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SHADOW REPORT SUBMISSIONS AND UPDATES

**COMPILED BY THE INTERNATIONAL HUMAN RIGHTS
CLINIC AT UNIVERSITY OF ILLINOIS CHICAGO
SCHOOL OF LAW AND PROGRAM ON HUMAN RIGHTS
AND THE GLOBAL ECONOMY AT NORTHEASTERN
UNIVERSITY SCHOOL OF LAW**

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5th Periodic Review of the U.S. under the International Covenant on Civil and Political Rights (ICCPR)

October 10 – 18, 2023

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UIC Law School International Human Rights Clinic

The UIC Law School International Human Rights Clinic (IHRC) is a non-profit, nonpartisan, law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC offers students a background in human rights advocacy through the practical experience of working on international human rights cases and projects.

Program on Human Rights and the Global Economy – Northeastern University Law School

The Program on Human Rights and the Global Economy (PHRGE) at Northeastern University School of Law was founded in 2005 to engage in study, promotion, implementation and constructive critique of rights-based approaches to economic development and social transformation. PHRGE supports cutting edge human rights scholarship and movement building, with particular focus on economic, social and cultural rights, and works with students to ensure that human rights perspectives will continue to be vital to future generations of scholars and advocates.

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Executive Summary

The University of Illinois Chicago School of Law's International Human Rights Clinic (IHRC) and Northeastern University's Program on Human Rights and Global Economy (PHRGE) present this joint summary of reports in anticipation of the Human Rights Committee's ("the Committee") Fifth Periodic Review of the United States' compliance with its duties and obligations under the International Covenant on Civil and Political Rights (ICCPR). The IHRC is a non-profit, non-partisan legal clinic dedicated to the protection of human rights in the U.S. and worldwide. The IHRC advocates for the protection of vulnerable communities across domestic courts, administrative agencies, and international and regional judicial and/or quasi-judicial bodies. Likewise, the PHRGE is committed to the protection of human rights, both in its local community and worldwide, and through cutting-edge scholarship focused on human rights within the context of economic, social, and cultural rights.

During the Committee's Fourth Periodic Review of the United States in 2014, the Committee expressed concern over a multitude of issues impacting nearly every article of the ICCPR. The recommendations included expansion of the applicability of the ICCPR in good faith, the elimination or reduction of the country's reservations, understandings, and declarations (RUDs), and urging U.S. accession to both Optional Protocols of the ICCPR. The hope was that the subject matter of these three overarching recommendations would lead to the implementation of all proposed solutions.

This joint submission is a summary of the issues presented by members of civil society in shadow reports submitted to the Committee to provide it with supplemental information regarding actions taken by the United States in implementing the ICCPR at federal, state, and local levels. These reports raised pressing issues in several areas of concern, including those regarding race, ethnicity, gender, sexual orientation, legal status, and socioeconomic status. This summary is not representative of all the issues and problems people across the U.S. face due to its failure to fulfil its duties and obligations under the ICCPR.

A. National Human Rights Institute/Domestic Human Rights Framework (art. 2)

Issue 1: Establishing a National Human Rights Institute

The U.S. has not made any tangible progress towards the establishment of a National Human Rights Institution (NHRI)—or other mechanism to coordinate human rights treaty compliance—since the Committee’s fourth review.¹ There is no institutionalized federal infrastructure to support human rights education, monitoring, or implementation, or to provide guidance on human rights and translate international standards into domestic practice. Without an NHRI, there is simply no way for the U.S. to ensure that the rights of all individuals within its territory are being respected, as required by Article 2 of the ICCPR. Indeed, because there is no national human rights infrastructure, many state and local officials remain unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation.²

U.N. human rights bodies have consistently recommended that the U.S. establish an NHRI, but the U.S. has continuously failed to do so.³ This reluctance stands in stark contrast to the growing momentum among civil society organizations calling for the creation of an NHRI. Over the last two years, multiple coalition letters and reports have been submitted to U.S. government officials urging the U.S. to establish an NHRI.⁴ Even so, the U.S. has long routinely failed to adequately consult with civil society regarding implementation of or compliance with international human rights treaties.⁵

An NHRI would allow for unprecedented progress toward domestic implementation of the U.S.’ international human rights commitments and is pivotal to bringing human rights home to the U.S.⁶

Issue 1 Recommendations

- The White House must establish a study commission to consider the various options for structuring an NHRI and report its findings within one year.
- To achieve full implementation of the ICCPR, the U.S. must establish an NHRI in accordance with the Paris Principles. The NHRI should be built on transparent and effective mechanisms with a dedicated staff coordinating with state and local actors regarding human rights reporting and implementation. The NHRI’s mechanisms should be based on best practices at the state and local level. The NHRI should communicate recommendations from international bodies to state and local governments and act as a central federal point of coordination to liaise with state and local actors regarding human rights standards, implementation, and monitoring.

Reports Informing this Issue Include:

- IAOHRA & PHRGE, *U.S. Compliance with the International Covenant on Civil and Political Rights*
- American Civil Liberties Union, et al., *Toward an Effective National Human Rights Institution for the USA*.
- The Southern Poverty Law Center, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights*.

¹ Int’l Assoc. of Off. Hum. Rts. Agencies & Prog. on Hum. Rts. & the Glob. Econ., *U.S. Compliance with the International Covenant on Civil and Political Rights* 5 (Sept. 12, 2023) [hereinafter IAOHRA & PHRGE].

² *Id.*

³ Am. Civ. Liberties Union, Amnesty Int’l, Int’l Assoc. of Off. Hum. Rts. Agencies, et al., *Toward an Effective National Human Rights Institution for the USA* 4, 5-7 (Sept. 12, 2023).

⁴ *Id.*

⁵ S. Poverty L. Ctr., *The United States of America’s Compliance with the International Covenant on Civil and Political Rights* 2 (Sept. 12, 2023).

⁶ IAOHRA & PHRGE, *supra* 1, at 6.

B. Non-Discrimination and Equal Rights of Men and Women (arts. 2, 3, 4, 6, 7, 9, 14, 17, 19, 20, 23, 24, 26)⁷

Issue 1: Discrimination Against Women

The ICCPR recognizes the equal protection of rights and the freedom from discrimination under Articles 2 and 26.⁸ Equality in the protection of civil and political rights irrespective of gender is further recognized under Article 3.⁹ Where multiple forms of discrimination intersect, women face significant limitations to the rights guaranteed by the ICCPR.

In 2020, a sufficient number of states had voted to ratify the Equal Rights Amendment (ERA), which would recognize “sex” as a protected class under the U.S. Constitution.¹⁰ However, the U.S. government refuses to recognize the ERA as the 28th amendment due to an arbitrary time limit for ratification set in the ERA’s preamble.¹¹ The record of Supreme Court rulings strongly indicates the need for constitutional protections against gender and sex discrimination.¹²

Women continue to face discrimination based upon their gender and sex. Federal law prohibits Female Genital Mutilation (FGM/C) on girls under 18 and makes it illegal for parents, guardians, or caretakers to facilitate or consent to FGM/C on a girl’s behalf.¹³ In 2020, Congress passed the “Stop FGM Act” to strengthen opposition against FGM/C; however, its implementation has been egregiously slow.¹⁴ Moreover, not all states have specific laws against FGM/C, or statutes that prohibit parents or caretakers from facilitating FGM/C.¹⁵

Issue 1 Recommendations

- Recognize and incorporate the ERA as the 28th Amendment to the U.S. Constitution.
- Effectively implement the federal law on FGM/C and encourage states to pass legislation that prohibits and criminalizes all forms of FGM/C.
- Provide funding, resources, and support to community-based organizations with expertise and experience in addressing FGM/C.

Additional Considerations

Discrimination Against Black Women: In 2021, the Minnesota Legislature created the Missing and Murdered African American Women Task Force (MMAAW), the first of its kind. The MMAAW was charged with collecting data on policies and practices that perpetuate violence against Black women.¹⁶ The taskforce revealed that disciplinary systems (i.e., law enforcement, courts, schools) perceive Black girls as less innocent than their

⁷The list of issues identified by the Committee in 2019 was framed in terms of discrimination and equal rights of men and women. However, this section will also include discrimination based on age and disability.

⁸ International Covenant on Civil and Political Rights arts. 2, 26, *opened for signature* Dec. 19, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

⁹*Id.* at art. 3.

¹⁰ EQUALITY NOW, ERACALITON, ET AL., INFORMATION ON THE UNITED STATES OF AMERICA FOR REVIEW BY THE HUMAN RIGHTS COMMITTEE AT THE 139TH SESSION (09 OCT 2023 - 03 NOV 2023) ¶ 11 (Sept. 12, 2023).

¹¹*Id.*

¹²*Id.* at ¶ 14.

¹³*Id.* at ¶ 37.

¹⁴*Id.* at ¶ 37-41.

¹⁵*Id.* at ¶ 41.

¹⁶ THE ADVOCS. FOR HUM. RTS. & LAKEISHA LEE, THE UNITED STATES OF AMERICA’S COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: GENDER-BASED VIOLENCE AGAINST WOMEN ¶ 4 (Sept. 12, 2023). Other states, such as Illinois and Wisconsin, have also initiated the creation of a similar taskforce. *Id.*

white, female counterparts.¹⁷ As a result, Black girls are six times more likely to be suspended from school, outnumber white women in the incarceration rate by two to one, and are subjected to greater uses of force.¹⁸

Black girls face further disparate treatment by the media and police. When law enforcement classify a Black girl as a “runaway,” they generally do not send an Amber Alert to notify the community of the missing child.¹⁹ As a result, media coverage of the missing, Black girl is limited, resulting in what is known as “white girl syndrome.”²⁰ A report from 2020 indicates that there are somewhere between 64,000 to 75,000 Black girls and women who are missing.²¹

Additional Recommendations

- Develop culturally and gender-appropriate training in academia (K-12) that defines standards for appropriate school discipline in an effort to minimize the impact of explicit or implicit racial biases.
- Consult with civil society organizations that serve and/or advocate for Black women and girls to identify the root causes of disproportionate incarceration rates.
- Encourage states to allocate sufficient funding to the creation of task forces charged with investigating violence against Black women and girls.
- Conduct trainings with media to encourage their coverage of Black or other marginalized women who have been reported, though not necessarily classified, as missing.
- Provide training and adequate resources to law enforcement to ensure the proper classification and pursuit of missing persons cases.

Reports Informing this Issue Include:

- The Advocates for Human Rights & Lakeisha Lee, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights: Gender-Based Violence against Women*.
- Equality Now, Eracoalition, et al., *Information on the United States of America for Review by the Human Rights Committee at the 139th Session (09 Oct 2023 - 03 Nov 2023)*.

Issue 2: Violence Against Women

Acts of physical and sexual violence against women infringe on the rights of women in two respects. First, they lead to discrimination against women based upon their gender. Additionally, they disparately affect women of marginalized classes, who already face multiple and intersecting forms of discrimination. This leads to a violation of rights under Articles 2, 3, and 26 of the ICCPR.²²

Black and Indigenous women experience violence at disproportionate rates. Black women die of homicide at twice the rate of the general, female population, and are more likely to be victims of sex trafficking and sexual violence (about 86% of Black women in prison have experienced sexual violence).²³ However, they are less likely to report sexual or domestic violence given that their reports are often discounted or met with disbelief.²⁴ Indigenous women suffer from violence at similarly alarming rates – more than half are victims of sexual violence, and one in three have experienced rape in their lifetime.²⁵ However, most Indigenous women do not see justice due to the complex interplay between federal, state, and tribal jurisdictions that allows their perpetrator to walk

¹⁷ *Id.* at ¶ 27.

¹⁸ *Id.* at ¶¶ 9, 25, 27.

¹⁹ *Id.* at ¶ 28.

²⁰ *Id.* at ¶ 1.

²¹ *Id.*

²² ICCPR, *supra* note 8, at arts. 2, 3, 26.

²³ LAKEISHA LEE, *supra* note 16, at ¶¶ 1, 8, 10.

²⁴ *Id.* at ¶ 18.

²⁵ *Id.* at ¶ 17.

free.²⁶ Remedying the effects of violence on Black and Indigenous communities is critical to ensuring their enjoyment of equal rights under the ICCPR.

The lack of stable and secure housing is directly correlated to an increase in experienced violence, especially for Black women and girls.²⁷ Many Black women continue to live with their abusive partner due to an inability to secure housing support.²⁸ Moreover, girls experiencing unstable housing conditions may resort to survival sex or become victims of sexual exploitation.²⁹

Issue 2 Recommendations

- Identify and implement measures aimed at reducing and preventing violence against Black and Indigenous women.
- Enact legislation to strengthen accountability between state, federal, and tribal jurisdictions, and better coordinate ongoing investigations.
- Allocate sufficient resources to Black and Indigenous female victims of violence.
- Ensure effective application of the Fair Housing Act without discriminatory impact or intent, particularly as it concerns Black and marginalized women and girls.
- Provide adequate funding to organizations that assist victims of sexual violence and/or marginalized women in securing stable housing.

Additional Considerations

Violence Against Women in the U.S. Military: Sexual assault within the military is a pervasive problem that is fostered by a culture rife with misogyny and harassment.³⁰ An estimated 35,875 service members – 8.4% of active-duty service women and 1.5% of active-duty service men – experienced unwanted sexual contact in 2021.³¹ The Department of Defense estimates that only a fraction of active-duty military personnel report experiences of sexual assault due to stigma and the military culture.³² Moreover, 67% of women who reported unwanted sexual contact in 2021 experienced at least one retaliatory behavior.³³

Recent legislation by the U.S. Congress removed the authority previously granted to military Commanders to investigate and prosecute cases of sexual violence.³⁴ While the legislation is a welcome change, much more remains to be done to rectify other systemic problems that affect the military's ability to address sexual violence, including a toxic climate, low reporting and conviction rates, social and professional retaliation, weak prevention efforts, and inadequate access to remedies in military or civilian courts.³⁵

Child Marriage As Defense to Statutory Rape: Child marriage disproportionately affects girls, subjecting them to inequality and gender-based violence.³⁶ Most states permit the marital defense against charges of statutory rape, and both federal and some state laws permit, either outright or with parental permission, marriage for children under 18.³⁷

²⁶ *Id.*

²⁷ *Id.* at ¶ 23.

²⁸ *Id.*

²⁹ *Id.*

³⁰ CORNELL L. SCHOOL'S GENDER JUST. CLINIC, SEXUAL VIOLENCE IN THE U.S. MILITARY ¶ 5-7 (Sept. 12, 2023).

³¹ *Id.* at ¶ 13.

³² *Id.* at ¶ 7.

³³ *Id.* at ¶ 8.

³⁴ *Id.* at ¶ 3.

³⁵ *Id.* at ¶ 5.

³⁶ EQUAL. NOW, *supra* note 10, at ¶ 29.

³⁷ *Id.* at ¶¶ 28-30.

Additional Recommendations

- Ensure that the newly created Offices of the Special Trial Counsel, which have been charged with the review of sexual harassment and violence occurrences in the military, have adequate resources, training, and independence to be successful.
- Engage in robust and sustained efforts to dismantle the misogyny and gender stereotypes that create toxic military subcultures and allow harassment and violence to thrive.
- Remove Commander authority to review retaliation complaints of military sexual assault victims that do not involve a crime.
- Reform other aspects of the military justice system, including the expansion of remedies and treatment (including mental health care) available to military sexual violence victims, training of military prevention and justice practitioner staff, and expansion of sentencing options available against offenders.
- Enact federal and state legislation that sets the minimum age of marriage at 18, without any exceptions.
- Repeal all marital exceptions to the crime of statutory rape at the state and federal levels.

Reports Informing this Issue Include:

- Equality Now, Eracoalition, et al., *Information on the United States of America for Review by the Human Rights Committee at the 139th Session (09 Oct 2023 - 03 Nov 2023)*.
- Cornell Law School's Gender Justice Clinic, *Sexual Violence in the U.S. Military*.
- The Advocates for Human Rights & Lakeisha Lee, *The United States of America's Compliance with the International Covenant on Civil and Political Rights: Gender-Based Violence against Women*.

Issue 3: Reproductive Rights

Following publication of the Committee's 2019 List of Issues, which asked the U.S. to address ways that it was protecting people's access to abortion, the U.S. Supreme Court ruled in 2022 to overturn precedent and eliminate the constitutional right to abortion.³⁸ The Court's decision in *Dobbs v. Jackson Women's Health Organization* is the first time that the Court has stripped away a previously recognized fundamental right. The *Dobbs* decision threatens many other rights related to reproductive autonomy and beyond, and has escalated violations of reproductive rights in the U.S. under Articles 2, 3, 6, 7, 17, and 26 of the ICCPR.³⁹ In addition, prosecutions for abortion and pregnancy outcomes violate Articles 2, 3, 9, 14, and 26.⁴⁰

In the aftermath of *Dobbs*, people in the U.S. have faced increased morbidity, exacerbated pregnancy complications, and the inability to procure time-sensitive care.⁴¹ As of early September 2023, 26 states – which account for about half of the U.S. population – have full, partial, or temporarily blocked abortion bans.⁴² States that ban abortion, many of which already lead the country in disparities in health care access and maternal mortality, are likely to further perpetuate discrimination and health inequities that disproportionately harm Black, Indigenous, and Latinx populations.⁴³ Marginalized populations may be particularly disadvantaged in seeking

³⁸ PHYSICIANS FOR HUM. RTS., *SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE (CCPR) ON THE UNITED STATES OF AMERICA, FIFTH PERIODIC REPORT, 139TH SESSION (2023)* 10 (Aug. 2023); see *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

³⁹ U.N. Hum. Rts. Comm., *List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America*, ¶ 12, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019) [hereinafter LoI Fifth Periodic Report].

⁴⁰ ICCPR, *supra* note 8, at arts. 2, 3, 9, 14, 26.

⁴¹ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 11.

⁴² GLOB. JUST. CTR., AMNESTY INT'L, ET AL., *SUBMISSION TO THE HUMAN RIGHTS COMMITTEE, 139TH SESSION, OCTOBER 9 – NOVEMBER 3, 2023*, 4 (2023).

⁴³ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 12; see ABORTION CARE NETWORK, BLACK MAMAS MATTER ALL., ET AL., *RETROGRESSION IN U.S. REPRODUCTIVE RIGHTS: THE ONGOING FIGHT FOR REPRODUCTIVE AUTONOMY* 13 (Sept. 12, 2023) (stating that Black and Indigenous women die of pregnancy-related causes at two to three times the rate of white women; see also THE U.S. GENDER AND DISABILITY JUST. ALL., WOMEN ENABLED INT'L ET AL., *SUBMISSION FOR REPORTING OF THE UNITED STATES OF AMERICA ON WOMEN AND GENDER DIVERSE PEOPLE WITH DISABILITIES* 4 (2023).

abortion care outside their home states due to financial, childcare, and employment constraints.⁴⁴ While certain states, such as Idaho, are moving to criminalize inter-state travel for abortion, the legality of such legislation is questionable.⁴⁵

Thirty-three states have laws that impose criminal penalties for performing abortions in some circumstances, and, as of September 2023, sixteen states have made it a felony to perform an abortion at any stage of gestation, with some states imposing sentences of up to life imprisonment.⁴⁶ While only one state presently explicitly allows for criminal charges for people who self-manage their abortions, the stigma and suspicion the criminalization of abortion creates is dangerous to abortion seekers – between 2000 and 2020, at least 61 people were criminalized for self-managing an abortion or helping a loved one do so.⁴⁷ This is particularly problematic given that self-managed abortions and spontaneous miscarriages are frequently indistinguishable in most cases, leading to prosecution of people who spontaneously miscarry as well.⁴⁸ States also use fetal personhood laws, explicitly and implicitly, to violate the rights of pregnant individuals through uncontested medical procedures, compulsory drug treatment programs, and mandatory reporting requirements that professionals overtly interpret as applying to miscarriage, stillbirths, or suspected self-managed abortion.⁴⁹

Many abortion bans impose severe criminal and civil penalties on health care professionals who facilitate abortions.⁵⁰ As a result, physicians face a “dual loyalty” conundrum, where they must either comply with the ethical duties of their profession and face potential jail time, or abide by the state law and refuse care, thus repudiating patient autonomy and causing pregnant people to suffer preventable trauma or even death.⁵¹ In the year following the *Dobbs* decision, OB/GYN resident programs reported a 10% decrease in applications in states with abortion bans.⁵² Moreover, many OB/GYNs have moved their practice to states with more protective abortion policies, further limiting pregnant people’s accessibility to generalized reproductive health care in states with abortion bans.⁵³

This Committee has previously recognized that a government’s failure to protect people from arbitrary and preventable losses of life that result from pregnancy is a violation of the right to life under Article 6.⁵⁴ Yet, many abortion bans fail to meet even this minimum requirement.⁵⁵ The U.S. has the highest maternal mortality ratio among wealthy nations and has shown a callous disregard for the lives of people who can become pregnant by taking steps that will make these inequities worse.⁵⁶ Abortion bans that do permit exceptions have been difficult to implement given the lack of clarity in defining the exceptions, and the tendency of doctors to err on the side of caution in determining whether the exception is applicable.⁵⁷ Denying access to abortion in cases of fatal fetal

⁴⁴ CTR. FOR REPROD. RTS., LIFT LOUISIANA, ET AL., LEGAL RETROGRESSION AND THE HARMS OF LOUISIANA’S NEAR TOTAL ABORTION BANS 6 (Sept. 12, 2023).

⁴⁵ GLOB. JUST. CTR., *supra* note 42, at 4; *see Dobbs*, 142 S. Ct. at 2337 (Kavanaugh, J., concurring) (stating that the U.S. constitutional right to travel would bar a state from preventing its residents from traveling inter-state to obtain an abortion).

⁴⁶ HUM. RTS. & GENDER JUST. CLINIC & CUNY SCH. OF L, CRIMINALIZATION AND PUNISHMENT FOR ABORTION, STILLBIRTH, MISCARRIAGE, AND ADVERSE PREGNANCY OUTCOMES 2-3 (Sept. 12, 2023).

⁴⁷ *Id.* at 4.

⁴⁸ GLOB. JUST. CTR., *supra* note 42, at 9.

⁴⁹ HUM. RTS. & GENDER JUST. CLINIC, *supra* note 46, at 4, 7-9.

⁵⁰ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 11.

⁵¹ *Id.*

⁵² *Id.* at 12.

⁵³ Abortion Care Network, *supra* note 43, at 9.

⁵⁴ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 15.

⁵⁵ *Id.* at 13-14.

⁵⁶ CTR. FOR REPROD. RTS., LIFT LOUISIANA, ET AL., *supra* note 44, at 8.

⁵⁷ GLOB. JUST. CTR., *supra* note 42, at 19-24.

impairment and/or sexual violence, or otherwise delaying a pregnant person's treatment for cancer or an ectopic pregnancy, constitutes a form of torture and ill-treatment that is impermissible under Article 7 of the ICCPR.⁵⁸

Moreover, women who have suffered ill treatment as a result of abortion bans and have sought access to justice through the courts have been treated with additional cruelty by state actors defending their bans.⁵⁹ As these women and other individuals directly impacted by abortion bans and restrictions demonstrate, even when pregnant people are able to overcome obstacles to abortion care, many are still subjected to the unnecessary fear, delay, and stigma the bans perpetuate.⁶⁰

Issue 3 Recommendations

- Restore the federal recognition of the right to abortion.
- Enact the Women's Health Protection Act, which establishes a statutory right for medical professionals to provide abortion care and the right of their patients to receive care.
- Ensure that all federal and state laws, policies, and regulations on abortion conform with the World Health Organization's 2022 Abortion Care Guidelines.
- Protect women, girls, and people who can become pregnant from prosecution related to pregnancy and pregnancy outcomes, including miscarriages, stillbirths, and abortions.
- Enact a task force to monitor the impact of abortion bans on the reproductive health of people who can become pregnant and to identify racial and other disparities in reproductive health care access.
- Protect health professionals who provide abortion services from civil and criminal liability, loss of license, or other retribution (such as direct threats against their person).
- Ensure that the U.S. Federal Drug Administration maintains authority to approve medication abortion.
- Protect the confidentiality of persons who can become pregnant by limiting the collection of patient data and prohibiting its disclosure to third parties.
- Ensure that patient privacy laws prohibit reporting and disclosure of patient information in cases involving abortion, obstetric emergencies, and conduct during pregnancy.
- Enforce HIPAA protections that prohibit the disclosure of private health information.
- Monitor the impact of abortion bans on access to reproductive care and health inequities.

Recommended Questions:

- What measures are being undertaken by the U.S. government to restore the federal recognition of the right to abortion and enact positive measures at the federal and state level to guarantee this right in practice and without discrimination?
- How is the U.S. government aiming to ensure the provision of abortion by clinicians practicing in states where abortion is legal, including by ensuring abortion can be provided via telemedicine, that providers do not face penalties for treatment of patients from out-of-state, and that patients are able to travel across state lines for legal abortion care?
- In light of the increasing physical and legal attacks on healthcare workers and facilities that provide abortion-related care, what steps is the U.S. government taking to bring about an immediate end to the violence and to protect clinicians from facing lawsuits and prosecutions for provision of safe abortion care?

⁵⁸ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 15; *see* ICCPR, *supra* note 8, at art. 7.

⁵⁹ ABORTION CARE NETWORK, *supra* note 43, at 10-13.

⁶⁰ *Id.*

Additional Considerations

Violations to Right of Privacy of People Who Can Become Pregnant: Prior to the *Dobbs* decision, 39% of the documented cases of people investigated or prosecuted for self-managing abortions or helping someone else do so were reported to law enforcement by healthcare providers in violation of the patients' right to privacy and right to life.⁶¹ States that criminalize abortion are permitting law enforcement access to electronic information, such as location data, search histories, menstrual tracking applications, and text message communications, to prosecute people for accessing abortion.⁶² The use of digital surveillance to track abortions violates the right to privacy of people who can become pregnant and is a violation of the ICCPR.

Violation of the Rights to be Free From Arbitrary Detention and Fair Trial: From 2006-2020 (prior to the *Dobbs* decision), more than 1,300 people were arrested in relation to their conduct during pregnancy. Pregnancy-related prosecutions typically reflect stereotypical beliefs or political agendas of police, prosecutors, judges, and juries, resulting in prosecutions that misapply or distort statutes, rely on faulty or discredited expert opinions and medical evidence, depend on biased assumptions, and ignore exculpatory evidence.⁶³

Access to Reproductive Health for Gender Diverse People⁶⁴ with Disabilities: Women and gender diverse people with disabilities face significant barriers in accessing sexual and reproductive care. According to a 2017 survey of OB/GYNs, only 17.2% of physicians reported prior training in providing health care services to women with disabilities.⁶⁵ Women with disabilities are more likely to develop serious pregnancy complications and generally have less access to high-speed internet, which consequently limits their access to abortion and/or reproductive care information.⁶⁶ Women and gender diverse people with disabilities face a higher risk of being subjected to and suffering a disproportionate impact to their reproductive health, particularly in light of the *Dobbs* decision.⁶⁷ Significantly, the difficulty of travel for persons with physical disabilities will limit their access to out-of-state abortions.⁶⁸ Additionally, people with disabilities who require assistance from family members, intimate partners, friends, or community members to obtain an abortion will be forced to surrender right to privacy in order to request travel assistance from others.⁶⁹

Legal Restrictions on Midwifery: Black and Indigenous communities in the U.S. face numerous barriers to reproductive health and autonomy with few legal protections.⁷⁰ In addition to retrogression in abortion rights, communities of color have been systemically excluded from equal participation in the healthcare workforce, including through unnecessary legal and financial barriers that restrict who can acquire a midwifery license.⁷¹ These licensure requirements disproportionately impact and criminalize Black and Indigenous communities, including Native Hawaiians, who view traditional midwifery as a way of revitalizing their culture and mitigating discrimination that is common in mainstream U.S. healthcare settings.⁷² Opting for an at-home birth with a midwife allows many pregnant people to feel safe, supported, and empowered.⁷³ Yet, people in states that have

⁶¹ HUM. RTS. & GENDER JUST. CLINIC, *supra* note 46, at 8.

⁶² GLOB. JUST. CTR., *supra* note 42, at 13-14.

⁶³ HUM. RTS. & GENDER JUST. CLINIC, *supra* note 46, at 4, 9-11.

⁶⁴ As used in civil society's submissions, "gender diverse people" refers to transgender women and men, nonbinary people, agender people, and any/all people that identify as a gender other than cis-gender women or men.

⁶⁵ THE U.S. GENDER AND DISABILITY JUST. ALL., WOMEN ENABLED INT'L ET AL., SUBMISSION FOR REPORTING OF THE UNITED STATES OF AMERICA ON WOMEN AND GENDER DIVERSE PEOPLE WITH DISABILITIES 4 (2023).

⁶⁶ *Id.* at 6.

⁶⁷ *Id.* at 5.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Abortion Care Network, *supra* note 43, at 13-15.

⁷¹ *Id.* at 14-15.

⁷² *Id.* at 15-18.

⁷³ *Id.* at 17.

criminalized traditional midwives fear that they or their midwife will be punished for such an exercise of reproductive autonomy.⁷⁴

Additional Recommendations

- Adopt and implement improved measures for data collection on multi-marginalized people with disabilities, with a specific focus on collecting and analyzing data concerning Black, Latina, and Indigenous people who can become pregnant.
- Encourage medical schools and other healthcare institutions to develop a culturally-appropriate and gender-diverse curriculum that increases physician competency in providing accessible care to multi-marginalized people with disabilities.
- Ensure that access to reproductive care is fully accessible to persons with disabilities.
- Remove discriminatory legal and practical barriers to midwifery care, including and especially those that inhibit Black and Indigenous communities from preserving culturally significant midwifery traditions or participating in the healthcare workforce.
- Promote pregnancy care that preserves the dignity and autonomy of all people who can become pregnant.
- Mandate that the U.S. review all cases where individuals have been imprisoned for abortion-related and/or obstetric emergencies with the aim of ensuring their release and ensuring that they have legal assistance and due process.

