [http://www.justicepolicy.org/images/upload/07-07\\_REP\\_GangWars\\_GC-PS-AC-JJ.pdf](http://www.justicepolicy.org/images/upload/07-07_REP_GangWars_GC-PS-AC-JJ.pdf).

<sup>47</sup> *Ibid.*

<sup>48</sup> This, however, violates the ICERD General Recommendations. See GENERAL RECOMMENDATION XI, *supra* note 4.

<sup>49</sup> Amnesty International USA, “Threat and Humiliation,” *supra* note 19.

<sup>50</sup> Leadership Conference on Civil Rights Education Fund, “Long Road to Justice,” *supra* note 10, p. 32.

<sup>51</sup> *Ibid.*

<sup>52</sup> Richard Jerome, “Police Reform: A Job Half Done,” American Constitution Society for Law and Policy (4/2006). Available at: <http://www.acslaw.org/files/RJ%20Community%20Policing%204-26-06.pdf>.

<sup>53</sup> Marc Mauer, “The Racial Dynamics of Imprisonment,” reprinted in *Building Violence: How America’s Rush to Incarcerate Creates More Violence*, ed. Khalid R. Pitts (Thousand Oaks, CA: Sage Publications, 1999), p. 48, 49.

<sup>54</sup> See 21 U.S.C. § 841(b)(1)(B)(ii)-(iii).

<sup>55</sup> See 543 U.S. 220 (2005).

<sup>56</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 166, p. 59.

<sup>57</sup> CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 395.

<sup>58</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 171, p. 61.

<sup>59</sup> Mark Mauer, *Race to Incarcerate* (New York: The New Press, 2006).

<sup>60</sup> National Urban League, *The State of Black America: Portrait of the Black Male* (Silver Spring, MD: The Beckham Publications Group, 2007).

<sup>61</sup> Marc Mauer and Ryan S. King “Uneven Justice: State Rates of Incarceration by Race and Ethnicity,” The Sentencing Project (July 2007). Available at: [http://www.sentencingproject.org/Admin/Documents/publications/rd\\_stateratesofincbyraceandethnicity.pdf](http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf).

<sup>62</sup> *Ibid.*

<sup>63</sup> *Id.*

<sup>64</sup> CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 401.

<sup>65</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 173, p.62.

- 
- <sup>66</sup> American Civil Liberties Union, “Brief and Initial Analysis of the United States Report to the Committee on the Elimination of Racial Discrimination” (May 2007), p. 11. Available at: [http://www.aclu.org/pdfs/humanrights/cerd\\_analysis.pdf](http://www.aclu.org/pdfs/humanrights/cerd_analysis.pdf).
- <sup>67</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 152, p.55.
- <sup>68</sup> National Legal Aid and Defender Association, “Gideon Reviewed: The State of the Nation 40 Years Later”. Available at: <http://www.nlada.org/DMS/Documents/1047416381.38/>.
- <sup>69</sup> Caroline W. Harlow, “Defense in Criminal Cases 1,” U.S. Department of Justice Bureau of Justice Statistics (November 2000).
- <sup>70</sup> *Ibid.*
- <sup>71</sup> NAACP-LDF, “Assembly Line Justice,” (February 2003), Available at: <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/ms-assemblylinejustice.pdf>.
- <sup>72</sup> Katherine J. Rosich, “Race, Ethnicity, and the Criminal Justice System,” American Sociological Association (September 2007). Available at: <http://www.asanet.org/galleries/Research/ASARaceCrime.pdf>.
- <sup>73</sup> *Ibid.*
- <sup>74</sup> CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 396.
- <sup>75</sup> American Civil Liberties Union, “The Persistent Problem of Racial Disparities in the Federal Death Penalty” (25 June 2007). Available at: [http://www.aclu.org/pdfs/capital/racial\\_disparities\\_federal\\_deathpen.pdf](http://www.aclu.org/pdfs/capital/racial_disparities_federal_deathpen.pdf).
- <sup>76</sup> Death Penalty Information Center, “Facts about the Death Penalty” (19 November 2007). Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>.
- <sup>77</sup> CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 396.
- <sup>78</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 167, p.60.
- <sup>79</sup> Erwin Chemerinsky, “The Rehnquist Court and the Death Penalty,” *Georgetown Law Journal* (June 2006). Available at [http://findarticles.com/p/articles/mi\\_qa3805/is\\_200606/ai\\_n16618974/pg\\_9](http://findarticles.com/p/articles/mi_qa3805/is_200606/ai_n16618974/pg_9).
- <sup>80</sup> Lisa M. Seghetti and Nathan James, “Federal Habeas Corpus Relief: Background, Legislation and Issues,” Congressional Research Service (1 February 2006).
- <sup>81</sup> Lydia Saad, “Racial Disagreement Over Death Penalty Has Varied Historically,” July 30, 2007, Available at: <http://www.gallup.com/poll/28243/Racial-Disagreement-Over-Death-Penalty-Has-Varied-Historically.aspx>.
- <sup>82</sup> Death Penalty Information Center, “Facts About the Death Penalty,” *supra* note 76.
- <sup>83</sup> Death Penalty Information Center, “A Crisis of Confidence: Americans’ Doubts about the Death Penalty” (9 June 2007). Available at: <http://www.deathpenaltyinfo.org/CoC.pdf>.
- <sup>84</sup> General Recommendation XXX, *supra* note 4, at ¶ 3.
- <sup>85</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 88, p. 34.
- <sup>86</sup> Office of the Inspector General, “The September 11 Detainees,” *supra* note 23.

