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SUMMARY RECORD OF THE HUMAN RIGHTS COMMITTEE'S 5TH PERIODIC REVIEW OF UNITED STATES REPORT ON COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Sarah A. Dávila et al.

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**SUMMARY RECORD OF THE HUMAN RIGHTS
COMMITTEE'S 5TH PERIODIC REVIEW OF
UNITED STATES REPORT ON COMPLIANCE
WITH THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS**

OCTOBER 17-18, 2023

**COMPILED BY THE INTERNATIONAL HUMAN
RIGHTS CLINIC AT UNIVERSITY OF ILLINOIS
CHICAGO SCHOOL OF LAW**

Submitted February 7, 2024

ABOUT THE AUTHORS

UIC LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC

The UIC Law School International Human Rights Clinic (IHRC) is a non-profit, non-partisan, law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC advocates for the protection of vulnerable communities across domestic courts, administrative agencies, and international and regional judicial and/or quasi-judicial bodies. The IHRC offers students a background in human rights advocacy through the practical experience of working on international human rights cases and projects.

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Executive Summary

The University of Illinois Chicago School of Law’s International Human Rights Clinic (IHRC) presents this unofficial summary of the record compiled after the Human Rights Committee’s Fifth Periodic Review of the United States’ compliance with its duties and obligations under the International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Committee (“Committee”) is the body of independent human rights experts that monitors implementation of the ICCPR by State Parties. State Parties submit reports one year after acceding to the ICCPR. Thereafter, all State Parties submit periodic reviews to the Committee every eight years per the Predictable Review Cycle adopted in the Committee’s 126TH Session in July 2019.¹

The United States of America (U.S.) signed the ICCPR in 1977 but did not ratify it until 1992.² With its instrument of ratification, the U.S. included several Reservations, Understandings, and Declarations (RUDs) concerning the U.S.’s understanding and applicability of certain articles within the ICCPR.³ The reservations restrict the applicability of the ICCPR to the right to free speech and association protected by the U.S. Constitution and to the U.S.’s ability to impose capital punishment on persons.⁴ They also state that the U.S. is bound by Article 7 only to the extent that cruel, inhuman, or degrading treatment or punishment is aligned with the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution.⁵ Finally, the reservations indicate that U.S. policy and practice generally support and comply with the ICCPR as long as the U.S. can treat juveniles as adults in the criminal justice system under exceptional circumstances.⁶ Underlying the U.S.’s RUDs is the general principle that federal law, the federal constitution, and all treaties made under the authority of the U.S are the “supreme Law of the Land.”⁷ However, unless a treaty is self-executing, it does not become effective as domestic law until legislation is enacted incorporating it as the law of the land.⁸

In October 2023, the Committee conducted its Fifth Periodic Review of the U.S. under the ICCPR. U.S. civil society organizations submitted shadow reports regarding a variety of issues to the Committee by September 12, 2023.⁹ These reports raised questions regarding race, ethnicity,

¹ *Reporting Procedure Human Rights Committee*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, www.ohchr.org/en/treaty-bodies/ccpr/reporting-procedure (last visited Nov. 11, 2023).

² *Ratification of 18 International Human Rights Treaties*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, indicators.ohchr.org/ (last visited Nov. 11, 2023).

³ See 138 CONG. REC. D186 (daily ed. April 2, 1992) (listing the U.S. reservations, declarations, and understandings to the International Covenant on Civil and Political Rights).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Article VI Supreme Law*, CONST. ANNOTATED, constitution.congress.gov/browse/article-6/clause-2/ (last visited Nov. 24, 2023).

⁸ *ArtII.S2.C2.1.4 Self-Executing and Non-Self-Executing Treaties*, LEGAL INFO. INST., www.law.cornell.edu/constitution-conan/article-2/section-2/clause-2/self-executing-and-non-self-executing-treaties (last visited Nov. 24, 2023).

⁹ A shadow report is a document prepared by a non-governmental organization (NGO) that discusses “omissions, deficiencies, or inaccuracies in the official government reports” prepared by State parties as part of a treaty’s review cycle. *Why Do Shadow Reporting?*, U.S. HUM. RTS. NETWORK (April 2007), www.njjn.org/uploads/digital-

gender, sexual orientation, legal status, socioeconomic status, liberty, privacy, freedom of expression, and political participation, among others.¹⁰ As part of the review process, the Committee examines the shadow reports (including the Summary of Shadow Reports¹¹), addresses its concerns through questions posed to the State party delegation, and issues recommendations to the State party in the form of “concluding observations.”¹²

The Committee began its review of the U.S. on September 26TH, 2023, via a virtual informal briefing¹³ during which members of civil society presented interventions.¹⁴ Following interventions, the Committee members conducted a “questions and answers” portion where members of civil society provided short, oral answers. After the meeting’s conclusion, civil society members also submitted written answers to the Committee’s questions. Once in Geneva, members of U.S. civil society had opportunities to present more interventions to the Committee. On October 12TH, the Committee held an in-person informal briefing at the Palais Wilson, where members of civil society raised issues of U.S. ICCPR non-compliance. Again, civil society members provided interventions, followed by questions from the Committee. During a brief answer period, civil society members either provided oral answers or expressed that they would submit written answers to the Committee shortly thereafter.

On October 13TH, 17TH, and 18TH, U.S. civil society had opportunities to meet with U.N. Special Procedures staff in the U.N. Motta building, during which a wide array of topics were discussed.¹⁵ On October 16TH, the Committee held a formal briefing¹⁶ with civil society at the Palais Wilson. At this time, the U.S. Department of State (“DOS”) hosted the ICCPR Consultation and Reception with members of civil society at the Mission of the U.S. in Geneva. The Consultation and Reception was intended to create dialogue between civil society and the DOS on issues of ICCPR

library/resource_492.pdf. Shadow reports are submitted to the monitoring body responsible for reviewing State compliance for a given treaty. *Id.*

¹⁰ These shadow report submissions are not representative of all the issues and problems people across the U.S. face due to its failure to fulfill its duties and obligations under the ICCPR.

¹¹ In July 2023, the Committee and U.N. Secretary requested civil society’s submission of a single report summarizing the issues raised in shadow report submissions. For prior ICCPR and other reviews, a summary of reports was prepared by the U.S. Human Rights Network.

¹² “Concluding observations refer both to positive aspects of a State’s implementation of the treaty and areas where the treaty body recommends that further action needs to be taken by the State.” *Human Rights Treaty Bodies: Glossary of Treaty Body Terminology*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., www2.ohchr.org/english/bodies/treaty/glossary.htm (last visited Nov. 24, 2023).

¹³ An informal briefing is a meeting held with civil society and Committee members to discuss concerns and issues with a State’s treaty compliance. Unlike a formal briefing, which is requested by the Committee and recorded to the U.N. official, an informal briefing is additional time granted by the Committee to members of civil society to provide further input, pose questions, and provide important testimonies and interventions that the Committee can consider prior to the formal briefing with the State.

¹⁴ An intervention is a statement made by a member of civil society and/or a directly impacted person that brings the Committee’s attention to ways in which the U.S. is failing to honor human rights and meet its obligations under the ICCPR.

¹⁵ Topics included voting rights, hate crimes, racial profiling, privacy, freedom of expression, women’s rights, sexual and reproductive health and rights, disability rights, LGBTQI+ rights, food and water rights, Indigenous rights and self-determination (including U.S. territories Puerto Rico and Guam), refugees, immigrants, and human trafficking.

¹⁶ See *supra* note 11.

compliance.¹⁷ A final informal briefing between the Committee and members of civil society took place on the morning October 17TH at the Palais des Nations.

The U.S. Review took place in Palais des Nations during the afternoon of October 17TH and the morning of October 18TH. The U.S. delegation was led by Michèle Taylor, the U.S. Ambassador to the U.N. Human Rights Council, and Justin Vail, Special Assistant to the President for Democracy and Civic Participation at The White House Domestic Policy Council. During review sessions, Committee members presented questions to the U.S. delegation, the delegation provided answers, and follow-up questions were posed by Committee members. The Committee requested that the U.S. provide a written response for questions they did not answer during review.

As a way to preserve the record of the 139TH Session of the United Nations Human Rights Committee and 5TH Review of the United States in relation to the ICCPR, and to provide a summary of informal and formal meetings, interventions, and submissions, the IHRC has produced this Summary of Record.

¹⁷ The DOS limited its invitation to select civil society members. Despite its authority to select the facility for hosting the event, the DOS cited limited availability of space at the U.S. Mission as the reason for its restrictive guest list. <https://geneva.usmission.gov/iccpr2023/>

I. INTRODUCTION

During the 139TH Session of the Human Rights Committee, the U.S. was questioned about its compliance with its obligations under the ICCPR.¹⁸ Committee Members Soh, Kran, Yigezu, Donders, Šurlan, Gómez Martínez, Tigroudja, Quezada Cabrera, Santos Pais, and Carazo each asked questions and provided comments regarding several issues. These included the ratification of the ICCPR's Optional Protocols and/or other treaties, domestic legal and institutional developments, withdrawal of U.S. RUD's,¹⁹ the implementation of the ICCPR at federal, state, and local levels, the ICCPR's scope of applicability, the establishment of a National Human Rights Institute (NHRI), nondiscrimination, violence against women, reproductive rights, children's rights, LGBTQIA+ rights, hate speech/hate crimes, human trafficking, voting rights, campaign funding, Indigenous rights, the right to privacy and protection against unlawful surveillance, the treatment of non-citizens, refugees, and asylees (including the Zero Tolerance Policy and detention without due process), the unchecked power of U.S. Customs and Border Protection (CBP), impacts of the "Muslim ban," forced labor and the nonimmigrant visa programs, family separation at the U.S.-Mexico border, the right to life (water access, environmental concerns, criminalization of homelessness and poverty, and the right to life of pregnant women), the treatment of persons deprived of liberty, racial disparities in the criminal justice system, excessive use of force, the death penalty and death by incarceration, solitary confinement, forced and degrading labor, freedom from torture, extraterritorial use of force, and the Guantánamo Bay facility. A summary of questions posed by Committee members and U.S. responses follows below.

This Summary of the Record is not meant to be a complete articulation of all the crucial conversations and events that took place throughout the Committee's Fifth Periodic Review of the U.S. under the ICCPR. Neither is this record a complete compilation of the issues presented by civil society both prior to and during the U.S. Review. Rather, this Record is meant to serve as an informational tool for directly impacted persons, organizations, and the public relating to the 5TH Periodic Review of the U.S. in relation of the ICCPR. This Record contains the questions the Committee asked the State party and the State Party responses, including the U.S. delegation's failure to provide a response(s) to questions posed by the Committee. The Summary of the Record also includes a summary of the Committee's Concluding Observations. For an overview of the issues raised by civil society prior to the review, please refer to Addendum A and the Summary of Shadow Reports submitted to the Committee.²⁰ For additional information on issues raised by civil society during the informal and formal briefings in Geneva, please refer to Addendum B-D.²¹

¹⁸ International Covenant on Civil and Political Rights, *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].

¹⁹ Reservations, Understandings, and Declarations (RUD's) are statements made by a country (state), typically in conjunction with its ratification of a treaty, where the country clarifies its understanding and/or interpretation of certain provisions in the treaty. Through a RUD, a country may limit its obligations under a treaty. For example, the United States interprets Article 20's prohibition of war propaganda and hate speech as not requiring it to enact legislation that would restrict freedom speech and freedom of association. *Status as of 19-11-2023, Chapter IV International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=_en (last visited Nov. 19, 2023).

²⁰ Sarah A. Dávila et al., *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* (UIC Law White Papers 2023). See also *infra* Addendum A.

²¹ For additional information on issues raised by civil society during the informal and formal briefings in Geneva, please refer to Addendum B-D.

II. 139TH SESSION OF THE COMMITTEE – 4050TH AND 4051ST MEETINGS

The 139TH Session of the Human Rights Committee commenced with opening remarks from The Honorable Ambassador Michèle Taylor, U.S. Ambassador to the U.N. Human Rights Council. Ambassador Taylor affirmed the U.S.’s continued commitment to meet its obligations under the ICCPR and to create a “more perfect union,”²² and stressed the importance of civil society to that process. Justin Vail, Special Assistant to the President for Democracy and Civic Participation at The White House, highlighted current initiatives to advance and protect human rights under the Biden-Harris Administration.

Following the opening remarks, Committee Member Soh echoed the importance of a vibrant civil society to a healthy democracy and to monitoring a State’s compliance with its human rights obligations.²³ Committee Member Soh noted that many U.S. actions exert an influence far beyond its borders, and that he therefore could not underscore enough the global significance of this review. Committee Member Soh stated that the ICCPR is a living instrument that does not operate in a vacuum, and international human rights law protects and promotes human rights worldwide. Committee Member Soh further explained that questions raised by the Committee during this review complement the Committee’s 2019 List of Issues,²⁴ and noted that the Committee would be expecting answers and updates to each question.

As an initial matter, Committee Member Soh inquired about the U.S. response to the Committee’s Concluding Observations from 2014.²⁵ Committee Member Soh specifically asked the U.S. delegation to provide additional information on issues that were insufficiently addressed in its report, including domestic violence and juvenile justice.²⁶ Committee Member Soh noted that, despite the State party’s strong support for the development of the Covenant, it had not ratified the ICCPR’s optional protocol to allow individual communications, nor the abolition of the death penalty.²⁷ He then asked when the U.S. would ratify the Optional Protocols to the ICCPR. Committee Member Soh also asked whether the U.S. would ratify the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), and other human rights

²² U.N. Office in Geneva - UNOG, *4050TH Meeting, 139TH Session, Human Right Committee (CCPR)*, UN Web TV (Oct. 17, 2023), media.un.org/en/asset/k1t/k1tu2vqwgo [hereinafter *4050TH Meeting*].

²³ *Id.*

²⁴ 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 (April 23, 2014) [hereinafter *Concluding Observations Fourth Periodic Report*].

²⁵ *Id.*

²⁶ See also *infra* Part II-B and Part II-H.

²⁷ See U.N. Hum. Rts. Comm., *List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America*, ¶ 1, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019) [hereinafter *LoI Fifth Periodic Report*] (listing as issue #1 the adoption of the ICCPR Optional Protocols).

treaties.²⁸ He further requested that the U.S. discuss any significant developments in its legal and institutional framework.²⁹

Committee Members Yigezu and Kran raised additional questions regarding the ICCPR's general applicability to the U.S., including the withdrawal of RUDs, the scope of applicability of the ICCPR to individuals outside U.S. territory, and the ICCPR's implementation in a U.S. Constitutional and legal framework.³⁰ Their questions and the U.S. responses follow below:

Question (Yigezu)³¹: *Can the State party please explain why the State party does not intend to categorically withdraw its reservation to Article 6(5)? The Committee has recommended to withdraw these reservations in the previous concluding observations. Could the State party please provide any updates or information on reviewing the reservations in the context of withdrawing them?*

The State party did not provide answers to this question.