Reports Informing this Issue Include:

- The U.S. Gender and Disability Justice Alliance, Women Enabled International et al., *Submission for Reporting of the United States of America on Women and Gender Diverse People with Disabilities*.
- Abortion Care Network, Black Mamas Matter Alliance, et al., *Retrogression in U.S. Reproductive Rights: The Ongoing Fight for Reproductive Autonomy*.
- Physicians for Human Rights, *Submission to the UN Human Rights Committee (CCPR) on the United States of America, Fifth Periodic Report, 139th Session (2023)*.
- Global Justice Center, Amnesty International, et al., *Submission to the Human Rights Committee, 139th Session, October 9 – November 3, 2023*.
- Human Rights and Gender Justice Clinic & CUNY School of Law, *Criminalization and Punishment for Abortion, Stillbirth, Miscarriage, and Adverse Pregnancy Outcomes*.
- Center for Reproductive Rights, Lift Louisiana, et al., *Legal Retrogression and the Harms of Louisiana's Near Total Abortion Bans*.

Issue 4: LGBTQIA+ Rights

Discrimination against LGBTQIA+ persons on the basis on their sexual orientation or gender identity violates Articles 2, 3, and 26 of the ICCPR.⁷⁵ In its State report, the U.S. report overlooks many of the disparities faced by the LGBTQIA+ community, including targeted violence, barriers to health care, and unequal treatment under the law.⁷⁶

Members of the LGBTQIA+ community are experiencing bias, discrimination, violence, hate, and oppression at increasing rates.⁷⁷ In 2023, the U.S. saw the introduction of 525 anti- LGBTQIA+ bills, as well as the highest to-date number of hate-related trans deaths (with transgender persons generally experiencing violence at four times

⁷⁴ *Id.* at 17. 38

⁷⁵ ICCPR, *supra* note 8, at arts. 2, 3, 26.

⁷⁶ In addition, robust enforcement of violations brought under Title IX has been lacking, as no educational institution has been denied federal funding due to noncompliance. UNIV. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, HUM. RTS. WATCH ET AL., HUMAN RIGHTS VIOLATIONS AGAINST TRANSGENDER COMMUNITIES IN THE UNITED STATES ¶ 2 (Sept. 12, 2023).

⁷⁷ IAOHRA & PHRGE, *supra* note 1, at ¶ 31.

the rate of cisgender persons).⁷⁸ Black trans women experience the disproportionately highest rates of violence, and studies show murders of transgender Black women steadily rising.⁷⁹ In addition, the inconsistent application of the non-punishment principle of human trafficking laws results in many transgender trafficking victims being criminally charged with prostitution or sex work.⁸⁰ Transgender individuals are more likely to experience homelessness, as many shelters are gendered or religiously affiliated, and deny access.⁸¹ Additionally, LGBTQIA+ persons who are detained remain vulnerable to harm and abuse and continue to be denied treatment for gender-affirming health care (GAHC).⁸²

Within the health care context, most LGBTQIA+ persons consider access to GAHC life-changing and critical to their mental health.⁸³ The U.S. medical community overwhelmingly agrees that GAHC is a safe and medically-necessary component of sexual and reproductive care, particularly for people experiencing gender dysmorphia; yet, access to GAHC is frequently limited.⁸⁴ Currently, 22 states ban gender-affirming health care for children, and 5 states criminalize providing gender-affirming care as a felony.⁸⁵ Research has shown that people who are denied access to GAHC both consider and die from suicide at alarming rates, with Black transgender and nonbinary people with disabilities suffering the highest risk of suicide.⁸⁶ Despite this data, the U.S. has proposed a bill (US HB 3328) that if passed, would prohibit health care practitioners from prescribing gender-affirming treatments to patients under the age of 18.⁸⁷

Issue 4 Recommendations

- Expressly prohibit any discrimination based on sexual orientation and gender identity in areas such as education, healthcare, housing, and public accommodations.
- Initiate litigation against schools that violate Title IX.
- Intentionally allocate resources for transgender victims of trafficking.
- Consult LGBTQIA+ persons, including trans adults and youth with disabilities, to draft and implement state, local, and federal legislation that prohibits discrimination based on gender identity, protects the right to GAHC, and removes excessive GAHC barriers.
- Enact proposed legislation, including the Equality Act, and the HHS' proposed rule to limit discrimination and improve GAHC access.
- Identify measures for ensuring that transgender persons have adequate access to shelters.
- Establish and enforce clearer standards of humane treatment for LGBTQIA+ detainees, including appropriate housing and access to gender-affirming care.
- Continue to provide staffing and adequate resources to the Interagency Working Group on Anti-Transgender Violence.

⁷⁸ HUM. RTS. CAMPAIGN, SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE CONCERNING LGBTQIA+ RIGHTS IN THE UNITED STATES 2 (Sept. 2023); *see* IAOHRA & PHRGE, *supra* note 1, at ¶¶ 32, 34; THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 11.

⁷⁹ IAOHRA & PHRGE, *supra* note 1, at ¶¶ 34, 41.

⁸⁰ *Id.* at ¶ 43.

⁸¹ UNIV. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, *supra* note 76, at ¶ 16.

⁸² HUM. RTS. CAMPAIGN, *supra* note 78, at 8.

⁸³ THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 8.

⁸⁴ *Id.* at 7-8.

⁸⁵ UNIV. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, *supra* note 76, at ¶ 14.

⁸⁶ THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 8.

⁸⁷ *Id.* at 8.

Additional Considerations

Limiting the Freedom of Expression of LGBTQIA+ Individuals: Limits on the freedom of expression are a direct violation of Article 19 of the ICCPR.⁸⁸ Nonetheless, public school and university curriculums have attempted to ban diversity initiatives and censor materials which encourage “lifestyles that deviate from generally accepted standards of society.”⁸⁹ As part of this censorship initiative, states have prohibited transgender persons from sharing their pronouns, banned drag performances, and enacted and expanded “Don’t Say LGBTQ+” laws.⁹⁰ In addition, states have criminalized the use of bathrooms that do not match the person’s biological sex and restrict transgender person’s participation in school sports.⁹¹

Additional Recommendations

- Adopt federal legislation that protects LGBTQIA+ persons from the effects of state legislation that attacks the “otherness” of their lifestyle, body type, and functioning.
- Encourage states to lift bans on books with LGBTQIA+ content, and on classroom instruction that discusses sexual orientation and gender identity.

Reports Informing this Issue Include:

- The U.S. Gender and Disability Justice Alliance, Women Enabled International et al., *Submission for Reporting of the United States of America on Women and Gender Diverse People with Disabilities*.
- University of Miami School of Law Human Rights Clinic, Human Rights Watch et al., *Human Rights Violations against Transgender Communities in the United States*.
- Human Rights Campaign, *Submission to the UN Human Rights Committee Concerning LGBTQI+ Rights in the United States*.
- IAOHRA & PHRGE, *U.S. Compliance with the International Covenant on Civil and Political Rights*.

Issue 5: Children’s Rights

Under Article 2 of the ICCPR, persons are guaranteed rights without distinction of any kind, including race, ethnicity, age, and socioeconomic class.⁹² The U.S. child welfare system’s often unnecessary disruptions to family integrity, especially to families living in poverty or Black and Indigenous communities, results in a direct violation of Articles 2 and 26.⁹³

Child welfare investigations disproportionately impact children from Black, Indigenous, or impoverished families.⁹⁴ The child welfare system defines neglect using similar terminology to what is used to define poverty.⁹⁵ States’ receipt of federal funding is also conditioned on the inclusion of neglect as a legal standard for child removal (as required by the Child Abuse Prevention and Treatment Act, or CAPTA).⁹⁶ As a result, investigations of families charged with child neglect act as a proxy for punishing poverty, with state and local agencies opting for family separation instead of addressing the underlying socio-economic issues.⁹⁷

⁸⁸ ICCPR, *supra* note 8, at art. 19.

⁸⁹ THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 10.

⁹⁰ UNIV. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, *supra* note 76, at ¶¶ 7, 9-12.

⁹¹ HUM. RTS. CAMPAIGN, *supra* note 78, at 8; *see* THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 11.

⁹² ICCPR, *supra* note 8, at art. 2.

⁹³ *Id.* at arts. 2, 26.

⁹⁴ PARENTS SUPPORTING PARENTS NY, PALE BLUE, ET AL., FAMILY SEPARATION IN THE U.S. CHILD WELFARE SYSTEM, AT THE U.S. MEXICO BORDER, AND OF INDIGENOUS COMMUNITIES 3 (Sept. 12, 2023) [hereinafter PALE BLUE] (stating that one in three children in the U.S. will be part of a child welfare investigation).

⁹⁵ *Id.*

⁹⁶ CHILDREN’S RTS., ET AL., FAMILY SEPARATION IS AN URGENT HUMAN & CIVIL RIGHTS ISSUE 6 (Sept. 2023).

⁹⁷ PALE BLUE, *supra* note 94, at 3-4.

Families undergoing investigation frequently do not know their rights, which results in their unnecessary submission to the demands of child protective service agents.⁹⁸ Many parents face the early stages of child welfare investigation without the effective assistance of counsel.⁹⁹ In addition, the Adoption and Safe Families Act (ASFA) places time limitations on parents satisfying court-ordered mandates necessary to family reunification.¹⁰⁰ When parents are charged with child maltreatment and placed on a state registry, many, and especially Black women, have difficulties finding subsequent employment.¹⁰¹

The child welfare system also fails many of its children – for every 50,000 children that are adopted each year, more than twice that number remain waiting to be adopted.¹⁰² Every year, more than 20,000 youth “age out” from the foster system, and often leave with less family connections or supportive networks that they had going in.¹⁰³

Issue 5 Recommendations

- Prohibit the treatment of poverty-related circumstances as a factor independently triggering child welfare intervention.
- Hold Congressional Hearings that evaluate the harm to families of existing legislation, including CAPTA and the ASFA, and take appropriate action to repeal the Acts either in whole or in part.
- Take all appropriate measures to eliminate racial discrimination in the child welfare system, and review and repeal laws that perpetuate racial discrimination.
- Enact legislation that increases due process protections for parents and which strengthens and supports communities in combating child maltreatment.

Additional Considerations

Child Welfare Systems Make Children Vulnerable to Homelessness, Incarceration, and Sex-Trafficking: The child welfare system has been frequently called the “foster-to-prison pipeline” due to the high number of children from foster care that end up incarcerated.¹⁰⁴ Child welfare involvement also increases likelihood of homelessness (especially amongst Black youth), and both factors raise the risk of children becoming sex trafficking victims.¹⁰⁵ Group facilities that house sex trafficking victims often do not meet the victims’ needs, which creates a “revolving door of victimization.”¹⁰⁶

Child Welfare System’s Disparate Impact on Indigenous Communities: Indigenous families and communities have been subjected to centuries of abuse and harm that has sought to weaken the Indigenous family unit, destroy their culture, and erase children’s identities.¹⁰⁷ Through forced adoptions, approximately 80% of Indigenous families lost at least one child to the foster system.¹⁰⁸ Acknowledging the harms caused to Indigenous persons and tribes, Congress passed in 1978 the Indian Child Welfare Act (ICWA).¹⁰⁹ Yet, despite the recent Supreme Court ruling in *Haaland v. Brackeen*, many states have refused to recognize tribal sovereignty and the jurisdiction of tribal courts in child welfare decisions under the ICWA.¹¹⁰ Given the history of white-washing of the Indigenous culture, taken together with data showing that Indigenous parents are up to four times more likely to lose child

⁹⁸ CHILDREN’S RTS., *supra* note 96, at 8.

⁹⁹ PALE BLUE, *supra* note 94, at 5.

¹⁰⁰ CHILDREN’S RTS., *supra* note 96, at 8.

¹⁰¹ PALE BLUE, *supra* note 94, at 5, 6.

¹⁰² *Id.* at 5.

¹⁰³ *Id.*

¹⁰⁴ CHILDREN’S RTS., *supra* note 96, at 12.

¹⁰⁵ *Id.* at 13.

¹⁰⁶ *Id.*

¹⁰⁷ PALE BLUE, *supra* note 94, at 7.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 7-8.

¹¹⁰ *Id.* at 8.

custody, the mandatory implementation of the ICWA is critical to supporting family unity in Indigenous communities.¹¹¹

Additional Recommendations

- Consult with Indigenous Nations to develop trainings for child welfare agencies that discuss Indigenous culture, identify internal biases, and define best practices for agency action.
- Update the ICWA implementation guidelines based on Indigenous Peoples' input and mandate that states meet defined benchmarks for reducing the number of Indigenous children in their child welfare systems.
- Enact legislation that builds on and enhances the ICWA, specifically expanding its protections to cover all Indigenous Nations and ensuring their involvement in proceedings.

Reports Informing this Issue Include:

- Parents Supporting Parents NY, Pale Blue, et al., *Family Separation in the U.S. Child Welfare System, at the U.S. Mexico Border, and of Indigenous Communities*.
- Children's Rights, et al., *Family Separation Is an Urgent Human & Civil Rights Issue*.

Issue 6: Hate Speech/Hate Crimes

In its 2019 List of Issues, the Committee raised concerns with certain homophobic and supremacist groups using their right to assembly, expression, and association to promote hate speech and hate crimes.¹¹² Any tolerance by the U.S. or its inaction against the propagation of hate speech in its mainstream, law enforcement, military, or government agencies is a violation of Articles 2, 4, and 20 under the ICCPR.¹¹³

In recent years, the prevalence of hate speech in the U.S. has increased in the mainstream media, often propagated by Republican politicians who openly associate with and adopt the rhetoric of the white nationalist movement.¹¹⁴ On several occasions, former President Trump himself retweeted social medial posts from neo-Nazis and white supremacists.¹¹⁵ The prevalence of racist rhetoric and antisemitism in the media has promulgated the "great replacement" theory, which uses fearmongering and changing racial demographics as a call to action for reinforcing white supremacy.¹¹⁶ A 2021 report released by the Federal Bureau of Investigation (FBI) revealed a total of 10,840 documented incidents of hates crimes in the U.S. – the largest number reported to date.¹¹⁷ Yet, the actual figures are likely much higher, as 2021 saw a record low level of participation (since 2012) by law enforcement agencies in submitting reports.¹¹⁸

Members of LGBTQIA+ and Muslim communities continue to be frequent victims of hate speech, bullying, and discrimination. The inadvertent posting of the FBI's Secret Watchlist reveals that 98% of entries are Muslim names.¹¹⁹ Additionally, former President Trump promoted hostility and discrimination against China and individuals of Asian descent.¹²⁰ The U.S. has 56 million Twitter users, which accounts for 26.3% of the country's social network users.¹²¹ Through the Twitter platform, Trump deployed language such as "Chinese Virus" (49

¹¹¹ *Id.* at 9.

¹¹² LoI Fifth Periodic Report, *supra* note 39, at ¶ 24.

¹¹³ ICCPR, *supra* note 8, at arts. 2, 4.

¹¹⁴ THE S. POVERTY L. CTR, *supra* note 5 at 7-8.

¹¹⁵ THE LEADERSHIP CONF. ON CIV. AND HUM. RTS. & THE LEADERSHIP CONF. EDUC. FUND, STATEMENT OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS 1 (Sept. 12, 2023) [hereinafter "LEADERSHIP CONF. STATEMENT"].

¹¹⁶ *Id.* at 8.

¹¹⁷ *Id.* at 11.

¹¹⁸ *Id.* at 7.

¹¹⁹ INT'L FOUND. OF WITNESSES ASHOORA, VIOLENCE CAUSED BY XENOPHOBIA AND ISLAMOPHOBIA 6 (2023).

¹²⁰ INT'L PROBONO LEGAL SERVICES ASS'N, CIVIL & POLITICAL RIGHTS IN THE UNITED STATES OF AMERICA 13, 23 (Sept 12, 2023).

¹²¹ *Id.* at 21.

tweets; 8 retweets) and “Chinese Plague” (11 tweets; 1 retweet).¹²² As a result, Asian-Americans and Pacific Islanders in the U.S. experienced shunning, physical assault, and workplace discrimination.¹²³ From March 2020 to December 2021, nongovernmental agencies documented over 10,000 anti-Asian American and Pacific Islander hate incidents.¹²⁴ After entering office, President Biden passed the COVID-19 Hate Crimes Act, which includes implementing the National Incident-Based Reporting System (NIBRS), and permitting courts to order educational classes as a condition of supervised release.¹²⁵ While the Act is a significant step toward recognizing and remedying the hate crime crisis, not all states have transitioned to NIBRS, thereby limiting the FBI’s ability to gather more comprehensive data on hate crime incidents and bias-motivations.¹²⁶

White supremacists and extremist ideologies remain prevalent in the U.S. military and in intelligence operations. Specifically, audits reveal that military recruiters fail to screen for extremist behavior in new recruits.¹²⁷ To combat extremism in law enforcement, President Biden issued in May 2022 an Executive Order that instructs development of best practices for law enforcement agencies.¹²⁸ However, the same month, the U.S. Senate blocked passage of the Domestic Terrorism Prevention Act, which would provide federal, state, local, and tribal law enforcement agencies with training and resources to identify and deter white supremacist infiltration.¹²⁹ At the state and local level, law enforcement agencies have broad discretion in determining whether to punish an officer for a transgression; even when they do, it is not unusual for the officer to be hired by another department.¹³⁰

To combat the rise of hate speech in the mainstream and social media, civil society has spearheaded initiatives for developing the public’s understanding of and resilience to disinformation.¹³¹ An upcoming pilot program includes the development of Community, Advisory, Resource, and Education (CARE) Centers that will provide services and support to those impacted and affected by hate, discrimination, and supremacist ideologies.¹³²

Issue 6 Recommendations

- Encourage elected officials, business leaders, and community officials to use their public platforms to condemn hate crimes and threats, vandalism, and violence.
- Establish task forces to address the root causes of hate and extremism.
- Mandate hate crime reporting to the FBI and condition police agencies’ receipt of federal funds on the timely report submission and meaningful engagement with the community on hate crime prevention, outreach, and awareness initiatives.
- Order the Department of Justice (DOJ) to provide incentives and support to law enforcement agencies for completing the transition to NIBRS.
- Request the Educational Opportunities Section of the Civil Rights Division and the Department of Education’s Office for Civil Rights to collectively work to ensure that campuses comply with the hate crime reporting requirements mandated by the Clery Act.
- Ensure that civil rights and community organizations have input in defining effective hate crimes reporting methods and training.
- Address extremism in the military at every stage (recruitment, active-duty personnel, and transition to civic life).

¹²² *Id.* at 21.

¹²³ *Id.* at 23.

¹²⁴ LEADERSHIP CONF. STATEMENT, *supra* note 115, at 9.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ THE S. POVERTY L. CTR., *supra* note 5, at 9.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 11.

¹³² *Id.*

- Implement rules and regulations to ensure that tech companies and social media networks comply with civil rights laws prohibiting discrimination, while also remaining mindful of First Amendment considerations.
- Take effective measures to review and update federal, state, and local policies to prevent xenophobia, Islamophobia, Anti-Asian sentiment, and zero tolerance approaches toward Muslim, Asian, and Pacific Islander communities.
- Direct the DOJ to create or redirect grants and discretionary funds to support local community organizations so that they can continue to serve people targeted for hate crimes, as well as respond to hate incidents without additional police presence (thereby building trust and strengthening relationships between communities and law enforcement).
- Support the creation of hate crimes working groups in every U.S. attorney's office across the country.

Additional Considerations

Statements Made by Former President Trump Qualify as a Punishable Offense under the Rabat Plan of Action: The Office of the High Commissioner for Human Rights has developed the Rabat Plan of Action, which consists of a 6-part test for determining whether a statement constitutes incitement to hatred, discrimination, or violence.¹³³ Relevant factors to the analysis include: context, speaker, intent, content and form, extent (of reach), and likelihood (of inciting harmful action).¹³⁴ Former President Trump's tweets from 2020-2021 satisfy all prongs of the Rabat threshold test and constitute a violation of Article 20 of the ICCPR.¹³⁵

Additional Recommendations

- Effectively redress the harm caused by former President Trump's incitement to hatred and discrimination against the Asian-American community.

Reports Informing this Issue Include:

- International Probono Legal Services Association, *Civil & Political Rights in the United States of America*.
- The Southern Poverty Law Center, *The United States of America's Compliance with the International Covenant on Civil and Political Rights*.
- International Foundation of Witnesses Ashoora, *Violence Caused by Xenophobia and Islamophobia*.
- The Leadership Conference on Civil and Human Rights & The Leadership Conference Education Fund, *Statement of the Leadership Conference on Civil and Human Rights*.

Issue 7: Human Trafficking and Sexual Exploitation

The Committee has asked the U.S. to identify measures taken towards eliminating human trafficking.¹³⁶ The 2019 List of Issues specifically raises concerns with the criminalization of victims of human trafficking in violation of Articles 2, 3, 7, and 26 of the ICCPR.¹³⁷

While the change of Administration in 2021 has led to positive changes in identifying and investigating human trafficking, much more can yet be done.¹³⁸ Instances of collaboration between law enforcement and civil society

¹³³ INT'L PROBONO LEGAL SERVICES ASS'N, *supra* note 120, at 16-17.

¹³⁴ *Id.*

¹³⁵ *Id.* at 24.

¹³⁶ LoI Fifth Periodic Report, *supra* note 39, at ¶ 18.

¹³⁷ ICCPR, *supra* note 8, at arts. 2, 3, 7, 26.

¹³⁸ THE ADVOCS. FOR HUM. RTS., COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: NON-DISCRIMINATION, HUMAN TRAFFICKING AND FORCED LABOR, NON-REFOULEMENT AND IMMIGRATION ENFORCEMENT AND DETENTION 22 (Sept. 12, 2023).

remain rare, but where they have occurred, it has led to positive outcomes for victims.¹³⁹ Of significant note is the shift away by many states from prosecuting human trafficking victims for prostitution, though they are still regularly prosecuted for acts they were forced to commit by traffickers.¹⁴⁰ Additionally, trafficking victims continue to have limited access to housing, interim benefits, and immigration protection.¹⁴¹

Civil society also calls for the U.S. to address deficiencies in online sexual exploitation and abuse (OSEA) protections.¹⁴² Approximately 40% of sex trafficking victims in the U.S. are recruited online.¹⁴³ Yet, gaps in U.S. law fail to address AI-generated or manipulated images and videos that resemble or depict victims.¹⁴⁴ Moreover, technology advances and the fragmentation of data through the cloud make it difficult to track data sources; and inconsistencies across state laws create obstacles for remediating OSEA harms.¹⁴⁵

Issue 7 Recommendations

- Use existing case data to learn how to better identify human trafficking trends and implement measures for early intervention.
- Strengthen networks between civil society, workers' associations, service providers, and law enforcement to encourage collaborative identification of trafficking victims.
- Update law and policy to make access to interim benefits mandatory for trafficking victims.
- Enact and implement laws that address the root causes of OSEA, including gender and sex-based discrimination, and the proliferation of misogyny and abuse of power through the use of digital technologies.
- Fund institutions that provide support to victims and survivors of OSEA.
- Mandate digital platforms and service providers to implement clear and efficient policies and procedures relating to posting, sharing, publication, and takedown of OSEA material on their platforms, and mandate penalties for non-compliance.

Additional Considerations

Insufficient Protections for Non-Citizen Victims of Human Trafficking: Non-citizen human trafficking victims frequently remain with their traffickers for fear of detention and removal from the U.S.¹⁴⁶ When non-citizen victims do report trafficking to the police, their immigration status may remain in limbo until their case is certified – a process that is subject to law enforcement discretion and the goals of prosecution.¹⁴⁷ Federal legislation has created several visa categories that offer non-citizens protection. However, the T visa remains highly underutilized, while the U visa (which offers protections for victims of other non-trafficking crimes) is subject to a statutory cap that is oversubscribed and results in year-long waits for case adjudication.¹⁴⁸

Human Trafficking and Forced Labor of Children and Unaccompanied Minors (UAC's): The U.S. places many UAC's in foster-care or short-term homes in remote or rural areas without adequate vetting of sponsors or confirmation of family ties.¹⁴⁹ Civil society has received reports of UAC's that have been prevented from attending school and are forced to work.¹⁵⁰ Many of these children avoid seeking help for fear of immigration

¹³⁹ *Id.* at 23.

¹⁴⁰ *Id.* at 25.

¹⁴¹ *Id.*

¹⁴² EQUAL. NOW, *supra* note 10, at ¶ 47.

¹⁴³ *Id.* at ¶ 51

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at ¶¶ 51-53.

¹⁴⁶ THE ADVOCS. FOR HUM. RTS., *supra* note 138, at 30, 36.

¹⁴⁷ *Id.* at 31-33, 35.

¹⁴⁸ *Id.* at 33-34.

¹⁴⁹ *Id.* at 37, 39.

¹⁵⁰ *Id.*

consequences.¹⁵¹ The U.S. has recognized the need for new regulation that better protects children from labor exploitation.¹⁵²

Decriminalization of Prostitution: The full decriminalization of prostitution is trafficking prevention, and any and all efforts to support a transition to full decriminalization of prostitution is in line with ending sex trafficking.¹⁵³ Due to prostitution itself being illegal and all forms of sex work highly stigmatized, many of those involved in the sex trade are denied safe access to housing, education, employment, healthcare, public benefits, and any number of other resources that protect against vulnerability to victimization.¹⁵⁴ For persons with criminal records resulting from engaging in prostitution, limitations on livelihood are even more significant.¹⁵⁵ Discrimination and stigma against persons working in the sex trade are further promulgated by federal laws that deny them employment protections against discriminatory firings.¹⁵⁶ Moreover, financial institutions and online payment platforms have targeted and banned persons that engage in sex work.¹⁵⁷

Civil society, and the sex workers and sex trafficking survivors that it represents, calls on the U.S. to bolster the development of robust poverty prevention and intervention services that are easily accessible and which address racial inequities.¹⁵⁸ The harmful conflation of sex work and sex trafficking has resulted in the constricting of basic human rights for sex workers and is concomitantly ineffectual in realizing its alleged aims of ending sex trafficking.¹⁵⁹

Additional Recommendations

- Update law and policy to improve access to immigration protections for non-citizen victims, limiting certification less to the discretion of individual law enforcement agents.
- Ensure that trafficking victims have access to healthcare, education, and employment opportunities in order to reduce trauma and minimize risks of re-trafficking.
- Mandate the full decriminalization of prostitution.
- Address the lack of access to and existence of robust poverty prevention and intervention services, including a special focus on the inequitable impacts of historical racism and generational poverty caused by slavery, Indigenous genocide, and broken treaties.
- Stop conflation of sex work with sex trafficking by rolling back federal policies (e.g., SESTA) which increase harms to sex workers by stripping basic human rights to privacy, freedom of speech, and self-determination.
- Revise policy efforts to end trafficking by bolstering federal protections for sex workers.
- Recognize that discrimination in housing, employment, and the financial sector reinforces the impossibility of exiting the sex industry if and when desired, and leaves the already vulnerable, such as low-income people, children and youth, and Black, Indigenous, and People of Color at even further risk of being trafficked.

¹⁵¹ *Id.*

¹⁵² *Id.* at 39.

¹⁵³ CORNELL L. SCHOOL'S GENDER JUST. CLINIC, BAY AREA WORKERS SUPPORT ET AL., TRAFFICKING PREVENTION BY THE U.S. GOVERNMENT (Sept. 12, 2023).

¹⁵⁴ *Id.* 137, at 3.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *Id.* at 4-5.

¹⁵⁷ *Id.* at 5.

¹⁵⁸ *Id.* at 3-13.

¹⁵⁹ For example, the Stop Enabling Sex Traffickers Act (SESTA), while aimed at reducing sex trafficking vulnerability, limits the ability of sex workers to communicate important safety information with one another and clients. *Id.* at 7-9.

Reports Informing this Issue Include:

- The Advocates for Human Rights, *Compliance with the International Covenant on Civil and Political Rights: Non-discrimination, Human Trafficking and Forced Labor, Non-Refoulement and Immigration Enforcement and Detention*.
- Cornell Law School’s Gender Justice Clinic, Bay Area Workers Support et al., *Trafficking Prevention by the U.S. Government*.
- Equality Now, Eracoalition, et al., *Information on the United States of America for Review by the Human Rights Committee at the 139th Session (09 Oct 2023 - 03 Nov 2023)*.