- 
- <sup>87</sup> American Civil Liberties Union Foundation of Southern California and the National Immigration Law Center, “US Immigration Detention System: Substandard Conditions of Confinement and Ineffective Oversight” (3 May 2007). Available at: [http://www.nilc.org/immlawpolicy/arrestdet/UNspecialrapporteur\\_presentation\\_2007-05-03.pdf](http://www.nilc.org/immlawpolicy/arrestdet/UNspecialrapporteur_presentation_2007-05-03.pdf).
- <sup>88</sup> Nina Bernstein, “New Scrutiny as Immigrants Die in Custody,” *The New York Times* (26 June 2007). Available at: <http://www.nytimes.com/2007/06/26/us/26detain.html>.
- <sup>89</sup> Rachel Swarns, “Rights Groups Criticize Speedy Deportations” *The New York Times* (20 February 2006). Available at <http://www.nytimes.com/2006/02/20/politics/20asylum.html>.
- <sup>90</sup> GENERAL RECOMMENDATION XXX, *supra* note 4, at ¶ 18.
- <sup>91</sup> American Civil Liberties Union, “US Immigration Detention System,” *supra* note 95.
- <sup>92</sup> *Ibid.*
- <sup>93</sup> American Civil Liberties Union, “Broken Promises,” *supra* note 28.
- <sup>94</sup> *Ibid.* See also Caterina Goivis Roman, Seri Irazola, and Jenny W.L. Osborne, “After Katrina: Washed Away? Justice in New Orleans,” Urban Institute (September 2007). Available at: [http://www.urban.org/UploadedPDF/411530\\_washed\\_away.pdf](http://www.urban.org/UploadedPDF/411530_washed_away.pdf).
- <sup>95</sup> American Civil Liberties Union, “Abandoned and Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina” (August 2006), p. 17. Available at: <http://www.aclu.org/pdfs/prison/oppreport20060809.pdf>.
- <sup>96</sup> INITIAL REPORT, *supra* note 1, at p. 46-47.
- <sup>97</sup> GENERAL RECOMMENDATION XIX, *supra* note 4, at ¶ 1.
- <sup>98</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 267, p. 89.
- <sup>99</sup> *Ibid.* at ¶ 69, p. 25.
- <sup>100</sup> Gary Orfield & Chungmei Lee, “Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies,” The Civil Rights Project (August 2007). Available at: [http://www.civilrightsproject.ucla.edu/research/deseg/reversals\\_reseg\\_need.pdf](http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf).
- <sup>101</sup> Gary Orfield and S. Eaton, and the Harvard Project on School Desegregation, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (New York: The New Press, 1998).
- <sup>102</sup> William L. Taylor, Dianne M. Piche, Crystal Rosario, and Joseph D. Rich, Eds. “The Erosion of Rights: Declining Civil Rights Enforcement Under the Bush Administration,” Citizens’ Commission on Civil Rights (21 March 2007). Available at: [http://www.americanprogress.org/issues/2007/03/pdf/civil\\_rights\\_report.pdf](http://www.americanprogress.org/issues/2007/03/pdf/civil_rights_report.pdf).
- <sup>103</sup> Gary Orfield & Chungmei Lee, “Historic Reversals,” *supra* note 100.
- <sup>104</sup> Kevin Carey, “The Funding Gap 2004 Many States Still Shortchange Low-income and Minority Students” Education,” The Education Trust (Fall 2004). Available at: <http://www2.edtrust.org/NR/rdonlyres/30B3C1B3-3DA6-4809-AFB9-2DAACF11CF88/0/funding2004.pdf>.
- <sup>105</sup> *Ibid.*
- <sup>106</sup> National Urban League, *The State of Black America*, *supra* note 60.