Question (Kran)³²: *What steps has the State party taken to ensure that the Covenant is implemented as the supreme law of the land at the federal, state, local and territorial levels? How does the State party plan to address breaches of the Covenant by individual states and what steps will it take to improve the application of national laws at the federal, state, and local levels to ensure fulfilment of its Covenant obligations?*

The State party did not provide answers to this question.

Question (Kran)³³: *Can the State party share examples of any references to the Covenant in judicial decisions issued by federal and state courts and information about the training provided to judges and law enforcement officials to improve the application of the Covenant?*

The State party did not provide answers to this question.

Question (Kran)³⁴: *What steps is the State party taking to address concerns that it is evading its Covenant responsibilities by moving detainees outside of its territory, including to its ships and aircraft and sites under its control in foreign countries? How does the State party protect the rights of detainees in its overseas facilities? When is the State party planning to recognize the applicability of the Covenant to persons outside of its territory but subject to its jurisdiction?*

²⁸ The U.S. signed the ICESCR in 1977, CEDAW in 1980, CRC in 1995, and CRPD in 2009. It has, not, however ratified these treaties. Ratification of 18 International Human Rights Treaties, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, indicators.ohchr.org/ (last visited Nov. 19, 2023).

²⁹ See *LoI Fifth Periodic Report*, *supra* note 27 (listing as issue #2 the reporting of significant developments in the legal and institutional framework).

³⁰ *Id.* (listing the implementation of the ICCPR as domestic law at the federal, state, and local levels as issue #3, the ICCPR's scope of applicability as issue #4, and the withdrawal of U.S. RUD's as issue #5).

³¹ 4050TH Meeting, *supra* note 22.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

The State party did not provide answers to this question.

Committee's Concluding Observations:

For information regarding the Committee's observations regarding these questions, please refer to the Concluding Observations portion of Section A. National Human Rights Institute/Domestic Human Rights Framework.

National Human Rights Institute/Domestic Human Rights Framework

ESTABLISHING A NATIONAL HUMAN RIGHTS INSTITUTE (NHRI)

The issue of establishing an NHRI—or an alternative mechanism of coordinating human rights treaty compliance—was raised during the Committee’s fourth review and remains a concern of civil society.³⁵ The U.S. has no institutionalized federal infrastructure to support human rights education, monitoring, or implementation, to provide guidance on human rights and translate international standards into domestic practice, and to ensure that the rights of all individuals within U.S. territory are being respected, as required by Article 2 of the ICCPR.³⁶ Because there is no national human rights infrastructure, many state and local officials remain unaware of treaties ratified by the U.S. and their obligations with respect to treaty implementation.³⁷

During the 139TH Session of the Human Rights Committee, Committee Member Soh noted the continued lack of an NHRI in the U.S.³⁸ He stated that, in addition to recommendations by various UN bodies, he understands that civil society organizations and members of Congress recently urged the Biden-Harris Administration to establish a Presidential Commission to study the creation of an NHRI and initiate the process of establishing such an institution. Committee Member Soh then raised the following questions:

Question (Soh)³⁹: Please share what measures the State party is taking to create an NHRI, including any progress on the establishment of a recommended Presidential Commission.

Following the initial round of responses received from U.S. representatives on the first day of the Review, Committee Member Soh stated his surprise and disappointment regarding the lack of a U.S. response to both of his questions about the NHRI and to his other questions.⁴⁰ He conveyed his hope that the U.S. would provide additional answers during the second day of the Review or in writing.⁴¹ Committee Member Soh repeated his questions about the NHRI, the death penalty, domestic violence, and the U.S.’s positions on optional protocols and ratifications.

Question (Soh)⁴²: What measures has the State party taken to create an NHRI?⁴³

Justin Vail, Special Assistant to the President for Democracy and Civic Participation at The White House⁴⁴ stated that the U.S. is committed to effective domestic implementation of its obligations under human rights treaties to which it is a party. Per Special Assistant Vail, though the U.S. does not have an NHRI, it has multiple, complementary protections and mechanisms to

³⁵ Int’l Assoc. of Off. Hum. Rts. Agencies and Prog. on Hum. Rts. and the Glob. Econ., *U.S. Compliance with the International Covenant on Civil and Political Rights* 5 (Sept. 12, 2023) [hereinafter IAOHRA and PHRGE].

³⁶ ICCPR, *supra* note 18, at arts. 2, 26.

³⁷ *Id.* See also <https://nhriforusa.org/>

³⁸ 4050TH Meeting, *supra* note 22.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Committee Member Soh did not re-ask his specific questions. This point summarizes Committee Member Soh’s general statement and uses language from the initial NHRI question raised by Committee Member Soh.

⁴⁴ 4050TH Meeting, *supra* note 22.

reinforce its ability to guarantee respect for human rights. These include an independent judiciary at federal and state levels, and numerous state and local human rights institutions. He stated that the Biden-Harris Administration's domestic agenda reflects the U.S.'s commitment to the advancement and protection of human rights, by prioritizing the development and implementation of strategies and processes for all Americans. In particular, the U.S. is committed to providing underserved communities with an opportunity to inform U.S. policy-making processes. Per Special Assistant Vail, the U.S. welcomes continued dialogue about ways it can improve its domestic implementation of human rights treaty obligations. Special Assistant Vail further noted that the U.S. is aware of, and appreciates, recommendations from the Committee and civil society about the establishment of a federal NHRI. He stated that, to the extent that the President has the authority to establish such a body, the Administration will continue to take such recommendations under advisement.

Committee's Concluding Observations⁴⁵:

The Committee regretted a lack of advancement toward establishing an independent NHRI in accordance with principles upon which the promotion and protection of human rights are upheld (the Paris Principles).⁴⁶ As a matter of priority, the State party was urged to establish an independent NHRI following these principles.⁴⁷ The Committee also recommended the inclusion of a mandate ensuring implementation of the Covenant and monitoring compliance with its provisions at federal, state, local, and territorial levels.⁴⁸

⁴⁵ U.N. Hum. Rts. Comm., *Concluding Observations on the Fifth Periodic Report of the United States of America*, ¶¶ 6-7, U.N. Doc. CCPR/C/USA/CO/5 (Nov. 3, 2023) [hereinafter *Concluding Observations Fifth Periodic Report*].

⁴⁶ *Id.* ¶ 6.

⁴⁷ *Id.* ¶ 7.

⁴⁸ *Id.*

Non-Discrimination and Equal Rights of Men and Women⁴⁹

DISCRIMINATION AGAINST WOMEN

The ICCPR recognizes the equal protection of rights and the freedom from discrimination under Articles 2 and 26.⁵⁰ Article 3 further recognizes equality in the protection of civil and political rights, irrespective of gender.⁵¹ Where multiple forms of discrimination intersect, women face significant limitations to the rights guaranteed by the ICCPR.

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised the following question on this issue:

Question (Soh)⁵²: Could the State party provide an update on the Equal Rights Amendment?

The State party did not provide answers to this question.

Committee’s Concluding Observations⁵³:

The State has taken measures to advance gender equality but should increase its efforts to guarantee protection against sex and gender-based discrimination in its Constitution, such as including initiatives like the Equal Rights Amendment.⁵⁴ Additionally, the State should consider ratifying the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) and its Optional Protocol.⁵⁵

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. Second, 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.⁵⁶

During the 139TH Session of the Human Rights Committee, Committee Member Šurlan stated that equality between men and women, and violence against women, remain prevalent issues in the U.S.⁵⁷ Within this broad theme, Committee Member Šurlan noted that she would specifically focus on the issue of sexual violence against women in schools and in institutions of higher learning, as well as within the U.S. military.⁵⁸ Committee Member Šurlan welcomed the issuance of Executive Order 14021 and the establishment of the Interagency Taskforce on Sexual Violence

⁴⁹ The 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.

⁵⁰ ICCPR, *supra* note 18, at arts. 2, 26.

⁵¹ *Id.* at art. 3.

⁵² 4050TH Meeting, *supra* note 22.

⁵³ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 18-19.

⁵⁴ *Id.* ¶ 18.

⁵⁵ *Id.* ¶ 19.

⁵⁶ ICCPR, *supra* note 18, at arts. 2, 3, 26.

⁵⁷ 4050TH Meeting, *supra* note 22.

⁵⁸ The Committee’s 2019 List of Issues identified sexual violence against women in schools and the military as issue #10. *LoI Fifth Periodic Report, supra* note 27, ¶ 10.

in Education. Nonetheless, she expressed the Committee's concern with implementation of the Campus SaVE Act.

With regards to the issue of sexual violence against women in the military, Committee Member Šurlan noted the Committee's concern with reports of a culture that enables misogyny and diminishes the seriousness of sexual violence. She cited to reports indicating that female service members of the U.S. army are disproportionately sexually targeted compared with male service members. Nonetheless, Committee Member Šurlan did welcome the issuance of Executive Order 14103, which implemented important changes to the military justice system handling sexual assault cases. She cited this reform as the most welcome one within the U.S. system.

Committee Member Šurlan's specific questions, as well as the U.S. responses, follow below:

Question (Šurlan)⁵⁹: How will the State party ensure that colleges and universities are fulfilling their obligations to organize prevention programs for sexual violence?

Catherine Elizabeth Lhamon, Assistant Secretary, Office for Civil Rights, U.S. Department of Education ("DOE")⁶⁰ stated that the DOE's Safer Schools and Campuses Best Practices Clearinghouse offers extensive training and technical assistance for schools, school districts, and the public on preventing and responding to sexual violence and harassment.

Question (Šurlan)⁶¹: Given reports of an alarming number of sexual assault cases among educational institutions (where the student population tends to be young and living, in many cases, away from their hometowns and families), and since sexual violence can provoke numerous consequences, what measures have been taken to impose obligations on colleges and universities across the country regarding victim support and protection after an assault has occurred?

Catherine Elizabeth Lhamon, Assistant Secretary, U.S. Department of Education ("DOE")⁶² stated that the DOE aggressively enforces the law to ensure non-discrimination. As an example, Assistant Secretary Lhamon referenced an investigation from last year involving a medical school in Puerto Rico that had never investigated an allegation that one of its students had been raped while the student was in school. Per Assistant Secretary Lhamon, the DOE required the university to reimburse that student for courses she had to retake following her experience. Assistant Secretary Lhamon further stated that the DOE is carrying out hundreds of investigations into this topic, which she noted is an enormous priority.

Question (Šurlan)⁶³: What measures have been taken to prevent sexual violence within the U.S. military?

⁵⁹ 4050TH Meeting, *supra* note 22.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

Johnathan Smith, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (“DOJ”)⁶⁴ stated that the DOJ is committed to addressing sexual and gender-based violence and is using all its statutory authorities to pursue action. Deputy Assistant Attorney General Smith noted that the reauthorization of the Violence Against Women Act (“VAWA”) in 2022 provides critical resources and assistance, including funding, criminal and civil statutory enforcement authority, technical assistance, and training to providers across the country.

*Question (Šurlan)*⁶⁵: *What measures have been taken to change the reported culture of misogyny, with the aim of ensuring a safe working environment for women? What measures have been taken to encourage victims of sexual assault and other related offenses to report?*

Deborah Plunkett, Associate General Counsel, Office of the General Counsel, U.S. Department of Defense (“DOD”)⁶⁶ stated that sexual assault and sexual harassment remain persistent and coercive problems across the military’s total force. She noted that the Secretary of Defense, Lloyd Austin, had made countering these harmful behaviors a top-strategy goal for the military for this reason. Per Associate General Counsel Plunkett, the DOD set into motion the means to produce the cultural and organizational change required to improve accountability, prevention, culture and climate, and victim care and support. She stated that, since December 2021, the DOD had made progress on implementing historic reforms in this mission space. She specifically called attention to the DOD’s latest annual report on sexual assault in the military, noting that it highlights the DOD’s major implementation efforts, including readying the offices of Special Trial Counsel for independent military prosecutors who will, after December 27, 2023, decide in place of military commanders whether to prosecute allegations of sexual assault, domestic violence, and other certain serious offenses allegedly committed. Associate General Counsel Plunkett also pointed to other highlights of the DOD’s progress, including hiring, training, and empowering the prevention workforce and professionalizing and strengthening the sexual assault response workforce.

*Question (Šurlan)*⁶⁷: *Noting that retaliation appears in various forms, but that no retaliation cases were referred to trial at the military courts, what measures are taken to encourage victims of sexual violation and retaliation to continuously report such incidents?*

The State party did not provide answers to this question.

On the issue of violence against women, additional questions were raised by Committee Members Soh and Gómez Martínez.⁶⁸ Referring back to the Committee’s previous Concluding Observations, Committee Member Soh noted his concern that domestic violence continues to be prevalent and that racial and ethnic minority groups are disproportionately affected.⁶⁹ Additionally, Committee Member Gómez Martínez commented on the issues of female genital mutilation (“FGM”),

⁶⁴ *Id.*

⁶⁵ 4050TH Meeting, *supra* note 22.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Concluding Observations Fourth Periodic Report, supra* note 24, ¶ 16.

allowing marriage for persons under eighteen, and violence against women in detention facilities. Committee Member Soh’s and Committee Member Gómez Martínez’s specific questions, as well as the U.S. responses, follow below:

Question (Soh)⁷⁰: What measures has the State party taken after the last Review to prevent and combat domestic violence, particularly to ensure that law enforcement personnel respond appropriately, cases are effectively investigated, perpetrators are persecuted, prosecuted and sanctioned, and victims are provided with remedies and necessary services?

Finnuala Tessier, Attorney Advisor, Criminal Division, U.S. Department of Justice (“DOJ”)⁷¹ stated that, as part of the DOJ’s broader commitment to ending gender-based violence, the DOJ’s Office on Violence Against Women (“OVW”) has acted as a leader in its efforts to end violence against women, including Native women, members of the LGBTQIA+ community, women of color, and other marginalized and vulnerable populations. Attorney Advisor Tessier noted that the OVW provides technical assistance and administers federal grant programs through the Violence Against Women Act (“VAWA”), which was first passed in 1994 and most recently reauthorized in 2022. Per Attorney Advisor Tessier, the OVW has awarded more than \$9 billion in grants and cooperative agreements VAWA, including more than \$488 million and 750 grants in fiscal year 2022. Attorney Advisor Tessier added that these grants go to local, state, and tribal governments, courts, non-profit organizations, community-based organizations, and educational institutions. Moreover, as Attorney Advisor Tessier noted, the grants support survivors and holds offenders accountable by promoting a coordinated community response—including through direct services, crisis intervention, transitional housing, legal assistance to survivors, and training for law enforcement and courts.

Lynn Grosso, Deputy Assistant Secretary for Enforcement, Office of Fair Housing, U.S. Department of Housing and Urban Development (“HUD”)⁷² stated that she wished to comment on how the United States is ensuring that all people, particularly women, can avail themselves of protection from law enforcement and protections of the law when they are victims of domestic violence. Per Deputy Assistant Secretary Grosso, HUD uses its civil rights authorities, including the Fair Housing Act, to ensure that local governments do not pass ordinances that punish or restrict the rights of victims of violence as well as people with disabilities, particularly mental disabilities, to access assistance. Deputy Assistant Secretary Grosso noted that HUD had taken action particularly against the City of Hesperia, California to challenge the discriminatory effects of those types of laws against communities of color and communities of people with disabilities.