Issue 8: Rights for People With Disabilities

People with disabilities face significant barriers to exercising their civil and political rights. Discrimination based on disability violates Articles 2, 3, and 26 of the ICCPR.¹⁶⁰

Women and gender diverse people in the U.S. face discrimination based on gender identity, discrimination due to disability, and discrimination based on race or self-identity.¹⁶¹ Census data collected in 2020 reveals that 36% of LGBTQIA+ individuals identify as having a disability.¹⁶² Moreover, 33% of Indigenous persons and 25% of Black persons identify as having a disability (compared to 20% of white persons).¹⁶³ When disability, gender, and race intersect, people who are multi-marginalized face structural oppression that is heightened and qualitatively different from that experienced by people who face fewer forms of marginalization.¹⁶⁴

Guardianship systems in the U.S. frequently limit the legal capacity of women and gender diverse people with disabilities to make decisions concerning their sexual and reproductive health.¹⁶⁵ As of 2022, 31 states permit forced sterilization.¹⁶⁶ In addition, guardianship can restrict people’s access to GAHC, including in states with “trans refuge” laws that otherwise protect access to GAHC procedures.¹⁶⁷ Permitting third parties (i.e., parents, guardians, courts, or doctors) to make reproductive health decisions on behalf of women and gender diverse persons with disabilities is a violation of their bodily autonomy, right to privacy, and freedom from torture or ill-treatment.¹⁶⁸

People with disabilities face disproportionate barriers in exercising their right to civic participation.¹⁶⁹ Not all states and local government offer assistance to citizens in completing the voter registration process, and many states fail to offer registration options that meet digital accessibility standards.¹⁷⁰ People with disabilities may also lack transportation options to polling places, including inability to access public transportation, a rideshare, or a car.¹⁷¹ For those that do navigate through these barriers, people with disabilities may ultimately be unable to reach the polling facility due to a lack of wheelchair ramps, or face difficulty reading or seeing ballots, or using voting machines.¹⁷²

¹⁶⁰ ICCPR, *supra* note 8, at arts. 2, 3, 26.

¹⁶¹ THE U.S. GENDER AND DISABILITY JUST. ALL., *supra* note 65, at 1.

¹⁶² *Id.* at 1.

¹⁶³ *Id.* at 8.

¹⁶⁴ *Id.* at 5.

¹⁶⁵ *Id.* at 7.

¹⁶⁶ *Id.* at 4.

¹⁶⁷ *Id.* at 9.

¹⁶⁸ *Id.* at 7.

¹⁶⁹ *Id.* at 12.

¹⁷⁰ *Id.* at 12.

¹⁷¹ *Id.* at 13.

¹⁷² *Id.* at 12-13.

Issue 8 Recommendations

- Ratify the CRPD and CEDAW Conventions to provide an intersectional human rights framework through which to address human rights issues occurring at the intersection of gender and disability.
- Ensure that LGBTQIA+ persons, including those with disabilities, are consulted in the development of laws and policies that directly affect their lives, such as those pertaining to healthcare and guardian consent.
- Ensure that state and local government provides accessible opportunities for voter registration and that staff members are trained to assist citizens with disabilities, including citizens with disabilities of marginalized genders, with registering to vote.
- Recognize that state restrictions on voting have a disproportionate impact on people with disabilities, including, people of color, women, and gender diverse people, and adopt federal legislation to counter these restrictions and promote the accessibility and inclusivity of voting.
- Ensure that online opportunities to register to vote and to request mail-in ballots meet the federal and state standards related to website accessibility.
- Increase the number of ADA-compliant polling places and accessible voting machines, seek to remedy ADA violations rather than closing polling places outright, and train poll workers on how to serve voters with disabilities, including women and gender diverse people with disabilities.
- Repeal laws that disenfranchise voters under guardianship and ensure that these voters have accessible opportunities to register and vote.

Reports Informing this Issue Include:

- The U.S. Gender and Disability Justice Alliance, Women Enabled International et al., *Submission for Reporting of the United States of America on Women and Gender Diverse People with Disabilities*.

C. Freedom of Expression, Assembly and Association, and the Right to Political Participation (arts. 19, 20, 21, and 22)

Issue 1: Voting Rights and Political Participation

Article 25 of the ICCPR recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the ICCPR requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the ICCPR.¹⁷³ In its 2014 Concluding Observations on the fourth periodic report,¹⁷⁴ the Committee expressed concerns that “the persistence of state-level felon disenfranchisement laws, its disproportionate impact on minorities and the lengthy and cumbersome voting restoration procedures in states, [as well as] voter identification and other recently introduced eligibility requirements may impose excessive burdens on voters and result in de facto disenfranchisement of large numbers of voters, including members of minority groups.”

Since the 2013 U.S. Supreme Court decision in *Shelby County, Alabama v. Holder*, which gutted Section 4(b) of the Voting Rights Act of 1965 (VRA) – a key provision requiring jurisdictions with a history of racial voting discrimination to obtain federal clearance to change voting laws – states have passed almost 100 new laws

¹⁷³ UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7.

¹⁷⁴ UN Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, 23 April 2014, CCPR/C/USA/CO/4.

restricting voting access. In 2021, the Supreme Court also severely undermined Section 2 of the VRA, which allows non-governmental plaintiffs to bring lawsuits challenging discriminatory voting practices.¹⁷⁵ In 2022, state legislatures introduced more than 400 restrictive voting bills and 150 election interference bills.¹⁷⁶ Voter ID laws have been adopted in 36 states using the baseless justification of preventing “voter fraud.”¹⁷⁷

A letter to the White House and ten federal agencies, signed by civil society organizations,¹⁷⁸ outlined recommendations for strengthening implementation of Executive Order, which directed federal agencies to identify and implement “ways to expand citizens’ opportunities to register to vote and to obtain information about, and participate in, the electoral process.”¹⁷⁹ According to the U.S. Census Bureau data presented in the letter: 77 percent of white eligible voters are registered to vote, compared to only 69 percent of Black eligible voters, 61 percent of Latinx eligible voters, 64 percent of Asian American eligible voters, and 63 percent of Native American eligible voters.¹⁸⁰ The right to vote is the cornerstone to the democratic process and political action. Protecting every individual’s right to vote is crucial in the facilitation of democracy.

Issue 1 Recommendations

- Adopt legislation to restore and strengthen the Voting Rights Act of 1965, including updated preclearance requirements that cover states with a demonstrated history of discrimination in voting practices.
- Increase funding to state and local jurisdictions for election administration to modernize and effectively carry out elections.
- Invite nonpartisan national or international election observers to monitor upcoming elections and provide full access necessary to facilitate their activities and the preparation of comprehensive reports. Individual state law will govern who is allowed to observe, and we request the highest level of intervention allowed by law in each state.

Additional Considerations

Disenfranchisement of Voters with Felony Convictions

Paragraph 14 of General Comment 25 states “The grounds for such deprivation [of the right to vote] should be objective and reasonable. If conviction for an offense is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offense and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”¹⁸¹ The Committee has observed that the right to vote “lies at the heart of democratic government based on the consent of the people,” and restrictions must be “objective and reasonable” and not based on discrimination.¹⁸²

Many U.S. jurisdictions extend the denial of voting rights for persons convicted of felony offenses long past sentences imposed by a court – sometimes effectively for life.¹⁸³

Additional Recommendations

¹⁷⁵THE S. POVERTY L. CTR., *Supra* note 5 at 1.

¹⁷⁶ *Brnovich v. Democratic National Committee*, 594 U.S. ____ (2021).

¹⁷⁷ Brennan Center For Justice, *Voting Laws Roundup: December 2022*, 19 December 2022.

¹⁷⁸ THE CARTER CENTER, *NGO SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE*.

¹⁷⁹ *Id.* at 4.

¹⁸⁰ *Id.*

¹⁸¹ General Comment No. 25, *supra* note 173.

¹⁸² THE S. POVERTY L. CTR., *supra* note 5, at 7.

¹⁸³ General Comment No. 25, *supra* note 173.

- Abolish the disenfranchisement of citizens based on criminal convictions.
- Increase funding and other resources for federal agencies to engage in activities designed to increase voter registration and protect access to voting rights, including those contemplated by Executive Order 14109.
- Adopt legislation providing national standards for federal election administration to ensure that all eligible voters are able to cast their vote, and have it counted, and to ensure that partisan gerrymandering does not render their votes meaningless.

Mis- and Disinformation Surrounding Elections

Despite the 2020 U.S. Presidential Election being the most secure electoral process in American history,¹⁸⁴ false claims of a “rigged” or “stolen” election have distorted the American people’s perception of the process. The public, including voters, and even non-voters, have begun to question whether the voting process is fair, resulting in an overall lack of trust in public institutions, whether these beliefs are grounded in fact or not. Voter confidence and voter interest play a crucial role in the U.S. electoral process. This lack of trust has expanded beyond the polls and into the lives of those administering the elections. Since the 2020 election, these administrators have feared threats of violence or have become targets of harassment, death, and abuse.¹⁸⁵ In response to these threats and acts of violence against administrators, the Election Threats Taskforce was created and has already brought charges in 14 cases, securing 9 convictions.¹⁸⁶ It is recommended that the U.S. is more heavily involved in proactively supporting these efforts to prevent future negative acts, and to ultimately encourage political participation pursuant to Article 25 of the ICCPR.¹⁸⁷

Reports Informing this Issue Include:

- Dream Defenders, et al., *Florida: A Shadow Over the Sunshine State, A Shadow Report to the United Nations Human Rights Committee For Its Review of the Fifth Periodic Report of the United States of America Under the International Covenant on Civil and Political Rights*.
- The Southern Poverty Law Center, et al., *The United States of America’s Compliance with the International Covenant on Civil and Political Rights*.
- The Carter Center, *NGO Submission to the U.N. Human Rights Committee*.

Issue 2: The Use of Terrorism Laws to Criminalize Protest Movements

Article 21 of the ICCPR provides: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right *other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety*.”¹⁸⁸ The Committee has regularly expressed concern and has collected decades worth of U.S. counterterrorism data, including a study focused on effects of counterterrorism on civil society.¹⁸⁹ It is clear that these “anti-terror” measures adopted by federal and state agencies – including legislation, surveillance, and enactment of enforcement agencies – disproportionately impact communities of color.¹⁹⁰

Over 20 years after 9/11, the U.S. terrorism framework and the “War on Terror” has taken hold at almost every level of government and law enforcement, shrinking the space for movements, dissent, and civil society, and hindering the rights enshrined and protected in the ICCPR.¹⁹¹ During the mass popular uprisings that gripped the

¹⁸⁴ THE CARTER CENTER, *supra* note 178 at 14.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ ICCPR, *supra* note 8, at art. 25.

¹⁸⁸ ICCPR, *supra* note 8, at art. 21.

¹⁸⁹ MOVEMENT L. LAB, ET AL., LETTER FROM GLOBAL CIVIL SOCIETY TO THE UN HUMAN RIGHTS COMMITTEE PROVIDING INFORMATION FOR THE UNITED STATES OF AMERICA’S UPCOMING REVIEW (Sept. 12, 2023).

¹⁹⁰ INT’L FOUND. OF WITNESSES ASHOORA, *supra* note 119.

¹⁹¹ THE CARTER CENTER, *NGO SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE*.

U.S. in the summer of 2020 following the murder of George Floyd, protesters – especially Black protesters – were framed as “domestic terrorists” by the highest levels of government, from the Attorney General to the President.¹⁹²

By way of example, in 2021 the Florida Government successfully enacted anti-protest legislation. In supporting the law, Governor DeSantis vowed to have “a ton of bricks rain down” on folks who violate the law—specifically here, Black communities that lead protests against police violence during the summer of 2020.¹⁹³ “The enactment of the Act has rendered Dream Defenders fearful of arrest and prosecution for engaging in speech, organizing, or participating in demonstrations that constitute permissible and protected speech, particularly given its experience with violence at protests initiated by police and counter-protestors. Because of that fear, Dream Defenders canceled demonstrations and refrained from publishing electronic communications.”¹⁹⁴

Further, in 2017 the Georgia General Assembly passed a state statute purporting to target acts of domestic terrorism, in response to white gunman Dylann Roof killing 9 worshippers in a Black church in nearby South Carolina.¹⁹⁵ The law is broad and includes language that allows for the prosecution of any individual that attempts to, in relevant part, “alter change, or coerce the policy of the government.”¹⁹⁶ This law was used by the State to prosecute 61 individuals who were protesting the establishment of “Cop City” – a new police training facility – under a RICO indictment where the state argued that the protesters functioned as a criminal enterprise.¹⁹⁷

Issue 2 Recommendations

- The State party should immediately engage in a whole-of-government review of War on Terror infrastructure, laws, policies, and practices to comprehensively assess compliance with the ICCPR with a commitment to accountability and repair in accordance with the right to an effective remedy.
- The State party should bring its current counterterrorism and counter-extremism laws and practices into full compliance with the ICCPR, specifically taking immediate steps toward ending the criminalization of communities by eliminating laws and policies that are ripe for abuse against activists as well as Black, Muslim, Arab, and South Asian, Indigenous, Latinx, and LGBTQIA+ communities.

Reports Informing this Issue Include:

- Movement for Black Lives, et al., *How the “War on Terror” has Metastasized to Silence U.S. Social Movements and Shrink Civic Space*.
- Southern Center for Human Rights & the University of Dayton Human Rights Center, *State Repression of the Movement to Stop Cop City and Defend the Atlanta*.
- International Foundation of Witnesses Ashoora, *Report of the International Foundation Witnesses Ashoora on Violence Caused by Xenophobia and Islamophobia*.
- Movement L. Lab, et al., *Letter from Global Civil Society to the UN Human Rights Committee Providing Information for the United States of America’s Upcoming Review*.

¹⁹² MOVEMENT FOR BLACK LIVES, CMTY. MOVEMENT BUILDERS, ET AL., HOW THE “WAR ON TERROR” HAS METASTASIZED TO SILENCE U.S. SOCIAL MOVEMENTS AND SHRINK CIVIC SPACE 3 (Sept. 12, 2023).

¹⁹³ DREAM DEFS., FLORIDA RISING, ET AL., FLORIDA: A SHADOW OVER THE SUNSHINE STATE, A SHADOW REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE FOR ITS REVIEW OF THE FIFTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 11 (Sept. 12, 2023).

¹⁹⁴ *The Dream Defenders v. DeSantis*, 559 F. Supp. 3d 1238 (N.D. Fla. 2021).

¹⁹⁵ S. CTR. FOR HUM. RTS. & THE U. OF DAYTON HUM. RTS. CTR., STATE REPRESSION OF THE MOVEMENT TO STOP COP CITY AND DEFEND THE ATLANTA FOREST 7 (Sept. 12, 2023).

¹⁹⁶ O.C.G.A. § 1-3-1 (2022).

¹⁹⁷ S. CTR. FOR HUM. RTS., *supra* note 195, at 8.

Issue 3: Attacks on Public Education

Article 19(2) of the ICCPR provides “Everyone shall have the right to freedom of expression; [including] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁹⁸ Because public education in the U.S. is primarily controlled by state legislatures, access to information varies greatly from state to state. Since January 2021, 45 U.S. state legislatures have introduced more than 309 educational gag orders specifically stifling issues of race, gender, sexual orientation, and issues of individual identity in educational settings.¹⁹⁹ In total, 135 million Americans live in a state where at least one educational gag order is in place.²⁰⁰

Florida leaders approved the Individual Freedom Act, also known as the Stop WOKE Act. The bill restricts certain teachings and employee training related to aspects of race and sex. According to the law, “required instruction, instructional materials, and professional development in public schools must be consistent with the following principles” including: (1) Meritocracy or traits such as a hard work ethic are not racist but fundamental to the right to pursue happiness and be rewarded for industry; (2) A person, by virtue of his or her race or sex, does not bear responsibility for actions committed in the past by other members of the same race or sex; and (3) A person should not be instructed that he or she must feel guilt, anguish, or other forms of psychological distress for actions, in which he or she played no part, committed in the past by other members of the same race or sex.

Despite the law being preliminarily enjoined,²⁰¹ its chilling effects on teachers and students prevail. The calculated and deliberate impact of the Stop WOKE Act is in contravention of ICCPR Article 19(2), guaranteeing the “freedom to seek, receive and impart information and ideas of all kinds . . .” The laws discussed above do more than limit or restrict individual speech. They were designed with the intention of forcing entire groups of people out of public spaces and out of educational systems for good.²⁰² Efforts to suppress access to content surrounding puberty, dating, sexual consent, teen pregnancy deprives students of vital information about their bodies and relationships that facilitates personal growth through difficult stages of life that they may experience.²⁰³

Issue 3 Recommendations

- Initiate federal legal intervention in challenges to the unconstitutional and illegal restrictions on expression, assembly and association recently enacted by the Florida government.
- Use federal enforcement mechanisms that prohibit “intimidation motivated by race, religion, color, ethnicity, gender, sexual orientation, gender identity, or disability” to challenge actions by the Florida government and restrict future limitations on expression, assembly, and association.

Reports Informing this Issue Include:

- Dream Defenders, Florida Rising, et al., *Florida: A Shadow Over the Sunshine State, A Shadow Report to the United Nations Human Rights Committee for Its Review of the Fifth Periodic Report of the United States of America Under the International Covenant on Civil and Political Rights*.
- PEN America, *No Title [Individual Submission]*.

¹⁹⁸ ICCPR, *supra* note 8, at art. 19.

¹⁹⁹ PEN AMERICA, NO TITLE [INDIVIDUAL SUBMISSION] 2 (Sept. 12, 2023).

²⁰⁰ *Educational Gag Orders*, PEN AMERICA, <https://pen.org/report/educational-gag-orders/> (last visited Sept. 25, 2023).

²⁰¹ *Honeyfund.com, Inc. v. DeSantis*, 622 F.Supp.3d 1159 (N.D. Fla. 2022).

²⁰² Dream Defs., *supra* note 193, at 11.

²⁰³ PEN AMERICA, *supra* note 199, at 3.

D. Indigenous Rights (arts. 1, 2, 6, 7, 8, 9, 10, 14, 18, 23, 24, 25, 26, 27)²⁰⁴

Issues 1 and 2: Self-Determination & U.S. Territories and Decolonization

Indigenous Peoples have faced the impact colonialism has in their communities for since contact. The U.S. government has not engaged in the productive dialogue necessary to achieve its obligations under Article 1 of the ICCPR which guarantees the right of Indigenous Peoples to self-determination and the connected right of free, prior, and informed consent, as provided in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the U.S. has interpreted this right to free, prior, and informed consent as a “meaningful consultation” with Indigenous leaders and “federally recognized” governments “but not necessarily requiring the Tribe’s agreement for any government action impacting Indigenous [Nations, Tribes, or communities].”²⁰⁵

Indigenous Peoples “lost nearly 99% of land since colonization and 42.1% of tribes presently lack a federally recognized land base.”²⁰⁶ Moreover, there are nearly 375 ratified Treaties between the U.S. and Indigenous Nations. There are countless other agreements that Indigenous Peoples would have understood as binding agreements or Treaties at the time of negotiations and signing that are not recognized by the U.S. government. Each and every one has been violated and an objective redress mechanism for Treaty violations is non-existent. The current redress mechanism is an arduous and costly process overseen by the Supreme Court of the United States which has shown to be ignorant of Federal Indian Law and outright hostile towards Indigenous Peoples.²⁰⁷

This sub-issue summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding lack of self-determination for Indigenous and colonized Peoples throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Additionally, the U.S. continues to refuse to provide federal recognition of Indigenous Nations in the U.S. and the violation of their sovereignty as recognized by international law.²⁰⁸ These violations range from the illegal taking of Indigenous lands, invasion, occupation, and annexation of lands without treaties or the consent of the population, and refusal to implement decolonization measures as deemed necessary by U.N. decolonization processes.²⁰⁹ Several reports informing this section focus on these violations in the context of Alaska and Hawai’i, specifically how the Indigenous Peoples of these Original lands were forcefully subsumed into the U.S. It is important to note that these are not the only examples of U.S. colonialism and how it has been leveraged against Indigenous Peoples all over the country under the “guise of ‘peoples concerned.’”²¹⁰ Indeed, the U.S. weaponized the doctrine of discovery against Indigenous Peoples to coerce them to “give up their territory and sovereignty” in order to be saved and force them “to adhere to the superior genius of the European civilization.”²¹¹

Before U.S. intervention, the Kingdom of Hawai’i was “a fully recognized sovereign independent State with several international treaties of trade, commerce and friendship with many States of the world” including the

²⁰⁴ The authors of this Summary of Shadow Reports respectfully explain that this section was not generated at the request of Indigenous Peoples and representative organizations who submitted shadow reports. Some organizations, such as the ACLU, have elected to have their Indigenous issues summarized in this section. We therefore recommend that the Committee read the Indigenous Peoples Summary separately.

²⁰⁵ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL., DESECRATION AND EXPLOITATION OF THE BLACK HILLS, SOUTH DAKOTA INDIGENOUS SACRED SITE 8 (SEPT. 12, 2023).

²⁰⁶ AMNESTY INT’L, UNITED STATES OF AMERICA: SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE 16 (2023).

²⁰⁷ WATER PROTECTOR LEGAL COLLECTIVE, UNITED STATES’ COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 5 (SEPT. 19, 2023).

²⁰⁸ INDIGENOUS PEOPLES & NATIONS COAL. AND KOANI FOUND. INT’L COUNCIL FOR HUM. RTS., SHADOW REPORT FOR THE HUMAN RIGHTS COMMITTEE 2023 ICCPR REVIEW OF THE UNITED STATES OF AMERICA 4 (Sept. 12, 2023).

²⁰⁹ *Id.* at 1.

²¹⁰ *Id.*

²¹¹ *Id.* at 6.

U.S.²¹² In January 1893, the U.S. overthrew Queen Lili’uokalani and the Hawaiian government.²¹³ This illegal invasion came “without a declaration of war or any sign of hostilities and in clear violation of the Constitution of the United States of America.”²¹⁴ Then-President Cleveland declared that the invasion was illegal and vowed to restore the “lawful Hawaiian Kingdom Government” but no restoration ever occurred.²¹⁵ As a result, there is a “strong Native Hawaiian sovereignty movement” focused on the effects of U.S. colonization and seeking results regarding “decolonization, the exploitation of natural resources, [the] legacy of racial unrest sown by colonialism, and over-tourism at the expense of Native Hawaiians.”²¹⁶ This sovereignty movement aims to have Native Hawaiians successfully exert their right to self-determination.

Alaska is in a state of permanent trusteeship to the U.S.²¹⁷ Alaska was illegally annexed into the U.S. in violation of the U.N. Charter.²¹⁸ This illegal annexation occurred even though the U.S. and Great Britain declared the vast territory as “independent tribes inhabiting an independent territory.”²¹⁹ The U.S. historically based its arguments for why Alaska’s annexation was allowed through domestic case law. In *Downes v. Bidwell*, 182 U.S. 244 (1901), a case on Puerto Rico and not Alaska, the Supreme Court’s articulated that the 1867 Treaty of Cession of Alaska from Russia to the U.S. “unilaterally determined that Alaska was incorporated into the United States of America.”²²⁰ This insertion amounts to an unconstitutional attempt to modify the Constitution by the Supreme Court bench when constitutional amendments “require[] Congressional and State approval.”²²¹ Importantly, this Treaty of Cession was made *without* the Indigenous Peoples of Alaska.²²² The violation of the Alaska Native Nations or the Indigenous Peoples of Alaska’s right to self-determination included an unethical 1959 vote for statehood which required that Alaska Native Peoples “prove they could speak and write” English as well as the “(reprehensible) requirement that five (5) white people, verified through documentation” that the Alaska Native individual was “‘competent’ to vote.”²²³

Indigenous Peoples in the continental U.S. are not the only ones who have been subjected to U.S. colonialism. The U.S. has five unincorporated, occupied territories, American Samoa, the Commonwealth of the Northern Mariana Islands (CMNI), Guam (Guahan), Puerto Rico (Borikén), and the U.S. Virgin Islands.²²⁴ The U.S. has “[exported] the [historically perfected] racist policies of disinvested and abandonment” to “U.S. overseas colonies like Guam and Puerto Rico.”²²⁵ Guam and Puerto Rico’s status as unincorporated territories comes from the belief that while they were “strategically important,” they were unsuitable for white settlers.²²⁶ An unincorporated status allows “the federal government immense power over the territories but very little responsibility for the well-being of territorial inhabitants” including denial of their Article 25 right to meaningful political participation.²²⁷ The U.S. Constitution provides for a Territory Clause which “authorizes unequal treatment of US territories compared to US states as long as there is a ‘rational basis’ for such differential treatment.”²²⁸ This differential treatment is

²¹² *Id.* at 4.

²¹³ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 7.

²¹⁴ INDIGENOUS PEOPLES & NATIONS COAL., *supra* note 208 at 2.

²¹⁵ *Id.* at 2.

²¹⁶ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 7.

²¹⁷ INDIGENOUS PEOPLES & NATIONS COAL., *supra* note 208 at 1.

²¹⁸ CHIEF GARY, THE TAKING OF ALASKA & ARTICLE 1 OF THE ICCPR 3, FIFTH PERIODIC REPORT 14 (Aug. 2023).

²¹⁹ INDIGENOUS PEOPLES & NATIONS COAL., *supra* note 208 at 2.

²²⁰ *Id.* at 4.

²²¹ *Id.*

²²² CHIEF GARY, *supra* note 218 at 14.

²²³ *Id.*

²²⁴ AM. CIV. LIBERTIES UNION, BLUE OCEAN L., ET AL., TOWARDS DECOLONIZATION & REPAIR: U.S. TERRITORIES, SELF-DETERMINATION, AND THE INCOMPATIBILITY OF COLONIALISM AND HUMAN RIGHTS 1 (Sept. 12, 2023).

²²⁵ *Id.* at 3.

²²⁶ *Id.* at 2.

²²⁷ *Id.* at 3.

²²⁸ UNITED CONFEDERATION OF TAÍNO PEOPLE, INDIGENOUS PEOPLES ALTERNATIVE REPORT FOR THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REVIEW OF THE UNITED STATES OF AMERICA’S FIFTH PERIODIC REPORT 2 (SEPT. 12, 2023).

evident in how all unincorporated territories are excluded from federal elections, have no Senate representation, only have a non-voting representative in Congress, and are subject to federal legislation even though they have no power to “shape” federal legislation.²²⁹ This continual occupation of Guam and Puerto Rico has led the U.S. to directly violate Article 1 of the ICCPR as the U.S. still controls their “economy, foreign policy[,] and natural resources.”²³⁰

Guam has been under U.S. colonial rule for 125 years and has been turned into a military outpost without regard to “the well-being of the territory’s inhabitants.”²³¹ The CHamoru (Chamorro) of Guam (Guahan) are unable to access their Original lands and waters, in particular, their fishing waters due to military occupation that have deemed the areas as “surface danger zones.”²³² Military presence in Guam (Guahan) threatens vital endangered species, including coral, and military activities include the use and testing of nuclear weapons and Agent Orange directly leading to cancer being the second leading cause of death in Guam (Guahan).²³³ The military occupation and activities, both on land and on water, threaten, harm, and destroy “the island’s waters, sacred burial ground, cultural artifacts, acres of limestone forest, endangered species, and cultural practices.”²³⁴ The U.S. military occupies thirty percent of Guam which denies the CHamoru “their right to permanent sovereignty over their land and natural resources” in direct violation to their right of self-determination.²³⁵

Puerto Rico has also been under U.S. colonial rule for 125 years and has been “denied effective self-governance and fundamental legal rights”²³⁶ The U.S. invaded Puerto Rico in 1898 following the conclusion of the Spanish-American War and the Treaty of Paris.²³⁷ The U.S. system of federal recognition harms those who are not federally recognized, like the Taíno Peoples of Borikén (Puerto Rico).²³⁸ The local government on the island, following the U.S. government’s example, is not necessarily concerned with the Taíno Peoples or their well-being. As a result, the Taíno “are not only marginalized domestically, but also within the international system as their ‘home countries’ are not full members of the United Nations or the Organization of American States.”²³⁹ The U.S. has failed to safeguard the right to self-determination of the people of Puerto Rico both by its treatment of the Taíno Peoples as well as its treatment of the Puerto Rican people and its role in denying self-governance. A prominent example comes from the imposition of a Financial Oversight Management Board for Puerto Rico which “rules despite never being elected by the People of Puerto Rico.”²⁴⁰ This board, simply called “La Junta” in Puerto Rico, was established by the 2016 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) “with the purported task of restoring the credit of Puerto Rico by repaying a 73 billion USD debt to bond holders.”²⁴¹ “PROMESA” is “promise” in Spanish but what it promises is adversity and austerity for the people of Puerto Rico.

Issues 1 and 2 Recommendations:

- Annulment U.N. General Assembly resolution 1469.

²²⁹ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 6.

²³⁰ AM. CIV. LIBERTIES UNION, BLUE OCEAN L., ET AL., *supra* note 231, at 10.

²³¹ *Id.* at 6.

²³² WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 6.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ AM. CIV. LIBERTIES UNION, BLUE OCEAN L., ET AL., *supra* note 231, at 6.

²³⁶ *Id.* at 9.

²³⁷ UNITED CONFEDERATION OF TAÍNO PEOPLE, *supra* note 228 at 2.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ INSTITUTO PUERTORRIQUEÑO DE RELACIONES INTERNACIONALES (PUERTORICAN INST. OF INT’L REL.), SHADOW REPORT FOR SUBMISSION BEFORE THE UNITED NATIONS COMMITTEE OF HUMAN RIGHTS THAT SUPERVISES COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), RE: UNITED STATES REPORT | SELF-DETERMINATION 3 (Sept. 12, 2023).

²⁴¹ AM. CIV. LIBERTIES UNION, BLUE OCEAN L., ET AL., *supra* note 231, at 11.