---

<sup>107</sup> Sam Dillon, “Advanced Placement Tests Are Leaving Some Behind” *New York Times* (February 2, 2007), Available: [http://www.nytimes.com/2007/02/07/education/07ap.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/02/07/education/07ap.html?_r=1&oref=slogin).

<sup>108</sup> National Urban League, *The State of Black America*, *supra* note 60.

<sup>109</sup> Adriana D. Kohler and Melissa Lazarin, “Hispanic Education in the United States,” National Council of La Raza Statistical Brief (2007). Available at: [www.nclr.org/files/43582\\_file\\_SB8\\_HispEd\\_fnl.pdf](http://www.nclr.org/files/43582_file_SB8_HispEd_fnl.pdf).

<sup>110</sup> SECOND PERIODIC REPORT *supra* note 9, at ¶ 269, p. 90.

<sup>111</sup> Jaekyung Lee, “Tracking Achievement Gaps and Assessing the Impact of NCLB On The Gaps: An In-Depth Look Into National and State Reading and Math Outcome, Trends,” The Civil Rights Project (June 2006). Available at: [http://www.civilrightsproject.ucla.edu/research/esea/nclb\\_naep\\_lee.pdf](http://www.civilrightsproject.ucla.edu/research/esea/nclb_naep_lee.pdf).

<sup>112</sup> NAACP-LDF, “Dismantling the School to Prison Pipeline,” (20 September 2007). Available at: [http://www.naacpldf.org/content/pdf/pipeline/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://www.naacpldf.org/content/pdf/pipeline/Dismantling_the_School_to_Prison_Pipeline.pdf).

<sup>113</sup> The Sentencing Project, “Schools and Prisons: Fifty Years After *Brown v. Board of Education*” (January 2004). Available at [http://www.sentencingproject.org/Admin/Documents/publications/rd\\_brownvboard.pdf](http://www.sentencingproject.org/Admin/Documents/publications/rd_brownvboard.pdf). Data from Department of Education (2003).

<sup>114</sup> NAACP-LDF, “Dismantling the School to Prison Pipeline,” *supra* note 112.

<sup>115</sup> James Bell, “Young People of Color Find Little or No Justice in US Juvenile Justice System,” Soros Foundation Open Society News (Fall 2007). Available at: [http://www.soros.org/resources/articles\\_publications/publications/osinews\\_20071105/osinews\\_20071105.pdf](http://www.soros.org/resources/articles_publications/publications/osinews_20071105/osinews_20071105.pdf).

<sup>116</sup> Center on Juvenile and Criminal Justice, “Race and the Juvenile Justice System.” Available at: [http://www.cjcj.org/jjic/race\\_jj.php](http://www.cjcj.org/jjic/race_jj.php).