Demetria McCain, Principal Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (“HUD”)⁷³ stated that she would speak on the issue of serving survivors of domestic violence, including specific actions taken by HUD to avoid revictimization and additional trauma. Under the 2022 Violence Against Women (“VAWA”) reauthorization, HUD’s enforcement authority for survivors of domestic

⁷⁰ 4050TH Meeting, *supra* note 22.

⁷¹ *Id.*

⁷² 4050TH Meeting, *supra* note 22.

⁷³ U.N. Office in Geneva - UNOG, 4051ST Meeting, 139TH Session, Human Right Committee (CCPR), UN WEB TV (Oct. 18, 2023), <https://media.un.org/en/asset/k1e/k1e80otbb4> [hereinafter 4051ST Meeting].

violence is similar to its enforcement authority under the Fair Housing Act. She stated that survivors can lodge their complaints directly with HUD as it relates to their inability to move. Principal Deputy Assistant Secretary McCain further noted that survivors have a legal right to housing transfers when they are subsidized housing tenants, and HUD is there to ensure that those rights are adhered to. Since reauthorization of the VAWA in 2022, Principal Deputy Assistant Secretary McCain noted that HUD had heard from over 450 individuals who had contacted them about these issues, and that HUD had actually issued charges under the new authority that it now has.

Question (Gómez Martínez)⁷⁴: Please provide further information on the measures taken to address the high rates of violence against women, particularly low-income, Afro-descendent and Indigenous women and women in prisons or immigrant detention centers. Please comment on the fact that some states have no laws against female genital mutilation and that many allow marriages in cases where one or both partners are under 18 years of age. Does the State party provide any specialized training in this area to law enforcement officers or members of the judiciary? Are there specialized courts or judiciaries that try cases involving violence against women?

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, Office of Civil Rights and Civil Liberties, U.S. Department of Homeland Security (“DHS”)⁷⁵ replied that the overwhelming majority of those impacted by changes in immigration policy were people of color, and that DHS is committed to ensuring that all immigration benefits, including those for survivors and victims, are available, and that barriers are reduced. She stated that this is reflected in the implementation of the Racial Equity Executive Order and that discrete, but significant policy changes, have been made to expand access to immigration benefits, including the U visa for survivors and victims of crime, the T visa for victims of trafficking in persons and self-petitioner protection for those who had been abused by a spouse or relative. Per Officer Wadhia, DHS had also established the Council on Combating Gender-Based Violence which leads and supports DHS’s efforts on gender-based violence, including the establishment of victim-centered policies and confidentiality compliance with confidentiality protections for victims.

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁷⁶ clarified that the government is committed to prosecuting perpetrators of female genital mutilation and had brought three such prosecutions to date. She stated that in January 2021, President Biden passed the Stop Female Genital Mutilation Act that expands the punishable acts and provided millions of dollars in awards to assist front-line workers and victims. With respect to the question asked by Committee Member Gómez Martínez regarding state laws on marriage, she stated that VAWA requires the Attorney General, Merrick Garland, to report on conflicts between the marriage age in state laws and laws defining age-based sex offenses. Regarding law enforcement training and the sexual abuse of women in prisons, she noted that, under the Reauthorization Act of 2022, it was a strict liability crime for federal law enforcement officers to engage in sexual conduct with persons in federal custody. Per Attorney Advisor Tessier, senior DOJ officials issued a report in November 2022 with more than 50 recommendations for improving the DOJ’s response to sexual misconduct by Federal Bureau of Prison employees involving inmates, and the implementation of those

⁷⁴ 4050TH Meeting, *supra* note 22.

⁷⁵ *Id.*

⁷⁶ 4051ST Meeting, *supra* note 73.

recommendations was under way. She added that updated guidance had been released in May 2022 to help law enforcement agencies recognize and prevent gender bias when responding to incidents involving gender-based violence.

Committee's Concluding Observations⁷⁷:

The Committee recognized the State's efforts to prevent and combat violence against women and girls.⁷⁸ However, the Committee was still concerned with the persistence of violence against women, including domestic and sexual violence to those in minority groups and those with disabilities.⁷⁹ Additionally, the Committee was concerned with the prevalence of reports of sexual violence against women and girls in schools, institutions of higher education, and within the armed forces.⁸⁰ The Committee acknowledged the adoption of the Strengthening of Opposition to Female Genitalia Mutilation Act (Stop FGM Act), but was still concerned with reports indicating implementation of these laws has been slow and only some states have laws against FGM.⁸¹

The Committee recommended the State party should increase efforts to prevent, combat, and eradicate all forms of violence against women and girls by encouraging and facilitating the reporting of violence, providing a thorough and effective investigation, with appropriate prosecution and punishment, providing victims access to remedies and support services, strengthening training for law enforcement and legal professionals, implementing laws at all levels, and encouraging states to pass legislation prohibiting and criminalizing all forms of FGM.⁸²

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 in 2022 ruled to overturn precedent and eliminate the constitutional right to abortion.⁸³ The Court's decision in *Dobbs v. Jackson Women's Health Organization*⁸⁴ 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.⁸⁵ In addition, prosecutions for abortion and pregnancy outcomes violate Articles 2, 3, 9, 14, and 26.⁸⁶

During the 139TH Session of the Human Rights Committee, Committee Member Šurlan raised questions and concerns on the issue of maternal mortality, the termination of pregnancy, and reproductive rights.⁸⁷ Committee Member Šurlan noted receipt of reports expressing concern with

⁷⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 20, 21.

⁷⁸ *Id.* ¶ 20.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* ¶ 21 (a)–(f).

⁸³ 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).

⁸⁴ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

⁸⁵ ICCPR, *supra* note 18, at arts. 2, 3, 6, 7, 17, 26.

⁸⁶ *Id.* at arts. 2, 3, 9, 14, 26.

⁸⁷ *See LoI Fifth Periodic Report*, *supra* note 27, ¶ 12 (identifying maternal mortality and morbidity, termination of pregnancy, and access to reproductive care as issue #12). *See also 4050TH Meeting*, *supra* note 22.

the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*,⁸⁸ which the UN High Commissioner for Human Rights and many Special Procedures qualified as a major set-back after five decades of protection for sexual and reproductive health and rights in the U.S. through *Roe v. Wade*.⁸⁹ Committee Member Šurlan expressed that the decision acts as a regression of an existing right that will jeopardize women's health and life, particularly those with low incomes and those belonging to racial and ethnic minorities. Committee Member Šurlan further pointed to reports indicating that the *Dobbs* decision had been followed by state abortion bans and restrictions, including: the criminalization of abortion seekers and of anyone helping any pregnant individuals to seek an abortion, as well as healthcare professionals who facilitate abortions, the criminalization of interstate travel for abortion, and bans on abortion medication. She added that reports received also indicate that prosecutors are using digital data for surveillance of persons seeking or having performed abortion, and that exceptions to abortion bans are not clear and create confusion. Committee Member Šurlan stated that, because of these measures, health care personnel are afraid of providing abortion services, women, and other individuals seeking abortion care are afraid that doctors could report them.

Regarding maternal mortality and morbidity, Committee Member Šurlan noted receipt of information that the U.S. has the highest maternal mortality ratio amongst developed countries, with a disparate, disproportionate impact on low-income, Black and Indigenous women, Native Hawaiians, and other Pacific Islander people, among other reasons, due to a lack of obstructive providers and hospitals. Based on information received, Committee Member Šurlan also noted the Committee's concern with the criminalization of traditional midwifery practices in some states.

Committee Member Šurlan's specific questions, as well as the U.S. responses, follow below:

Question (Šurlan)⁹⁰: *What measures has the State party adopted or envisions to adopt to prevent the introduction of new bans and restrictions on access to abortion, to protect positive measures to ensure access to safe and legal abortion, and to ensure that abortion regulation does not run in a manner contrary to the State's duty to ensure that women and girls do not have to resort to unsafe abortions?*

Justin Vail, Special Assistant to the President for Democracy and Civic Participation at The White House⁹¹ reiterated the Biden-Harris Administration's deep commitment to protecting and advancing sexual and reproductive health and rights. Special Assistant Vail noted that the Supreme Court's *Dobbs* decision overturned nearly fifty years of precedent and eliminated a constitutional right that it had previously recognized. Per Special Assistant Vail, this has had an immediate and devastating impact on women's health and rights. Special Assistant Vail stated that the Biden-Harris Administration stands with most Americans who believe that the right to choose is fundamental and will continue calling for Congress to pass a law restoring the protections of *Roe v. Wade*.⁹² He further noted that President Biden had issued three executive orders directing a

⁸⁸ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

⁸⁹ *Roe v. Wade*, 410 U.S. 113 (1973).

⁹⁰ 4050TH Meeting, *supra* note 22.

⁹¹ *Id.*

⁹² *Roe v. Wade*, 410 U.S. 113 (1973).

comprehensive slate of actions to protect access to a full spectrum of reproductive health and care services, including abortion.

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)⁹³ stated that, in the wake of the *Dobbs* decision, the DOJ took several steps, including the creation of the Reproductive Rights Task Force, to formalize and fortify the DOJ’s ongoing work to protect reproductive freedom under federal law. He noted that the DOJ continues to monitor state laws and enforcement actions that threaten and infringe federal protections of reproductive rights. Moreover, Deputy Assistant Attorney General Smith stated that the DOJ will not hesitate to take legal action where appropriate, including by filing litigation to defend and protect federal reproductive rights. Per Deputy Assistant Attorney General Smith, one of the issues that is of key concern within the DOJ are actions that threaten the safety of individuals who seek access to reproductive healthcare. Deputy Assistant Attorney General Smith noted that, under federal law, it is unlawful to use violence, threats of violence, or property damage to block access to reproductive health services. He added that the DOJ has used their federal authority to bring dozens of cases against defendants across the country, including in Washington D.C., Tennessee, Michigan, and Florida. Deputy Assistant Attorney General Smith further noted that the DOJ has also conducted training with state and local partners on how they can use their authorities to protect reproductive rights.

Aaron Ford, Attorney General, State of Nevada⁹⁴ noted that the Supreme Court’s decision in *Dobbs v. Jackson* tore away the constitutional right to privacy and bodily autonomy. He added, however, that the decision did not institute a nationwide ban on abortion, and as a result, states have increased abilities to either limit or to protect women’s ability to get an abortion. Per Attorney General Ford, Nevada has chosen the latter approach and remains committed to protecting the right to reproductive health care. Attorney General Ford noted that, in 1990, Nevadans approved a constitutional amendment enshrining the right to an abortion until 24 weeks gestation in the state constitution and state statutes. He stated that the protection extends to all pregnant persons in the state, including minors. Attorney General Ford noted that there is currently a push to place a constitutional amendment on the ballot in Nevada that would ban abortion restrictions before fetal viability, which would ultimately be determined by physicians. In addition, Attorney General Ford stated that the right to an abortion in Nevada is not limited to Nevada residents, noting that Nevada will not aid another state in prosecuting an individual for seeking or obtaining an abortion and legal reproductive health care in Nevada. Per Attorney General Ford, in Nevada’s most recent legislative session earlier this year, a new state law was enacted to ensure that those seeking reproductive health care could not be extradited to a state for their actions in Nevada. Attorney General Ford added that, before this law’s passage, the governor had discretion; now, he no longer has that discretion. In addition, Attorney General Ford noted that, absent a valid Nevada subpoena, non-Nevada attorneys generally lack authority to require Nevada state agencies or Nevada physicians to provide any information pertaining to reproductive health care services. He clarified that this protection is available in addition to existing privacy protections for such information that exist in other laws. Attorney General Ford’s final note on this front was stating that his office is also involved in ongoing litigation meant to limit access to abortion nationwide. Along with twenty-three other attorney generals, Attorney General Ford said that he is working to stop efforts

⁹³ 4050TH Meeting, *supra* note 22.

⁹⁴ *Id.*

to ban the abortion drug mifepristone, which has been proven to be safe. Attorney General Ford stated that these efforts are the newest attempt by anti-abortion lobbyists to intrude upon personal health care decisions.

Question (Šurlan)⁹⁵: What measures has the State party adopted or envisions to adopt to ensure that medical service providers who assist pregnant women to undergo abortion are not criminally sanctioned?

The State party did not provide answers to this question.

Question (Šurlan)⁹⁶: What measures has the State party adopted or envisions to ensure that abortion seekers can travel to other states for abortion care and are not subjected to digital surveillance?

Jessica Swafford Marcella, Deputy Assistant Secretary, Office of Population Affairs, U.S. Department of Health and Human Services (“HHS”)⁹⁷ stated that the Office of Population Affairs, within the HHS, is responsible for administering the nation’s family planning program. She noted that the Office’s efforts and commitments are focused on providing access to sexual health, information and care, contraception, abortion, other reproductive health care, or maternal health. Deputy Assistant Secretary Marcella stated that she will focus her remarks on meaningful actions, specifically with respect to protecting privacy for patients and providers seeking essential reproductive health care—actions, she noted, were occurring in addition to other priorities that the HHS was focusing on to ensure access to accurate information, birth control, and stabilizing abortion care. Deputy Assistant Secretary Marcella noted that, in terms of protecting privacy rights, the HHS put out a new rule to prevent the weaponization of data and strengthen privacy protections for individuals, health care providers, and others who seek, obtain, provide, or facilitate lawful reproductive health care, including abortion. She added that, notably, this rule would prohibit most doctors and other health care providers, as well as health plans, from disclosing individual’s protected health information, including information related to reproductive health care under certain circumstances. She further noted that, as the HHS thinks of how to support people, her office has issued a “how-to” guide for consumers on steps they can take to better protect their data on personal cell phones or tablets, and when using mobile health apps, like period trackers, which are generally not protected under existing privacy protections under Health Insurance Portability and Accountability Act (HIPPA).

Question (Šurlan)⁹⁸: What specific strategies is the State party implementing to reduce maternal mortality and morbidity arising from unsafe abortion? What measures is the State taking to improve health care of all pregnant women, including those that belong to vulnerable groups?

Jessica Swafford Marcella, Deputy Assistant Secretary, U.S. Department of Health and Human Services (“HHS”)⁹⁹ stated that it is important to acknowledge that, as the nation faces a

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ 4050TH Meeting, *supra* note 22.