- Allow Alaska and Hawai'i to trigger decolonization processes as outlined in Article 73(e) of the U.N. Charter.
- Call upon the Committee on the Elimination of Racial Discrimination (CERD) to allow Alaska and Hawai'i to petition CERD for a complete review under Article 15 of the International Covenant on the Elimination of Racial Discrimination (ICERD).
- Permit Alaska and Hawai'i to be admitted to the Indigenous Peoples and Nations Coalition (IPNC).
- Expansion of the right to self-determination for Alaska, Hawai'i, Guam (Guahan), Puerto Rico (Borikén), and all other Indigenous and Colonized Peoples under U.S. control.
- Create a Treaty violations redress mechanism separate from SCOTUS for Treaties made with the U.S. and Indigenous Nations.
- Address the continual and current colonial relationship between the U.S. and Guam and the U.S. and Puerto Rico.
- End military expansion and fully demilitarize territories in furtherance of decolonization.
- Condemn Insular Cases.
- Nullify the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and assume responsibility for Puerto Rico's debt.
- Evaluation of U.S. obligations to Puerto Rico and other territories should be grounded firmly within Article 1 of the ICCPR.
- Recognition of reparations for the people of Puerto Rico to address more than 125 years of colonial exploitation.
- Fully implement the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) as a minimum standard to guide compliance and include non-federally recognized Indigenous Peoples in the U.S. as well as in current U.S. territories such as Puerto Rico and the U.S. Virgin Islands.
- Safeguard and expand the principle of free, informed, and prior consent for Indigenous Peoples as set out in UNDRIP, including ensuring all government action and development, and development that requires governmental permitting, in both the so-called continental U.S. and so-called U.S. territories, is undertaken only with the free, prior, and informed consent of Indigenous Peoples after having access to accurate and complete information, at the planning and beginning stages, about the proposed project and consent is given affirmatively and freely and ensure Indigenous Peoples' right to decline development, in accordance with Article 1 of the ICCPR.²⁴²
- Bring national policies and laws into conformity with the provisions of the ICCPR, UNDRIP, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) with a focus on self-determination and free, prior, and informed consent.
- Implement a just, bilateral, fully participatory process for redress and restitution of rights affirmed in Treaties with respect for their original spirit and intent as understood and interpreted by the Indigenous Peoples and in accordance with the framework contained in UNDRIP.
- Interpret the ICCPR consistently with UNDRIP and other relevant international law.
- Establish a national-level body for oversight and implementation of its human rights obligations, including the provisions of International Human Rights Treaties and Declarations, Treaty Body recommendations, and Nation-to-Nation Treaties with Indigenous Peoples, with the full and effective participation of affected communities, Indigenous Peoples and Nations.
- End the U.S. colonial recognition system and undergo Transitional, Transformative, and Reparative Justice via a comprehensive Truth Commission and formal Decolonization Process under the equitable and inclusive guidance of International Law.
- Consult with Indigenous Peoples and the peoples of U.S. non-incorporated territories regarding the development of reparation measures and policies to ensure self-determination.

²⁴² WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 27.

- Implement these same steps in all jurisdictions where military projects affect Indigenous Peoples, colonized peoples, and other marginalized groups, including in the Federated States of Micronesia, Palau, and the Marshall Islands.

Reports Informing this Section Include:

- Chief Gary, *The Taking of Alaska & Article 1 of the ICCPR, Fifth Periodic Report 139th Session*.
- American Civil Liberties Union, et al., *Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Sites*.
- Indigenous Peoples and Nations Coalition and Koani Foundation International Council for Human Rights, *Shadow Report for the Human Rights Committee 2023 ICCPR Review of the United States of America*.
- American Civil Liberties Union, et al., *Towards Decolonization & Repair: U.S. Territories, self-determination, and the incompatibility of colonialism and human rights*.
- Instituto Puertorriqueño de Relaciones Internacionales (Puertorican Inst. of Int'l Rel.), *Shadow Report for submission before the United Nations Committee of Human Rights that supervises compliance with the International Covenant on Civil and Political Rights (ICCPR), Re: United States Report | Self-Determination*.
- United Confederation of Taíno People, *Indigenous Peoples Alternative Report for the United Nations Human Rights Committee Review of the United States of America's Fifth Periodic Report*.
- Amnesty International, *Submission to the Human Rights Committee*.
- Water Protector Legal Collective, *United States' Compliance with the International Covenant on Civil and Political Rights*.

Additional Considerations

Indigenous children's assimilation: In direct violation of ICCPR articles 24, 26, and 27, the use of “federally-approved and -enforced Indian boarding schools” were used to violently indoctrinate and assimilate Indigenous children into white, Western culture and strip them “of their cultural practices and beliefs.”²⁴³ Above all, the goal of these government policies was to “erase Indigenous children’s identities, weaken the Indigenous family unit,” and destroy their cultures. The Indian Child Welfare Act (ICWA) “addressed assimilationist policies” leading to the removal of “almost a third of all American Indian and Alaska Native Children from their homes.”²⁴⁴ Removals happened even if there was no evidence of abuse or neglect.²⁴⁵ The ICWA prioritizes that Indigenous children be placed either “with an Indigenous family or institution from the Tribe” but eighty-five (85%) of these removals led to children placed in non-Indigenous homes.²⁴⁶ While the ICWA has the processes outlining what should be done, it has no compliance mechanism that can be used against states. As a result, the current situation with Indigenous children is “reminiscent of the Boarding School era and [of the] harmful removal practices by child services” which amount to the historic genocidal policies the U.S. has imposed on Indigenous Peoples.²⁴⁷

This additional consideration summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding forceful assimilation of Indigenous children throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Incarcerated Indigenous Persons: The U.S. violates ICCPR articles 26 and 27 when it prevents Indigenous Persons access to “traditional cultural items and ceremonies and otherwise obstruct their engagement in traditional

²⁴³ PALE BLUE *supra* note 94 at 7.

²⁴⁴ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 21.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

Indigenous religious practice.”²⁴⁸ This violation relates to several areas of concern the Committee identified, specifically “racial disparities in the criminal justice system,” treatment of people in detention, “and protection of Indigenous Peoples’ traditional ways of life and rights to consultation.”²⁴⁹ Immediate steps are necessary to protect their individual and cultural survival.²⁵⁰ A prominent example is Leonard Peltier, a world renowned Indigenous activist who has been imprisoned for forty-eight (48) years for charges he is innocent of.²⁵¹ He has been a victim of impartial hearings, court proceedings, and parole hearings.²⁵² Mr. Peltier has been subjected to maximum security detention for 46 years in a facility over “500 miles from his family and homelands, contrary to federal statute.”²⁵³ Additionally, he has had restricted access to sacred and religious items as well as his spiritual advisor even though legal protections should have prevented these restrictions.²⁵⁴

This additional consideration summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding incarcerated Indigenous Persons throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Violence Against Women, Girls, Two-Spirit, and Relatives: The Missing and Murdered Indigenous Women, Girls, and Two Spirit (MMIWG2S) crisis is an active one that demands urgent attention. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) is a Supreme Court case which ruled that Tribal courts do not have criminal jurisdiction over non-Indigenous people. This has led to a historic jurisdictional gap in which non-Indigenous perpetrators of domestic violence and other crimes have not been prosecuted.²⁵⁵ The 2013 Violence Against Women Act (VAWA) attempted to remedy this jurisdictional gap by including “provisions for Tribal Courts to institute protections for Indigenous wom[e]n from domestic violence especially when the perpetrator is non-Indigenous.”²⁵⁶ The relevant VAWA provisions allow “‘participating tribes’ to exercise ‘special domestic violence criminal jurisdiction (‘SDVCJ’).”²⁵⁷ SDVCJ was amended in 2022 to “‘special Tribal criminal jurisdiction’ (‘STCJ’)” and now allows for participating tribes to prosecute sex trafficking.”²⁵⁸ However, for a “Tribal Court” to receive VAWA jurisdiction it must be a federally recognized tribe before it can even attempt to receive this jurisdiction. Apart from the federal recognition requirement, the process to obtain VAWA jurisdiction has over thirty-five (35) requirements and is cost-prohibitive.²⁵⁹ For tribes that want to become federally recognized, the process takes around 30-40 years. Justice for MMIWG2S victims may take generations under the current U.S. scheme.

This additional consideration summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding the Missing and Murdered Indigenous Women, Girls, and Two Spirit (MMIWG2S) crisis throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Additional Recommendations:

²⁴⁸ HUY, CONCERNING RELIGIOUS FREEDOMS OF INDIGENOUS PERSONS DEPRIVED OF THEIR LIBERTY IN THE UNITED STATES OF AMERICA 2 (SEPT. 12, 2023).

²⁴⁹ *Id.* at 2.

²⁵⁰ *Id.* at 1.

²⁵¹ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 16.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 20.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

- Implement policies to protect the integrity and rights of Indigenous children, families, and communities consistent with the principle of free, prior, and informed consent.
- Update Indian Child Welfare Act (ICWA) implementation guides following consultation and co-development with Tribes of culturally appropriate practices, policies, and consideration.
- Enact legislation to build on, enhance, and protect the minimum requirements of the ICWA, including ensuring full access for Tribes in proceedings; establishing State-Tribal Compacts or defining government-to-government consultation processes; recognizing tribal customary adoptions; and creating State-Tribal forums for enhanced communication and decision making.
- Regularly publish data that can be disaggregated on the implementation of the ICWA and the overrepresentation of Indigenous Peoples in the child welfare system.
- Develop federal benchmarks for reducing the number of Indigenous children in state child welfare systems following consultation and recommendations by Indigenous Peoples.
- Immediately halt violations of incarcerated Indigenous persons' religious freedoms at state and local levels and engage Indigenous communities in consultation to determine how federal, state, and Indigenous governments may jointly address the needs of incarcerated Indigenous persons.
- Promptly respond to the 2013 Letter of Inquiry sent to the United States jointly by the U.N. Special Rapporteur on the Rights of Indigenous Peoples and the U.N. Special Rapporteur on Freedom of Religion or Belief.
- Grant Leonard Peltier clemency and immediately release him from prison in accordance with decision A/HRC/WGAD/2022/7 from the U.N. Working Group on Arbitrary Detention and articles 9 and 12 of the ICCPR.

Reports Informing this Section Include:

- Parents Supporting Parents NY, Pale Blue, et al., *Family Separation in the U.S. Child Welfare System, at the U.S.-Mexico Border and of Indigenous Communities*.
- Huy, *Concerning Religious Freedoms of Indigenous Persons Deprived of their Liberty in the United States of America*.
- Water Protector Legal Collective, *United States' Compliance with the International Covenant on Civil and Political Rights*.
- Amnesty International, *Submission to the Human Rights Committee*.

Issue 3: Environmental Impacts on Indigenous Lands and U.S. Territories

The U.S. continues to disregard the unique sovereign status of the Indigenous Peoples in the U.S., which has led the government to trespass onto Indigenous lands and conduct mining, military, and other extractive operations which negatively impact the natural environment and inhibit access and enjoyment of their lands.²⁶⁰ The U.S. also conducts these harmful operations in its unincorporated territories to the same detrimental effect on their lands and natural resources. These operations are a direct violation of Articles 1, 6, 7, 17, 23, 25, and 27 of the ICCPR because they impact these peoples' rights to freely self-determine what to do with their natural resources, which affects their right to life as the environment is harmed or destroyed, further impacting cultural and religious practices, their families, their right to participate in their own cultures, and their right to free, prior, and informed consent. This sub-issue is not meant to be an inclusive articulation of all the Indigenous and colonized lands that are threatened, harmed, or destroyed by U.S. actions. The reality is that the "recent and ongoing fossil fuel and

²⁶⁰ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE'S L. PROJ., ET AL., *supra* note 205, at 1.

other actual proposed extractive projects” of the U.S. are threatening the existence of Indigenous and colonized peoples, subsistence rights, religious and cultural rights, access to water, and the right to self-determination.²⁶¹

U.S. intervention is prohibiting the Sioux Nation Tribes and many other Nations from fully exercising their right of self-determination. This violation directly relates to the self-determination of the natural resources within their ancestral lands in the sacred Black Hills of South Dakota.²⁶² As a result of this mining and trespass, The Sioux Nation Tribes are forced to deal with the environmental onslaughts and bear the brunt of the contamination and pollution of their lands. Mining in the Black Hills includes the U.S. destroying the environment to mine for minerals and gold. A proposed gold mining project in He Sapa (Black Hills) is an example of how the U.S. continues to threaten ancestral lands.²⁶³

Invasive gold mining is not unique to the Black Hills of South Dakota. In Alaska, by 1913, gold miners were exploiting the Matanuska-Susitna Valley.²⁶⁴ The exploitation of tribal lands for its resources is in direct violation of Articles 1 and 27 of the ICCPR as they relate to the self-determination Indigenous Peoples have in determining how and why their natural resources will be used or not used. U.S. control has made these sites lucrative to the government and Alaska specifically has been “a source of immense wealth for the U.S.”²⁶⁵

The U.S. presence, military or otherwise, in tribal lands and in Guam and Puerto Rico has amounted to the looting of the natural resources present. In Guam, the military expansion has led to “incalculable” damage to the natural environments and resources which are critical for Guam’s Indigenous Peoples, the Chamoru’s culture, and way of life.²⁶⁶ Military presence forced Guam to endure chemical contamination due to the storing and testing of nuclear weapons, of Agent Orange, and of other carcinogens, leading to at least eighty-nine (89) toxic sites in Guam.²⁶⁷ In Puerto Rico, the “lingering vestige of U.S. military colonialism” has made it difficult for the island to recover from environmental challenges since Puerto Ricans do not have control over the natural resources necessary for such recovery. This is especially prevalent in Vieques, Puerto Rico. From 1943 to 2003 the U.S. Navy ran a military base in Vieques “where they tested various weapons and ammunition (including depleted uranium and napalm) with serious environmental, health[,] and physical implications for the local inhabitants.”²⁶⁸ In a 2021 report from the UN Special Rapporteur on Minority Issues, Dr. Fernand de Varennes, the issue of the lack of any visible cleanup efforts was summarized simply as “They bombed us, they made us sick, then they left us. They don’t give a damn.”²⁶⁹

The following is a non-exhaustive list of the current extractive projects the U.S. is pursuing: the Dakota Access Pipeline, Line 3 Pipeline, the Willow Project, the Mountain Valley Pipeline, Fracking Near Chaco Canyon.²⁷⁰ The U.S. has at least three proposed extractive projects: Proposed Lithium Mining at Oak Flat, Proposed Thirty-Meter-Telescope (“TMT”) on Summit of Mauna Kea, and Proposed Gold Mining in He Sapa (Black Hills).²⁷¹

Issue 3 Recommendations:

- Complete withdrawal of all extractive activities in Indigenous Peoples’ lands.
- Complete withdrawal of all mining activities in the Black Hills of South Dakota.

²⁶¹ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 8.

²⁶² AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL, *supra* note 205, at 1.

²⁶³ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 8.

²⁶⁴ CHIEF GARY, *supra* note 218 at 14.

²⁶⁵ *Id.*

²⁶⁶ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL, *supra* note 205, at 7.

²⁶⁷ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 6.

²⁶⁸ AM. CIV. LIBERTIES UNION, BLUE OCEAN L., ET AL., *supra* note 231, at 12.

²⁶⁹ *Id.* at 13.

²⁷⁰ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 8.

²⁷¹ *Id.*

- Honor the lawful treaties which recognize that the Sioux Nation Tribes are the rightful owners of the Black Hills.
- Study and propose mitigation strategies for the existing population in the Black Hills and study and report on adverse health effects caused by mining in the Black Hills.
- Ensure access to self-determination of natural resources.
- Fulfil obligations under Article 1 to protect Indigenous Nations' treaty rights and to remedy treaty violations.
- Removal of U.S. military from Guam.
- Enact and enforce effective clean up protocols in Guam and in Puerto Rico.

Reports Informing this Section Include:

- American Civil Liberties Union, et al., *Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Sites*.
- Chief Gary, *The Taking of Alaska & Article 1 of the ICCPR, Fifth Periodic Report. 139th Session (2023)*.
- American Civil Liberties Union, et al., *Towards Decolonization & Repair: U.S. Territories, Self-Determination, and the Incompatibility of Colonialism and Human Rights*.
- Water Protector Legal Collective, *United States' Compliance with the International Covenant on Civil and Political Rights*.

Additional Considerations

Health Concerns as a Result of Mining in He Sapa (Black Hills): Mining in the Black Hills exacerbates Sioux Nations Peoples' health problems of "lower life expectancy, greater risk of cardiovascular disease, lung cancer, diabetes, chronic obstructive pulmonary disease (COPD) and overall higher rates of chronic disease factors which are caused by "systemic inequalities in economic opportunities and poor social conditions caused by lasting and ongoing effects of colonization."²⁷² The contamination of drinking water in the Black Hills is known to be four times the acceptable level of arsenic which has caused unidentifiable harms to the health of Indigenous Peoples who live there. "Elevated levels of arsenic exposure in ground water have been shown to significantly increase the risk of peripheral neuropathy, cardiovascular disease, myocardial infarction, stroke, chronic obstructive pulmonary disease (COPD), gout, lung cancer, and diabetes."²⁷³ The continuous mining activity has caused rivers and waterways within the Black Hills of South Dakota to become polluted with arsenic and other heavy metals and have resulted in two Environmental Protection Agency (EPA) Superfund Sites in the region due to arsenic and heavy metal pollutant contamination. Sioux Nations Peoples in the Black Hills have been subjected to unquantifiable dire health effects as a result. Additionally, Indigenous Peoples all over the Southwest Region of the U.S. continue to deal with the legacy of uranium extraction and milling as well as the prospect of storage of nuclear waste.

This additional consideration summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding Indigenous Peoples' health concerns throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Criminalization of Indigenous Environmental and Human Rights Defenders, Excessive Force, Surveillance, and "Ecoterrorism": Eighty percent (80%) of the world's biodiversity is protected by Indigenous Peoples who make up five percent (5%).²⁷⁴ The U.S. continues the legacy of "brutality, surveillance[,] and

²⁷² AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE'S L. PROJ., ET AL, *supra* note 205, at 5-6.

²⁷³ *Id.* at 6.

²⁷⁴ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 10.

violations of the rights to privacy afforded by [ICCPR] Articles 17 and 22.”²⁷⁵ The U.S. has employed excessive force tactics against Water Protectors, comprised of both Indigenous and non-Indigenous Human Rights and Land/Earth Defenders, and against Indigenous activists, labeling these defenders and activists as “eco-terrorists” since the 1970s.²⁷⁶ This dangerous label has resulted in a “‘Green Scare’ that has led to legal and legislative repercussions for climate justice defenders and dangerous judicial precedents.”²⁷⁷ The U.S. “holds a fiduciary responsibility to ensure its policies and laws afford all equal protection and equality before the law.”²⁷⁸ In other words, the U.S. has an obligation to ensure that Indigenous Peoples are equal before the law and are afforded the equal protection of the law. This is not the case. Indigenous Peoples, particularly Human Rights Defenders, are subjected to “unfair and unjust trials riddled with irregularities, arbitrary detention or wrongful imprisonment, and enhanced sentencing.”²⁷⁹ Those involved in self-determination campaigns have routinely been surveilled by the U.S. government with the aim of monitoring, suppressing, and disrupting these movements. However, as technology has advanced, non-state actors in the form of Private Military and Security Companies (PMSCs) “engage in conduct that amounts to cruel, inhuman or degrading treatment or punishment, particularly in their treatment of Indigenous Peoples trying to protect their waters and lands in the U.S.”²⁸⁰ These non-state actors commit human rights abuses without any oversight or accountability and have a “wide scale presence in the U.S. on Indigenous lands” when protests are taking place.²⁸¹

This additional consideration summary is comprised of all but four reports submitted to the Committee and is not meant to be representative of all the issues regarding the criminalization, surveillance, and use of excessive force against Indigenous Environmental and Human Rights Defenders throughout the U.S. and its territories. For more information on the four reports not summarized in this summary, please refer to footnote 204.

Additional Recommendations:

- Report on the health impact on Indigenous Peoples caused by mineral extractions.
- Immediately cease all use of PMSCs, especially against Indigenous Peoples and their allies seeking to protect the Earth.
- Ensure PMSCs have public codes of conduct and publicly available records of activities for extractive companies. This code of conduct should include:
 - Requiring PMSC contractors to wear uniforms and/or visible insignia that distinguishes them from all other security providers in the area and laypersons or others;
 - Ensuring PMSC employees respect all applicable human rights and international law;
 - Requiring PMSCs to provide adequate, continuous, and internally funded training on all applicable human rights, international, and domestic laws, including U.S. Federal Indian Law;
 - Requiring that PMSCs conduct extensive background checks; and
 - Requiring PMSCs to report their patterns, policies, and activities on an annual basis to an impartial oversight committee or agency for immediate public publication. The agency should review each PMSC’s activities for potential human rights violations by the PMSC or otherwise.

Reports Informing this Section Include:

- American Civil Liberties Union, et al., *Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Sites*.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 19.

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 15.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 11.

²⁸¹ *Id.*

- Water Protector Legal Collective, *United States' Compliance with the International Covenant on Civil and Political Rights*.

Issue 4: Desecration of Sacred Areas

Indigenous Sacred Areas have been reported on by different shadow reports and the positions of Indigenous Peoples are diverse, ranging from generalized issues surrounding the proper management and protection of sacred areas in the U.S. to more pointed positions taken by specific Indigenous Tribes, like the Lakota Sioux Tribe of South Dakota and the Black Hills.

This sub-issue summary is not meant to be an exhaustive enumeration of all the sacred areas in the U.S. and its territories or the ones expanded upon the submissions to this Fifth Periodic Review of the U.S. under the ICCPR. The examples provided here are just some of the sacred areas the U.S. has desecrated, not all of them. For more information on the four reports not summarized in this summary, please refer to footnote 204.²⁸²

The HRC in its 2014 Concluding Observations and Recommendations, noted its concern about “insufficient measures taken to protect the sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism, and toxic contamination.” (para 25).²⁸³ This remains a primary concern for Indigenous Peoples all over the continental U.S. and in U.S. territories. These lands include the Black Hills of South Dakota, Chaco Canyon and Mt. Taylor in New Mexico, Bears Ears in Utah, Oak Flat and Apache Leap, San Francisco Peaks in Arizona, Red Hill in Hawai’i, Mauna Kea in Hawai’i, Peehee Mu’huh (Thacker Pass) in Nevada, Parque Ceremonial Indígena de Caguana (Caguana Indigenous Ceremonial Center) in Puerto Rico, and many other sacred areas across the U.S. and its territories.

The U.S. took and still controls sacred lands in direct violation of its duties and obligations under Articles 1, 2, 18, and 27 of the ICCPR and continues to threaten, harm, and destroy these areas. The Black Hills of South Dakota are sacred and contain “highly cherished and integral sacred areas inextricably linked to Lakota cosmology and practiced worldviews.”²⁸⁴ While Indigenous Peoples have been seeking land back since these lands were forcefully annexed into the U.S., in violation of treaties entered into by the Sioux Nation Tribes, the sacredness of the Black Hills exists irrespective of ownership, which the U.S. has acknowledged this belief is held by various and several Indigenous Peoples. The Lakota are not the only ones for whom the Black Hills are considered sacred. Indeed, many other Indigenous Peoples reference the Black Hills in their history and lore and have traditional and cultural ties to them.²⁸⁵ Despite the admission by the U.S. that Indigenous Peoples, and specifically the Lakota Sioux, deem the Black Hills sacred, it has yet to declare the Black Hills as an Indigenous Sacred Site. The U.S. fails to adequately protect it for cultural and spiritual use by the Sioux Nation Tribes and fails to return the Black Hills to them in violation of the lawful treaties entered.

In Puerto Rico, the Parque Ceremonial Indígena de Caguana (Caguana Indigenous Ceremonial Center) is “one example illustrating how the US has failed to uphold its obligations under the ICCPR to protect sacred areas, which are vital to the cultures and religious practices of Indigenous Peoples in US territories.”²⁸⁶ This sacred area

²⁸² The He Sapa (Black Hills) are discussed at some length because there is one shadow report submission that focuses solely on this area. Other shadow report submissions by Indigenous Peoples to the Committee cover a wide array of sacred areas in the U.S. and its territories. However, in no way are the submissions nor the authors of this report stating that one sacred area is more important than the others. All sacred areas are important and should be protected by the U.S. fulfilling its obligations under the ICCPR.

²⁸³ U.N. HUM. RTS. COMM., *CONCLUDING OBSERVATIONS ON THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA*, U.N. DOC. CCPR/C/USA/CO/4 (APR. 23, 2014).

²⁸⁴ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL, *supra* note 205, at 2.

²⁸⁵ *Id.* at 3.

²⁸⁶ UNITED CONFEDERATION OF TAÍNO PEOPLE, *supra* note 228 at 3.

is one of the most “important Pre-Columbian sites” and is sacred to the Taíno and other Indigenous Peoples.²⁸⁷ It is now in danger of being transferred from the Institute of Puerto Rican Culture (ICP) to the Municipality of Utuado for management. At no point during the resolution hearings nor in the determination to privatize the area did the government obtain the free, prior, and informed consent of the Taíno Peoples.²⁸⁸

U.S. support of extraction, including the mining sites the U.S. authorized in the Black Hills of South Dakota as one example of many, beyond the destruction of natural resources, has resulted in impediments to Indigenous Peoples’ access to sacred areas for religious ceremonies and beliefs.²⁸⁹ These beliefs include the requirement that natural resources must be protected, honored, celebrated, and worshipped as the source of all life. The U.S. disregard and desecration of these sacred areas amount to a “continuation of the horrific genocidal and assimilation policies” that have been inflicted on all Indigenous Peoples since the beginning of U.S. colonization.²⁹⁰

Additionally, this continuous desecration of sacred areas across the U.S. and its territories across the board negatively impacts Native children, adolescents, and young adults since it greatly restricts their ability to freely participate in their tribal and cultural activities and communities.²⁹¹ This furthers U.S. assimilation and eradication policies, but at a less visible level than previously enforced through the enactment of harmful laws and policies such as the federal boarding school policies, which forcefully kidnapped Indigenous children from their families and subjected them to physical, sexual, mental and emotional abuse – sometimes leading to death – in order to destroy Indigeneity in the U.S.²⁹² Studies have shown that access to their Indigenous culture is crucial to high self-esteem, lower rates of mental health problems, and higher education attainment. A secure sense of identity and attachment to their cultural background and identity is necessary for the full enjoyment of their human rights. In the Black Hills, like in other sacred areas, U.S. desecration restricts access to their culture, spiritual worship and ceremonies, which is visually represented through the hundreds of ribbons tied to trees, will seriously hinder the access to necessary aspects of Indigenous culture.²⁹³ These harmful effects of U.S. desecration of sacred areas are happening all over the country and its territories. This is meant to be a mere glimpse into what the U.S. has done or has failed to do to, and how it has continued to perpetuate the grave effects of colonialism against Indigenous Peoples, in violation of its duties and obligations under the ICCPR.

Issue 4 Recommendations:

- Stop granting mining permits in the Black Hills without the free, prior, and informed consent of the Sioux Nation Tribes.
- Stop granting extractive permits in all sacred areas without the free, prior, and informed consent of Indigenous Peoples.
- Publicly acknowledge the Black Hills as a sacred Indigenous Site and return ownership and possession of the Black Hills to the Sioux Nation Tribes to allow for adequate management and protection of this sacred area.
- Publicly acknowledge all other sacred Indigenous sites in the U.S. and return their ownership to the Indigenous Peoples.
- Develop policies alongside Indigenous Peoples aimed at effective protection and restoration of sacred areas, including declaring the Black Hills as a sacred Indigenous Site as one example of the many sacred areas the U.S. must declare as sacred Indigenous Sites.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 3-4.

²⁸⁹ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL., *supra* note 205, at 4.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 6-7

²⁹² *Id.* at 1.

²⁹³ *Id.* at 4.

- Implement laws and policies that fully respect freedom of religious practice, culture, and spiritual beliefs for Indigenous Peoples, including non-federally recognized Indigenous Peoples in current U.S. territories like Puerto Rico and the U.S. Virgin Islands.
- Implement laws enforcing an absolute legal prohibition of the desecration of sacred areas, provide provisions for their protection, and uphold Indigenous Peoples’ rights as they relate to the protection, management, and control of sacred areas.

Reports Informing this Section Include:

- American Civil Liberties Union, Lakota People’s Law Project, et al., *Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Sites*.
- United Confederation of Taíno People, *Indigenous Peoples Alternative Report for the United Nations Human Rights Committee Review of the United States of America’s Fifth Periodic Report*.
- Water Protector Legal Collective, *United States’ Compliance with the International Covenant on Civil and Political Rights*.

Issue 5: Resource Rights

The U.S. has entered into hundreds of treaties with Indigenous Peoples; many of them included provisions recognizing sovereignty over lands and resources, including rights to hunt, fish, and gather. Additionally, the U.S. court system created a “trust relationship” with Indigenous Peoples, which reduced sovereign peoples to “wards” under the trusteeship of the U.S. government. This resulted in policies and practices of assimilation and termination, changing the ways of life of Indigenous peoples, and taking of lands and resources. The U.S. has encroached on ancestral lands and imposed developments such as tourism of parks comprised of Indigenous areas like Mount Rushmore in the Black Hill and mining, which impacts every facet of Indigenous and Tribal life, in clear violation of both UNDRIP and Articles 1, 2, 6, 7, 8, 9, 10, 14, 18, 23, 24, 25, 26, and 27 of the ICCPR.¹⁹⁶

This sub-issue summary is not meant to be representative of all access to resource rights issues experienced by the Indigenous Peoples and colonized peoples in the U.S. and in its territories.

These assimilation policies and practices took many forms. Hunter families were forced to give up how they had traditionally survived in exchange for learning foreign agrarian ways to be applied to unsuitable farming lands.²⁹⁴ Land is one of the big issues when it comes to the relationship between the U.S. and the Tribal Nations. Under U.S. control, the land has been exploited in nearly every single way. Indeed the U.S., as the spoliators, are effectively “digging into the womb of Mother Earth” and keeping what they pull out from the hills, valleys, and mountains.²⁹⁵ The U.S. has extracted gold, silver, and fur from tribal lands and has used them as “main revenue generators for decades.”²⁹⁶ In Guam, U.S. military presence threatens the “survival of various endangered species and vital cultural and medicinal purposes.”²⁹⁷ U.S. presence on tribal and colonized lands has restricted how Indigenous Peoples can be stewards for and protect forest ecosystems, wildlife, and waterways.