<sup>117</sup> Children’s Defense Fund, “Dismantling the Cradle to Prison Pipeline: A Resource Guide and Advocacy Tool Kit for the Members of Jack and Jill of America, Inc.” (2001). Available at: [http://www.pcsglobe.com/jackandjill/C2P\\_Resource\\_Guide.pdf](http://www.pcsglobe.com/jackandjill/C2P_Resource_Guide.pdf).

<sup>118</sup> Brian J. Cook and Diana I. Cordova, “Minorities in Higher Education: Twenty-Second Annual Status Report,” American Council on Education (October 2006), p. 14. Statistics cited from U.S. Department of Education, National Center for Education Statistics, “Beginning Postsecondary Students Longitudinal Study – Second Follow-up” (BPS: January 1996).

<sup>119</sup> NAACP-LDF, “Moving from Rhetoric to Reality,” *supra* note 13.

<sup>120</sup> In 2003, the federal government filed an amicus brief in the Supreme Court case *Gratz v. Bollinger*. The question at hand was whether the University of Michigan's use of race-conscious measures in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The government argued that the University of Michigan program was tantamount to encouraging racial quotas. See <http://www.usdoj.gov/osg/briefs/2002/3mer/1ami/2002-0516.mer.ami.html>.

<sup>121</sup> Associated Press, *Washington Post*, “U.S. Orders College to Drop Fellowships For Minorities” (12 November 2005), p. A 14. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/11/AR2005111101716.html>.

<sup>122</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 272, p. 92.

<sup>123</sup> William L. Taylor, Dianne M. Piche, Crystal Rosario, and Joseph D. Rich, Eds. “The Erosion of Rights,” *supra* note 102.

---

<sup>124</sup> *Ibid.*

<sup>125</sup> Clemencia Cosentino de Cohen, Nicole Deterding, Beatriz Chu Clewell, “Who’s Left Behind? Immigrant Children in High and Low LEP Schools,” Urban Institute (September 2005). Available at: [http://www.urban.org/UploadedPDF/411231\\_whos\\_left\\_behind.pdf](http://www.urban.org/UploadedPDF/411231_whos_left_behind.pdf).

<sup>126</sup> Urban Institute, “After Katrina: The Future of Public Education in New Orleans” (January 2006). Available at: [http://www.urban.org/UploadedPDF/900913\\_public\\_education.pdf](http://www.urban.org/UploadedPDF/900913_public_education.pdf).

<sup>127</sup> Amy Liu and Allison Ply, “A Review of Key Indicators of Recovery Two Years After Katrina,” The Brookings Institution Metropolitan Policy Program and Greater New Orleans Community Data Center (August 2007). Available at: <http://www.gnocdc.org/NOLAIndex/ESNOLAIndexAug07.pdf>.

<sup>128</sup> *Ibid.*

<sup>129</sup> Dennis Hevesi, “A Wider Loan Pool Draws More Sharks,” *The New York Times* (24 March 2002). Available at: <http://query.nytimes.com/gst/fullpage.html?res=9C0CE2D61138F937A15750C0A9649C8B63&sec=&spoon=&pagewanted=all>.

<sup>130</sup> Leadership Conference on Civil Rights Education Fund, “Long Road to Justice,” *supra* note 10, at p. 36.

<sup>131</sup> INITIAL REPORT, *supra* note 1, at 49.

<sup>132</sup> U.S. Department of Housing and Urban Development, Office of Community Planning and Development, “Annual Homeless Assessment Report to Congress” (2 February 2007). Available at: <http://www.huduser.org/Publications/pdf/ahar.pdf>.

<sup>133</sup> John R. Logan, “Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America” Lewis Mumford Center for Comparative Urban and Regional Research (13 October 2002). Available at: [http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/1a/a2/6c.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1a/a2/6c.pdf).