⁹⁹ *Id.*

claw-back of reproductive rights, women in the U.S., especially minority women, are dying from pregnancy-related causes before, during, and after childbirth at a higher rate than any other developed nation. Per Deputy Assistant Secretary Marcella, the Biden-Harris Administration is committed to cutting the rates of maternal mortality and morbidity, reducing the disparities in maternal health outcomes, and improving the overall experience of pregnancy birth and postpartum for people across the country. She noted that, in June of last year, on the same day as the *Dobbs* decision, the Biden-Harris Administration released the White House blueprint for addressing the maternal health crisis, a whole government strategy to combat maternal mortality and improve maternal and infant health, particularly in underserved communities. Deputy Assistant Secretary Marcella noted that the HHS has taken meaningful steps across five goals, which include: increasing access to and coverage of comprehensive high-quality maternal health services, including behavior health services; ensuring those giving birth are heard as decisions makers and accountable systems of care; advancing data collections, standardization, harmonization, transparency, and research; expanding and diversifying the prenatal work force; and strengthening the economic and social support for people before, during, and after pregnancy.

Aaron Ford, Attorney General, State of Nevada¹⁰⁰ noted that the state of Nevada has been taking significant actions to reduce maternal mortality and morbidity of women of color, particular Black women who have a higher rate of mortality and morbidity. He noted that the Nevada state legislature has created several programs that have been successful in doing that and the state is proud of the progress they are making. However, Attorney General Ford also noted that the state has a long way to go, and that it will continue working in that arena.

Question (Šurlan)¹⁰¹: *What measures is the State party taking to facilitate the practice of traditional midwifery, particularly in Black and Indigenous communities, including by removing obstructive licensing requirements?*

The State party did not provide an initial answer to this question.¹⁰²

Following the initial round of responses received from U.S. representatives, Committee Member Šurlan referenced reports stating that 60% of women who had abortions were already mothers, with 50% of them already having two or more children. Considering this information, Committee Member Šurlan raised the following additional questions:

Question (Šurlan)¹⁰³: *What remedies are in place for the families of pregnant women forced to carry pregnancies to term, even if it endangered their lives, or physical or mental health; and for women that had to undergo unsafe abortions that led to severe health problems or even death?*

The State party did not provide answers to this question.

¹⁰⁰ 4051ST Meeting, *supra* note 73.

¹⁰¹ 4050TH Meeting, *supra* note 22.

¹⁰² Committee Member Šurlan repeated her question concerning obstructive licensing requirements for the practice of midwifery twice during the 4050TH meeting. The U.S. did not respond to her question until the very end of the 4051ST meeting the following day. To avoid redundancies, the U.S. delegation's answer to this question is discussed in reference to Šurlan's second, repeated question *infra* page 18.

¹⁰³ 4050TH Meeting, *supra* note 22.

Question (Šurlan)¹⁰⁴: Is the State party planning to 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?

Jessica Swafford Marcella, Deputy Assistant Secretary, U.S. Department of Health and Human Services (“HHS”)¹⁰⁵ stated that she would provide additional information concerning the Biden-Harris Administration’s position on the Women’s Health Protection Act (“WHPA”). Deputy Assistant Secretary Marcella noted that, if passed by Congress, WHPA would establish a statutory right for health care professionals to provide abortion care and the right for their patients to receive care that is free from bans and medically unnecessary restrictions that single out abortion care. She added that, in July of 2022, the White House issued a statement of administration policy strongly supporting WHPA and urging Congress to advance this important bill with the utmost urgency that this moment demands.

Question (Šurlan)¹⁰⁶: Concerning Indigenous and Black midwifery practices, no answer was provided. Again—what will the U.S. do to protect Black, Indigenous, and other cultural reproductive rights in childbirth, including rolling back criminalization of cultural midwifery practices, and in particular, how will it move towards exception from licensure requirements for religious and cultural midwifery practices?

Aaron Ford, Attorney General, State of Nevada¹⁰⁷ noted that, in speaking to the issue of midwifery and doulas, improving health for mothers and babies is an urgent matter in Nevada, and that the state has made recent strides in increasing access to doula services. He noted that, in April of 2022, the Nevada state legislature implemented changes making doula services an approved provider type in the state for medical care. Attorney General Ford stated that Nevada Medicaid—which is a state program that provides medical care for very low-income Nevadans—is a primary source for half of Nevada’s suburbs. He added that Nevada Medicaid now allows for reimbursement for doula services at \$350 per pregnancy and up to \$450 for prenatal and antepartum cases. Attorney General Ford noted that his state’s hope is to see dramatic improvement in Nevada maternal health statistics, including mortality rates because of these policy and funding changes. Regarding midwives, Attorney General Ford stated that it is important to note that Nevada is desperately lacking fully integrated midwifery care and has not been able to create a licensing scheme to ensure public protections and funding for expectant persons who desire to utilize midwifery services. He added that certified nurse midwives are recognized under Nevada law, and that they are regulated by the State Board of Nursing and by its advanced force of registered nurses, who have all completed specialized training. Attorney General Ford stated, however, that the Nevada State Board of Nursing’s annual report reported that there were only ten certified nurse midwives in Nevada in the last year. He noted that there have been two recent legislative attempts to establish a licensing board for certified professional midwives, which is a new provider type that would allow for midwifery services to be covered by the state’s Medicaid reimbursement, but that those, unfortunately, have failed.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Adding to this discussion, Committee Member Tigroudja raised additional questions and concerns. Committee Member Tigroudja noted the position of the U.S. in recognizing the devastating effect of U.S. abortion law. However, Committee Member Tigroudja called attention to comments made about private life and the sharing of personal data. Committee Member Tigroudja stated that women have been deprived of safe and legal abortion services, which violates not only their right to private life but also their right to life, non-discrimination, and freedom from cruel and degrading treatment, as the Committee has emphasized in its jurisprudence of Article 6.¹⁰⁸ Committee Member Tigroudja also referred to reports received concerning prison sentences and fines for medical staff and individuals. She stated that reports note that in states such as Texas, the fine could be over one hundred thousand dollars and many decades of prison for medical staff. Committee Member Tigroudja's questions were as follows:

Question (Tigroudja)¹⁰⁹: *What tangible, precise measures have been taken by the State party since 2022 to bring U.S. regulations in line with the WHO 2022 abortion care guidelines, to remove all criminalization for women who use abortion, as well as relatives who help them and medical staff who help them?*

The State party did not provide answers to this question.

Question (Tigroudja)¹¹⁰: *Please provide information on persons who are the victims of discrimination because of abortion, and who are suffering psychologically from the Dobbs jurisprudence.*

The State party did not provide answers to this question.

Committee's Concluding Observations¹¹¹:

The Committee was deeply concerned with the increased maternal mortality and morbidity within the State party, which has the highest maternal mortality among developed countries and particularly affects women of vulnerable and minority groups.¹¹² Additionally, the Committee was concerned with the restriction ban, or even criminalization, of midwifery which limits the availability of culturally sensitive and respectful maternal healthcare.¹¹³

The Committee recommended the State should increase efforts to prevent and combat maternal mortality and morbidity and eliminate discrimination and disparities in sexual and reproductive rights.¹¹⁴ Further, the State should remove restrictive and discriminatory legal and practical barriers to midwifery care.¹¹⁵

¹⁰⁸ See *LoI Fifth Periodic Report*, *supra* note 27, ¶ 12 (noting that the Committee's interpretation of Article 6 requires that State parties refrain from regulation that can result in women or girls having to undergo unsafe abortions).

¹⁰⁹ *4050TH Meeting*, *supra* note 22.

¹¹⁰ *Id.*

¹¹¹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 26-29.

¹¹² *Id.* ¶ 26.

¹¹³ *Id.*

¹¹⁴ *Id.* ¶ 27.

¹¹⁵ *Id.*

The Committee welcomed information on various measures adopted at the Federal level to address “the immediate and devastating impact on women's health and rights” of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*.¹¹⁶ However, it was alarmed at the increase of legislation, barriers, and practices at the state level that criminalize those providing and/or seeking abortion care.¹¹⁷ The Committee was also deeply concerned with the travel restrictions to access medication for abortion and digital data use for prosecution purposes.¹¹⁸ Furthermore, the Committee expressed concern of the profound impact and burden these measures add to women and girls seeking an abortion, including the rights to life, privacy, and to not to be subject to cruel and degrading treatment, and in particular at the disproportionate impact on low-income women and girls, those from vulnerable groups, those living in rural areas, and those belonging to racial and ethnic minorities.¹¹⁹

In light of the Committee’s General Comment No. 36 (2018) on the right to life, the State party should take all necessary measures at the federal, state, local, and territorial levels to ensure that women and girls do not have to resort to unsafe abortions that may endanger their lives and health.¹²⁰ Specifically, the State party should provide legal, effective, safe, and confidential access to abortion for all women and girls without discrimination, violence, or coercion.¹²¹ The State party should also stop criminalization of abortion and appeal criminalizing laws, ensure professional secrecy of medical staff and patient confidentiality, remove barriers to abortion access, including interstate travel bans, and refrain from introducing new barriers, and continue efforts to guarantee and expand access to abortion medication.¹²²

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.¹²³ Specifically, LGBTQIA+ persons are victims of targeted violence, face barriers to health care, and experience unequal treatment under the law.¹²⁴

During the 139TH Session of the Human Rights Committee, Committee Donders noted receipt of reports discussing discriminatory practices in the U.S. against LGBTQIA+ persons.¹²⁵ Her questions, as well as the U.S. delegation’s responses, follow below:

¹¹⁶ *Id.* ¶ 28.

¹¹⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 28.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* ¶ 29.

¹²¹ *Id.* ¶ 29 (a)-(e).

¹²² *Id.*

¹²³ ICCPR, *supra* note 18, at arts. 2, 3, 26.

¹²⁴ 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).

¹²⁵ Issue #11 of the Committee’s 2019 List of Issues asks for information on the legislative and judicial protections in place for lesbian, gay, bisexual and transgender individuals who are victims of discriminatory practices in the U.S. See *LoI Fifth Periodic Report*, *supra* note 27, ¶ 28. See also 4050TH Meeting, *supra* note 22.

Question (Donders)¹²⁶: Because the Senate has not yet passed the Equality Act, the State party does not yet have comprehensive legislation that expressly prohibits discrimination based on sexual orientation and gender identity. Could the State party indicate why this has not yet happened? And whether it foresees adopting such a law in the near future?

Jessica Swafford Marcella, Deputy Assistant Secretary, U.S. Department of Health and Human Services (“HHS”)¹²⁷ stated that HHS has taken several actions to build on and further President Biden’s executive orders on preventing and combatting discrimination on the basis of gender identity and sexual orientation and advancing equality for lesbian, gay, bisexual, transgender, queer, and intersex individuals. In 2021, the HHS Office of Civil Rights announced it will interpret and enforce §1557 of the Title IX prohibitions on discrimination on the basis of sexual orientation and identity. In July 2023, HHS proposed a rule to affirm civil rights and equal opportunity for people nationwide in HHS-funded services. The proposed rule, if finalized, would help protect LGBTQI+ people from discrimination by clarifying and reaffirming the prohibition on discrimination on the basis of sexual orientation and identity. The proposed rule would confirm nondiscrimination protections in HHS programs, as well as in services and grants that provide aid to refugees, assistance with people experiencing homelessness, substance abuse treatment and prevention, community mental health services, maternal and child health services, and other community services. Deputy Assistant Secretary Marcella noted that the Biden-Harris Administration has taken steps to combat misinformation with respect to gender affirming care.

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)¹²⁸ answered an inquiry regarding the number of state laws that have restricted the rights of LGBTQIA+ individuals in the U.S., noting that the DOJ is committed to using its federal authorities to challenge such laws. In 2022, the DOJ issued letters to each of the 50 states’ respective attorneys general reminding them of their obligations to protect transgender youth against discrimination, including when gender-affirming care is sought. The DOJ has filed litigation against the states of Alabama, Arkansas, Kentucky, Oklahoma, and Tennessee for their laws that restrict or criminalize gender-affirming care for transgender minors. The DOJ has filed and supported litigation that permits transgender individuals to live in ways consistent with their gender-identity. Per Deputy Assistant Attorney General Smith, the DOJ is committed to using their authorities to combat violence against LGBTQI+ individuals.

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)¹²⁹ commented that regarding incoming inmates in the federal prison system who are transgender, guidance is issued by the DOJ’s Prison Transgender Council, which is a multidisciplinary team that meets on a regular basis to discuss the best placement options for transgender inmates and to offer advice and guidance to institutions. Redesignation may be assessed at any point during the incarceration period for the inmate. The Women and Special Populations branch is a source and point of contact on classification management and service provision for transgender inmates. The needs of an inmate who is transgender are evaluated with input from all departments involved. The inmate’s care should be solicited, and clinical needs assessed through psychology and health services.

¹²⁶ 4050TH Meeting, *supra* note 22.

¹²⁷ 4051ST Meeting, *supra* note 73.

¹²⁸ 4050TH Meeting, *supra* note 22.

¹²⁹ *Id.*

Question (Donders)¹³⁰: What steps is the federal government taking to ensure these laws are in full conformity with the ICCPR? What is the State party doing to combat root causes of discriminatory practices such as misinformation and bias about sexual orientation and gender identity?

The State party did not provide answers to this question.

Question (Donders)¹³¹: Could the State party indicate how it will ensure nondiscrimination for LGBTQIA+ persons, in particular transgender persons in housing and healthcare?

The State party did not provide answers to this question.

Question (Donders)¹³²: Which steps is the State party taking to investigate these acts of violence and hold perpetrators accountable?

The State party did not provide answers to this question.

Question (Donders)¹³³: Could the State party indicate how it ensures that educational facilities do not discriminate against transgender peoples and that complaints are properly investigated?

Catherine Elizabeth Lhamon, Assistant Secretary, U.S. Department of Education (“DOE”)¹³⁴ reaffirmed President Biden’s support for the Equality Act. Per Assistant Secretary Lhamon, the DOE resolved an investigation of a Wisconsin school district during summer 2023. The school district was found to have burdened a nonbinary student for their own harassment. The school limited the student’s access to school because other students had discriminated against them. The student was required to take all but three classes online because a teacher had determined that they could not protect the student from their classmates’ harassment. Per Assistant Secretary Lhamon, this is against the law. The investigation was resolved with a requirement that the school provide compensatory services, education, and therapy for the student, as well as update policy to ensure that no student faces similar discrimination in the future. In addition to cases and investigations, the DOE maintains a webpage with resources for LGBTQIA+ persons about their rights in schools to help school communities fully comply with the law.

Question (Donders)¹³⁵: How does the State party eliminate discrimination and tackle negative and stereotyped attitudes on sexual orientation and gender identity within its military forces? How does it ensure that complaints by victims are adequately dealt with?

The State party did not provide answers to this question.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ 4050TH Meeting, *supra* note 22.

¹³⁴ *Id.*

¹³⁵ *Id.*

Question (Donders)¹³⁶: *Does the State party have any plans to safeguard LGBTQIA+ individuals' access to books and other informational materials? Does the federal government plan to take any action to ensure that individual states fully comply with the Covenant's provisions on freedom of information?*

The State party did not provide answers to this question.