For Indigenous Peoples, water is life. This phrase embodies the commitment Indigenous Peoples have in protecting water for future generations.²⁹⁸ “Water is not only important for survival, but it retains invaluable cultural significance and is regarded as sacred and a giver of life, just as every person begins in the water of their mother’s womb.”²⁹⁹ The U.S., with its Western understanding of water as “just” a natural resource, “ignores the

²⁹⁴ *Id.* at 1.

²⁹⁵ CHIEF GARY, *supra* note 218 at 3.

²⁹⁶ *Id.*

²⁹⁷ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 6.

²⁹⁸ *Id.* at 24.

²⁹⁹ *Id.*

foundational relation between Water” and the cultural and religious rights of Indigenous Peoples.³⁰⁰ Mining has caused catastrophic repercussions on access to water. Mining pollutes all forms of water with arsenic and other chemical contaminants. Well-water contamination is especially worrisome since Black Hills Indigenous communities rely on it for drinking water. The impact is two-fold: a tainted water supply and a contradiction to the Indigenous beliefs that water was the “first medicine” and, as such, is sacred.³⁰¹ This relates directly to other cornerstone beliefs surrounding the protection of forest ecosystems and natural waters. Arsenic presence in water pollutes the soil necessary for agriculture and ranching, which results “in the incorporation of arsenic into plant and animal food supplies that are then consumed.”³⁰² In Guam, U.S. military activities threaten the vitality of the island’s primary freshwater source, the Northern Lens Aquifer.³⁰³ These are just some examples of how Indigenous Peoples’ access to their natural resources continues to be violated and why the U.S. must abide by its obligations under the ICCPR.

Issue 5 Recommendations:

- Honor existing treaties with Indigenous Peoples, many of which contain provisions on lands and resources.
- Give land back to Indigenous Peoples and Tribal Nations.
- Provide for decontamination of waterways with priority afforded to water sources used as drinking water.
- Bring national policies and laws into conformity with the provisions of the ICCPR, UNDRIP, and ICERD regarding the right to lands, resources, and subsistence rights.

Reports Informing this Section:

- American Civil Liberties Union, Lakota People’s Law Project, et al., *Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Sites*.
- Chief Gary, *The Taking of Alaska & Article 1 of the ICCPR, Fifth Periodic Report. 139th Session (2023)*.
- United Confederation of Taíno People, *Indigenous Peoples Alternative Report for the United Nations Human Rights Committee Review of the United States of America’s Fifth Periodic Report*.
- Water Protector Legal Collective, *United States’ Compliance with the International Covenant on Civil and Political Rights*.

E. Right to Privacy and Unlawful Surveillance (arts. 2, 17, 18, 21, 22, 26)

Issue 1: Federal Agency Surveillance

Article 17 and 18 of the ICCPR recognize civilian’s right to be free from interference of privacy and freedom of thought, conscience and religion.³⁰⁴ Additionally, individuals may peacefully assemble and have a right of association with others under Articles 21 and 22.³⁰⁵ The Committee recognizes a right to equal protection in Article 26 and states that public emergency, including that of national security, is not sufficient to justify a discriminatory derogation of rights on the basis of race, color, sex, language, religion or social origin in Article 4.³⁰⁶ Despite the obligations to these articles, the U.S. government continues to practice improper intelligence gathering and fails to adequately protect American citizen’s rights to privacy, freedom to religion and equal

³⁰⁰ *Id.*

³⁰¹ AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE’S L. PROJ., ET AL, *supra* note 205, at 5.

³⁰² *Id.* at 6.

³⁰³ WATER PROTECTOR LEGAL COLLECTIVE, *supra* note 207 at 6.

³⁰⁴ ICCPR, *supra* note 8, at arts. 17, 18.

³⁰⁵ *Id.* at arts. 21, 22, 26.

³⁰⁶ ASIAN L. CAUCUS, SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE REVIEWING THE U.S. PERIODIC REPORT UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) 2 (Sept. 2023).

protection under the law through its Federal Bureau of Investigations (FBI), CVE Programs, the Foreign Intelligence Surveillance Act and the Customs and Border Protection agency.

FBI Informants

The U.S. government works in unison with various agencies to carry out national security functions, including conducting interviews, working with informants, and carrying out efforts for the Joint Terrorism Task Forces (JTTF).³⁰⁷ The interviews are considered voluntary, but they apply intrusive investigative methodologies, including false pretenses, use of confidential informants, and unrestricted physical surveillance.³⁰⁸ These practices result in the habitual violation of U.S. residents' and citizens' rights to privacy, as well as those traditionally targeted by law enforcement and national security policies, including Arab, Middle Eastern, Muslim, South Asian (AMEMSA), Black, and LGBTQIA+ individuals, activists, and protestors.³⁰⁹

'Voluntary Interviews'

The U.S. government conducts 'Voluntary Interviews' by approaching individuals without notice and requesting the interview on the basis of national security concerns.³¹⁰ Agents conducting the interviews do not inform the interviewees of any legal right to being approached, so many interviewees agree to participate because they believe compliance is mandatory by law.³¹¹ There is no requirement for agents to inform interviewees of the right to refuse questioning at any time.³¹² Out of 113 cases in which the FBI contacted individuals in the Muslim community, 20% were individuals involved with the immigration process.³¹³ Without their consent, this information may be used to target interviewees for crimes which violates equal protection and interference of privacy. Many individuals experience distress, embarrassment, or intimidation because of these practices, along with lasting stigmas and anxiety regarding the possibility of being revisited.³¹⁴

Along with the use of voluntary interviews, the U.S. government utilizes informants to infiltrate communities and spaces of worship.³¹⁵ Mosques and AMEMSA community spaces are primarily targeted with the use of confidential informants on the discriminatory and unfair belief that AMEMSA communities are more predisposed to terrorism than other communities.³¹⁶ Using such coercion, the U.S has compiled over 15,000 informants, many of which are asked to infiltrate American Muslim communities.³¹⁷ There is currently little regulation or judicial oversight over the FBI's use of informants, which was reflected in the 2005 examination of the FBI that showed 87% of criminal investigations conducted by the agency included violations.³¹⁸

Joint Terrorism Task Force (JTTF)

The Joint Terrorism Task Forces are interagency law enforcement collaborations between federal, state and local agencies, that are housed within FBI facilities.³¹⁹ Currently, the U.S. government operates approximately 200 task forces nationwide, with each of the FBI's 56 regional offices hosting at least one.³²⁰ JTTFs facilitate the "proliferation of racial profiling, invasive investigative techniques and unwarranted surveillance," and it

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* at 3.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.* at 5.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.* at 6.

³¹⁹ *Id.* at 4.

³²⁰ *Id.*

continues to criminalize communities that have historically been the focus of counter-terrorism inquiries nationwide.³²¹ It is particularly disconcerting that these efforts are carried out by state and local law enforcement, who traditionally would not have the right to question individuals without well-founded suspicions of criminal activity and allow them to infringe on individual's right to privacy, freedom of association and equal protection.³²²

Countering Violent Extremism (CVE) Program

CVE Programs are law enforcement initiatives that involve government and private entities aimed at identifying individuals who are considered susceptible to radicalization and violent extremism. In the U.S., the initiatives themselves vary in name, but generally, they typically involve the distribution of federal funds to local organizations, including academic institutions and non-profit organizations, that receive training to identify violent extremism and collect information.³²³ While the initiatives are often promoted as “community led” and “empowering [to] local partners,” a CATO Institute study found that CVE Programs have a chilling effect on targeted communities and stigmatizes the communities as predisposed to violence and terrorism.³²⁴ The CVE Programs result in disproportionate targeting of Muslim, Black, and LGBTQIA+ communities because the indicators, provided by the theory, perpetuate racial bias and ultimately fail to address the underlying issues associated with radicalization and extremism.³²⁵

Section 702 of Foreign Intelligence Surveillance Act

The U.S. government employs the Foreign Intelligence Surveillance Act (FISA) to access internet-based communications of overseas targets.³²⁶ The U.S. government may access communications under Section 702 when it has a reasonable belief that the individual is likely to communicate “foreign intelligence information.”³²⁷ This standard has been interpreted so broadly that it includes virtually any information relating to the foreign affairs of the U.S. government.³²⁸ Because of this, the communications of any U.S. person with a foreign target may be subjected to warrantless searches.³²⁹ Without establishing probable cause as required by a warrant, considerations that are improper, such as race, religion, politics and opinions of individuals, are more likely to include government officials' own conscious or unconscious biases and political beliefs.³³⁰

Because the information used is through U.S. persons, the U.S. government accidentally collects domestic information, including communications of corporations and associations.³³¹ In June of 2020 the FBI ran a query based on data collected under FISA and identifiers of 133 individuals that were arrested for their involvement in Black Lives Matter protests.³³² The Foreign Intelligence Surveillance Court determined this was a violation of its own, already extremely low standard in connection with FISA section 702.³³³ In 2021 alone, the U.S. government performed 3.4 million U.S. person queries of Section 702 data.³³⁴ These searches not only represent an invasion of Americans' privacy and freedom of association, but it also presents a real danger of over prosecution and law enforcement harassment, especially for activists and marginalized communities.³³⁵

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 8.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.* at 9.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ ASIAN L. CAUCUS, *supra* note 306, at 11.

U.S. Customs and Border Protection's (CBP) Use of Intrusive Interrogation

The U.S. CBP has conducted interviews of citizens and migrants of various backgrounds that ask deeply personal questions about religious beliefs and political affiliations.³³⁶ The CBP lacks any limitation on officer's ability to ask individuals these questions, including the authority to search travelers' written materials and electronics devices without any suspicion of wrongdoing.³³⁷ An interview with the CBP cannot be vacated by the interviewee at any time and the individuals' cannot depart on international flights without CBP approval.³³⁸ A majority of those questioned identify as Muslim or have South Asian and Middle Eastern roots, and because these individuals cannot enter the U.S. without complying with the border agent's requests, there is an inherently coercive element in the practice that suggests the U.S. government is targeting individuals with specific beliefs or communities to harass and delay.³³⁹

Issue 1 Recommendations:

- Establish a criminal predicate for any investigation to be opened, including the condition that individuals solely be approached by the FBI in relation to suspected criminal activity.
- Immediately terminate the use of confidential informants for intelligence and national security purposes
- Dismantle all JTTFs, including its field offices and collaborative networks .
- Examine and evaluate the data collected and held by the FBI on U.S. and non-U.S. Citizens, and subsequently purge all records that did not lead to predicated investigation.
- Evaluate and publish findings regarding violations of state and local law resulting from JTTF collaborations.
- Evaluate and publish findings regarding the disproportionate impacts of JTTFs on AMEMSA, immigrant and communities of color.
- Abandon all CVE Programs in all forms and iterations.
- Adopt policies limiting CBP's ability to search personal papers, cell phones and other personal property, along with personal questioning about one's religious beliefs or more without suspicion of wrongdoing.

Reports Informing this Issue Include:

- Asian Law Caucus, *Submission to the UN Human Rights Committee Reviewing the U.S. Periodic Report under the International Covenant on Civil and Political Rights (ICCPR)*.
- PEN America, *No Title [Individual Submission]*.

Issue 2: Facial Recognition Technology in Police Surveillance

Article 17 of the ICCPR recognizes rights to privacy, as well as a freedom from discrimination in Article 2.³⁴⁰ The U.S. government implemented facial recognition technology that violates individuals' right to privacy and freedom from discrimination because it is discriminant in nature and utilizes nonconsensual civilian photographs.³⁴¹

Facial recognition technology is a "biometric system that uses artificial intelligence and machine learning algorithms" used to match an input faceprint with one in the database.³⁴² Therefore, the technology requires a

³³⁶ *Id.*

³³⁷ *Id.* at 10.

³³⁸ *Id.*

³³⁹ *Id.* at 11.

³⁴⁰ ICCPR, *supra* note 8, at arts. 2, 17.

³⁴¹ AM. CIV. LIBERTIES UNION & PRINCETON POL'Y ADVOC. CLINIC, REVIEW OF U.S. CRIMINAL LEGAL SYSTEM COMPLIANCE WITH THE ICCPR AND RECOMMENDATIONS FOR POLICY CHANGES 4 (Sept. 2023).

³⁴² *Id.*

preexisting database to analyze and make matches based on distinctive facial features.³⁴³ The U.S. government's database is derived from arrest photos or driver's license photos, but a leading AI company that markets specifically to law enforcement has "amassed more than 30 billion images of faces scraped from the internet," including sources such as social media sites and other websites, without the consent of individuals.³⁴⁴ The use of such databases have been subject to large fines by privacy regulators worldwide, but the U.S has yet to enact comprehensive federal law to protect civilians privacy and continues to use the databases despite the lack of consent.³⁴⁵

Additionally, facial recognition technology generally misidentifies women and children of color, especially those that are black.³⁴⁶ The U.S. law enforcement has wrongfully arrested and ejected people of color from commercial premises based on incorrect facial recognition matches.³⁴⁷ In a 2019 study, facial recognition technology accuracy was examined for racial and gender disparities, and it found that false positives were higher for African American and Asian faces than Caucasian faces.³⁴⁸ Due to variations in photo quality, training and reliability of facial recognition operators, these disparities cannot be resolved.³⁴⁹

Federal agencies refuse to specify the purposes of their use of the databases. and the U.S. government has not published any findings on the impact of facial technology on civilians' privacy.³⁵⁰ The U.S. government also has not taken substantive actions to mitigate facial recognition technology's discriminatory impact and violation of privacy.³⁵¹

Issue 2 Recommendations:

- Implement federal moratorium on use of facial recognition technology by federal agencies and state or local recipients of federal funding.
- Ensure immediate prohibition of facial recognition technology to analyze live or recorded video.
- Require companies developing and deploying facial recognition technology to disclose information about the algorithms used, training data, and accuracy rates, including implicit biases in their systems.
- Require robust disclosure to criminal defendants from prosecutors and law enforcement about use of facial recognition technology and algorithms.

Reports Informing this Issue Include:

- American Civil Liberties Union and Princeton Policy Advocacy Clinic, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes*.
- Georgetown Law Center on Privacy & Technology and University of California, Irvine School of Law, *Submission to the United Nations Human Rights Committee During its Periodic Review of United States of America*.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ GEO. L. CTR. ON PRIVACY & TECH. & U. OF CALIF., IRVINE SCHL. OF L., SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE DURING ITS PERIODIC REVIEW OF UNITED STATES OF AMERICA 7 (Sept. 2023); PRINCETON POL'Y ADVOC. CLINIC, *supra* note 341, at 4.

³⁵¹ PRINCETON POL'Y ADVOC. CLINIC, *supra* note 341, at 4-5.

F. Treatment of Non-Citizens, Refugees, and Asylees (arts. 2, 6, 7, 9, 12, 13, 14, 17, 23, 26)

Issue 1: Non-refoulement Measures

Article 7 of the ICCPR protects migrants from cruel, inhumane or degrading treatment or punishment.³⁵² Further, Article 12 states that no one shall be required to leave the country in which they reside and that they have a right to nationality.³⁵³ The U.S. government utilizes refoulement measures, including the Migrant Protection Protocols (MPP) and maritime interdictions of Haitians, that constitute cruel, inhumane and degrading treatment.³⁵⁴

After its implementation in 2019, the MPP expanded to seven entry sites at the U.S-Mexico Border, and currently, it has forced approximately 81,353 individuals seeking asylum, regardless of nationality, to remain in Mexico border cities while their cases were being decided in U.S. immigration courts.³⁵⁵ Its implementation at these sites has caused an increase in danger and medical harms, including physical violence, sexual violence, kidnapping, theft and extortion.³⁵⁶

Additionally, the U.S. government's maritime interdictions includes the unlawful detention of Haitian individuals aboard military ships and off shore detention facilities, with no ability to contact family or counsel.³⁵⁷ Individuals are required to pass a 'manifestation of fear' fear test, or they will be returned to their country of origin.³⁵⁸ No verbal questions are asked of migrants in regards to the test, and instead, Coast Guard operatives visually scan migrants on board to determine if they demonstrate a fear to return to their country of origin.³⁵⁹ The manifestation of fear test is insufficient to determine if returning Haitian migrants to their country of origin will result in irreparable harm, and any decision that lacks the consideration of their safety constitutes cruel, inhumane and degrading treatment.

Issue 1 Recommendations:

- Restore asylum at the U.S-Mexico border.
- Remedy affected individuals that were impacted by MPP.
- Codify the principle of non-refoulement in federal legislation for people in the effective control of the U.S. government.

Reports Informing this Issue Include:

- Physicians for Human Rights, *Submission to the UN Human Rights Committee (CCPR) on the United States of America, Fifth Periodic Report, 139th Session (2023)*.
- Haitian Bridge Alliance, et al., *Treatment of Foreign Nationals, including Refugees and Asylum-seekers, Disparately Impacting Black People and other Peoples Protected by the ICCPR and the Convention on the Elimination of All Forms of Racial Discrimination*.

Issue 2: Lack of Access to Healthcare and Education

The Committee has interpreted Article 2 of the ICCPR to include non-discrimination against persons, regardless of immigration status, and it has urged state parties to eliminate barriers to access healthcare and social services

³⁵² ICCPR, *supra* note 8, at art. 7.

³⁵³ *Id.* at art. 12.

³⁵⁴ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 2.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ HAITIAN BRIDGE ALL., THE UNDOCUBLACK NETWORK, CAMEROON ADVOC. NETWORK, ET AL., *TREATMENT OF FOREIGN NATIONALS, INCLUDING REFUGEES AND ASYLUM-SEEKERS, DISPARATELY IMPACTING BLACK PEOPLE AND OTHER PEOPLES PROTECTED BY THE COVENANT AND THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* 11 (Sept. 2023).

³⁵⁸ *Id.*

³⁵⁹ *Id.* at 13.

for immigrants, migrants and refugees.³⁶⁰ The U.S. Government has failed to adequately protect and enforce the rights of migrants at the U.S.-Mexico border by implementing Title 42 U.S.C. section 265 of the 1944 Public Health and Service Act.³⁶¹ Invoked during the Trump Administration, Title 42 effectively closed the U.S.'s southern border and denied migrants and asylees entry on the basis of COVID-19.³⁶²

Medical and public health experts, as well as civil society, in the U.S. wrote letters informing both the Trump and Biden Administrations that there was no public health justification of Title 42.³⁶³ Moreover, the expulsion process mandated by Title 42 increased the risk of spreading and exposure of COVID-19. The process included holding individuals in crowded conditions for the day without available testing and transporting them in crowded vehicles as well.³⁶⁴

Title 42 ended under the Biden Administration, but it was followed by the "Circumvention of Legal Pathways" Rule, commonly referred to as the "Asylum Ban."³⁶⁵ A U.S. District Court blocked the policy and found the secondary ban to be "arbitrary and capricious," to which the Biden Administration has appealed.³⁶⁶

Additionally, the U.S. has immigration detention centers that are either operated by Customs and Border Protection (CPB) and ICE, or they are contracted out to a privately held facility. Detention centers are marked by poor hygiene and access to healthcare, including poor conditions, mistreatment, abuse, medical neglect, and denial of due process.³⁶⁷ The U.S. has closed two detention facilities for concerning reasons. One ICE facility in Pennsylvania under the Biden Administration due to inhumane conditions, medical neglect, and cruel and abusive treatment by the DHS staff.³⁶⁸ Another private facility was closed in Georgia for reported unsanitary living conditions, lack of medical and mental health care, fabricated medical records, and non-consensual gynecological procedures.³⁶⁹ After the closure of these facilities, the U.S. Senate Permanent Subcommittee on Investigations opened an 18-month investigation and published a report that confirmed ICE's failure to "ensure adequate oversight of off-site medical providers contracted for the treatment of people held in its custody" and its failure to take corrective measures once on notice of the medical neglect.³⁷⁰

Particularly disconcerting is the U.S. Government's lack of protection of detainees during the COVID-19 pandemic. Serious health concerns in detention centers were made known to the U.S. in 2013 and continued unresolved.³⁷¹ The pandemic exacerbated preexisting unsanitary and inhuman conditions, and as a result, ICE detainees experienced higher risks of COVID-19 than the general population.³⁷²

Issue 2 Recommendations:

- Revoke the Circumvention of Legal Pathways Rule.
- Implement adequate healthcare practices to prevent and test for COVID-19 during expulsion processes.

³⁶⁰ ICCPR, *supra* note 8, at art. 2.

³⁶¹ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 3.

³⁶² *Id.* at 2.

³⁶³ *Id.*

³⁶⁴ *Id.* at 3.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.* at 4.

³⁶⁸ *Id.* at 4.

³⁶⁹ PROJECT SOUTH, U. OF PENN. L. SCH. TRANSNATIONAL L. CLINIC, & U. OF TEX. AT AUSTIN IMMIGR. CLINIC, UNITED STATES' IMMIGRATION DETENTION SYSTEM CONTRAVENES OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) 2 (Sept. 2023).

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² PHYSICIANS FOR HUM. RTS., *supra* note 38, at 3.

Reports Informing this Issue Include:

- Physicians for Human Rights, *Submission to the UN Human Rights Committee (CCPR) on the United States of America, Fifth Periodic Report, 139th Session (2023)*.
- Project South, et al., *United States' Immigration Detention System Contravenes Obligations Under the International Covenant on Civil and Political Rights (ICCPR)*.

Issue 3: Impact of Executive Actions collectively known as the “Muslim Ban”

Articles 2, 17, 23, 24 and 26 of the ICCPR recognize that all individuals, regardless of status, have a right to freedom from discrimination and protection against unlawful or arbitrary interference with home and family life.³⁷³ The U.S.’s Presidential Proclamation 9645 was one in a series of executive actions commonly known as the “Muslim Ban” that discriminate against individuals from majority-Muslim countries seeking immigrant and non-immigrant visas to enter the U.S.³⁷⁴ The ban also included an Agency Memorandum to the President in October 2017 which targeted family reunification for refugees, who in recent years had been majority Muslim, and singled out refugees from a list of Muslim majority countries for extreme vetting and suspension of admissions.³⁷⁵

The formal rescission of the Muslim Ban has failed to rectify the damage it has caused. As a result of the ban’s ongoing impact, refugees are prevented from reunifying with family members in the U.S. due to continued extreme vetting, unnecessary layers of process and review and a dramatic increase in application processing times. Before the ban was introduced, almost half of all refugee admissions to the U.S. were from Muslim majority countries. In 2021, refugees from these countries represented less than a third of refugee admissions. Many refugees continue to receive unexplained denials or face indefinite delays of their family reunification applications.³⁷⁶

Between 2017 and 2021, the U.S. government rejected 41,000 visa applications under the Muslim Ban.³⁷⁷ Approximately 28,267 applicants denied non-immigrant visas under the ban have no recourse to a visa reconsideration process.³⁷⁸ A federal judge in California ordered the Biden Administration to provide relief to individuals who were denied visas under the ban, yet over a year later the government has failed to do so. And the U.S. legislature has failed to pass the NO BAN Act, a bill which would prevent any future discriminatory bans.³⁷⁹

Issue 3 Recommendations:

- Completely rescind the Muslim Ban by abolishing all the practices and policies that it introduced.
- Institute fair, efficient and transparent processes for refugee family reunification to ensure families are able to reunite swiftly.

Reports Informing this Issue Include:

- International Refugee Assistance Project, *The Continuing Impact of the Muslim Ban*.

³⁷³ ICCPR, *supra* note 8, at arts. 2, 17, 23, 24, 26.

³⁷⁴ INT’L REFUGEE ASSISTANCE PROJECT, THE CONTINUING IMPACT OF THE MUSLIM BAN 3 (SEPT. 2023) available at <https://refugeerights.org/news-resources/the-continuing-impact-of-the-muslim-ban>.

³⁷⁵ *Id.* at 2-3.

³⁷⁶ *Id.* at 3-4.

³⁷⁷ *Id.* at 4.

³⁷⁸ *Id.* at 5.

³⁷⁹ *Id.*

Issue 4: Detention without Due Process

Article 2 and Article 6 of the ICCPR establishes that individuals in the U.S., regardless of status, have rights to life and freedom from discrimination.³⁸⁰ It also protects against inhuman or degrading treatment and ensures the right to liberty and security of persons in Article 7 and Article 9.³⁸¹ Article 13 of the ICCPR also provides for fair deportation procedures.³⁸² Through the Immigration and Customs Enforcement (ICE) office, the U.S. Government impose mandatory detention for a wide array of instances, including individuals seeking asylum, persons with criminal convictions, and others in expedited removal.³⁸³ As of July 2023, the U.S government detains 31,064 individuals, 60% of whom have no criminal records, or they have minor offenses such as traffic violations.³⁸⁴

Most asylum seekers are automatically detained at the border without review of an ICE determination to detain, and detentions are without appointment of counsel.³⁸⁵ Previously, once detained, asylum seekers could wait for a credible fear interview (CDI) and upon completion, they could appeal their detention for review. Currently, most detentions occur in Texas where the rule of law precludes any review of detention, even with a credible CDI, so many individuals remain in detention for months or years, without review, despite proof of flight risk or danger to community.³⁸⁶ Once detained, access to counsel is extremely limited.³⁸⁷

The DHS is in charge of investigating immigrant detention facilities, some of which have been described by investigators as “barbaric” and “negligent.”³⁸⁸ A federal judge has ordered DHS to release more than 1600 pages of secret inspection reports that it illegally withheld from the public.³⁸⁹ The withheld reports detail common conditions in facilities across the country, including racist and violent abuse of people in detention, such as pepper spraying individuals with disabilities.³⁹⁰ The Inspector General recommended the immediate closure of facilities, to which immigration officials refused to comply.³⁹¹

There has been a decrease in ICE detention under the Biden Administration, but it may be attributed to the mass-enrollment in a variety of programs that function as alternatives to detention, including Intensive Supervision Appearance Program (ISAP) and Young Adult Case Management Program.³⁹² Mass enrollment in these programs raises concerns of increased surveillance over those who would not traditionally be detained.³⁹³

Issue 4 Recommendations:

- Create adequate conditions in detention centers.
- Provide adequate oversight of private prison facilities.
- Create Community based management services.
- End or restructure the immigration detention system.
- Terminate all contracts with private detention facilities.
- Ensure access to justice for those deprived of their rights.

³⁸⁰ ICCPR, *supra* note 8, at arts. 2, 6.

³⁸¹ *Id.* at arts. 7, 9.

³⁸² *Id.* at art. 13.

³⁸³ PROJECT SOUTH, *supra* note 369, at 1.

³⁸⁴ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 4.

³⁸⁵ PROJECT SOUTH, *supra* note 369, at 1.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 1.

³⁸⁸ HAITIAN BRIDGE ALL., *supra* note 357, at 11.

³⁸⁹ *Id.* at 15.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² PHYSICIANS FOR HUM. RTS., *supra* note 38, at 4.

³⁹³ *Id.*

- Implement protocols to prevent excessive use of force by ICE officers.

Recommended Questions:

- How does the U.S. reconcile its 2023 “Circumvention of Legal Pathways” policy with its domestic and international legal obligations to respect the right to seek asylum regardless of the time, place, or manner that individuals present themselves?
- How are community-based, non-surveillance case management programs being implemented or expanded, and what criteria are being used to assess their effectiveness in comparison to immigration detention or surveillance-based programs?
- What steps are being taken to ensure transparency and accountability within ICE and CPB regarding their treatment of detainees, including procedures for addressing reports of physical and verbal abuse by U.S. officials?

Reports Informing this Issue Include:

- Project South, et al., *United States’ Immigration Detention System Contravenes Obligations Under the International Covenant on Civil and Political Rights (ICCPR)*, (Sept. 2023) Physicians for Hum. Rts., *Submission to the UN Human Rights Committee (CCPR) on the United States of America, Fifth Periodic Report, 139th Session (2023)*.
- Haitian Bridge Alliance, et al., *Treatment of Foreign Nationals, including Refugees and Asylum-seekers, Disparately Impacting Black People and other Peoples Protected by the Covenant and the Convention on the Elimination of All Forms of Racial Discrimination*.
- International Refugee Assistance Project, *The Continuing Impact of the Muslim Ban*.

Issue 5: Zero Tolerance Policy

Article 7 and Article 9 of the ICCPR establishes that individuals in the U.S. have the rights to freedom from inhuman or degrading treatment and a right to liberty and security of person.³⁹⁴ Additionally, the ICCPR provides that individuals are entitled to due process and fair deportation procedures, as well as a freedom from interference of family, in Articles 10 and 13.³⁹⁵ The U.S. denies individuals of these rights in its implementation of the Zero Tolerance Policy, also known as the “family separation policy,” because it targets asylees who are suspected to have entered the U.S. illegally or have a criminal history, gang affiliation or communicable disease.³⁹⁶ This family separation policy results in the detention and subsequent incarceration or deportation of individuals who have children.³⁹⁷ As of May 2023, 860 children remain separated from their families due to the policy.³⁹⁸

In 2021, experts found that severe psychological trauma resulted in children and parents who experienced forced separation, because of the policy, during their application for asylum at the U.S.-Mexico border.³⁹⁹ The effects of this trauma could be seen in their mental and physical health, and the report evidenced that the practice of forced separation under the policy amounted to inhumane and degrading treatment that is consistent with the legal definition of torture.⁴⁰⁰

Issue 5 Recommendations:

- Continue family reunification efforts for the remaining 860 children.

³⁹⁴ ICCPR, *supra* note 8, at arts. 7, 9.

³⁹⁵ *Id.* at arts. 13, 14, 17.