<sup>134</sup> Mary Pattillo-McCoy, *Black Picket Fences: Privilege and Peril among the Black Middle Class*, (Chicago: University of Chicago Press, 1999), p.25. Introduction available at: <http://www.press.uchicago.edu/Misc/Chicago/649288.html>.

<sup>135</sup> Erica Frankenburg, “The Impact of School Segregation on Residential Housing Patterns: Mobile, Alabama, and Charlotte, North Carolina,” in *School Resegregation: Must the South Turn Back?*, John Charles Boger and Gary Orfield eds. (Chapel Hill, NC: UNC Press, 2005), p. 164, 180.

<sup>136</sup> There is a 23 percent gap in homeownership. See National Fair Housing Alliance, “The Crisis of Housing Segregation: 2007 Fair Housing Trends Report” (30 April 2007). Available at: <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>.

<sup>137</sup> National Urban League, *The State of Black America*, *supra* note 60.

<sup>138</sup> National Fair Housing Alliance, “The Crisis of Housing Segregation,” *supra* note 136.

<sup>139</sup> SECOND PERIODIC REPORT, *supra* note 9, at p. 25.

<sup>140</sup> National Fair Housing Alliance, “The Crisis of Housing Segregation,” *supra* note 136.

<sup>141</sup> Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li, “Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages” Center for Responsible Lending (May 2006), p. 19. Available at: [http://www.responsiblelending.org/pdfs/rr011-Unfair\\_Lending-0506.pdf](http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf). See also National Community Reinvestment Coalition, “Income is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America’s Metropolitan Areas” (10 July 2007). Available at:

---

<http://ncrc.org/pressandpubs/documents/NCRC%20metro%20study%20race%20and%20income%20disparity%20July%2007.pdf>.

<sup>142</sup> Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, “Losing Ground: Foreclosures in the Subprime Market and their Cost to Homeowners,” Center for Responsible Lending (December 2006). Available at: <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>.

<sup>143</sup> *Ibid.* See also National Urban League, *The State of Black America*, *supra* note 60.

<sup>144</sup> Associated Press, “Hope for Homeowners Lifts Wall Street” *The New York Times* (7 December 2007). Available at: <http://www.nytimes.com/2007/12/07/business/07stox.html?scp=3&sq=freeze+plan+bush+december&st=nyt>.

<sup>145</sup> Center for Responsible Lending, “Voluntary Loan Modifications Fall Far Short: Foreclosure Crisis Will Continue Unabated Without Court-Supervised Modifications,” *CRL Issue Brief* (30 January 2008). Available at: <http://www.responsiblelending.org/pdfs/paulson-brief-final.pdf>.

<sup>146</sup> Center for Responsible Lending, “Statement of Center for Responsible Lending in Response to President Bush’s Plan to Address Foreclosure Crisis,” (6 December 2007). Available at: <http://www.responsiblelending.org/press/releases/crl-s-response-to-bush-paulson-plan-12-6-2007.html>.

<sup>147</sup> Leadership Conference on Civil Rights, “Congress Begins Addressing Subprime Mortgage Fallout,” *Civil Rights Monitor* (2007). Available at: [http://www.civilrights.org/press\\_room/buzz\\_clips/civilrightsorg-stories/congress-begins-addressing.html](http://www.civilrights.org/press_room/buzz_clips/civilrightsorg-stories/congress-begins-addressing.html).

<sup>148</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 66, p. 22.

<sup>149</sup> *Ibid.*

<sup>150</sup> National Fair Housing Alliance, *Crisis of Housing Segregation*, *supra* note 136.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 255, p. 85-86.

<sup>155</sup> Department of Justice Press Release, “Acting Attorney General Announces Results of Operation Home Sweet Home” (26 October 2007). Available at: [http://www.usdoj.gov/opa/pr/2007/October/07\\_crt\\_858.html](http://www.usdoj.gov/opa/pr/2007/October/07_crt_858.html).

<sup>156</sup> Greater New Orleans Fair Housing Action Center, “For Rent Unless You’re Black” (24 April 2007). Available at: <http://www.gnofairhousing.org/pdfs/GNOFHAC%202007%20Rental%20Audit.pdf>.