Committee's Concluding Observations¹³⁷:

The Committee was concerned with the increase of state legislation that severely restricts the rights of persons based on their sexual orientation or gender identity.¹³⁸ Additionally, the Committee was concerned with reports on the discriminatory treatment persons face based on their sexual orientation or gender identity.¹³⁹ The State party should adopt all measures necessary to ensure that state laws discriminating against persons based on their sexual orientation and gender identity are repealed.¹⁴⁰ The State party should also adopt comprehensive legislative initiatives prohibiting discrimination on those grounds.¹⁴¹ Furthermore, the State party should ensure that any act of discrimination, harassment, and violence is investigated, that perpetrators are brought to justice, and that victims are provided with effective remedies and redress.¹⁴²

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.¹⁴³ The U.S. child welfare system's often unnecessary disruptions to family integrity, especially to families living in poverty or Black and Indigenous communities, result in a direct violation of Articles 2 and 26.¹⁴⁴

While the Committee's 2019 List of Issues did not specifically reference discrimination based on age, this issue was nonetheless raised during the 139TH Session of the Human Rights Committee. Committee Members Quezada Cabrera and Yigezu specifically asked the following questions:

Question (Quezada Cabrera)¹⁴⁵: *What tangible measures has the State party taken to overcome racial disparities and discrimination against Afro-descendant and Indigenous families in the child protection system? What are the results of these measures? Has the State party planned to conduct a review of federal laws that affect the right of families to stay together, such as the Child Abuse Prevention and Enforcement Act and the Adoption and Safe Families Act?*

Michelle Brané, Executive Director, Family Reunification Task Force, Customs and Border Protection, U.S. Department of Homeland Security ("DHS")¹⁴⁶ noted that the United States

¹³⁶ 4051ST Meeting, *supra* note 73.

¹³⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 24-25

¹³⁸ *Id.* ¶ 24.

¹³⁹ *Id.*

¹⁴⁰ *Id.* ¶ 25.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ ICCPR, *supra* note 18, at art. 2.

¹⁴⁴ *Id.* at arts. 2, 26.

¹⁴⁵ 4050TH Meeting, *supra* note 22.

¹⁴⁶ *Id.*

Immigration and Customs Enforcement (ICE) and CBP have zero-tolerance policies on sexual abuse in immigration detention facilities. She stated that the Prison Rape Elimination Act regulations contain extensive requirements regarding training and the prevention, reporting, and investigation of sexual abuse. With respect to allegations of the forced sterilization of migrant women in detention, she noted that in September 2020, the DHS was informed by a whistle-blower complaint of forced medical procedures performed by an off-site provider serving women held at the Irwin County Detention Center. Per Executive Director Brané, ICE immediately stopped sending patients in its custody to that provider, an investigation was initiated by the Civil Rights and Civil Liberties Office and, in November 2020, ICE halted intakes of detainees for that facility, which was not currently in operation.

Question (Yigezu)¹⁴⁷: Reports before the Committee indicate that State party places unaccompanied migrant children in foster care in remote areas without having properly vetted the host families and that some of those children were subjected to labor exploitation and prevented from attending school. Can the State party clarify whether it intends to provide laws and regulations that further protect such children?

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)¹⁴⁸ responded by saying that the Office of Refugee Resettlement serves unaccompanied children through two distinct programs: the Unaccompanied Refugee Minors Program and the Unaccompanied Children’s Program. Per Executive Director Brané, the programs offer a comprehensive set of services, including out-of-home placement, case management, and educational, physical, and mental health support. She additionally noted that there is a Children’s Legal Fund program. Executive Director Brané added that the Department of Education and the Department of Justice recently published a fact sheet on access to education for unaccompanied children that highlighted specific challenges and available services.

Jessica Swafford Marcella, Deputy Assistant Secretary, U.S. Department of Health and Human Services (“HHS”)¹⁴⁹ noted that the Biden-Harris Administration is unequivocally committed to addressing the disproportionality and disparity in child welfare for Black, American Indian, Alaskan Native, Hispanic and Latino, other impacted people of color, LGBTQIA+, those who experience poverty, and other populations who have historically experienced disproportionate and disparate treatment in the U.S.’s child welfare system. Per Deputy Assistant Secretary Marcella, HHS has established four priority areas. The first focuses on the prevention of children coming into foster care in the first place. The second focuses on how HHS can support kin caregivers so that individuals can stay aligned with their families. The third focuses on ensuring that youth leave care strengthens relationships, holistic support, and other opportunities. The fourth focuses on developing and enhancing the Child Welfare Workforce. Per Deputy Assistant Secretary Marcella, HHS’s Office of Civil Rights relies on Title VI of the Civil Rights Act, Title IX of the Education Amendments, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and Title II of the American with Disabilities Act to maintain integrity and a holistic approach in considering child welfare.

¹⁴⁷ 4051ST Meeting, *supra* note 73.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Committee’s Concluding Observations¹⁵⁰:

The Committee was concerned with reports indicating a high number of children who are separated from their families and placed in child welfare facilities.¹⁵¹ Additionally, the Committee was concerned with the overrepresentation of children belonging to racial and ethnic minority groups in the child welfare system.¹⁵² The Committee was also concerned with reports of high levels of police presence in schools and harsh disciplinary practices in the school system.¹⁵³ Furthermore, the Committee was concerned that marriage to a person under the age of 18 years old is legally permitted in forty-one states.¹⁵⁴

The Committee recommended the State party adopt measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents, and review poverty-related circumstances or lack of financial resources as factors that can trigger child welfare interventions.¹⁵⁵ Additionally, the State party should take steps to end permanent placement of police in schools, law enforcement involvement in discipline, and discriminatory bias in administering student discipline.¹⁵⁶ The State party should further adopt measures at all levels in order to prohibit marriage under the age of 18 years.¹⁵⁷

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.¹⁵⁸ 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.¹⁵⁹

Committee Member Kran’s specific questions from the 139TH Session of the Human Rights Committee, as well as the U.S. delegation’s responses, follow below:

Question (Kran)¹⁶⁰: *What steps has the State party taken or plan to take to ensure accurate data collection on hate crimes and the measures adopted since 2021 to counter the sharp rise in hate-motivated violence?*

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)¹⁶¹ addressed the issue of hate crimes, saying that when Attorney General Merrick Garland talks to the public about hate crimes, he likes to remind them that the DOJ was founded in 1817 with the primary purpose of protecting the rights of free African Americans subjected to

¹⁵⁰ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 62-63.

¹⁵¹ *Id.* ¶ 62.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* ¶ 63.

¹⁵⁶ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 63.

¹⁵⁷ *Id.*

¹⁵⁸ *LoI Fifth Periodic Report, supra* note 27, ¶ 24.

¹⁵⁹ ICCPR, *supra* note 18, at arts. 2, 4.

¹⁶⁰ 4051ST Meeting, *supra* note 73.

¹⁶¹ *Id.*

the reign of terror by the Ku Klux Klan (“KKK”) and other white supremacists.¹⁶² Deputy Assistant Attorney General Smith acknowledged that 153 years after the founding of the DOJ, hate crimes, including white supremacy-based violence, remain far too prevalent and common throughout the country.¹⁶³ Deputy Assistant Attorney General Smith demonstrated the reality of that statement by speaking about the tragic killing of the Palestinian child in Illinois earlier that week.¹⁶⁴ Deputy Assistant Attorney General Smith said that the FBI recently released its hate crimes statistics for 2022, which showed the highest number of hate crimes in a generation.¹⁶⁵ Deputy Assistant Attorney General Smith told the Committee that the DOJ knew that the FBI statistics were severely undercounted because so many victims of hate crimes simply do not report the crime.¹⁶⁶ Deputy Assistant Attorney General Smith said that was why the first act the Attorney General took when he assumed office was to direct the DOJ to use all the tools in its arsenal to challenge acts of hate and discrimination wherever and whenever they occur.¹⁶⁷ Deputy Assistant Attorney General Smith then briefly spoke about what the DOJ has done, including the usage of its criminal prosecution authority to hold individuals who engage in unlawful acts of hate accountable.¹⁶⁸ Deputy Assistant Attorney General Smith recounted how a few weeks before the Review, the DOJ obtained the conviction of the individual responsible for the Tree of Life massacre in Pittsburgh, Pennsylvania.¹⁶⁹ Deputy Assistant Attorney General Smith said that the DOJ had also secured the conviction of the individual responsible for the massacre of Latino individuals in a Walmart in Texas.¹⁷⁰ Deputy Assistant Attorney General Smith said that the DOJ was prosecuting the individual responsible for the Tops Friendly Supermarket shooting in Buffalo, NY, as well as the three men who killed Ahmaud Arbery just because he was jogging in the wrong neighborhood.¹⁷¹ Deputy Assistant Attorney General Smith then acknowledged that prosecution alone will not solve or stop the spread of hate across country, which was why the DOJ was using its other tools, including combating hate incidents, which are non-criminal acts of hate, that occur in schools, workplaces, and communities to deter those incidents.¹⁷² Deputy Assistant Attorney General Smith finished by stating that the DOJ had also devoted ten million dollars to establish state hotlines to promote better reporting as well as providing training to the DOJ’s state and local partners.¹⁷³

*Question (Kran)*¹⁷⁴: *Are there any plans to enact laws prohibiting hate speech or to withdraw the State party’s reservation to Article 20 of the Covenant?*

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security (“DHS”)¹⁷⁵ addressed the issue of hate crimes, saying that domestic violence extremism poses the most lethal and persistent terrorism-related threats to the U.S. today, and that

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ 4051ST Meeting, *supra* note 73.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ 4051ST Meeting, *supra* note 73.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

the DHS Secretary had made identifying, addressing, and preventing domestic violence extremism a top priority.¹⁷⁶ Officer Wadhia explained that DHS’s Center for Prevention Programs and Partnerships (“CP3”) follows an evidence-informed, public health approach to prevention.¹⁷⁷ Officer Wadhia elaborated that the public health model is a multi-disciplinary one, developed and implemented locally by community partners to meet the unique needs, resources, and challenges of each community. Officer Wadhia noted that the DHS was heartbroken to see senseless acts of violence and hate, including against a 6 year old boy.¹⁷⁸ Officer Wadhia emphasized the DHS Secretary’s thinking that there is no humane world that can and should tolerate the death of an innocent child due of his identity.¹⁷⁹ Officer Wadhia finished by repeating what the DHS Secretary said about DHS condemning violence including, and especially, violence born of hate and reiterated DHS’s commitment to working every day to prevent such violence.¹⁸⁰

Demetria McCain, Principal Deputy Assistant Secretary, U.S. Department of Housing and Urban Development (“HUD”)¹⁸¹ explained that hate speech often precedes or includes hate-based behavior and that it was worth pausing to continue this conversation as it relates to the killing of this young six-year-old in Chicago at the hands of his landlord.¹⁸² Principal Deputy Assistant Secretary McCain explained that during the Biden-Harris Administration, even before the tragic killing of this child, the Administration and HUD had focused on making sure that the Fair Housing Act was being used to address national origin discrimination and religion discrimination both under the Act and under Title XI of the Civil Rights Act of 1964.¹⁸³ Principal Deputy Assistant Secretary McCain finished by saying that HUD has these tools to address its enforcement activity, including against a homeowner’s association which refused to sell to a tenant because of their national origin and religion and reiterated HUD’s commitment to battling such discrimination.¹⁸⁴

*Question (Kran)*¹⁸⁵: *What support, including mental health services, is available for victims and survivors of racially motivated hate crimes and do they have access to compensation?*

Johnathan Smith, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (“DOJ”)¹⁸⁶ said that, as most hate crimes were prosecuted at the local and state level, they fell outside the jurisdiction of the federal government. The Administration nonetheless recognized the need to address hate crimes and the impact they had both on individual victims and on the larger community that had been targeted. As hate crimes were often underreported, the Department of Justice conducted an annual hate crime victimization survey. The Office for Victims of Crime provided technical assistance and funding to state and local organizations that provided support to victims, including mental health support.

¹⁷⁶ *Id.*

¹⁷⁷ 4051ST Meeting, *supra* note 73.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ 4051ST Meeting, *supra* note 73.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

Committee’s Concluding Observations¹⁸⁷:

Although the State had taken notable steps to combat hate crimes, the Committee was still concerned with the persistence and under-reporting of hate crimes due to the voluntary nature of reporting to the Federal Bureau of Investigation.¹⁸⁸

The State party should consider withdrawing or narrowing its reservations of Article 20 of the Covenant and strengthen its efforts to combat hate crimes and hate speech.¹⁸⁹ Specifically, the State party should take measures to effectively prevent and publicly condemn hate speech, intensify actions to confront the prevalence of online hate speech, reinforce awareness campaigns for public officials and the general public to promote respect for human rights and diversity, implement and enforce effective legal and policy frameworks to combat hate crimes and provide effective training measures to those who address or investigate hate crimes, improve data collection for hate crimes, and thoroughly investigate and prosecute perpetrators with appropriate punishment and provide access to victims and their families to full reparation.¹⁹⁰

HUMAN TRAFFICKING AND SEXUAL EXPLOITATION

In its 2019 List of Issues, the Committee asks the U.S. to identify measures taken towards eliminating human trafficking.¹⁹¹ The 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.¹⁹²

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu questioned the U.S. about its obligations under the ICCPR to take preventative measures against human trafficking.¹⁹³ Committee Member Yigezu’s specific questions, as well as the U.S. responses, follow below:

Question (Yigezu)¹⁹⁴: *Please inform the Committee about measures taken to stop the criminalization of sex-trafficking victims and improve the early identification of victims to create a robust framework to end the cycle. What measures have been taken to ensure that all trafficking victims have adequate access to health care, education, employment opportunities, rehabilitation services and compensation? Does the State party plan to update laws and policies to ensure such benefits are available to such victims? What measures has the State party taken or plans to take to eliminate gaps in the law in order to improve its ability to prevent the use of artificial intelligence to create sexually explicit content that was then employed to extort or harass victims? What steps have been taken to address the inconsistencies across state laws that limit efforts to combat online sexual exploitation and abuse, including sex trafficking?*

¹⁸⁷ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 10-11.

¹⁸⁸ *Id.* ¶ 10.

¹⁸⁹ *Id.* ¶ 11.

¹⁹⁰ *Id.*

¹⁹¹ *LoI Fifth Periodic Report, supra* note 27, ¶ 18.

¹⁹² ICCPR, *supra* note 18, at arts. 2, 3, 7, 26.

¹⁹³ Issue #18 of the Committee’s 2019 List of Issues focuses on the elimination of slavery and servitude, which includes the elimination of human trafficking. *See LoI Fifth Periodic Report, supra* note 27, at ¶ 18. *See also 4051ST Meeting, supra* note 73.

¹⁹⁴ *4051ST Meeting, supra* note 73.

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)¹⁹⁵ made it clear that instances of human trafficking and forced labor remain far too prevalent in the United States. He stated that in December 2021, the President released a national action plan and, in 2022, the DOJ released a national strategy to combat human trafficking with a focus on prevention, prosecution and victim protection. Deputy Assistant Attorney General Smith noted that, under the national strategy, the DOJ has developed recommendations and best practices, including the creation of local and state level anti-human trafficking task forces supported by state law enforcement agencies. He added that this task force provides comprehensive victim assistance. Further, Deputy Assistant Attorney General Smith noted that the DOJ is also focused on coordinating labor trafficking investigations and prosecutions, as well as developing victim screening protocols to identify trafficking victims in law enforcement screenings. Per Deputy Assistant Attorney General Smith, in the 2022 fiscal year alone, the DOJ brought human trafficking charges against 310 individuals and obtained over 250 convictions. Also in 2022, the DOJ launched an interagency initiative to detect forced labor violations and prosecute the persons responsible for those violations.