³⁹⁶ PHYSICIANS FOR HUM. RTS., *supra* note 38, at 2.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

- Implement efforts to mitigate the physical and mental impacts of the policy for those affected.
- Prevent future policies from utilizing family separation as a practice in the U.S. immigration process.

Reports Informing this Issue Include:

- Physicians for Human Rights, *Submission to the UN Human Rights Committee (CCPR) on the United States of America, Fifth Periodic Report, 139th Session (2023)*.

Issue 6: Impact of the Controlled Application Review and Resolution Program

Article 2 of the ICCPR protects against discrimination by state parties, regardless of immigration status.⁴⁰¹ The U.S. Citizenship and Immigration Services (USCIS) has implemented the Controlled Application Review and Resolution Program (CARRP), a program that investigates and adjudicates applications the agency considers a national security concern, but in practice, it discriminates against AMEMSA immigration benefit applicants and employs heightened scrutiny of these individuals' applications.⁴⁰² Factors that the CARRP program considers to establish targets include their country of origin, religion, travel history, charitable donations, and law enforcement or FBI visits and questioning.⁴⁰³ Within a 5-year span, over 41,800 applications were subject to USCIS's application of CARRP, primarily affecting immigrants from Iraq, Iran, Yemen, India, and Pakistan.⁴⁰⁴ The heightened scrutiny against these applicants results in delays in gaining citizenship and immigration benefits, despite federal law mandating that USCIS carry out its duties within a reasonable time.⁴⁰⁵

If an individual's application is subjected to CARRP, there is no appeal or established process for status updates.⁴⁰⁶ Individuals may schedule appointments with USCIS to inquire about their application's status, but at most, USCIS has only confirmed that applications are being held in background checks.⁴⁰⁷ Because of this, the main form of recourse for applicants is to file a mandamus suit in the U.S. federal court, and if accepted, it is followed by lengthy litigation that may compel the government in taking action on the application's status.⁴⁰⁸ If an applicant is successful in taking these steps and the government is compelled, USCIS can still deny the applicant without an opportunity to cure any defects or withhold the reasons for denial.⁴⁰⁹

Issue 6 Recommendations:

- Immediately terminate CARRP.
- Prohibit the implementation of similar immigration policies that discriminate on the basis of race, religion, nationality, gender and ethnicity.

Reports Informing this Issue Include:

- Asian Law Caucus, *Submission to the UN Human Rights Committee Reviewing the U.S. Periodic Report under the International Covenant on Civil and Political Rights (ICCPR)*.

⁴⁰¹ ICCPR, *supra* note 8, at art. 2.

⁴⁰² ASIAN L. CAUCUS, *supra* note 306, at 12.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

Issue 7: The Unchecked Power of U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) is the largest law enforcement agency in the United States—roughly 85% of its agents are deployed at the U.S.-Mexico border.⁴¹⁰ CBP agents routinely violate Articles 2, 6, 7, 9 and 26 of the ICCPR by engaging in racial profiling, conducting warrantless searches, establishing interior checkpoints, and using excessive force.⁴¹¹

Despite the prohibition against discrimination under Article 26, the United States Department of Justice (DOJ) and CBP policy permit agents to engage in racial profiling.⁴¹² CBP has used its broad warrantless search authority to establish over 100 interior checkpoints and stop nearly one third of voters in border states, violating individual rights to freedom from arbitrary arrest and detention guaranteed by Article 9.⁴¹³

Rather than follow the international use of force standard of “necessary and proportional”, CBP assesses whether the use of force is lawful under the “objective reasonableness” standard.⁴¹⁴ This lax standard fosters excessive use of force by CBP agents in violation of Articles 6 and 7.⁴¹⁵ Use of force incidents by CBP have dramatically increased and are on pace to reach a new high in 2023.⁴¹⁶ More than 270 people have died from encounters with border agents since 2010.⁴¹⁷

While Article 2 requires an effective remedy for violations, victims of border agents struggle to access civil, criminal, or administrative justice in the United States.⁴¹⁸ In the 100-year history of U.S. Border Patrol, not a single border agent has been convicted for taking a life while on duty, despite killing thousands, and successful disciplinary or civil actions against U.S. border agents are exceedingly rare.⁴¹⁹

Issue 7 Recommendations:

- Enact federal legislation that limits use of force to ‘necessary and proportional.’
- Issue an Executive Order directing all federal agencies to amend their use of force policies to conform with the U.N. Code of Conduct and Basic Principles.
- Incorporate international law on use of force into domestic jurisprudence.
- Amend the DOJ policy to remove the border region exception to the prohibition on profiling and adopt legislation that codifies the prohibition for all federal law enforcement, including CBP.
- Adopt legislation that eliminates warrantless powers granted to CBP under 8 U.S.C. 1357(a)(3).
- Issue an Executive Order directing all federal agencies to amend their policies and prohibit involvement in criminal use of force investigations of their own officers.
- Adopt legislation to protect the integrity of criminal investigations and end the concurrent jurisdiction of agencies to investigate their own officers in 6 U.S.C. 211(j)(3).

⁴¹⁰ S. BORDER CMTYS. COAL., REPORT FOR THE 2023 REVIEW OF U.S. COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 4 (Sept. 2023).

⁴¹¹ *Id.* at 5.

⁴¹² *Id.* at 5-6.

⁴¹³ *Id.* at 7.

⁴¹⁴ Maria Puga, *The Killing of Anastasio Hernandez Rojas* 4 (Sept. 12, 2023) *see* S. BORDER CMTYS. COAL., *Supra* note. at 9.

⁴¹⁵ *Id.* at 8-10.

⁴¹⁶ U.S. Customs and Border Protection, Assaults and Use of Force Statistics (Last Updated Aug. 18, 2023), <https://www.cbp.gov/newsroom/stats/assaults-use-force>

⁴¹⁷ Southern Border Communities Coalition, Deaths by Border Patrol: Track Death and Abuse by Border Patrol, https://www.southernborder.org/deaths_by_border_patrol (last visited Aug. 1, 2023).

⁴¹⁸ S. BORDER CMTYS. COAL., *supra* note 410 at 11-13.

⁴¹⁹ *Id.* at 12.

Reports Informing this Section Include:

- Southern Border Communities Coalition, *Report for the 2023 Review of U.S. Compliance with the International Covenant on Civil and Political Rights*.
- Maria Puga, *The Killing of Anastasio Hernandez Rojas*.

Issue 8: Forced Labor and Nonimmigrant Visa Programs

The forced labor of all categories of workers, including nonimmigrants, asylees, and refugee seekers, is a violation of Article 8 of the ICCPR.⁴²⁰

Workers that enter the U.S. under the H-2A, H-2B, and J-1 visa programs are particularly at risk of being exploited by employers and/or traffickers that take advantage of the programs' gaps and the power dynamics to force nonimmigrants into unsafe and involuntary working conditions.⁴²¹ The H-2A program requires employers to provide workers with food and housing; however, many housing locations lack heat or air-conditioning, are overcrowded, lack sufficient cooking facilities (that are promised in lieu of food), and have inadequate bathrooms.⁴²² Workers are also frequently denied medical care or safety equipment during their period of employment.⁴²³ These human rights violations frequently go unnoticed due to lack of employer vetting and site checks by U.S. government officials.⁴²⁴ Where employers do face an investigation, they typically only receive a reprimand and are allowed to continue utilizing the H-2 visa program.⁴²⁵ Workers entering the U.S. pursuant to the J-1 visa, which provides training opportunities for exchange visitors, face another distinct set of issues. The J-1 program requires workers to obtain their own medical insurance and, with limited exceptions, fund their own trip.⁴²⁶ However, upon arriving in the U.S., many J-1 workers find that they've been assigned to menial labor that is unrelated to the specialized training program, at wages that fail to cover cost of living expenses, and which leaves the worker indebted and subject to the abuse of their employer.⁴²⁷

At immigrant detention centers, detained migrants are frequently forced into involuntary labor through the Voluntary Work Program.⁴²⁸ Workers who do not participate in the program are threatened with solitary confinement, room changes that deprive them of privacy, and are unable to pay for basic goods such as food, water, and hygiene products.⁴²⁹ The detention centers pay detainees about \$1 per day for work that, if outsourced, would require the center to offer pay equal to the federal or state minimum wage (\$7.25-\$12).⁴³⁰

Issue 8 Recommendations:

- Review and update the H and J visa programs to reduce risks of involuntary labor and trafficking, unsafe working conditions, and inadequate access to food and housing.
- Develop standards and monitoring to ensure that the Voluntary Work Program is truly voluntary and complies with state and federal wage and hour laws.

⁴²⁰ ICCPR, *supra* note 8, at art. 8.

⁴²¹ THE ADVOCS. FOR HUM. RTS., *supra* note 138, at 43-55.

⁴²² *Id.* at 45-48.

⁴²³ *Id.* at 45.

⁴²⁴ *Id.* at 47-52.

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 53.

⁴²⁷ *Id.* at 55.

⁴²⁸ *Id.* at 56.

⁴²⁹ *Id.* at 57.

⁴³⁰ *Id.* at 56.

Additional Considerations

Insufficient Protections for Migrants from Venezuela: Migrants entering the U.S. from Venezuela are frequent targets of human trafficking organizations and are often subjected to sexual exploitation, forced labor, and servile matrimony in the U.S.⁴³¹

Additional Recommendations

- Bring awareness to the human rights violations suffered by Venezuelan migrants and enact measures to reduce risks of trafficking and involuntary servitude.

Reports Informing this Issue Include:

- La Fundación Red Nacional de Derechos Humanos (RENADDHH) y el Consejo Nacional para la Defensa del Derecho Humano a la Salud (CNDDHS), *Reporte Sobre Estados Unidos de América*.
- The Advocates for Human Rights, *Compliance with the International Covenant on Civil and Political Rights: Non-discrimination, Human Trafficking and Forced Labor, Non-Refoulement and Immigration Enforcement and Detention*.

Issue 9: Family Separation at the U.S./Mexico Border

In its 2019 List of Issues, the Committee requests the U.S. to comment on the separation of migrant families at the U.S.-Mexico border, which continue to persist despite court mandate ordering the reunification of families.⁴³² The separation of families violates Articles 23 and 24 of the ICCPR.

The Trump Administration's "zero-tolerance" policy resulted in the separation of over 5,500 children at the border, including 500 children under the age of five.⁴³³ Following a court order in June 2018 ordering the reunification of separated families, a steering committee led by the ACLU began identifying reunification options.⁴³⁴ However, the magnitude of the problem led President Biden to sign an Executive Order in February 2021 that created a task force to address family separation.⁴³⁵ To date, hundreds of children have not yet been reunited, and the U.S. government has no contact information to identify the parents of 86 of the children.⁴³⁶ Currently, there are over 40 lawsuits are pending in U.S. courts for separated families seeking damages in monetary compensation.⁴³⁷ Rather than recognizing the egregious harm caused by the family separations, the Biden Administration has chosen to defend the lawsuits.⁴³⁸

The practice of separating families at the border has continued. Any children who arrive with a family member other than a parent (such as a sibling or grandparent) are deemed “unaccompanied” and transferred to the custody of the HHS.⁴³⁹ Families who are placed into CBP detention facilities often suffer unsafe and unsanitary conditions, including overcrowding, inadequate clothing, cold temperatures, and lack of age-appropriate food.⁴⁴⁰

Issue 9 Recommendations

- Use maximum legal authority to ensure the reunification of separated families.

⁴³¹ LA FUNDACIÓN RED NACIONAL DE DERECHOS HUMANOS & EL CONSEJO NACIONAL PARA LA DEFENSA DEL DERECHO HUMANO A LA SALUD, REPORTE SOBRE ESTADOS UNIDOS DE AMÉRICA 3 (Sept. 2023).

⁴³² LoI Fifth Periodic Report, *supra* note 39, at ¶ 20.

⁴³³ PALE BLUE, *supra* note 94, at 11.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ CHILDREN’S RTS., *supra* note 96, at 3.

⁴³⁷ PALE BLUE, *supra* note 94, at 12.

⁴³⁸ *Id.*

⁴³⁹ CHILDREN’S RTS., *supra* note 96, at 5.

⁴⁴⁰ *Id.*

- Enact legislation that prohibits any ongoing and future family separations.
- Drop the defense of pending lawsuits and provide compensation for the physical and mental harm experienced by separated families.

Reports Informing this Issue Include:

- Parents Supporting Parents NY, Pale Blue, et al., *Family Separation in the U.S. Child Welfare System, at the U.S. Mexico Border, and of Indigenous Communities*.
- Children’s Rights, et al., *Family Separation Is an Urgent Human & Civil Rights Issue*.

G. Right to Life (arts. 2, 6, 7, 9, 19)

Issue 1: Water Access and Affordability

Water as a human right is enshrined in the right to life under Article 6 of the ICCPR and General Comment 36.⁴⁴¹ Despite this, in the U.S., Black, Brown, and Indigenous communities face discriminatory deprivation of access to clean and affordable drinking water. Such discrimination persists due to a systemic failure to enforce federal environmental justice commitments on decision makers at all levels of our nation’s water systems. The denial of this aspect of the right to life is compounded by the absence of information transparency at the federal, state, and local level in the funding and operation of drinking water systems.⁴⁴²

This disproportionate failure of water systems located in communities of color is not random, but rather reflects systemic environmental racism, part of the broader context of historical and continual injustices perpetrated by federal and state actors since the inception of the U.S. Drinking water crises in majority Black cities, like Jackson, Mississippi, Flint, Michigan, and Detroit, Michigan are occurring in a period of unprecedented investment in drinking water infrastructure at the federal level. However, achievements in securing infrastructure funding and the Biden Administration’s commendable environmental justice commitments mean little without information transparency and accountability mechanisms to ensure that federal funding is distributed to historically disinvested communities to update their aging and ineffective water systems.⁴⁴³

Issue 1 Recommendations

- The federal government should officially recognize and affirm that the “Right to Life” includes the right to affordable, clean, and accessible drinking water and the right to sanitation.
- Passage of federal legislation or issuance of an EPA rule requiring transparency in state disbursement of funding received predicated on high need data from Black and brown communities with aging water systems.
- Implement DOJ processes to hold states accountable if funding received is diverted away from predominantly Black and brown communities.
- Passage of the Water Affordability, Transparency, Equity and Reliability Act to create a trust fund to dedicate at least \$35 billion a year to improve the nation’s drinking water and wastewater infrastructure.
- Increased funding and staffing for agencies to have efficient and transparent data collection processes on water contamination and access issues to inform a more equitable distribution of funds.

⁴⁴¹ ICCPR, *supra* note 8, at art. 6(1); see Hum. Rts. Comm., *General Comment 36*, U.N. Doc. CCPR/C/GC/36 (2018).

⁴⁴² INT’L ASSOC. OF OFF. HUM. RTS. AGENCIES. & PROGRAM ON HUM. RTS. & THE GLOB. ECON., *DRINKING WATER ACCESS AND AFFORDABILITY & U.S. COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 2* (SEPT. 12, 2023).

⁴⁴³ *Id.*

Additional Considerations:

Texas Law Eliminating Mandatory Water Breaks for Outdoor Workers: The Governor of Texas in the U.S. recently signed into law a new measure that overrules mandatory water breaks for workers, affecting construction, post office, and utility linemen workers (among others), while they work under triple-digit heat. “Heat stress” and “extreme temperatures” have become a hazard for safety and health in some working environments.⁴⁴⁴ In this context, mandatory access to shaded rest and clean potable water during breaks is an urgent human rights issue. Laws and policies that override local ordinances that require mandatory water breaks for workers due to extreme temperatures have a negative effect on the life and personal integrity of workers as well as on their physical and mental health.

Additional Recommendations

- Take immediate actions at both federal and state levels to derogate this measure as soon as possible in order to save workers’ right to life.

Reports Informing this Issue Include:

- Jason Glaser, La Isla Network, *Preliminary observations of La Isla Network on the report on and country situation in the United States*.
- IAOHRA & PHRGE, *Drinking Water Access and Affordability & U.S. Compliance with the International Covenant on Civil and Political Rights*.

Issue 2: Food Security

Violations of the right to food should be construed as violations of the right to life under the International Covenant on Civil and Political Rights (“ICCPR”). Widespread and ongoing human right to food violations in the U.S. lead to violations of the Article 6 right to life as well as multiple other rights enshrined in the ICCPR.⁴⁴⁵

Children in the U.S. often suffer from food insecurity and are particularly vulnerable to problems associated with hunger and malnutrition. Many children in the U.S. depend on school resources to access meals, but when these programs fail, children are left hungry with severe repercussions on their health and long-term wellbeing. So far, the U.S. has failed to implement universal free school lunches.⁴⁴⁶ The failure to provide adequate food and nutrition to children is especially stark when looked against statistics showing that 25-30% of food in North America is wasted each year.⁴⁴⁷

Moreover, government assistance and charitable programs are failing to address hunger in the U.S because their regulations, requirements, and arduous application processes create barriers for families who need food assistance. Additionally, the food available through these programs often fails to meet nutritional needs. Because Black, Indigenous, and People of Color (“BIPOC”) communities make up the majority of these recipients, they are disproportionately impacted by the failure of these systems to adequately address hunger.⁴⁴⁸

The U.S. is also failing to address the widespread criminalization of homelessness, including through the weaponization of food. For example, in 2020, the City of Miami banned food providers from feeding groups of

⁴⁴⁴ JASON GLASER, LA ISLA NETWORK, *PRELIMINARY OBSERVATIONS OF LA ISLA NETWORK ON THE REPORT ON AND COUNTRY SITUATION IN THE UNITED STATES*.

⁴⁴⁵ U. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, RIGHT TO FOOD, ET AL., VIOLATIONS OF CIVIL AND POLITICAL RIGHTS IN THE UNITED STATES STEMMING FROM HUNGER, MALNUTRITION, AND VIOLATIONS OF THE RIGHT TO FOOD 2 (Sept. 12, 2023).

⁴⁴⁶ *Id.*

⁴⁴⁷ INSTITUTE OF SUSTAINABLE DEVELOPMENT, THE REPORT OF THE INSTITUTE OF SUSTAINABLE DEVELOPMENT ON THE SUSTAINABLE DEVELOPMENT GOALS (SDG) AND VIOLATIONS OF THE ARTICLES OF THE POLITICAL AND CIVIL RIGHTS COVENANT FOR THE 139TH MEETING OF THE HUMAN RIGHTS COMMITTEE 2 (2023).

⁴⁴⁸ U. OF MIAMI SCH. OF L. HUM. RTS. CLINIC, RIGHT TO FOOD, *supra* note 445 at 2.

25 people or more without a permit and limiting these feedings to take place in five inconveniently designated locations. This prevents charitable organizations from distributing food to homeless populations who desperately need the assistance.⁴⁴⁹

Issue 2 Recommendations

- Adopt a rights-based national plan to end hunger that incorporates strong civic participation from those most affected, and that addresses the history of enslaved, demeaned, and incarcerated food system labor in the U.S. by the corporate scale agro-food industry and private public prisons.
- Strengthen anti-trust laws to de-monopolize the food and agriculture industry.
- Break up concentrated land ownership, industrially organized political lobbying, and monopolistic food production, processing, and marketing.
- Ensure adequate working conditions, living wages, and ensure gender and racial equity in labor practices.
- Implement universal school food programs in every state focusing on nutrition and addressing the existing stigma surrounding free and reduced meals, such as Breakfast After the Bell.
- Make federal law that post-incarcerated individuals have equal access to public (e.g., SNAP, WIC) and private (e.g., pantries, soup kitchens) food assistance programs.
- Hold agricultural companies and extractive industries liable for their impacts on life-sustaining environmental resources such as clean water and food supplies.

Reports Informing this Issue Include:

- University of Miami School Of Law Human Rights Clinic, Right to Food, et al., *Violations of Civil and Political Rights in the United States Stemming from Hunger, Malnutrition, and Violations of the Right to Food*.
- Institute of Sustainable Development, *The Report of the Institute of Sustainable Development on the Sustainable Development Goals (SDG) and Violations of the Articles of the Political and Civil Rights Covenant for the 139th Meeting of the Human Rights Committee*.

Issue 3: Failure to Address Environmental Concerns

In its 2019 List of Issues, the Committee requests information concerning the effects of climate change, such as flash floods, coastal flooding, wildfires, infectious diseases, extreme heat, and air pollution, on the right to life.⁴⁵⁰ The inherent right to life is protected under Article 6 of the ICCPR.⁴⁵¹

While North America is rich in natural capital, much of its biodiversity is threatened by land use change, pollution, climate change, and invasive species.⁴⁵² Of the 8 million species on the earth, 1 million are on the brink of mass extinction.⁴⁵³ The disposal of single-use plastic bags has been particularly adverse to harming the biodiversity of rivers, lakes, and oceans.⁴⁵⁴ Predictions show that by 2050, oceans will have more plastic than fish by volume, while 94% of tap water in the U.S. is already contaminated by microplastic fibers.⁴⁵⁵ In addition, more than 40% of the U.S. population faces adverse health risks and effects due to air pollution.⁴⁵⁶

⁴⁴⁹ *Id.*

⁴⁵⁰ LoI Fifth Periodic Report, *supra* note 39, at ¶ 15.

⁴⁵¹ ICCPR, *supra* note 8, at art. 6.

⁴⁵² INST. OF SUST. DEV., *supra* note 447, at 2.

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* at 2-3.

⁴⁵⁶ *Id.* at 3.

Issue 3 Recommendations

- Implement measures that address the harmful consequences of environmental pollution, and which recognize its effects on climate change and people's health.
- Adhere to the 17 principles of Sustainable Development Goals.
- Encourage political leaders to proactively limit the harmful effects of economic development projects and the destruction of the environment.

Additional Considerations:

Disproportionate Impact of Petrochemical Pollution on Black and Brown Communities: The toxic and harmful emissions of the fossil fuel industry are disproportionately felt by Black and Brown communities, many of which are low-income and have limited English proficiency.⁴⁵⁷ The production of petrochemicals releases harmful compounds, such as benzene and formaldehyde, into the environment.⁴⁵⁸ The emissions from these compounds has been linked to higher cancer rates, asthma (especially among children), respiratory issues, headaches, reproductive issues, and irritation of the skin, nose, eyes, and throat.⁴⁵⁹ In Houston, a lack of zoning restrictions results in many low-income, Black and Brown families having to live near petrochemical facilities.⁴⁶⁰ Houston is home to the 52-mile-long Houston Ship Channel, which includes more than 400 petrochemical plants, and two of the largest refineries in the U.S.⁴⁶¹ Aside from toxic emissions, families experience the adverse effects of major petrochemical disasters, including fires, explosions, leaks, and chemical spills; facilities that cause these disasters face little to no accountability.⁴⁶²

Additional Recommendations

- Phase out the extraction and production of fossil fuels.
- Pass legislation that strengthens the Environmental Protection Agency's (EPA's) authority to enforce permit limits and stringent penalties towards corporations that violate their operating permits.
- Require companies and the EPA to provide adequate real-time multi-lingual notification systems about chemical releases and emergency response protocols.

Reports Informing this Issue Include:

- Amnesty Int'l, *United States of America Submission to the UN Human Rights Committee 139th session, 9 October - 3 November 2023* (2023).
- Institute of Sustainable Development, *The Report of the Institute of Sustainable Development on the Sustainable Development Goals (SDG) and Violations of the Articles of the Political and Civil Rights Covenant for the 139th Meeting of the Human Rights Committee*.

Issue 4: Criminalization of Homelessness and Poverty

Article 6 of the ICCPR states that everyone has an inherent right to life, that right shall be protected by law, and that no one shall be arbitrarily deprived of that right.⁴⁶³ The U.S.' homelessness epidemic has been on the rise since 2017, with a record high nationwide count of 127,768 individuals in 2022 who experienced chronic

⁴⁵⁷ AMNESTY INT'L, *supra* note 206, at 18.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.* at 19.

⁴⁶³ ICCPR, *supra* note 8, at art. 6.

homelessness. Moreover, since the start of the pandemic, more unhoused persons are unsheltered than sheltered with many of them being forced to live in encampments and in public spaces.⁴⁶⁴

In recent years, there has been a dramatic growth in law and policies across the U.S. that criminalize homelessness, including bans on camping and sleeping, laws restricting sitting and lying down in public, living in vehicles, vagrancy, loitering, and food scavenging, and laws prohibiting begging in public. Oftentimes, unhoused persons face steep civil and court-imposed fines and fees for violating these laws, which further perpetuates cycles of poverty and leaves them without the means to afford necessities like food and transportation.⁴⁶⁵

Some municipalities have also begun to weaponize the civil involuntary commitment system to effectively accomplish the same goal of getting persons off the streets temporarily, without addressing their underlying housing needs. In a concerning trend, municipalities across the U.S. are using the very condition of a person's homelessness as circumstantial evidence of dangerousness to themselves or others, presenting an eligibility criterium for involuntary commitment, even if the person has displayed no overtly dangerous propensities. The criminalization of mental health disproportionately impacts the unhoused population in the U.S., where about 20 percent of the nation's unsheltered population suffers from a severe mental health disability.⁴⁶⁶

Issue 4 Recommendations

- Ensure that federal law enforcement is not used in responding to homelessness.
- Stop state legislation authorizing forced relocation camps for unhoused persons under threat of arrest.
- Ensure service providers are not targeted for assisting unhoused persons with meeting their basic needs.
- Abolish criminalization of homelessness including the use of carceral civil involuntary commitment systems.
- Redirect funding to compassionate crisis response teams with mental health, harm reduction, and other psychosocial service expertise; trauma-informed, non-congregate shelters with supportive services as temporary residences; and community-based housing, including permanent supportive housing, utilizing a Housing First approach.

Additional Considerations

Perpetuating Homelessness through Sex Offender Registries in Florida: In 2006, the U.S. Congress passed the Sex Offender Registration and Notification Act, which revamped federal standard for sex offender registration and notification. Since then, several bills, including many at the state level, have expanded SORNA's provisions. For example, the State of Florida prohibits anyone who has been convicted of certain sexual crimes from living within 1,000 feet of a school, childcare facility, park, or playground, regardless of the nature of their offense, how long ago it was committed, or their present risk.⁴⁶⁷ Many counties and cities in Florida have enacted these Sex Offender Residency Restrictions (SORRs), despite multiple studies showing that SORRs do not improve public safety, reduce child sexual abuse, nor reduce recidivism.⁴⁶⁸ In fact, SORRs have been shown to increase homelessness and family separation.

For example, in Miami-Dade and Broward counties, more than one-quarter of the people on the Sex Offender Registry are homeless. This is not because of a lack of funds or an absence of family or friends who would take them in; rather, it is a direct cause of SORRs, which have legislated these individuals into homelessness.

⁴⁶⁴ NAT'L HOMELESSNESS L. CTR., UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS CLINIC, CRIMINALIZATION OF HOMELESSNESS AND MENTAL HEALTH IN THE UNITED STATES 1 (Sept. 12, 2023).

⁴⁶⁵ *Id.* at 5.

⁴⁶⁶ *Id.* at 12, 14.

⁴⁶⁷ FLORIDA ACTION COMM., HUMAN RIGHTS VIOLATIONS AGAINST PERSONS REQUIRED TO REGISTER AS SEX OFFENDERS IN THE UNITED STATES AND HOW SEX OFFENDER RESIDENCY RESTRICTIONS ("SORR") CONTRIBUTE TO THE HOMELESS CRISIS 2 (Sept. 12, 2023).

⁴⁶⁸ *Id.*

Throughout Florida, these individuals are excluded from all but the smallest pockets of geographic areas, in which the stock of available residential units are quickly filled by other registrants.⁴⁶⁹ To make matters worse, individuals who cannot find homes that meet SORR requirements are facing arrest in some areas of Florida: effective September 12, 2023, the city of Miami Beach will begin arresting homeless persons who refuse to go to a shelter.

Additional Recommendations

- The U.S. government should remove all resident restrictions for those registered as sex offenders, as such restrictions have not been shown to be effective public safety measures.
- The U.S. government should remove all residency restrictions for those registered as sex offenders that would prevent them from living in a medical or long-term rehabilitation center, nursing home, hospice facility, and other care facilities as well as private homes with their family and loved ones.
- The U.S. government should remove all restrictions that deny any person the right to stay in emergency shelters during periods of natural disasters or with their families.
- The U.S. government should remove all restrictions that deny any person the right to choose who they allow to live in their home.

Reports Informing this Issue Include:

- Florida Action Committee, *Human Rights Violations against Persons Required to Register as Sex Offenders in the United States and How Sex Offender Residency Restrictions (“SORR”) Contribute to the Homeless Crisis*.
- National Homelessness Law Center, et al., *Criminalization of Homelessness and Mental Health in the United States*.

Issue 5: Arms Trade

Article 6 of the ICCPR protects the inherent right to life.⁴⁷⁰ The Committee has further clarified through its General Comment No. 36 that a State has the responsibility to ensure that parties acting within its territory or subject to its jurisdiction do not take actions that have a foreseeable impact on the right to life of individuals outside of the State’s territory.⁴⁷¹

In the last five years, the U.S. has accounted for 39% of global arms exports, of which 43% went to the Middle East, and a quarter to Saudia Arabia.⁴⁷² The supply of arms enabled a Saudi-led coalition to launch in 2015 a military intervention in Yemen, which continues to cause a deprivation of the right to life for thousands of civilians.⁴⁷³ While the U.S. has not engaged in the Yemen conflict directly, its supply of arms to the Middle East had a foreseeable impact on the right to life of individuals within the region and the rising tensions between Yemen and Saudia Arabia.⁴⁷⁴ Despite President Biden’s campaign promise to end support for the Saudi-led war in Yemen, his administration has continued to approve multi-million dollar contracts for arms exports, including a helicopter fleet and air-to-air missiles.⁴⁷⁵

⁴⁶⁹ *Id.* at 6.