<sup>157</sup> National Fair Housing Alliance, “Still No Home for the Holidays: A Report on the State of Housing and Housing Discrimination in the Gulf Coast Region” (22 December 2006). Available at: [http://www.nationalfairhousing.org/resources/newsArchive/resource\\_79704192466752484772.pdf](http://www.nationalfairhousing.org/resources/newsArchive/resource_79704192466752484772.pdf).

<sup>158</sup> Amy Liu and Allison Plyer, “New Orleans Index,” The Brookings Institution (13 November 2007). Available at: [http://www.brookings.edu/reports/2007/~/\\_media/Files/rc/reports/2007/08neworleansindex/200711\\_katrinaES.pdf](http://www.brookings.edu/reports/2007/~/_media/Files/rc/reports/2007/08neworleansindex/200711_katrinaES.pdf).

<sup>159</sup> *Ibid.*

<sup>160</sup> National Fair Housing Alliance, “Still No Home for the Holidays,” *supra* note 157.

---

<sup>161</sup> *Anderson v. Jackson*, Class Action Complaint for Declaratory and Injunctive Relief, Case 2:06-cv-03298-ILRL-ALC, Filed in the U.S. District Court for the Eastern District of Louisiana (27 June 2006). Available at: <http://www.advancementproject.org/pdfs/katrina/Anderson%20Complaint.pdf>.

<sup>162</sup> ICERD TREATY, *supra* note 8, at Article 5(e)(i).

<sup>163</sup> Carmen DeNavas-Walt and Bernadette D. Proctor, “Income, Poverty and Health Insurance Coverage in United States: 2004” U.S. Census Bureau (August 2005). Available at: <http://www.census.gov/prod/2005pubs/p60-229.pdf>.

<sup>164</sup> Bureau of Labor Statistics, “Charting the U.S. Labor Market in 2006” (August 2007). Available at: <http://www.bls.gov/cps/labor2006/chart4-1.pdf>.

<sup>165</sup> *Ibid.* at: <http://www.bls.gov/cps/labor2006/chart4-5.pdf>.

<sup>166</sup> *Ibid.* at: <http://www.census.gov/prod/2007pubs/p60-233.pdf>.

<sup>167</sup> National Urban League, 2006 Census Poverty and Income Data (28 August 2007). Available: [http://www.nul.org/publications/policyinstitute/factsheet/2006\\_Poverty\\_Income\\_Statistics.pdf](http://www.nul.org/publications/policyinstitute/factsheet/2006_Poverty_Income_Statistics.pdf).

<sup>168</sup> Rakesh Kochhar, “The Wealth of Hispanic Households: 1996 to 2002,” Pew Hispanic Center (18 October 2004). Available at: <http://pewhispanic.org/files/reports/34.pdf>.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> Pew Foundation, “Economic Mobility of Black and White Families” (13 November 2007). Available at: [http://www.economicmobility.org/assets/pdfs/EMP\\_Black\\_White\\_Families.pdf](http://www.economicmobility.org/assets/pdfs/EMP_Black_White_Families.pdf).

<sup>172</sup> SECOND PERIODIC REPORT, *supra* note 9, at ¶ 242, p. 81.

<sup>173</sup> *Ibid.*

<sup>174</sup> John Schmitt and Ben Zipperer, “The Decline in African-American Representation in Unions and Manufacturing, 1979-2006,” Center for Economic and Policy Research (March 2007). Available at: [http://www.cepr.net/documents/publications/african\\_americans\\_manufacturing\\_2007\\_03.pdf](http://www.cepr.net/documents/publications/african_americans_manufacturing_2007_03.pdf).

<sup>175</sup> Wade Henderson, President and CEO, Leadership Conference on Civil Rights, “Testimony to the House Judiciary Committee, Oversight of the Civil Rights Division” (22 March 2007).