Royce Bernstein Murray, Senior Counselor, Office of the Secretary of Homeland Security, U.S. Department of Homeland Security (“DHS”)¹⁹⁶ stated that in October 2021, the DHS directed components to implement a victim-centered approach into all policies, programs and activities involving interaction with victims of crime. Senior Counselor Murray also noted that Homeland Security Investigations issued a directive underscoring its personnel’s responsibility to identify and assist victims of crimes, and that the Center for Countering Human Trafficking launched a public website that provides all DHS anti-trafficking resources in one place. Per Senior Counselor Murray, United States Citizenship and Immigration Services released the first-ever stand-alone T visa resource guide to provide information to law enforcement and certifying agencies about how they should support victims of human trafficking during investigations and prosecutions. She added that the DHS had also requested an updated and comprehensive T visa policy guide for agency adjudicators to clarify requirements for T visa eligibility.

*Question (Yigezu)*¹⁹⁷: *Does the Government envisage full decriminalization of victims of sex trafficking?*

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)¹⁹⁸ responded by stating that human trafficking is a violation of federal law, but that it was important to note that the U.S. does not have a federal criminal statute regarding sex work, and it is entirely regulated at the state and local levels. He noted that the federal government nonetheless recognizes the importance of listening to victims and survivors of trafficking or abuse when developing law enforcement strategies. Per Deputy Assistant Attorney General Smith, the DOJ was not involved or engaging with individuals whose conduct violates federal law, and is committed to working with communities, as well as state and local state enforcement offices.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

Question (Yigezu)¹⁹⁹: Does the Government envisage full decriminalization of victims of sex trafficking?

Aaron Ford, Attorney General, State of Nevada²⁰⁰ noted that Nevada may be the only state to have decriminalized sex work. He stated that, as a matter of law, it is working to protect victims of sex trafficking from being treated as offenders.

Committee's Concluding Observations²⁰¹:

The Committee did not issue observations or recommendations for this issue.

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.²⁰²

During the 139TH Session of the Human Rights Committee, Committee Member Kran raised the following questions concerning discrimination based on disability:

The Committee welcomed any information on plans to support states' administration of secure and accessible elections in accordance with the Covenant.

Question (Kran)²⁰³: What measures are being taken for addressing the challenges faced by persons with accessibility issues?

The State party did not provide answers to this question.

Committee's Concluding Observations²⁰⁴:

The Committee did not issue observations or recommendations for this issue.

¹⁹⁹ 4051ST Meeting, *supra* note 73.

²⁰⁰ *Id.*

²⁰¹ *Concluding Observations Fifth Periodic Report, supra* note 45.

²⁰² ICCPR, *supra* note 18, at arts. 2, 3, 26.

²⁰³ 4051ST Meeting, *supra* note 73.

²⁰⁴ *Concluding Observations Fifth Periodic Report, supra* note 45.

Freedom of Expression, Assembly and Association, and the Right to Political Participation

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 the Covenant 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.²⁰⁵ In its 2014 Concluding Observations on the Fourth Periodic Review, 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.”²⁰⁶

On this issue, Committee Member Kran’s specific questions, as well as the U.S. responses, follow below:

Question (Kran)²⁰⁷: *The Committee wished to hear what efforts were being made to achieve individual states’ compliance with the Executive Order on Promoting Access to Voting.*

The State party did not provide answers to this question.

Question (Kran)²⁰⁸: *Does the State party intend to restore the full protections previously afforded by the Voting Rights Act of 1965?*

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)²⁰⁹ reiterated how fundamental the right to vote is for American democracy as it is the foundational right upon which all other rights are built upon.²¹⁰ While the Voting Rights Act (“VRA”) of 1965 is considered to be the “crown jewel” of the Civil Rights movement, the Supreme Court’s decision in *Shelby County v. Holder*²¹¹ has severely undermined the VRA. Deputy Assistant Attorney General Smith further stated that the DOJ was committed to using all of its available tools when addressing incidents and cases of voter intimidation, discrimination, and bias.²¹² Deputy Assistant Attorney General Smith mentioned two recent successful DOJ acts in proving to courts that racial gerrymandering was in effect in Texas and Alabama in violation of

²⁰⁵ 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.

²⁰⁶ *Concluding Observations Fourth Periodic Report*, *supra* note 24, ¶ 24.

²⁰⁷ *4051ST Meeting*, *supra* note 73.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Shelby County v. Holder*, 570 U.S. 529 (2013).

²¹² *4051ST Meeting*, *supra* note 73.

the VRA.²¹³ The DOJ has also addressed threats to election workers, poll workers, and other individuals that are “essential to the administration of our electoral system.”²¹⁴ Deputy Assistant Attorney General Smith finished by stating that while partnering with local and state entities has helped decrease threats to voting rights, the DOJ has repeatedly urged Congress to restore the VRA.²¹⁵ However, since Congress has not done so, Deputy Assistant Attorney General Smith emphasized that DOJ will use its authority under the VRA, the National Voter Registration Act, the Help America Vote Act, and any other authorities available to the DOJ to fulfill their mission of protecting voting rights.²¹⁶

Question (Kran)²¹⁷: *Are there any plans for improving voter education and offering election materials in languages other than English?*

The State party did not provide answers to this question.

Question (Kran)²¹⁸: *What action has been taken to prevent harassment and threats directed at election officials?*

The State party did not provide answers to this question.

Question (Kran)²¹⁹: *What mechanisms are in place to ensure that new electoral maps were not partisan or discriminatory and how many states have implemented laws to prevent gerrymandering?*

The State party did not provide answers to this question.

Question (Kran)²²⁰: *Are there any measures in place to secure compliance with article 25 of the Covenant by removing obstacles to voting faced by felons who had served their sentence and been released?*

The State party did not provide answers to this question.

Committee’s Concluding Observations²²¹:

The Committee noted particular concern regarding the increase of state legislative actions that limit the exercise of the right to vote, “inter alia, partisan gerrymandering, restrictions on voting by mail and on ballot collection, and burdensome voter identification requirements.”²²² Additionally, it expressed concern about the disproportionate effect of these actions on marginalized communities, including persons with low-income, with disabilities, and racial and

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ 4051ST Meeting, *supra* note 73.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 64.

²²² *Id.*

ethnic minorities.²²³ The Committee noted reported increases in harassment against election officials, persistent state felon disenfranchisement laws, and voting restoration procedures described as “lengthy and cumbersome.”²²⁴ The State was urged to comply with varied recommendations reflecting the Committee’s varied concerns to support accessible, equal, and fair voting.²²⁵

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.”²²⁶ 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.²²⁷ Moreover, these “anti-terror” measures adopted by federal and state agencies—including legislation, surveillance, and enactment of enforcement agencies—disproportionately impact communities of color.²²⁸

Committee Member Donders said that her first question concerned measures taken to ensure that broad anti-protest laws at the state level did not unjustifiably limit freedom of expression and freedom of assembly.

*Question (Donders)*²²⁹: *What measures and specific targets were in place for putting a stop to the excessive use of force by public and private actors against protesters, journalists, legal observers and paramedic teams?*

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)²³⁰ stated that the First Amendment of the U.S. Constitution guarantees the right of all people to peacefully assemble and to petition the government, which includes the right to protest. Deputy Assistant Attorney General Smith articulated that this right is critically important to the development of our democracy, which remains a work in progress. Deputy Assistant Attorney General Smith reaffirmed the government’s commitment to holding authorities in law enforcement accountable when they infringe on the rights of protestors. Deputy Assistant Attorney General Smith noted that the federal government has brought criminal investigations against police departments in Minneapolis, Louisville, and Portland, Oregon when they have engaged with practices that have infringed on the rights of protestors there.

Steven Reed, Mayor of City of Montgomery, Alabama²³¹ said that, with respect to freedom of assembly, there is general acknowledgement of the right for peaceful protest. Mayor Reed noted

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.* ¶ 65 (a)–(f).

²²⁶ ICCPR, *supra* note 18, at art. 21.

²²⁷ 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).

²²⁸ INT’L FOUND. OF WITNESSES ASHOORA, *Violence Caused by Xenophobia and Islamophobia* (2023).

²²⁹ 405^{1ST} Meeting, *supra* note 73.

²³⁰ *Id.*

²³¹ *Id.*

that mayors of American cities often view the excessive use of force to protests as coming from within the culture of the city’s public safety department. Mayor Reed stated that it is the responsibility of the mayor, the chief of law enforcement, and members of the community to build relationships to mitigate the need for force in response to protests. Mayor Reed noted that a lack of training can lead to the use of excessive force used during protests. Also, Mayor Reed said that the lack of discipline in law enforcement can lead to a “warrior” mentality, which must be changed to a “guardian” mentality to continue to mitigate the use of excessive force in response to protests. Mayor Reed stated that we must continue to invest in training and enforcement at the local level to minimize the excessive use of force as a response to peaceful protest.

Question (Donders)²³²: *The Committee reiterated its question about the need for the 1033 Program and the proportionality issues raised by the use of military equipment by law enforcement agencies during demonstrations. How does the State party ensure that counter-terrorism laws and laws on critical infrastructure are in full compliance with the Covenant and are not misused to suppress lawful political and other protests?*

The State party did not provide answers to this question.

Committee’s Concluding Observations²³³:

The Committee noted concern regarding an influx of legislation restricting the right to peaceful assembly and the function of anti-terrorism laws under which peaceful protestors (including anti-racism, environmental, and Indigenous activists) are prosecuted.²³⁴ Reports of excessive use of force, surveillance, arbitrary arrest, and mass detention during peaceful protests by law enforcement officers and private security personnel further concerned the Committee.²³⁵ The State party was urged to guarantee and protect the right of peaceful assembly by adhering to Article 21 of the ICCPR, conducting proper investigations for all excessive force, arbitrary arrest, and detention claims, and providing appropriate training to law enforcement officials regarding the right of peaceful assembly.²³⁶

ATTACKS ON PUBLIC EDUCATION

Article 19(2) of the ICCPR provides that “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.”²³⁷ 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, forty-five 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.²³⁸ In total, 135 million Americans live in a state where at least one educational gag order is in place.²³⁹

²³² *Id.*

²³³ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 60.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* ¶ 61 (a)-(c).

²³⁷ ICCPR, *supra* note 18, at art. 19.

²³⁸ PEN AMERICA, NO TITLE [INDIVIDUAL SUBMISSION] 2 (Sept. 12, 2023).

²³⁹ *Educational Gag Orders*, PEN AMERICA, <https://pen.org/report/educational-gag-orders/> (last visited Sept. 25, 2023).

On this issue, Committee Member Kran ’s specific questions, as well as the U.S. responses, follow below:

Question (Kran)²⁴⁰: *Since 2021, many states introduced bans on books and curricula on certain topics in schools, such as on people of African descent, LGBTQ individuals, sex, and sexuality. How will the U.S. ensure that individual states are applying measures and guidelines that result in better compliance with the Covenant? And how do you plan to safeguard LGBTQIA+ individuals’ access to informative books without undue restrictions?*

Catherine Elizabeth Lhamon, Assistant Secretary, U.S. Department of Education (“DOE”)²⁴¹ answered this question, stating that President Biden has been an outspoken leader on this issue. Assistant Secretary Lhamon said that President Biden’s position on book bans is that individuals cannot choose to learn what they want to know and not learn what they do not want to know. President Biden has been very clear that book bans harm students’ education and that, at his direction, the DOE has appointed a book ban coordinator, who works on Assistant Secretary Lhamon’s team, to coordinate efforts to address book bans throughout the nation. In August 2023, the DOE released guidance explaining the law and the racially discriminatory hostile environments that follow book bans. Assistant Secretary Lhamon said that the DOJ has been explicit in stating that federal law requires that communities ensure that hostile environments do not limit or deny students’ access to education. The DOE secured an agreement with a Georgia school after student testimony indicated that students believed they experienced a racially and sexually hostile environment related to the removal of books from their school libraries. Assistant Secretary Lhamon stated that the agreement requires that the district(s) follow federal law to ensure that hostile environments do not persist in their schools and assured that the DOE will continue to be vigilant to ensure that students have equal access to education.

Committee’s Concluding Observations²⁴²:

The Committee recommended the State implement efforts through which the protection of freedoms of opinion and expression could be supported, including an increase in efforts to ensure that educational materials and books are regulated by state laws and school districts in full compliance with Article 19 of the ICCPR.²⁴³

CAMPAIGN FINANCING²⁴⁴

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu raised the following questions concerning undue influence on federal and state elections in the United States²⁴⁵:

²⁴⁰ 4051ST Meeting, *supra* note 73.

²⁴¹ *Id.*

²⁴² *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 59.

²⁴³ *Id.* ¶ 59(d).

²⁴⁴ The authors of this report respectfully note that the issues in this summary record mirror the issues noted in the Summary of Shadow reports submitted to the Committee. However, in light of questions posed during the Fifth Periodic Review of the United States under the ICCPR, this report includes the addition of issue #4 under Theme C.

²⁴⁵ Issue #28 of the Committee’s 2019 List of Issues raises concerns about undue influence on the conduct of elections at the federal and state levels in the United States. *See LoI Fifth Periodic Report, supra* note 27, at ¶ 28. *See also 4051ST Meeting, supra* note 73.

Question (Yigezu)²⁴⁶: *In the light of the 2008 Supreme Court decision in Citizens United v. Federal Election Commission,*²⁴⁷ *which prohibited any law that placed a limit on campaign spending, what regulatory measures does the State party plan to adopt to ensure greater transparency and disclosure in the campaign funding provided by outside interest groups in order to prevent or limit their apparent undue influence on the conduct of elections in the State party?*

The State party did not provide answers to this question.

Question (Yigezu)²⁴⁸: *Does the State party intend to adopt the bill on the disclosure of campaign funding—the Democracy is Strengthened by Casting Light on Spending in Elections (“DISCLOSE”) Act?*

The State party did not provide answers to this question.

Committee’s Concluding Observations²⁴⁹:

The Committee emphasized that the disproportionality of campaign expenditures through outside spending, like advertisements and other communications, for which no disclosure of sources is required, allows for excessive influence of anonymous groups and individuals likely have in the election process.²⁵⁰ The Committee recommended the State ensure that campaign funding laws safeguard an equal right to participate in the conduct of public affairs, and support the free choice of voters through enacting legislation on campaign expenditure such as the DISCLOSE Act.²⁵¹

²⁴⁶ 4051ST Meeting, *supra* note 73.

²⁴⁷ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

²⁴⁸ *Id.*

²⁴⁹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 64.

²⁵⁰ *Id.*

²⁵¹ *Id.* ¶ 65.