⁴⁷⁰ ICCPR, *supra* note 8, at art. 6.

⁴⁷¹ THE INST. FOR THE PROT. OF WOMEN’S RTS., THE REPORT OF THE INSTITUTE FOR PROTECTION OF WOMEN’S RIGHTS (IPWR), FOR THE 139TH MEETING OF THE HUMAN RIGHTS COMMITTEE 8-9 (2023).

⁴⁷² *Id.* at 5.

⁴⁷³ *Id.* at 4-5.

⁴⁷⁴ *Id.* at 7-9.

⁴⁷⁵ *Id.* at 7.

In 2019, former President Trump announced the withdrawal of the U.S. from the Arms Trade Treaty (ATT).⁴⁷⁶ Since the United States is the world's largest arms exporter, it played a significant role in the ATT's negotiations, ensuring that the treaty did not contradict U.S. laws, policies, or regulations and reflected U.S. values, much to the consternation of some countries that wanted a stricter treaty.⁴⁷⁷ The lack of U.S. participation in the ATT, and the inaction of the Biden administration in recommitting the U.S. as an ATT signatory, limits the treaty's effectiveness in creating a responsible, accountable, and transparent arms trade that is consistent with Article 6 of the ICCPR.⁴⁷⁸

Issue 5 Recommendations

- Ensure that arms export licenses will not pose a serious risk of international humanitarian law or international human rights violation.
- Integrate dialogue on human rights, especially those related to gender and the impact of weapons on gender-based violence, into strategic dialogues with countries purchasing U.S. weapons.
- Ensure that the U.S. arms trade policy is consistent with the United Nations Guiding Principles on Arms Trade and Human Rights.
- In connection with the export of surveillance technology, biometric data, and other dual-use products, the U.S. should provide information on the measures taken to assess the potential violations of human rights, including privacy, freedom of expression, and women's rights, and make this information available to Congress and the public when authorizing such technologies.

Reports Informing this Issue Include:

- The Institute for the Protection of Women's Rights, *The Report of the Institute for Protection of Women's Rights (IPWR), for the 139th Meeting of The Human Rights Committee*.

H. Treatment of Persons Deprived of Liberty (arts. 2, 6, 8, 9, 10)

Issue 1: Excessive Use of Force and Extrajudicial Killings

Article 2(3)(a-c) of the ICCPR provides that each state party must ensure that any individual whose freedom is restricted be given the opportunity for an effective administrative remedy, that the process of requesting that remedy is heard by a competent judicial, legislative, or administrative body, and that competent authorities will enforce any awarded remedy.⁴⁷⁹ In addition, Article 6(1) states that “no one shall be arbitrarily deprived of his life”⁴⁸⁰, and Article 9 (1, 4) provides that no individual may be subject to arbitrary arrest or detention and – in the event that they are – must be brought before a competent judicial agent immediately.⁴⁸¹

Each year, nearly 1,000 civilians are killed by law enforcement in the U.S.⁴⁸² In 2022 alone, that number increased to 1,243 civilians.⁴⁸³ While high, the number alone does nothing to show the racial disparities that exist in these encounters. Black Americans are 2.7 times more likely to be murdered by law enforcement than their white counterparts while the Latino population is 1.6 more likely to be killed.⁴⁸⁴ Despite the rising number of police

⁴⁷⁶ *Id.* at 10.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ ICCPR, *supra* note 8, at art. 2(3) a-c.

⁴⁸⁰ *Id.* at art. 6(1).

⁴⁸¹ *Id.* at art. 9(1) and 9(4).

⁴⁸² THE CTR. FOR VICTIMS OF TORTURE, SHADOW REPORT TO THE FIFTH PERIODIC REPORT OF THE UNITED STATES 3 (Sept. 12, 2023).

⁴⁸³ *Fatal Force: Police Shootings Database*, The Washington Post (Sept. 6, 2023), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

⁴⁸⁴ THE CTR. FOR VICTIMS OF TORTURE, *supra* note 482, at 4.

involved killings, the U.S. has refused to take action against the police. For more than 30 years, the Committee has requested that the U.S. not only provide more insight to the issue, but also take action to prevent this senseless problem.⁴⁸⁵

In each of their reviews, the U.S. has either failed to respond adequately to the questions by the Committee or defended their position based on domestic case law.⁴⁸⁶ The “Objectively Reasonable” standard that guides police misconduct is based in common law and requires that an officer’s actions with a civilian be viewed through the lens of an objectively reasonable officer in the same circumstance.⁴⁸⁷ Given that the standards interpretation is based on facts, not law, civilian jurors - individuals who are not officers – are asked if they would find it reasonable to be scared just as the officer purportedly was when he pulled the trigger.

Under the “objectively reasonable” standard, U.S. courts examine the conduct of law enforcement officers “from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight.”⁴⁸⁸ International law is guided by the imperative of protecting the right to life—a supreme, nonderogable right—from arbitrary deprivation and permits only force that is necessary and proportionate.⁴⁸⁹ In contravention of international standards, the “objective reasonableness” standard does not require state agents to use the minimum amount of force necessary; to use force proportionate to the threat posed; to exhaust available, less-harmful force alternatives; or to deploy de-escalation tactics.⁴⁹⁰

In fact, internal use of force complaints made by civilians only have a 1-in-31 chance of being adjudicated by the police department, only 2% of all police involved killings result in criminal charges against the officer(s), and of those charged, only 1% will result in a conviction.⁴⁹¹ In the Committee’s List of Issues for the 5th Periodic Review, it was requested that the U.S. provide the Committee with updates on the policies, procedures, and intended legislation regarding the continued abuse of power by the Police.⁴⁹² Specifically, they requested the U.S. to comment on why there remain 9 states that have yet to implement laws regarding restrictions on an officer’s use of force.⁴⁹³

Issue 1 Recommendations

- Adopt federal and state legislation that limits use of force to “necessary and proportional” in compliance with U.N. standards.
- Issue an Executive Order directing all federal agencies to amend their use of force policies to conform with the U.N. Code of Conduct and Basic Principles.
- Incorporate international law on use of force into domestic jurisprudence.
- Require reporting of all incidents of use of force by all law enforcement agencies.
- Eliminate the doctrine of qualified immunity.
- Limit or prohibit the ability of an offending officer’s department or agency to conduct a review of the offending officer’s conduct in a use of force incident. Additionally, abolish the exceptions that allow officers to delay investigations into an incident.
- Require state and local law enforcement to pass legislation to eliminate the use of highly discretionary police stops that are susceptible to bias and the elimination of which pose a low risk to public safety.

⁴⁸⁵ MARIA PUGA, *The Killing of Anastasio Hernandez Rojas* 4 (Sept. 12, 2023).

⁴⁸⁶ *Id.*

⁴⁸⁷ *Use of Force Policy*, Dep’t of Just. (July 2022), <https://www.justice.gov/jm/1-16000-department-justice-policy-use-force>.

⁴⁸⁸ ALLIANCE SAN DIEGO, *Defending Human Dignity in California: Local Law Enforcement’s Ongoing Discrimination, Abuse, and Impunity*, 10; see also *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁴⁸⁹ S. BORDER CMTYS. COAL., *supra* note 410 at 9.

⁴⁹⁰ ALL SAN DIEGO, *supra* note 488 at 10.

⁴⁹¹ THE CTR. FOR VICTIMS OF TORTURE, *SUPRA* NOTE 482, AT 4.

⁴⁹² U.N. Hum. Rts. Comm., *supra* note 39

⁴⁹³ *Id.*

- Require state and local law enforcement to adopt legislation that prohibits the use of warrantless searches so that officers may not ask for “consent” or ask about probation, parole, or supervision status in order to justify a search without articulable facts establishing probable cause that a crime has been committed.

Recommended Questions:

- What steps does the government plan to take to investigate, study, or support new, non-securitized responses to people experiencing mental or behavioral health challenges?
- What is the government’s plan of action to improve reporting for deaths in custody and to fully comply with the Death in Custody Reporting Act of 2013?
- How has the United States worked to mainstream UN principles and guidance on the use of force in law enforcement, including the 2020 UN Guidance on Less-Lethal Weapons?

Reports Informing this Issue Include:

- The Center for Victims of Torture, *Shadow Report to the Fifth Periodic Report of the United States*
- Maria Puga, *The Killing of Anastasio Hernandez Rojas*.
- ACLU, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes*.
- Amnesty International, *United States of America: Submission to the Human Rights Committee*.
- Southern Border Communities Coalition, *Report for the 2023 Review of U.S. Compliance with the International Covenant on Civil and Political Rights*.
- Alliance San Diego: *Defending Dignity in California: Local Law Enforcement’s Ongoing Discrimination, Abuse and Impunity*

Issue 2: Death Penalty

While there has been some progress in the U.S. regarding the Death Penalty, the U.S. still remains one of the few countries in the world that utilizes the practice.⁴⁹⁴ While Juveniles can no longer be executed, the U.S. still has 2,414 individuals on death row and have executed more than 1,500 since 1970.⁴⁹⁵ Two specific issues are brought to light by Civil Society: the routine capital convictions of the innocent and the racial disparities that exist on death row, in direct contravention of Articles 6 and 7 of the ICCPR.

Since 1973, there have been 191 death row exonerations. While the U.S. maintains that “the criminal justice system is designed to minimize the risk of wrongful convictions,”⁴⁹⁶ 35 of the 191 exonerations came in the last 8 years with the average prison sentence being 24 years.⁴⁹⁷ While the federal government did place a ban on federal executions that lasted for 17 years, the Trump Administration lifted the moratorium in 2020. Over the 7 months that Trump remained in office, 13 individuals in federal prison were put to death.⁴⁹⁸ Nearly all the 13 who were executed had significant irregularities in their respective cases including discrimination, mental disability, intellectual disability, and inadequate representation.⁴⁹⁹

While it is estimated that nearly 13% of all current death row inmates are innocent, the largest disparity lies in race. Of the more than 2,000 individuals on death row, nearly 41% of them are Black – despite making up only

⁴⁹⁴ PRINCETON POL’Y ADVOC. CLINIC, *supra* note 341, at 16.

⁴⁹⁵ *Id.*

⁴⁹⁶ U.N. Hum. Rts. Comm., *supra* note 39 at ¶ 40.

⁴⁹⁷ THE WORLD COAL. AGAINST THE DEATH PENALTY, ET AL., *THE UNITED STATES’ COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: THE DEATH PENALTY* (Sept. 12, 2023).

⁴⁹⁸ AMNESTY INT’L, *supra* note 206, at 14.

⁴⁹⁹ *Id.*

14% of the U.S. population.⁵⁰⁰ Of those who have been executed since 1976, Black people account for 34%.⁵⁰¹ Further, Black people are nearly 20 times more likely to be sentenced to death in capital case where the decedent was white compared to their white counterparts where the decedent was Black.⁵⁰²

The Committee has requested that the U.S. provide more information regarding the racial and ethnic disparities that exist among the death row population as well as information pertaining to the methods used to execute individuals and the Biden Administration's stance on a federal moratorium on the death penalty.⁵⁰³

Issue 2 Recommendations

- Commute the sentences of all persons on federal death row.
- Abolish the death penalty for federal cases and replace it with new sentencing guidelines that are consistent, fair, and proportional to the offense in accordance with international law.
- Conduct a top-to-bottom review of the death penalty including pre-trial adjudication, jury selection, peremptory strikes, and sentencing.
- Require DNA testing in all capital offense prosecutions.
- Eliminate felony murder statutes.

Additional Considerations

Death by Incarceration: According to the latest Bureau of Justice Statistics (BJS) report, the number of deaths (3,853 prisoners) and mortality rate in US state prisons (330 deaths per 100,000 prisoners) in 2019 was at one of the highest levels since BJS started collecting data in 2001.⁵⁰⁴ Another report that analyzed over 500 U.S. jails from 2008 to 2019, there were more than 7,500 documented inmate deaths, with Black women being disproportionately affected.⁵⁰⁵ That report revealed a variety of intersecting factors leading to detainee deaths including lack of oversight, unenforceable standards for their operation or the healthcare they provide, and sicker inmate populations.⁵⁰⁶ Several empirical studies have found a clear and consistent relationship between rates of incarceration and adverse health outcomes for incarcerated people.⁵⁰⁷ The Committee stated that when States deprive individuals of their liberty, such as through imprisonment, they have a “heightened duty of care to take any necessary measures to protect the lives” of these individuals. But United States prisons are “death-making institutions” that create risks of fatal harm.⁵⁰⁸ This is why advocates have coined the term “death by incarceration” to reveal the reality that those serving these prison sentences are condemned to die, often prematurely in prison.⁵⁰⁹ These outcomes emerge as a result of a variety of conditions that characterize US prisons and are exacerbated by

⁵⁰⁰ THE WORLD COAL. AGAINST THE DEATH PENALTY, *supra* note 497, at ¶¶ 12, 15.

⁵⁰¹ *Id.* at ¶ 51.

⁵⁰² *Id.*

⁵⁰³ U.N. Hum. Rts. Comm., *supra* note 39 at 13.

⁵⁰⁴ E. Ann Carson, Bureau of Just. Statistics, Mortality in State and Federal Prisons, 2001-2019 – Statistical.

⁵⁰⁵ REUTERS, DYING INSIDE (2020), <https://www.reuters.com/investigates/special-report/usa-jails-deaths/> (“Blacks comprise less than 14% of the U.S. population, but at least 24% of the female victims identified by Reuters were Black.”).

⁵⁰⁶ HUMAN RIGHTS AT HOME LITIGATION CLINIC, RACISM, TORTURE, & DEATHS AT THE ST. LOUIS CITY JAIL 9.

⁵⁰⁷ Christopher Wildeman & Emily A. Wang, *Mass Incarceration, Public Health, and Widening Inequality and Widening Inequality in the USA*, 389 Lancet 1464, 1467-68 (2017); see Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 Ann. Rev. Socio., 291, 291, 295–96 (2015).

⁵⁰⁸ Keeanga-Yamahitta Taylor, *The Emerging Movement for Police and Prison Abolition*, New Yorker, May 7, 2021, <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition>

Advancing Public Health Interventions to Address Harms of the Carceral System, Am. Pub. Health Ass’n (Oct. 26, 2021), <https://www.apha.org/Policies-andAdvocacy/Public-Health-Policy-Statements/Policy->

⁵⁰⁹ ABOLITIONIST LAW CENTER, ET AL., *DEATH BY INCARCERATION IS TORTURE* 8.

deepening environmental and climate injustice: overcrowding⁵¹⁰, extreme temperatures⁵¹¹, inadequate sanitation procedures⁵¹², hard labor, and a lack of access to adequate physical and mental healthcare services for vulnerable populations.⁵¹³

Questions for the Committee:

What legal and policy measures are state and federal governments undertaking to eliminate death by incarceration sentences? For example, are governments retracting laws that impose life without parole, life with parole, “virtual life,” and other lengthy sentences, so as to comply with international obligations, including the prohibition on torture and CIDT and racial discrimination?

Additional Recommendations:

- The State Party should immediately improve the mechanisms for reporting and investigating any detainee deaths to ensure accountability.
- The State Party must take steps to thoroughly investigate all detainee deaths to adequately determine the cause and any parties involved, including correctional officers and other justice system workers.

Reports Informing this Issue Include:

- The World Coalition Against the Death Penalty, et al., *The United States’ Compliance with the International Covenant on Civil and Political Rights: The Death Penalty*.
- Amnesty International, *United States of America: Submission to the Human Rights Committee*.
- Abolitionist Law Center, et al., *Death By Incarceration Is Torture*.
- Human Rights at Home Litigation Clinic, *Racism, Torture, & Deaths at the St. Louis City Jail*

Issue 3: Juvenile Justice System

Today, more than 32,000 people reside in prison for crimes committed before they reached 18 years old.⁵¹⁴ Article 10 of the ICCPR requires that convicted children be separated from adults and treated in accordance with their age and legal status.⁵¹⁵ It further requires that Juveniles be treated in proportion with their age and legal status⁵¹⁶

These children are placed in adult prisons for their transgressions and, while in prison, are more than five times more likely to be physically and sexually assaulted and nine times more likely to commit suicide while incarcerated.⁵¹⁷ If the abuse they experience becomes so pervasive, prison officials are left with only one option: to place the child in solitary confinement. While in solitary, these children begin developing severe mental health issues after no more than 3 days in isolation. Further, nearly 10% of all adults in prison who were sentenced while

⁵¹⁰Paul S. Appelbaum, *Lost in the Crowd: Prison Mental Healthcare, Overcrowding, and the Courts*, 62 *Psychiatric Servs.* 1121, 1121–22 (2011).

⁵¹¹ Prison Policy https://www.prisonpolicy.org/blog/2022/04/20/environmental_injustice/.

⁵¹² Sharon Bernstein, *California Prison Inspection Uncovers Unsanitary Conditions*, Reuters, May 13, 2015, <https://www.reuters.com/article/us-usa-california-prisons/california-prison-inspection-uncovers-unsanitary-conditions-idUSKBN0NZ07D20150514>; Shannon Heffernan, *The Way Prisoners Flag Guard Abuse, Inadequate Health Care, and Unsanitary Conditions Is Broken*, ProPublica, Dec. 2, 2020, <https://www.propublica.org/article/the-way-prisoners-flag-guard-abuse-inadequate-health-care-and-unsanitary-conditions-isbroken>

⁵¹³ Tina Maschi et al, *Palliative and End-of Life Care in Prisons: A Content Analysis of the Literature*, 10 *Int’l J. Prisoner Health* 172, 188 (2014); Steve Belenko et al, *Treating Substance Use Disorders in the Criminal Justice System*, 15 *Current Psychiatry Reps.* 414, 416 (2013); Keri Blakinger, *Prisons Have a Health Care Issue – And It Starts at the Top*, Critics Say, The Marshall Project, July 1, 2021, <https://www.themarshallproject.org/2021/07/01/prisons-have-a-health-care-issue-and-it-starts-at-the-top-critics-say>;

⁵¹⁴ HUM. RTS. FOR KIDS, ICCPR SHADOW REPORT 3 (Sept. 12, 2023).

⁵¹⁵ ICCPR, *supra* note 8 at art. 10(2).

⁵¹⁶ ICCPR, *supra* note 8 at art. 10(3).

⁵¹⁷ HUM. RTS. FOR KIDS, *supra* note 514, at 3.

they were children are currently serving life sentences.⁵¹⁸ The racial disparities are stark with more than 60% of those sentenced as adults at 16 or 17 years old being Black.⁵¹⁹

However, the U.S. holds a reservation to article 10 stating that they reserve the right to treat children as adults in the criminal system.⁵²⁰ The Committee stated their concern with the treatment of Juveniles in prison in their 2014 concluding observations and requested that the U.S. abolish the use of solitary confinement for Juveniles entirely while making active efforts to separate Juveniles from adults in prison.⁵²¹ They have not, however, mentioned the status of Juveniles in their List of Issues Prior to Reporting.

Issue 3 Recommendations

- Implement new policies mandating the separation of Juveniles from adults in prison.
- Abolish the use of solitary confinement for Juveniles.
- Reconsider the sentences for all 35,000 prisoners sentenced before they reached the age of majority.

Additional Consideration

Juvenile Recruitment to the Military: The minimum age at which an individual may join the military is 17 years old.⁵²² Between the years of 2013 to 2015, more than 49,000 juveniles enlisted in the U.S. Armed Forces before their 18th birthday.⁵²³ This figure accounts for more than 6% of the total U.S. Armed Forces.⁵²⁴ In 2003 each branch of the armed forces adopted an “implementation plan” which basically precluded the deployment of persons aged under 18 outside US territory. Nevertheless, an army investigation revealed that, during 2003 and 2004, 62 soldiers were deployed in either Iraq or Afghanistan before their eighteenth birthday.⁵²⁵ Although prompt action was taken to rectify the situation, this illustrates the dangers inherent in a system which can allow even a small minority to be posted to operational units before their eighteenth birthday. A few further cases had been detected on enquiry in 2007, including the deployment of some seventeen-year-olds to what were classified as “hazardous duty pay” or “imminent danger pay” areas where they might be requested to perform inherently dangerous duties and may be at risk of indirect or direct participation in hostilities.⁵²⁶

Reports Informing this Issue Include:

- Human Rights for Kids, *ICCPR Shadow Report*.
- Conscience and Peace Tax International (CPTI), *Submission To The 139th Session Of The Human Rights Committee*.

Issue 4: Extraterritorial use of force and U.S. Counter-Terrorism

The U.S. has named itself the leader of the free world which means that the domestic policies it employs within its own borders have concrete human rights impacts because of the influence U.S. policies have on policies abroad.⁵²⁷ Some of these human rights impacts include heightened penalties, elimination of due process guarantees, and general restrictions on funding for civil society. The September 11th, 2001, attacks on the World

⁵¹⁸ *Id.* at 6.

⁵¹⁹ *Id.* at 7.

⁵²⁰ U.N. Treaty Collection, *Chapter IV Human Rights: Declaration and Reservations - United States* (Oct. 5, 1977), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

⁵²¹ U.N. HUM. RTS. COMM., *Concluding Observations*, ¶ 20, U.N. Doc. CCPR/C/USA/CO/4(2014).

⁵²² CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI), *SUBMISSION TO THE 139TH SESSION OF THE HUMAN RIGHTS COMMITTEE* 17.

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ *Id.* at 12.

⁵²⁶ *Id.*

⁵²⁷ CTR. FOR CONST. RTS., *GLOBAL CIVIL SOCIETY LETTER-US ICCPR REVIEW 1* (Sept. 2023).

Trade Center Twin Towers had far-reaching effects on how the U.S., and the world, views counter-terrorism efforts. Laws, practices, and policies around the world took inspiration from the U.S. Patriot Act which was passed just over a month after the Twin Towers attack. The U.S. Patriot Act allows U.S. intelligence and security agencies to “intercept telephone calls and emails from organizations and people allegedly involved in terrorism, without the need for any authorization from the courts, whether foreign or American.”⁵²⁸ As a result, U.S. “security policies and the fight against terrorism have been exported worldwide,” especially in the Global South.⁵²⁹

The UN Security Council adopted resolution 1373 after the September 11th attack which requires States to “criminalize terrorist activities, ban the financing of terrorists, and bring terrorists to justice.”⁵³⁰ Resolution 1373 forced Member States to enact national counter-terrorism legislation. Many Member States followed the enactment of these legislations with “counter-terrorism financing legislation and sanctions laws and frameworks in the name of fighting terrorism” since Resolution 1373 is connected with the implementation of Financial Action Task Force Standards.⁵³¹ While the aim of these types of legislation was to effectively fight against terrorism, in practice, they have been used against civil society as they are composed of “overly broad and ambiguous definitions of terrorism” and they operate in a way that “impinge[s] on the principles of legality, freedom of expression and opinion, freedom of thought, conscience and religion, freedom of association, and other fundamental rights and freedoms.”⁵³²

The U.S., in successive administrations, justified strikes in two ways: either as part of a “flawed” global war doctrine or for self-defense purposes, neither of which explains why it withholds “information regarding the legal and policy standards and criteria applied” when using lethal forces.⁵³³ Indeed, counter-terrorism efforts resulted in “significant loss of life.”⁵³⁴ At times, these efforts amounted to “extrajudicial killings” since the U.S. “asserts the right to target and deliberately kill members of particular groups or those believed to have an association with certain groups, including outside situations of recognized armed conflict.”⁵³⁵ These counter-terrorism efforts target civilians and non-civilians indiscriminately with the U.S. ignoring calls to “provide truth, justice, and reparation for past civilian killings.”⁵³⁶

The U.S. exerts extraterritorial force in violation of ICCPR Article 1 by imposing unilateral sanctions that deny countries like Iran the right to use its natural resources. These sanctions “prohibit investment in the oil and gas sector which can undermine exploration rights of the sanctioned governments.”⁵³⁷ The use and abuse of these sanctions have created humanitarian disasters in eighty-five countries with the U.S. rationale being that the sanctions are necessary “in the name of anti-terrorism.”⁵³⁸ U.S. anti-terrorism efforts abroad have directly killed almost one million people and displaced another thirty-eight million. While the sanctions have economic justifications, even if punitive, they also led to the delay or complete absence of life-saving treatment during the COVID-19 pandemic since the sanctions’ humanitarian exemptions were unsuccessful. In Syria, the impact of U.S. sanctions is that fifteen million out of approximately sixteen million Syrians require humanitarian aid.⁵³⁹

⁵²⁸ *Id.*

⁵²⁹ *Id.* at 2.

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ AMNESTY INT’L, *supra* note 206, at 11.

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ THE IRANIAN ELITE RSCH. CTR., THE REPORT OF THE IRANIAN ELITE RESEARCH CENTER FOR THE 139TH MEETING OF POLITICAL AND CIVIL RIGHTS COMMITTEE 4 (Sept. 2023).

⁵³⁸ *Id.*

⁵³⁹ *Id.* at 8.

The humanitarian crisis in Syria is exacerbated by U.S. sanctions which impact Syria's economy as well as recovery efforts from the pandemic.⁵⁴⁰

Many times, the U.S. justification for its actions is grounded in numerous emergency declarations for actions beyond its borders that do not necessarily pose actual threats to its national security.⁵⁴¹ The U.S. states emergency declarations through Presidential Executive Orders (E.O.s), most of which address threats beyond the U.S. border and target "Iran, Syria, North Korea, and Venezuela."⁵⁴² Since the U.S. levies its emergency declarations through E.O.s, it grants its executive a "wide latitude" which, "while domestically justified, often diverges from the stringent standards set by international instruments like the ICCPR."⁵⁴³

Issue 4 Recommendations:

- Disclose further legal and factual details about US policy and practices for so-called "targeted killings," "signature strikes," and "Terrorist Attack Disruption Strikes."
- Recognize the application of international human rights law to all U.S. counter-terrorism.
- End claims that the U.S. is authorized by international law to carry out intentional killings anywhere in the world under the "global war" theory.
- Bring U.S. policies and practices in line with its international human rights obligations.
- Strict adherence to humane principles in foreign policy.
- Recognize that U.S. interventions in other countries create causal links and directly negatively affect communities abroad.
- Enhance transparency in U.S. emergency declarations to ensure they meet international standards.
- Critically assess its criteria for emergency declarations, ensuring they resonate with Article 4 of the ICCPR's provisions.
- Institute robust checks and balances to monitor the President's powers, especially concerning emergency declarations and sanctions imposition since most emergency declarations relate to events or situations beyond its territorial limits.
- Augment transparency in its emergency declarations, aligning them with international benchmarks.
- Consistently inform pertinent international entities, including the UN Secretary-General and the Human Rights Committee, about its emergency declarations and their underlying rationale.
- Reevaluate its sanctions framework, ensuring it respects and upholds fundamental human rights, especially rights to due process and the presumption of innocence.
- Reexamine its stance on the ICCPR's domestic application, ensuring consistent adherence to its obligations both nationally and globally.
- Conduct oversight and monitoring of diplomatic assurances and repatriation and resettlement practices to ensure compliance with international human rights law.
- Provide effective remedies and redress, including adequate compensation and rehabilitation.
- Adopt a formal policy not to use, or defend the use of, evidence in any way tainted by torture in any proceeding for any purpose.

Reports Informing this Issue Include:

- Center for Constitutional Rights, *Global Civil Society Letter-US ICCPR Review*.
- Amnesty International, *United States of America: Submission to the Human Rights Committee*.

⁵⁴⁰ *Id.* at 8-9.

⁵⁴¹ JUST. FOR ALL INT'L, U.S. NON-COMPLIANCE WITH ITS OBLIGATIONS UNDER ARTICLE 4 OF THE ICCPR 2 (Sept. 2023).

⁵⁴² *Id.* at 4.

⁵⁴³ *Id.* at 16.

- The Iranian Elite Research Center, *The report of the Iranian Elite Research Center for the 139th meeting of Political and Civil Rights Committee*.
- Just for All International, *U.S. Non-Compliance with its Obligations Under Article 4 of the ICCPR*.
- Human Rights and Security Coalition, *Submission to the UN Human Rights Committee Review of the United States of America*.

Issue 5: Forced and Degrading Labor

The ICCPR prohibits subjecting persons to forced or compulsory labor.⁵⁴⁴ While Article 8 does allow individuals to be sentenced to hard labor as punishment for a crime, this exception does not strip individuals of other protections, such as the right to be free from cruel, inhuman, or degrading treatment.⁵⁴⁵ Recently passed legislation in Texas and the prison labor system force persons to perform forced and/or degrading labor, and result in violations of Articles 7 and 8 of the ICCPR.

Recent Texas legislation overrides mandatory water breaks for workers, with no exceptions (e.g., extreme temperatures).⁵⁴⁶ By subjecting workers to labor without access to water and shade/rest, the state of Texas is creating cruel and inhuman labor conditions that violate the rights of workers.⁵⁴⁷ Moreover, the long-term effects of degrading work conditions can impact worker's mental and physical health, lead to work-related accidents, and result in incapacities, disabilities, and death.⁵⁴⁸

Within U.S. prisons, incarcerated persons work in dangerous, degrading, and inhuman conditions for often just pennies per hour.⁵⁴⁹ Individuals who refuse to work, or are unable to, are threatened with punishment or solitary confinement.⁵⁵⁰ The ICCPR permits incarcerated persons to be subjected to hard labor; however, it does not permit labor that emulates chattel slavery. Nor does it permit worker exploitation or indifference to the "basic tenets of human dignity."⁵⁵¹

Issue 5 Recommendations:

- Mandate that the State of Texas recognize its obligations under the Texas Constitution, U.S. Constitution, and ICCPR, and swiftly revoke Bill 2127.
- Abolish the Thirteenth Amendment's exclusion that allows forced labor as a punishment for a crime and bring federal and state prison labor programs in line with the ICCPR.
- Adopt legislation providing all incarcerated workers with the same labor protections afforded to other U.S. workers, including minimum wage, overtime pay, health and safety standards, unionization, and protection from discrimination and retaliation.
- Ensure incarcerated workers who seek exemptions from assigned jobs due to illness, injury, disability, or other physical/mental considerations, are granted such exemptions.
- Expand and invest in prison work programs that provide incarcerated workers with marketable skills and training that will help them find employment after release.