<sup>176</sup> Christopher Lee, “EEOC Is Hobbled, Groups Contend” *Washington Post*, (14 June 2006). Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/13/AR2006061301418.html>.

<sup>177</sup> Wade Henderson, “Testimony,” *supra* note 175.

<sup>178</sup> *Ibid.*

<sup>179</sup> See EEOC Compliance Manual § 2-IV-C(1)(a).

<sup>180</sup> 126 S.Ct. 2965 (2007).

<sup>181</sup> Wade Henderson, “Testimony,” *supra* note 175.

---

<sup>182</sup> National Committee on Pay Equity, “African American Women in the Workplace” (May 2001). Available at: <http://www.pay-equity.org/PDFs/BLACKWMN2000d.pdf>.

<sup>183</sup> Aaron Terrazas, Jeanne Batalova, and Velma Fan, “Frequently Requested Statistics on Immigrants in the United States,” Migration Policy Institute (October 2007). Available at: <http://www.migrationinformation.org/USfocus/display.cfm?id=649>.

<sup>184</sup> Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States” (March 2007). Available at: <http://www.splcenter.org/pdf/static/SPLCguestworker.pdf>.

<sup>185</sup> *Ibid.*

<sup>186</sup> *Id.*

<sup>187</sup> Erin Johannson, “Fed Up with FedEx: How FedEx Ground Tramples Workers’ Rights and Civil Rights,” American Rights at Work and Leadership Conference on Civil Rights Education Fund (October 2007). Available at: <http://www.americanrightsatwork.org/dmdocuments/ARAWReports/fedupwithfedex.pdf>.

<sup>188</sup> 535 U.S. 137.

<sup>189</sup> National Employment Law Project, “Undocumented Workers: Preserving Rights and Remedies after *Hoffman Plastic Compounds v. NLRB*” (February 2003). Available at: <http://www.nelp.org/docUploads/wlghoff040303%2Epdf>. See also Human Rights Watch, “Blood, Sweat and Fear: Worker’s Rights in US Meat and Poultry Plants” (January 2005). Available at: <http://www.hrw.org/reports/2005/usa0105/usa0105.pdf>.

<sup>190</sup> Thomas B. Edsall, “Bush Suspends Pay Act In Areas Hit by Storm,” *Washington Post*, (Sept 9, 2005). Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/08/AR2005090802037.html>.

<sup>191</sup> Wade Henderson, “Claiming Our Democracy,” in *The Covenant with Black America* (Chicago: Third World Press, 2006), p. 125.

<sup>192</sup> *Ibid.*, p. 130.

<sup>193</sup> Seth Stern, “Obama-Schumer Bill Proposal Would Criminalize Voter Intimidation,” *New York Times* (31 January 2007). Available at: [http://www.nytimes.com/cq/2007/01/31/cq\\_2213.html](http://www.nytimes.com/cq/2007/01/31/cq_2213.html).

<sup>194</sup> United States Commission on Civil Rights, “Voting Irregularities in Florida During the 2000 Presidential Election” (26 August 2004). Available at: <http://www.usccr.gov/pubs/vote2000/report/exesum.htm>.

<sup>195</sup> *Ibid.*

<sup>196</sup> Wade Henderson, “Claiming Our Democracy,” *supra* note 191, at p. 135.

<sup>197</sup> Brennan Center for Justice at NYU School of Law and Spencer Overton on behalf of the National Network on State Election Reform, “Response to the Report of the 2005 Commission on Federal Election Reform” (19 September 2005). Available at: [http://www.carterbakerdissent.com/final\\_carterbaker\\_rebuttal092005.pdf](http://www.carterbakerdissent.com/final_carterbaker_rebuttal092005.pdf).

<sup>198</sup> Ryan Paul Haygood, “Voting Rights and Katrina” (October 2005). Published in *The Black Commentator* and available at: <http://www.naacpldf.org/content.aspx?article=736>.