Indigenous Rights²⁵²

SELF-DETERMINATION AND U.S. TERRITORIES AND DECOLONIZATION

Indigenous Peoples have faced the impact colonialism has in their communities. 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).²⁵³ 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].”²⁵⁴

On this issue, Committee Member Donders’ specific questions, as well as the U.S. responses, follow below:

Question (Donders)²⁵⁵: *How has the State party facilitated recognition of Indigenous Peoples at the federal level?*

Ann Marie Bledsoe Downes, Principal Deputy Solicitor for Indian Affairs, Office of the Solicitor, U.S. Department of the Interior (“DOI”)²⁵⁶ stated that the U.S. Constitution, treaties, statutes, and executive orders recognize American Indian and Alaska Native tribal nations as sovereign governments.²⁵⁷ Principal Deputy Solicitor Downes also noted that the Biden-Harris Administration has made commitments to respecting tribal sovereignty and self-governance to fulfill federal trust and treaty responsibilities the U.S. has to tribal nations.²⁵⁸ Principal Deputy Solicitor Downes identified regular, meaningful, and robust consultation as a cornerstone of policy. Principal Deputy Solicitor Downes recognized that the U.S. best serves Native people when tribal governments are empowered and when U.S. officials speak and listen to tribal leaders when formulating federal policies that affect tribal nations.²⁵⁹ In 2022, the DOI’s Office of Self-Governance distributed one billion dollars to over 287 tribes. This self-governance model is being expanded within the DOI and beyond, with the expansion reaching various programs of the Department of Agriculture.²⁶⁰ During the DOI’s 2022 tribal nation summit, seventeen federal agencies released a new best practices report with the aim of assisting federal field staff when

²⁵² The authors of this report respectfully note that this section mirrors the issues noted in the Summary of Shadow reports submitted to the Committee. Other issues presented to the Committee are discussed separately in the summary report prepared by the Indigenous Peoples. However, as this report is a summary of the 139TH session of the Human Rights Committee, all questions raised by the Committee, as well as U.S. delegation responses, are contained within this section.

²⁵³ ICCPR, *supra* note 18, at art. 1. *See also* G.A. Res. 61/295, U.N. Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

United Nations Declaration on the Rights of Indigenous Peoples

²⁵⁴ 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).

²⁵⁵ 405ST Meeting, *supra* note 73.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ 405ST Meeting, *supra* note 73.

integrating treaty considerations and reserve rights into agency decision-making processes.²⁶¹ Principal Deputy Solicitor Downes further stated that the best practices report was elaborated in consultation with tribal nations and implemented the agencies' memorandum of understanding regarding interagency coordination and collaboration for tribal treaty right protections.²⁶²

Question (Donders)²⁶³: *What has the State party done to ensure that permission for economic and development projects is subject to consultation and the free, prior, and informed consent of the affected communities?*

The State party did not provide answers to this question.

Question (Donders)²⁶⁴: *What measures are in place to enforce bilateral treaties with Indigenous Peoples?*

The State party did not provide answers to this question.

Question (Donders)²⁶⁵: *How does the State party promote cooperation between tribes and law enforcement agencies? What kind of training is given to law enforcement officials who worked with victims and their families?*

Heidi Todacheene, Senior Advisor, Office of the Assistant Secretary for Indian Affairs, U.S. Department of the Interior (“DOI”)²⁶⁶ further addressed the issue of Missing and Murdered Indigenous Peoples as well as the human trafficking issue by stating that President Biden has set policies based on trust relationships between the U.S. and the 574 federally recognized tribes to promote tribal self-governance.²⁶⁷ Senior Advisor Todacheene continued that on May 5TH, 2022, the Secretary of the Interior, Deb Haaland, and the Attorney General, Merrick Garland, announced the Not Invisible Act Commission, which is comprised of tribal leaders, victims, survivors, and family members of Missing and Murdered Indigenous persons, tribal leaders, federal partners, and service providers, among others.²⁶⁸ The purpose of this Commission was to provide recommendations to Congress and provide best practices for state, federal, and tribal enforcement.²⁶⁹ Additionally, Senior Advisor Todacheene stated that the Secretary of the Interior established a Missing and Murdered Unit (“MMU”) within the Bureau of Indian Affairs which has marshalled law enforcement resources to focus on the issues of Missing and Murdered Indigenous Peoples and human trafficking.²⁷⁰ Senior Advisor Todacheene stated that the U.S. has expanded voting access and resources to all American voters, especially in Indian country.²⁷¹ The efforts in Indian country came as a result of the implementation of Executive Order 14019, titled “Executive

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ 4051ST Meeting, *supra* note 73.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

Order on Promoting Access to Voting.”²⁷² The DOI became the first federal agency to designate a voter registration agency in Kansas and New Mexico to bolster voting resources, ensure access to voting, access to voting information for Indigenous communities through state laws.²⁷³

Question (Donders)²⁷⁴: *What steps has the State party taken to address the root causes of violence against Indigenous women?*

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)²⁷⁵ said that, regarding violence directed at Indigenous persons, the Office on Violence Against Women provided culturally responsive services to foster healing for victims of violence in Indigenous communities, especially in remote areas with little access to law enforcement or medical services. It had awarded almost forty million in grants to help tribes respond to domestic violence, sexual assault, stalking, sex trafficking, to support survivor safety, and to develop educational and prevention strategies. Under the 2022 reauthorization of the Violence Against Women Act, tribal authority over non-Indian offenders had been expanded for crimes of violence against women and children, sex trafficking and stalking.

Question (Donders)²⁷⁶: *Specific information on efforts to make real progress in combating violence against Indigenous women would be welcome.*

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)²⁷⁷ addressed violence against Indigenous persons and stated that the Biden-Harris Administration considered this issue as one of “very high priority.”²⁷⁸ Attorney Advisor Tessier mentioned President Biden’s November 15, 2021 Executive Order 14053 titled “Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People,” as well as the White House declaration of May 5TH, 2022 as Missing or Murdered Indigenous Persons Awareness Day.²⁷⁹ An interagency effort by the Departments of Justice, the Interior, and Health and Human Services released a comprehensive law enforcement strategy providing for the effective and efficient administration of criminal investigations.²⁸⁰ The strategy included an agreement between the Federal Bureau of Investigation (“FBI”) and the Department of the Interior which required that all law enforcement officers, including tribal enforcement officers, receive trauma-informed and culturally responsive training. Additionally, the DOJ’s Office of Violence Against Women administers grant programs specifically designed for tribes, tribal communities, and tribal organizations.²⁸¹

²⁷² 4051ST Meeting, *supra* note 73.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ 4051ST Meeting, *supra* note 73.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

Question (Donders)²⁸²: *What measures are being taken to give victims and their families access to justice, information and legal aid?*

The State party did not provide answers to this question.

Question (Donders)²⁸³: *Have there been any efforts to establish study, truth or reconciliation commissions or other initiatives to address the legacies of colonialism and slavery?*

The State party did not provide answers to this question.

Committee Member Donders requested specific examples of instances in which the State party's laws and policies on Indigenous rights had had a decisive impact on the ground. In particular, she wished to know:

Question (Donders)²⁸⁴: *What has the State party done to protect Indigenous Peoples' rights, including their right to peaceful protest, in relation to the proposed police training center referred to as "Cop City," the Dakota Access Pipeline, and the Black Hills?*

The State party did not provide answers to this question.

Question (Donders)²⁸⁵: *Is training on the proportionate use of force for law enforcement officers compulsory and has any data been collected to evaluate its impact?*

The State party did not provide answers to this question.

Committee's Concluding Observations²⁸⁶:

Regarding these issues, the Committee acknowledged the State party's efforts regarding Indigenous Peoples, noting the Presidential Memorandum of 2021 titled "Tribal consultation and strengthening nation-to-nation relationships."²⁸⁷ However, it remained concerned about the obstacles non-federally recognized communities face, including those which prevent recognition in the first place.²⁸⁸

The Committee expressed that the State party should facilitate recognition of Indigenous Peoples across the board, including efforts to properly promote and protect Indigenous Peoples' rights.²⁸⁹ It highlighted rights associated with their land, territory, and natural resources.²⁹⁰

On the issue of self-determination, the Committee regrets that the State party did not provide sufficient information regarding the implementation of the Covenant on its territorial possessions

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ 4051ST Meeting, *supra* note 73.

²⁸⁵ *Id.*

²⁸⁶ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 66-67

²⁸⁷ *Id.* ¶ 66.

²⁸⁸ *Id.*

²⁸⁹ *Id.* ¶ 67.

²⁹⁰ *Id.*

of Guam, Puerto Rico, American Samoa, United States Virgin Islands, and the Northern Mariana Islands.²⁹¹ It was also concerned about the State party’s restrictive view on Indigenous Peoples’ right to free, prior, and informed consent as well as its failure in ensuring timely and meaningful consultation Indigenous communities.²⁹²

The Committee expressed that the State party should increase efforts to honor treaties between itself and Indigenous Peoples while ensuring stronger meaningful consultation mechanisms with Indigenous Peoples.²⁹³ These consultations must be executed in good faith, with the active and effective participation of Indigenous Peoples.²⁹⁴ Indigenous Peoples’ free, prior, and informed consent must be obtained before any measures that may substantially affect them are adopted.²⁹⁵

Another area of concern the Committee identified was the Missing and Murdered Indigenous Women and Girls crisis.²⁹⁶ The Committee praised the State party for Executive Order 14053 titled “Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing of Murdered Indigenous People,” issued on November 15, 2021.²⁹⁷ It remained concerned about the disproportionate danger Indigenous Women and Girls face, including the lack of comprehensive data and the lack of resources to properly investigate and process cases.²⁹⁸

The Committee expressed that the State party should intensify its efforts on all government levels, including tribal and territorial, to prevent violence against Indigenous women and girls.²⁹⁹ Prevention should be done with the consultation of the victim’s family and of Indigenous women’s organizations.³⁰⁰ The State party should also devote resources to better data collection and analysis regarding this crisis.³⁰¹ Finally, the State party should ensure the effective and thorough investigation of Missing and Murdered Indigenous Women and Girls cases with the goal of prosecuting the perpetrators and enacting the appropriate punishment, if convicted.³⁰² Victims and their families must be provided with the appropriate remedies and access to any needed assistance.³⁰³

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 that negatively impact the natural environment and inhibit access and enjoyment of their lands.³⁰⁴ These operations are a direct violation of Articles 1, 6, 7, 17, 23, 25,

²⁹¹ *Id.* ¶ 4.

²⁹² *Id.* ¶ 66.

²⁹³ *Id.* ¶ 67.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Also referred to as the Missing and Murdered Indigenous Women, Girls, and Two Spirit (“MMIWG2S”) crisis.

²⁹⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 22.

²⁹⁸ *Id.*

²⁹⁹ *Id.* ¶ 23.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.* ¶ 22.

³⁰³ *Id.*

³⁰⁴ *4051ST Meeting*, *supra* note 73.

and 27 of the ICCPR³⁰⁵ because they impact Indigenous 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.³⁰⁶

On this issue, Committee Member Donders' specific questions, as well as the U.S. responses, follow below:

Question (Donders)³⁰⁷: *Are environmental and socioeconomic impact assessments conducted before activities were planned?*

Karim David Marshall, Senior Advisor, Office of Environmental Justice and External Civil Rights, Environmental Protection Agency (“EPA”)³⁰⁸ said that, in relation to the Black Hills issue, in 2021 the Environmental Protection Agency had published an action plan to strengthen its nation-to-nation partnerships with tribes on water issues and provide vital water protections to support public health, environmental sustainability, cultural activities, and subsistence practices. The National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act also provided institutional protections which had, for example, been deployed to address concerns regarding the construction of a telescope in Hawai’i. The government was committed to addressing tribes’ concerns regarding such projects.

Committee’s Concluding Observations³⁰⁹:

The Committee was concerned that the State party had not adopted measures to protect Indigenous lands, including sacred areas, from the cultural and environmental impacts of extractive industries, including toxic and nuclear waste, as well as the impacts of the military infrastructure.³¹⁰ The Committee expressed that the State party should adopt measures guaranteeing Indigenous Peoples’ access to their lands and sacred areas.³¹¹ The State party should also adopt measures to protect Indigenous lands and sacred areas from the impacts of extractive industries.³¹²

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.³¹³

³⁰⁵ ICCPR, *supra* note 18, at arts. 1, 6, 7, 17, 23, 25, and 27.

³⁰⁶ 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.

³⁰⁷ 4051ST Meeting, *supra* note 73.

³⁰⁸ *Id.*

³⁰⁹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 66-67

³¹⁰ *Id.* ¶ 66.

³¹¹ *Id.* ¶ 67.

³¹² *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 67.

³¹³ This sub-issue summary is not meant to be an exhaustive enumeration of all the Indigenous sacred areas in the U.S. and its territories.

On this issue, Committee Member Donders' specific questions, as well as the U.S. responses, follow below:

Question (Donders)³¹⁴: *What measures has the State party taken to protect Indigenous sacred sites and places of cultural, spiritual or religious significance from infringement by public and private actors?*

The State party did not provide answers to this question.

Committee's Concluding Observations³¹⁵:

The Committee was concerned that the State party had not adopted measures to protect Indigenous lands, including sacred areas, from the cultural and environmental impacts of extractive industries, including toxic and nuclear waste, as well as the impacts of the military infrastructure.³¹⁶ The Committee expressed that the State party should adopt measures guaranteeing Indigenous Peoples' access to their lands and sacred areas.³¹⁷ The State party should also adopt measures to protect Indigenous lands and sacred areas from the impacts of extractive industries.³¹⁸

RESOURCE RIGHTS³¹⁹

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.³²⁰ 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.³²¹ This resulted in policies and practices of assimilation and termination, changing the ways of life of Indigenous peoples, and taking of lands and resources.³²² The encroachment of the U.S. on ancestral lands and imposition of developments, such as mining and/or tourism of parks comprised of Indigenous areas like Mount Rushmore in the Black Hills, 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.³²³

The Committee did not provide questions on this issue.

Committee's Concluding Observations³²⁴:

The Committee expressed that the State party should increase efforts to honor treaties between itself and Indigenous Peoples while ensuring stronger meaningful consultation mechanisms with

³¹⁴ 4051ST Meeting, *supra* note 73.

³¹⁵ The Committee provided observations and recommendations for several issues regarding Indigenous rights in one section, which is why the information about the concluding observations is the same for issues 3 and 4.

³¹⁶ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 66.

³¹⁷ *Id.* ¶ 67.

³¹⁸ *Id.*

³¹⁹ 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.

³²⁰ AMNESTY INT'L, UNITED STATES OF AMERICA: SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE 16 (2023).

³²¹ CHIEF GARY, THE TAKING OF ALASKA AND ARTICLE 1 OF THE ICCPR 3, FIFTH PERIODIC REPORT 14 (Aug. 2023).

³²² AM. CIV. LIBERTIES UNION, LAKOTA PEOPLE'S L. PROJ., ET AL., *supra* note 251, at 4.