Reports Informing this Issue Include:

- La Isla Network, *Preliminary Observations of La Isla Network on the Report and Country Situation in the United States*.

⁵⁴⁴ ICCPR, *supra* note 7, at art. 8.

⁵⁴⁵ ICCPR, *supra* note 7, at art. 7, 8.

⁵⁴⁶ LA ISLA NETWORK, *supra* note 444.

⁵⁴⁷ *Id.* at 2.

⁵⁴⁸ *Id.* at 1.

⁵⁴⁹ PRINCETON POL'Y ADVOC. CLINIC, *supra* note 341, at 20.

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

- ACLU, et al., *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes*.

Issue 6: Freedom from Torture

Article 7 of the ICCPR provides that every individual has the right to be free from torture and from cruel, inhuman, or degrading treatment or punishment. The U.S. violates this article by creating cruel conditions at jails and prisons, failing to safeguard the due process rights of those detained, and choosing to not hold state actors accountable.

An example is the treatment of detainees in Guantánamo Bay, Cuba, who are routinely denied the right of habeas corpus.⁵⁵² Some Guantánamo Bay detainees were “subjected to torture and/or enforced disappearance” before arriving at the naval base, without the opportunity for accountability or redress.⁵⁵³ Most detainees are subjected to torture and cruel, inhuman, or degrading treatment once at the naval facility and there are no plans for permanent closure of the facility.⁵⁵⁴ This means continual exposure to torture and cruel treatment for the thirty current detainees.

While Guantánamo Bay is an easily understood U.S. violation of Article 7, it is not the only one nor is it the only facility perpetrating human rights abuses. Detainees at the City of St. Louis, Missouri jail live “under the near-constant threat of torturous attacks by means of chemical agents, prolonged water shutoffs, and solitary confinement.”⁵⁵⁵ The use of chemical agents is a violation of Article 7. The jail’s correctional officers use chemical agents “reflexively and indifferently, in response to any disruption or perceived inconvenience.”⁵⁵⁶ This indiscriminate use of chemical agents is used even when correctional officers know that “detainees have asthma or are on suicide watch.”⁵⁵⁷ This chemical agent use is seen in Missouri, Florida, and Pennsylvania and is utilized torturously against detainees, most of whom are Black.⁵⁵⁸

The use of twenty-three- and twenty-four-hour lockdowns every day of the week constitutes degrading and inhuman treatment since inmates, during the brief window of respite they receive, must choose between “calling family, taking a shower, or exercising.”⁵⁵⁹ Access to showers correlates with the inherent dignity of each individual and is made even more difficult when the jail decides to shut off the water. Correctional officers strategically use water shut-offs with chemical agents to let detainees “marinate” in their cells for hours or days at a time.⁵⁶⁰ These water shut-offs are punitive in nature and violate detainees’ rights to “water, sanitation, an adequate standard of living, health, privacy, and rights to be free from torture, and discrimination.”⁵⁶¹

Individuals outside of detainment facilities do not fare much better. Anastasio Hernández Rojas was detained by Customs and Border Protection (CBP) on May 28, 2010.⁵⁶² He was assaulted by at least eight CBP and Immigration and Customs (ICE) agents who “punched, kicked, dragged, tasered, hogtied, and kneeled on Anastasio’s neck and body while at least nine additional agents (17 agents in total) and dozens of onlookers watched.”⁵⁶³ Anastasio was tasered several times before he lost consciousness. Agents continued to kneel down

⁵⁵² AMNESTY INT’L, *supra* note 206 at 9.

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ MARIA PUGA, *supra* note 414, at 8.

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.* at 9.

⁵⁵⁸ *Id.* at 3.

⁵⁵⁹ HUM. RTS. AT HOME LITIG. CLINIC, *supra* note at 506

⁵⁶⁰ *Id.* at 5.

⁵⁶¹ *Id.* at 6.

⁵⁶² *Id.* at 2.

⁵⁶³ *Id.* at 2.

on his back to restrain him even though he was already unconscious. Hernández Rojas was denied timely medical attention and died “after suffering a heart attack, cardiac arrest, and brain damage.”⁵⁶⁴

Although his death was ruled a homicide, and damning evidence in the form of two videos exists, the U.S. failed to hold the agents responsible accountable for Anastasio’s murder. The videos clearly show how CBP and ICE agents subjected Anastasio to torturous and inhuman treatment. In the thirteen years since Anastasio’s homicide, the U.S. repeatedly told his widow, Maria Puga, that it would not move forward with charges, denying his family justice.⁵⁶⁵

Issue 6 Recommendations:

- Immediately close Guantánamo and commit to the resolution of each detainee’s case in full, through their transfer and release without further delay and in accordance with international law.
- Immediately take steps to prohibit the torturous use of chemical agents on detained persons.
- Stop shutting off water to jail cells except in instances of mechanical failures or flooding of jail cells.
- Provide effective remedies and redress, including adequate compensation and rehabilitation.
- Quickly develop and implement a plan to provide comprehensive, trauma-informed, culturally competent medical care to detainees.
- Issue an Executive Order directing all federal agencies to amend their use of force policies to conform with the U.N. Code of Conduct and Basic Principles.
- Adopt federal and state legislation that limits the use of force to ‘necessary and proportional’ in compliance with U.N. standards.
- Issue an Executive Order directing all federal agencies to amend their policies and prohibit involvement in criminal use of force investigations of their own officers.
- Adopt legislation to protect the integrity of criminal investigations and end the concurrent jurisdiction of agencies to investigate their own officers in 6 U.S.C. 211(j)(3).

Additional Considerations

Solitary Confinement: Article 7 of the ICCPR recognizes prisoner’s rights from cruel, inhumane or degrading treatment and punishment.⁵⁶⁶ However, the U.S. government still imposes solitary confinement on those detained or imprisoned by the state, including juveniles.⁵⁶⁷ The U.S. government violates its own federal laws and fails to adequately protect individual’s right from cruel, inhumane and degrading punishment.

The U.S. government found 75,505 individuals in solitary confinement in prisons across the country, though some reports suggest that number could be more than 120,000.⁵⁶⁸ Of this figure, 41,000 to 48,000 individuals were in solitary confinement for 15 days or longer.⁵⁶⁹ Approximately 3.7% of these individuals were in solitary confinement for more than a decade.⁵⁷⁰ While only 33% of the sentenced population is Black, the U.S. government reported that 39% of those subjected to solitary confinement were Black as well.⁵⁷¹

The routine use of indefinite or long-term solitary confinement – often in wretched conditions – in US prisons, jails and detention centers, has never been addressed by congressional legislation and, when challenged in the

⁵⁶⁴ *Id.* at 4.

⁵⁶⁵ *Id.* at 4-5.

⁵⁶⁶ ICCPR, *supra* note 8, at art. 7.

⁵⁶⁷ PRINCETON POL’Y ADVOC. CLINIC, *supra* note 341, at 14; *See also* THE S. POVERTY L. CTR, *supra* note 5.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.*

courts, has been routinely dismissed.⁵⁷² Notwithstanding the concept of solitary being torture, the conditions within these units are often deplorable. IN one instance, the Court visited a local solitary unit and found that the cells were loud, filthy, and dilapidated, “often filled with the smell of burning paper and urine with what appears to be dried excrement on the walls.”⁵⁷³ Without a definition of torture applicable within the US that includes the physical and mental suffering inflicted by long-term solitary confinement and the imposition of solitary confinement on children and people with serious mental health needs – it never will be, and these widespread practices will continue unabated.

Further, federal law prohibits the use of solitary confinement of juveniles in the First Steps Act of 2018, but the federal government has not taken any steps to address the growing concern of its continued use throughout its prison system. The number of people in solitary confinement in the U.S. continues to grow, despite the U.S. government committing itself to mitigate its use.⁵⁷⁴ Solitary confinement has risen 29% in federal Bureau of Prisons since December 2015 and 11.5% under the Biden Administration.⁵⁷⁵

Additional Recommendations:

- End solitary confinement for all people, other than for periods of minutes or hours for emergency de-escalation.
- Implement alternative methods for addressing safety concerns in custody, such as conflict resolution and therapy.
- Require all correctional and detention facilities to collect and report data on the use of confinement, including their reasons for use, duration, conditions and demographics.
- Prohibit placement of people with serious mental health conditions in solitary confinement.
- Establish independent monitoring of state and federal facilities to assess the use of solitary confinement across all correctional and detention facilities.
- Pass the End Solitary Confinement Act⁵⁷⁶, which would ban solitary confinement with very limited exceptions, impose a 4-hour maximum for emergency situations and withhold some federal funds from state or local governments that fail to adopt similar measures.
- Adopt legislation providing a definition of torture that includes indefinite or long-term solitary confinement for more than 15 days and the imposition of solitary confinement on juveniles and persons with serious mental health needs within its scope and criminalize such conduct under domestic law when committed within the territory of the US.
- Incentivize state and local jurisdictions to reduce the use of solitary confinement through negative consideration in funding programs, and by providing funding, training and other resources for the development and implementation of effective alternatives.
- Increase funding to the Department of Justice to conduct investigations of solitary confinement practices and conditions in state and local jurisdictions, and to bring civil lawsuits for injunctive relief and criminal charges for violations of constitutional rights.

Reports Informing this Issue Include:

- ACLU, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes*.
- The Southern Poverty Law Center, *The United States of America’s Compliance with the International Covenant on Civil and Political Rights*.

⁵⁷² THE S. POVERTY L. CTR, *supra* note 5.

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ End Solitary Confinement Act, H.R. 4792 in the US House of Representatives (118th Congress).

- Amnesty International, *United States of America: Submission to the Human Rights Council*.
- Human Rights at Home Litigation Clinic, *Racism, Torture, & Deaths at the St. Louis City Jail*.
- ACLU, *United States' Compliance with the International Covenant on Civil and Political Rights*.
- Maria Puga, *The Killing of Anastasio Hernández Rojas-Exposing the Mechanics of Impunity and State Violence in the United States*.

Issue 7: Freedom from Arbitrary Detention – Guantanamo Bay

The Guantanamo Bay Detention Camp, now in its 22nd year, remains open, despite assurances by the Biden Administration to close the facility. Currently, there are thirty individuals held in detention – all Muslim men who have been detained for over fifteen years, in violation of Articles 9 and 26 of the ICCPR.⁵⁷⁷

In June 2023, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT) concluded that the current “ongoing cruel, inhuman, and degrading treatment...and may also meet the legal threshold for torture.”⁵⁷⁸ The SRCT documented unnecessary surveillance of detainees; use of force and restraints; inconsistent standard operating procedures and inadequate training of guards; inadequate physical and mental healthcare; detainees’ limited access to family members, including communication and visits; ongoing arbitrary detention; and Article 14 violations of fair trial and due process rights.⁵⁷⁹

Ammar al Baluchi is one of the thirty detainees remaining detained at Guantanamo Bay and his experience is representative of other detainees similarly situated at Guantanamo Bay. After being captured in Pakistan on April 29, 2003, Mr. al Baluchi was held incommunicado and tortured by the U.S. Central Intelligence Agency, including repeatedly banging his head against a wall, sleep deprivation, near-drowning, beatings, food deprivation, and stress positions.⁵⁸⁰ From this treatment, Mr. al Baluchi’s suffers from a myriad of severe ailments, including, but not limited to, multiple traumatic brain injuries, chronic pain, sleep disturbances, post-traumatic stress disorder, and depression with moderate-severe dysfunction.⁵⁸¹

Despite these diagnoses, the U.S. government has refused to provide Mr. al Baluchi with any comprehensive physical or psychological care.⁵⁸² Indeed, his medical status continues to decline precipitously, and neither the military commission nor U.S. federal courts have provided remedies in the form of medical care, review of arbitrary detention, or release.⁵⁸³ This experience is consistent with the findings of independent medical experts, former military personnel, and human rights organizations which have long documented deficiencies in the medical care of detainees.

Another one of the thirty detainees remaining is Abu Zubaydah, a stateless person. Along with Mr. al Baluchi, he is neither facing charges nor have been cleared for release.⁵⁸⁴ Because of this, they have been labeled as “forever prisoners.” Both detainees do not have access to procedural measures, and in the instance of Mr. Abu Zubaydah, the U.S District Court for the District Court of Columbia has yet to rule on motions for discovery by writ of habeas corpus.⁵⁸⁵

⁵⁷⁷ THE CTR. FOR VICTIMS OF TORTURE, *supra* note 482, at 4.

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ MIL. COMMS. DEF. ORG., SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE CONCERNING ONGOING DETENTION AND MILITARY COMMISSIONS INSTITUTED BY THE UNITED STATES AT GUANTANAMO BAY 14 (Sept. 12, 2023).

⁵⁸¹ *Id.* at 3-4.

⁵⁸² *Id.*

⁵⁸³ *Id.* at 14

⁵⁸⁴ HUM. RTS. IN PRACTICE, ET AL., *SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE CONCERNING ARBITRARY DETENTION & TORTURE BY THE UNITED STATES AGAINST DETAINEES AT GUANTANAMO BAY* 3-4.

⁵⁸⁵ *Id.*

The U.N. Working Group on Arbitrary Detention found in 2017 that there was no legal basis for Mr. al Baluchi's and Mr. Abu Zubaydah's continued detention at Guantanamo Bay, but the case against them has continued for more than 20 years and has been mired in fundamental fair trial and due process deficiencies.⁵⁸⁶ This experience is not uncommon among detainees at Guantanamo Bay: though detainees have the right to habeas corpus, the U.S. government regularly contests habeas petitions, including in cases of individuals that the government itself has cleared for release.⁵⁸⁷

Issue 7 Recommendations

- Pursue plea agreements with detainees the government is prosecuting or will prosecute.
- Quickly develop and implement a plan to provide comprehensive, trauma-informed, culturally competent medical care to detainees.
- Provide effective remedies and redress, including adequate compensations and rehabilitation, to detainees.
- Adopt a formal policy not to use, or defend the use of, evidence in any way tainted by torture in any proceeding for any purpose.

Reports Informing this Issue Include:

- Military Commissions Defense Organization, *Submission to the U.N. Human Rights Committee Concerning Ongoing Detention and Military Commissions Instituted by the United States at Guantanamo Bay*.
- The Center for Victims of Torture, *United States' Compliance with the International Covenant on Civil and Political Rights*.
- Human Rights In Practice, et al., *Submission to the UN Human Rights Committee Concerning Arbitrary Detention & Torture by the United States against Detainees at Guantanamo Bay*.

Issue 8: Racial Disparities in the Criminal Justice System

Racial disparities pervade the U.S. criminal justice system, with Black, brown, and indigenous communities experiencing far worse outcomes across the board than their white counterparts, a violation of the equal protection Articles 2 and 26 of the ICCPR provides.

For example, in California, data reveals that discriminatory practices take place at every level of police encounters, from who gets stopped, to who is searched, and who force is used against.⁵⁸⁸ Indeed, Black Californians are about three times more likely to be seriously injured, shot, or killed by the police relative to their share of the state's population.⁵⁸⁹ This trend is mirrored on a national scale, with Black people making up 24% of all victims of deadly police violence despite only being 13% of the U.S. population.⁵⁹⁰ To make matters worse, the vast majority of police who engage in deadly violence face no repercussions due to low legal standards that make police accountability exceedingly difficult to attain.⁵⁹¹

Even before being convicted of any crimes, Black and brown defendants receive disparate treatment by the judicial system, representing 43% of the pretrial detention population and receiving cash bail amounts that are, on average, twice as high as white defendants.⁵⁹² The "war on drugs" also continues to have an outsized impact

⁵⁸⁶ *Id* at 9-14.

⁵⁸⁷ THE CTR. FOR VICTIMS OF TORTURE, *supra* note 482, at 13.

⁵⁸⁸ ALL SAN DIEGO, *supra* note 488.

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.* at 8.

⁵⁹¹ *Id.*

⁵⁹² PRINCETON POL'Y ADVOC. CLINIC, *supra* note 341, at 12;

on Black and Latino communities, with Black people comprising 27% of all drug-related arrests and 38.8% of marijuana possession arrests in 2020, despite consuming drugs at rates similar to white people.⁵⁹³

Incarceration rates further reflect racial disparities in the criminal justice system, with Black people incarcerated at a rate three times higher than white people, and Latinx and Indigenous populations also experience markedly disproportionate punishment in the criminal justice system.⁵⁹⁴ In addition to overrepresentation of ethnic and racial minorities in detention, deeply discriminatory practices in charging and policing subject members of underrepresented racial groups to the most severe punishments available.⁵⁹⁵ More specifically, one out of seven people in prison are serving a life sentence, and nearly half of that group is Black.⁵⁹⁶

Once incarcerated, the unfair treatment continues, with Black people being far more likely to be held in solitary confinement and more likely to be placed on death row.⁵⁹⁷ In one particularly egregious example, the majority Black detainee population at the St. Louis, Missouri city jail have suffered from terrible conditions, living under the near-constant threat of torturous attacks by chemical agents, prolonged water shutoffs, and solitary confinement.⁵⁹⁸

Black, brown, and indigenous children are likewise not spared from disparate treatment by the U.S. criminal justice system. Every year, thousands of children, who are disproportionately children of color, are tried in the adult criminal justice system where their child status is deemed irrelevant. Children of color are sentenced to longer terms of imprisonment and receive more life sentences than white children.⁵⁹⁹ Even in schools, children of color make up a disproportionate number of school-related arrests by school resource officers.⁶⁰⁰

The damaging harms of incarceration extends to families and communities as well. Studies show that Black people are 50% more likely to have experienced familial incarceration than white people, and they are three times as likely to have had a family member incarcerated for a year or longer.⁶⁰¹ Research also shows that Black children are six times more likely than their white peers to have had a parent behind bars.⁶⁰² Children of incarcerated parents become more likely to face poor academic and health outcomes, while communities as a whole often experience greater distrust in law enforcement and dissolution of informal networks for averting local crime.⁶⁰³

These racial biases are being incorporated into new policing technologies as well, such as increasingly popular facial recognition software. This software has been shown to have a racial bias, with the rate of false positives higher for Black and Asian faces compared to white faces. In fact, numerous studies by independent researchers have identified disparities in false match rates by skin tone, race, and gender.⁶⁰⁴

Issue 8 Recommendations:

- The White House should push Congress, including the United States Senate, to pass the George Floyd Justice in Policing Act.
- President Biden should use his convening powers to bring renewed attention to the problem of excessive use of force by police and should allocate more resources to the Department of Justice to increase its

⁵⁹³ *Id.* at 10.

⁵⁹⁴ THE CTR. FOR VICTIMS OF TORTURE, *supra* note 482 at 7.

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.* at 14.

⁵⁹⁸ HUM. RTS. AT HOME LITIG. CLINIC, *supra* note 506.

⁵⁹⁹ HUM. RTS FOR KIDS, *supra* note 514 at 1, 4.

⁶⁰⁰ PRINCETON POL'Y ADVOC. CLINIC, *supra* note 341, at 13.

⁶⁰¹ THE CTR. FOR VICTIMS OF TORTURE, *supra* note 482 at 7.

⁶⁰² *Id.*

⁶⁰³ *Id.*

⁶⁰⁴ *Id.* at 4.

capacity to conduct pattern or practice investigations of police departments engaged in systemic racism as well as constitutional, civil and human rights violations.

- Commit to reducing the federal pretrial detention rate, which has increased 185% since 1983.
- End the use of solitary confinement, chemical agents, and water shutoffs as forms of discipline for inmates.
- Support the Federal Death Penalty Prohibition Act.
- Create and enhance federal grant initiatives for schools to hire more school social workers, mental health professionals, and other staff to support students, and implement alternative disciplinary models.
- End the permanent placement of police in schools and law enforcement involvement in student discipline.
- Legalize recreational marijuana at the federal level including adopting The MORE Act, which does so and includes reparative provision for the “war on drugs.”
- Decriminalize possession of drugs for personal use at the federal level.
- Implement a federal moratorium on the use of facial recognition technology by federal agencies and state or local recipients of federal funding.

Additional Considerations

Reparations for the Legacy of Chattel Slavery and State-Sanctioned Violence: The rights of racialized communities continue to be challenged in courts, including most recently in the Supreme Court overturning the protections of Affirmative Action.⁶⁰⁵ Black persons have faced limitations in acquiring generational wealth, such as through discriminatory practices from 1900-1997 that caused Black farmers to lose 98% of their land.⁶⁰⁶ Racial discriminatory practices continue in the areas of housing, education, healthcare, employment, and law enforcement, amongst others.⁶⁰⁷ Given the continued and systemic anti-Black racism that remains pervasive in the U.S., civil society calls on the U.S. to recognize the need for reparations.⁶⁰⁸ U.S. civil society also requests the Committee conduct a full and complete investigation into the assassinations, murders and political exiles of the following individuals: Eleanor Fagan (Billie Holiday), Martin Luther King Jr., Malcolm X, Fred Hampton Sr., Assata Olugbala Shakur, Emmett Louis Till.⁶⁰⁹

Additional Recommendations

- Pass into law H.Res.414, which recognizes that the U.S. has a moral and legal obligation to provide reparations for the enslavement of Africans and its lasting harm on the lives of millions of Black people.
- Pass into law H.Con.Res 44 and H.R. 40/S.40, which, respectively, urge for the establishment of a U.S. Commission on Truth, Racial Healing, and Transformation, and a Commission to Study and Develop Reparations Proposals for African-Americans.

Reports Informing this Issue Include:

- Amnesty Int’l, *United States of America Submission to the UN Human Rights Committee 139th session, 9 October - 3 November 2023* (2023).
- Women’s All Points Bulletin, *Blood At The Root: Violence By The State*, September 2023.
- ACLU, Princeton Policy Advocacy Clinic, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes*.

⁶⁰⁵ AMNESTY INT’L, *supra* note 206, at 16.

⁶⁰⁶ *Id.* at 17.

⁶⁰⁷ *Id.*

⁶⁰⁸ *Id.*

⁶⁰⁹ WOMEN’S ALL POINTS BULLETIN, *Blood At The Root: Violence By The State, Submission to the UN Human Rights Committee Reviewing the Fifth Periodic Report of the United States Under the International Covenant on Civil and Political Rights* (September 2023).

- Alliance San Diego, *Defending Human Dignity in California: Local Law Enforcement's Ongoing Discrimination, Abuse, and Impunity*.
- The Center for Victims of Torture, *United States' Compliance with the International Covenant on Civil and Political Rights*.
- Human Rights at Home Litigation Clinic, *Racism, Torture & Deaths at the St. Louis City Jail*.
- Human Rights for Kids, *UN Shadow Report: Violations of Children's Human Rights Under the International Covenant on Civil and Political Rights*.

Addendum*

Submitting Organizations	Link to Document
Abolitionist Law Center, Amistad Law Project, California Coalition for Women Prisoners, Center for Constitutional Rights, et. al.	View document
ACLU South Dakota, Black Hills Clean Water Alliance, Great Plains Tribal Chairman's Association and Lakota People's Law Project: Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Site	View document
ACLU, Parents Supporting Parents NY, The Advocates for Human Rights, Woodhull Freedom Foundation, Institute for Justice and Democracy in Haiti, et.al.	View document
Al-Haq, Addameer, Center for Constitutional Rights, Centro de Estudios Legals y Sociales, et. al	View document
Alliance San Diego	View document
American Civil Liberties Union and Princeton Policy Advocacy Clinic	View document
American Civil Liberties Union, Amnesty International, the International Association of Official Human Rights Agencies, et. al.	View document
Amnesty International	View document
Asian Law Caucus	View document
Blue Ocean Law, the American Civil Liberties Union - Puerto Rico, and the Center for Constitutional Rights	View document
Center for International Environmental Law and the Center for Constitutional Rights	View document
Center for Reproductive Rights and Abortion Care Network, Ancient Song Doula Services, Birthmark Doula Collective, Black Mamas Matter Alliance, et. al.	View document
Center for Reproductive Rights, Physicians For Human Rights, and RH Impact	View document
Center for Victims of Torture	View document
Center on Privacy & Technology at Georgetown Law and the International Justice Clinic at UC Irvine School of Law	View document

Children’s Rights, JMAC for Families, and Angela Olivia Burton, Esq	View document
Conscience and Peace Tax International	View document
Cornell Law School's Gender Justice Clinic	View document
Dream Defenders, Florida Rising, Power U, Novo Collegian Alliance, SURJ and Community Justice Project	View document
Equality Now, the ERA Coalition, Unchained at Last, the US End FGM.C Network, and the Alliance for Universal Digital Rights (AUDRI)	View document
Florida Action Committee (FAC)	View document
Food and Water Watch, Ctr for Const. Rights, Jackson community, PHRGE	View document
Global Justice Center, Amnesty International USA, Human Rights Watch, Ipas, Obstetricians for Reproductive Justice, RH Impact, and the State Innovation Exchange	View document
Haitian Bridge Alliance, the UndocuBlack Network, Cameroon Advocacy Network, Center for Constitutional Rights, National Immigrant Justice Center, et. al.	View document
Human Rights & Gender Justice Clinic, CUNY School of Law, Pregnancy Justice Clinic CUNY School of Law, If/WHEn/How, Pregnancy Justice, Center for Reproductive Rights, Birthmark Doula Collective, Changing Woman Initiative & We Testify	View document
Human Rights and Security Coalition	View document
Human Rights at Home Litigation Clinic and Roderick & Solange MacArthur Justice Center	View document
Human Rights Campaign	View document
Human Rights in Practice & UCLA Law Promise Institute for Human Rights	View document
Human Rights Watch, Southern Legal Counsel, Florida Health Justice Project, Equality Florida, and Southern Poverty Law Center	View document
HUY	View document
Indigenous Peoples and Nations Coalition (IPNC) and Koani Foundation	View document
Institute for Protection of Women's Rights (IPWR)	View document
Institute of Sustainable Development US	View document

International Association of Official Human Rights Agencies (IAOHRA) and Northeastern University School of Law Program on Human Rights and the Global Economy (PHRGE)	View document
International Foundation Witnesses Ashoora	View document
International Indian Treaty Council	View document
International Indigenous Truthing Working Group (California)	View document
International Probono Legal Services Association Limited (IPLSA)	View document
International Refugee Assistance Project	View document
Iranian Elite Research Center	View document
Justice for All International	View document
La Isla Network	View document
Lipan Apache Women Defence (LAWD) and International Organization for Self-Determination and Equality (IOSDE)	View document
Maria Puga	View document
Military Commissions Defense Organization	View document
Movement for Black Lives, Community Movement Builders, US Campaign for Palestinian Rights, Louisiana Bucket Brigade, Last Real Indians, and the Center for Constitutional Rights	View document
National Homelessness Law Center and the University of Miami School of Law Human Rights Clinic	View document
PEN America	View document
Physicians for Human Rights (PHR)	View document
Project South, University of Pennsylvania Law School Transnational Legal Clinic & University of Texas at Austin Immigration Clinic	View document
Puertorican Institute of International Relations and Clínica de Asistencia Legal from the Interamerican University Law School	View document
RENADDHH-CNDDHS	View document
Shadow report - Chief Gary Harrison	View document
Southern Border Communities Coalition (SBCC)	View document
Southern Center for Human Rights and University of Dayton Human Rights Center	View document
Southern Poverty Law Center	View document
Southern Poverty Law Center, Alabama Forward, and Florida Rising together	View document

The Advocates for Human Rights	View document
The Advocates for Human Rights and the State of Minnesota Missing and Murdered African American Women Task Force	View document
The Advocates for Human Rights, the Cornell Center on the Death Penalty Worldwide, and the World Coalition Against the Death Penalty	View document
The Carter Center	View document
The Leadership Conference on Civil and Human Rights	View document
U.S. Gender and Disability Justice Alliance, Women Enabled International, the Autistic Women & Nonbinary Network, and the Autistic People of Color Fund	View document
United Confederation of Taino People: Indigenous Peoples Alternative Report	View document
University of Miami School of Law Human Rights Clinic, the National Right to Food Community of Practice, WhyHunger, and West Virginia University's Center for Resilient Communities	View document
University of Miami School of Law's Human Rights Clinic, Human Rights Watch, Southern Legal Counsel, Florida Health Justice Project, et. al.	View document
Water Protector Legal Collective	View document
Winnemem Wintu Tribe	View document
Women's All Points Bulletin WAPB	View document

* This Summary of Shadow Reports does not include the four reports listed with an asterisk in the addendum. These groups encourage the Committee to refer to their original report and any subsequent submissions. The representatives of these reports kindly request that the Committee refer to all original submissions and those not included in this summer, which are included below:

- Chief Saleen Sisk and India Reed Bowers, B.A. LL.M, *Winnemen Wintu Tribe (Indigenous People) Submission*;
- International Indigenous Truthing Working Group (California), *Indigenous Peoples and Persons Report*;
- Dr. Margo Tamez, Ndé, and India Reed Bowers, B.A. LL.M., *Lipan Apache Women Defense (LAWD) and International Organization for Self-Determination & Equality (IOSDE) Indigenous Peoples & Persons Report*;
- International Indian Treaty Council, *Consolidated Indigenous Peoples Alternative Report for the United Nations Human Rights Committee Review of the United States Fourth Periodic Report*.