<sup>199</sup> Based on a national telephone survey of 987 randomly selected voting-age American citizens. See Brennan Center for Justice, “Citizens without Proof: A Survey of Americas’ Possession of Documentary Proof of Citizenship and Photo Identification,” (November 2006). Available at: [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf).

<sup>200</sup> Wade Henderson, “Claiming Our Democracy,” *supra* note 191, at p. 130.

- 
- <sup>201</sup> Brennan Center for Justice, “Citizens without Proof,” *supra* note 199.
- <sup>202</sup> National Conference of State Legislatures, “Requirements for Voter Identification,” Table 1 (January 9, 2008). Available at: <http://www.ncsl.org/programs/legismgt/elect/taskfc/VoterIDReq.htm>.
- <sup>203</sup> *Florida NAACP v. Browning*, Amended Complaint, Filed in the U.S. District Court of the Northern District of Florida, Case 4:07-cv-402-SPM/WCS, (21 September 2007). Available at: [http://brennan.3cdn.net/f94ab67fe754a54cd8\\_47m6vy4ya.pdf](http://brennan.3cdn.net/f94ab67fe754a54cd8_47m6vy4ya.pdf).
- <sup>204</sup> Leadership Conference on Civil Rights Education Fund, “Long Road to Justice,” *supra* note 10, at p. 35.
- <sup>205</sup> *Ibid.*
- <sup>206</sup> Eric Lipton and Ian Urbina, “In 5-Year Effort, Scant Evidence of Voter Fraud,” *New York Times* (12 April 2007). Available at: <http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=print>.
- <sup>207</sup> Wade Henderson, President and CEO, Leadership Conference on Civil Rights, “Testimony to the Senate Judiciary Committee, Oversight of the Civil Rights Division” (21 June 2007).
- <sup>208</sup> William L. Taylor, Dianne M. Piche, Crystal Rosario, and Joseph D. Rich, Eds. “The Erosion of Rights,” *supra* note 102.
- <sup>209</sup> CONCLUDING OBSERVATIONS, *supra* note 2, at ¶ 397.
- <sup>210</sup> Ryan S. King, “A Decade of Reform: Felony Disenfranchisement Policy in the United States,” The Sentencing Project and Brennan Center for Justice (October 2006). Available at: [http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cfd\\_decade\\_reform.pdf](http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cfd_decade_reform.pdf).
- <sup>211</sup> Marc Mauer and Jamie Fellner, “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,” The Sentencing Project and Human Rights Watch (October 1998). Available at: [http://www.sentencingproject.org/tmp/File/FVR/fd\\_losingthevote.pdf](http://www.sentencingproject.org/tmp/File/FVR/fd_losingthevote.pdf).
- <sup>212</sup> Marc Mauer, “Felon Disenfranchisement: A Policy Whose Time Has Passed?,” *Human Rights* Vol. 31, No.1 (Winter 2004). Available at: [http://www.sentencingproject.org/Admin/Documents/publications/fd\\_fdpolicywhosetime.pdf](http://www.sentencingproject.org/Admin/Documents/publications/fd_fdpolicywhosetime.pdf).
- <sup>213</sup> Warren Richey, “Bans on ex-con voting reviewed,” *Christian Science Monitor* (1 October 2002). Available at: <http://www.csmonitor.com/2002/1001/p02s01-usju.html>.
- <sup>214</sup> Dēmos, “Challenges to Fair Elections,” Dēmos Briefing Paper Series (24 October 2006). Available at: [http://www.demos.org/pubs/CFE\\_felonydis\\_102406.pdf](http://www.demos.org/pubs/CFE_felonydis_102406.pdf).
- <sup>215</sup> *Segue v. Louisiana*, Complaint, Filed in the U.S. District Court for the Eastern District of Louisiana, Case 07-cv-05221-SRD-SS, (29 August 2007). Available at: [http://moritzlaw.osu.edu/electionlaw/litigation/documents/complaint\\_016.pdf](http://moritzlaw.osu.edu/electionlaw/litigation/documents/complaint_016.pdf).
- <sup>216</sup> *Ibid.*