³²³ ICCPR, *supra* note 18, at arts. 1, 2, 6, 7, 8, 9, 10, 14, 18, 23, 24, 25, 26, and 27.

³²⁴ The Concluding Observations for this issue is a combination of the ones seen in Issues 1, 2, and 3 because the Committee addressed these issues in the same section.

Indigenous Peoples.³²⁵ These consultations must be executed in good faith, with the active and effective participation of Indigenous Peoples.³²⁶ Indigenous Peoples' free, prior, and informed consent must be obtained before any measures that may substantially affect them are adopted.³²⁷

The Committee was concerned that the State party had not adopted measures to protect Indigenous lands, including sacred areas, from the cultural and environmental impacts of extractive industries, including toxic and nuclear waste, as well as the impacts of the military infrastructure.³²⁸ The Committee expressed that the State party should adopt measures guaranteeing Indigenous Peoples' access to their lands and sacred areas.³²⁹ The State party should also adopt measures to protect Indigenous lands and sacred areas from the impacts of extractive industries.³³⁰

³²⁵ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 67.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.* ¶ 66.

³²⁹ *Id.* ¶ 67.

³³⁰ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 67.

Right to Privacy and Unlawful Surveillance

FEDERAL AGENCY SURVEILLANCE

Article 17 and 18 of the ICCPR recognize civilians' right to be free from interference of privacy and freedom of thought, conscience and religion.³³¹ Additionally, individuals may peacefully assemble and have a right of association with others under Articles 21 and 22.³³² 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 4.³³³

During the 139TH Session of the Human Rights Committee, Committee Member Soh noted that with respect to privacy, there remain concerns that section 702 of the Foreign Intelligence Surveillance Act allows a tremendous invasion of the right to privacy and creates a very real danger of over-prosecution and law enforcement harassment, particularly through back-door searching.³³⁴ Per Committee Member Soh, this has been alleged to disproportionately impact non-citizens, minorities, civil rights activists, and journalists. Committee Member Soh noted that the State party report mentions the FISA Amendments Reauthorization Act of 2017, which introduced additional procedures to further protect the right of privacy of those whose communications are incidentally collected.³³⁵ Specifically, the Act notes a new requirement that in non-national security criminal investigations, the FBI must obtain an order from the Foreign Intelligence Surveillance Court to assess the information collected. Per reports received, however, Committee Member Soh noted that, as of April 2023, the FBI did not once comply with this requirement and amendments have been ineffectual and poorly enforced. Committee Member Soh also expressed his concern that government agencies employ data collection, including from private companies, without due protection of the right to privacy. He specifically pointed to reports which indicate that the Immigration and Customs Enforcement (“ICE”) agency has expanded its data sources to include private companies and government agencies with no law enforcement functions exploiting the absence of data privacy regulations in the State party.

On this issue, Committee Member Soh's specific questions, as well as the U.S. responses, follow below:

Question (Soh)³³⁶: *Please comment on the renewal of Section 702 and whether there are considerations for amendments aimed at safeguarding privacy, such as requiring a warrant before assessing the communications, strengthening the judicial review authority of the Foreign Intelligence Surveillance Court, and placing regional limits on the scope of surveillance.*

³³¹ ICCPR, *supra* note 18, at arts. 17, 18.

³³² *Id.* at arts. 21, 22, 26.

³³³ 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).

³³⁴ *See LoI Fifth Periodic Report, supra* note 27, ¶ 22 (listing as issue #22 the protection of the right to privacy, as mandated under the ICCPR); *see also 4051ST Meeting, supra* note 73.

³³⁵ U.N. Hum. Rts. Comm., *Fifth Periodic Report Submitted by the United States of America under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, Due in 2020*, ¶ 92, U.N. Doc. CCPR/C/USA/5 (Nov. 11, 2021) [hereinafter *U.S. Response Fifth Periodic Report*].

³³⁶ *4051ST Meeting, supra* note 73.

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)³³⁷ said that the U.S. has strong constitutional and statutory protections against arbitrary interference with privacy in the context of law enforcement investigations. She noted that the Fourth Amendment protects against unreasonable searches and seizures, and additional statutes, such as the Electronic Communications Privacy Act, Title III, provide additional safeguards. In addition, Attorney Advisor Tessier stated that the Privacy Act of 1974 governs how federal agencies must safeguard personally identifiable information. As to enforcement of Foreign Intelligence Surveillance Act, Attorney Advisor Tessier stated that the statute requires the government to notify any person whose communications were subject to collection if the government seeks to use the evidence against them in a legal proceeding. Attorney Advisor Tessier added that defendants can challenge the lawfulness of the collection in court, noting that if the court finds that the collection was unlawful, it must exclude evidence—a remedy that deters government misconduct. In addition, Attorney Advisor Tessier pointed to several statutes that authorize individuals to seek redress in civil lawsuits for violations. Attorney Advisor Tessier stated that there are remedies within the Foreign Intelligence Surveillance Act itself, in the Electronic Communications Privacy Act, and individuals may also challenge unlawful government access to persona data through the Administrative Procedure Act. Attorney Advisor Tessier noted that, although civil litigation remedies are sometimes limited by the classified nature of intelligence information, there is also a broader system of safeguards and remedies, including Civil Liberties and Privacy Officers at each intelligence agency, independent Inspector Generals at each agency, and the Privacy and Civil Liberties Oversight Board, and other mechanisms.

***Question (Soh)**³³⁸: Please outline the measures and guidelines provided to the FBI on erasing all records that did not lead to predicated investigations.*

The State party did not provide answers to this question.

***Question (Soh)**³³⁹: In relation to government agencies’ collection of data from private companies, what measures are in place to ensure that surveillance practices through data collection application of automated analytical tools and data sharing by government agencies comply with obligations under the Covenant? More generally, please describe the regulatory framework at the federal and state levels governing the collection, storage, use and retention of personal data, including biometric data and the available avenues to challenge such practices.*

Royce Bernstein Murray, Senior Counselor, U.S. Department of Homeland Security (“DHS”)³⁴⁰ stated said that U.S. Immigration and Customs Enforcement (ICE) integrates privacy, civil rights, and civil liberties considerations from the very outset of developing and procuring information technology systems to ensure appropriate individual safeguards are incorporated into all ICE activities. Per Senior Counselor Murray, ICE is currently working to complete a privacy impact assessment, covering, in part, ICE’s use of subscription services in support of law enforcement investigations. Senior Counselor Murray noted that the assessment will describe any identified risks to personal privacy and controls the agency has in place to mitigate those risks.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

Once complete, Senior Counselor Murray noted that this assessment would be publicly posted online. Senior Counselor Murray further stated that ICE has instituted a pause on the acquisition of commercial data services, including facial recognition technology services, pending the DHS's finalization and issuance of an overarching policy on the use of commercial data. Senior Counselor Murray stated that for the duration of the pause, commercial data services can only be acquired with approval from the ICE deputy director, in consultation with ICE's privacy and legal functions, and only after balancing the mission need against the privacy and other concerns surrounding the particular use of commercial data in question.

Question (Soh)³⁴¹: *Are there any plans to create comprehensive privacy legislation and or an independent privacy or data protection agency at the federal level?*

The State party did not provide answers to this question.

Committee Member Kran began addressing this issue by reminding the delegation that use of drone strikes outside recognized threats of conflict is presumptively illegal and violates several Covenant rights. Committee Member Kran stated that General Comment 36 recognizes the right to life as the supreme right from which no derogation is permitted. The U.S. lethal drone program, which conducts targeted killings around the world, including outside of armed conflict, raises significant concerns about U.S. compliance with the Covenant. These strikes have killed thousands of people around the world, including many civilians. In Somalia, the Committee had reports of 56 strikes since 2020, killing over 1500 people. The U.S. policy governing the use of lethal force outside of armed conflict does not reference the U.S. international human rights obligations under the Covenant and allows agencies to propose variations through classified plans unavailable to the public.

Committee Member Kran's specific questions, as well as the U.S. responses, follow below:

Question (Kran)³⁴²: *How many individuals has the U.S. killed using lethal force outside recognized armed conflict zones since 2014? What steps will be taken to stop illegal lethal strikes?*

The State party did not provide answers to this question.

Question (Kran)³⁴³: *What is being done to develop and make public a targeted policy that complies with the Covenant?*

The State party did not provide answers to this question.

While the Committee welcomed the new Civilian Harm Mitigation Response Action Plan, Committee Member Kran noted that the plan only applies to lethal strikes carried out by the Department of Defense.

³⁴¹ 4051ST Meeting, *supra* note 73.

³⁴² 4050TH Meeting, *supra* note 22.

³⁴³ *Id.*

Question (Kran)³⁴⁴: What steps are being taken to ensure lethal strikes conducted by the CIA meet Covenant obligations?

The State party did not provide answers to this question.

Question (Kran)³⁴⁵: What has the CIA done to investigate reports of unlawful attacks or of drones harming civilians?

The State party did not provide answers to this question.

The ICCPR includes the right to an effective remedy. In 2016 Committee Member Kran cited a 2016 Executive Order requiring relevant agencies to recognize responsibility for civilian casualties and to offer ex gratia payments. Committee Member Kran noted the U.S. has made no ex gratia payments in 2020 and only one in 2021.

Question (Kran)³⁴⁶: What is being done to ensure that ex gratia payments will be made to civilians who are injured or to the families of those killed as a result of U.S. military activity outside of recognized conflict zones?

The State party did not provide answers to this question.

Question (Kran)³⁴⁷: Other than Executive Orders and policy, what mechanisms are in place to ensure accountability and redress in these situations?

The State party did not provide answers to this question.

Question (Kran)³⁴⁸: What measures are available to protect journalists against undue federal investigations and surveillance?

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)³⁴⁹ stated that, regarding the protection of the rights of journalists, the Attorney General issued new guidance and new regulations regulating the way law enforcement at the federal level can and cannot use law enforcement tools like subpoenas to collect information from journalists. Deputy Assistant Attorney General Smith also noted that the Attorney General recognizes that freedom of the press is critical to our democracy and that law enforcement should infringe on that freedom as narrowly as possible.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ 4051ST Meeting, *supra* note 73.

³⁴⁹ *Id.*

Question (Kran)³⁵⁰: *How many complaints had been brought against law enforcement officials for violating journalists’ rights during the reporting period? What have been the outcomes of the ensuing investigations?*

The State party did not provide answers to this question.

Question (Kran)³⁵¹: *How does the State party plan to address the safety concerns of journalists, especially those reporting on misconduct by public officials? How does it propose to deal with the problem of press harassment by high-level politicians?*

The State party did not provide answers to this question.

Question (Kran)³⁵²: *What legal recourse is available to individuals unjustly targeted under anti-boycotting legislation?*

The State party did not provide answers to this question.

Committee’s Concluding Observations³⁵³:

The Committee noted concern regarding Section 702 of the Foreign Intelligence Surveillance Act’s overbreadth, allowing for surveillance of electronic communications of foreign nationals, to which the Fourth Amendment of the U.S. Constitution’s protection against unreasonable searches does not apply.³⁵⁴ It recognized “loopholes” of the Act that enable law enforcement officials’ broad access to incidentally captured communications of State party’s nationals without a warrant, and deficient oversight mechanisms thereof.³⁵⁵ The Committee further noted concern regarding government agencies relying on databases of personal information collected by private entities without individuals’ consent, namely for surveillance purposes without proper mechanisms for protecting the right to privacy and to produce varied reports.³⁵⁶ The State party was urged to ensure that domestic and international surveillance activities conform to obligatory Covenant requirements, including Article 17.³⁵⁷ The Committee recommended the adoption and enforcement of data privacy legislation for the public and private sectors in compliance with international human rights law.³⁵⁸ The Committee also recommended that persons responsible for violations thereof should be brought to justice with appropriate sanctions, and that victims of human rights violations linked to surveillance have access to effective remedial measures.³⁵⁹

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Concluding Observations Fifth Periodic Report, supra note 45, ¶ 56.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* ¶ 57.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

FACIAL RECOGNITION TECHNOLOGY IN POLICE SURVEILLANCE

Article 17 of the ICCPR recognizes the right to privacy, as well as freedom from discrimination under Article 2.³⁶⁰ The U.S. government has 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.³⁶¹

Committee Member Donders highlighted that the use of new technologies, such as facial recognition, seems to sustain rather than eliminate racial biases. Committee Member Donders's specific question follows below:

***Question (Donders)**³⁶² Which targets does the State party set for itself to outlaw racial profiling and prejudices, including in new technologies?*

The State party did not provide answers to this question.

Committee's Concluding Observations³⁶³:

The Committee did not provide observations or recommendations regarding this issue.

³⁶⁰ ICCPR, *supra* note 18, at arts. 2, 17.

³⁶¹ AM. CIV. LIBERTIES UNION AND PRINCETON POL'Y ADVOC. CLINIC, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes* 4 (Sept. 2023).

³⁶² 4050TH Meeting, *supra* note 22.

³⁶³ *Concluding Observations Fifth Periodic Report*, *supra* note 45.

Treatment of Non-Citizens, Refugees, and Asylees

NON-REFOULEMENT MEASURES

Article 7 of the ICCPR protects migrants from cruel, inhumane or degrading treatment or punishment.³⁶⁴ 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.³⁶⁵ The U.S. government utilizes refolement measures, including the Migrant Protection Protocols (MPP) and maritime interdictions of Haitians, that constitute cruel, inhumane and degrading treatment.³⁶⁶

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised concerns with the criminalization of irregular migrants by the U.S., and the continued use of immigration enhanced expedited removals, which were incompatible with the prohibition of collective expulsion, the principal of non-refoulement, the right to seek asylum, and the right to an individual assessment of protection needs.³⁶⁷ Committee Member Soh's specific questions, as well as the U.S. responses, follow below:

Question (Soh)³⁶⁸: Are there any measures taken to ensure that human rights-based alternatives to detention are available in law and in practice, instead of surveillance-based electronic monitoring programs, such as the intensive supervision appearance programs and the family expedited removal measurements?

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security (“DHS”)³⁶⁹ noted that the U.S. is committed to safe, humane, and efficient immigration enforcement, and this includes substantial use of alternatives to detention programs. She stated that, when considering factors, ICE may, in its discretion, choose not to detain a non-citizen at all, or to release non-citizens with conditions, absent extraordinary circumstances. Officer Wadhia added that there are policies dictating that certain vulnerable populations should not be detained. Officer Wadhia further noted that ICE has also progressed beyond technology tracking with a Young Adult Case Management Program focused on 18- and 19-year-olds. The focus is to have community services for the duration of the immigration process. Lastly, Officer Wadhia stated that Congress has appropriated twenty million dollars to the DHS for a transformative program known as the Case Management Pilot Program. Officer Wadhia noted that this program makes funds available to local governments and non-profits to provide voluntary case management and other services. Per Officer Wadhia, these are trauma-informed services that include, but are not limited to, mental health screenings, cultural orientation, and legal orientation. She stated that funds are awarded to local governments and non-profits, and the program itself is chaired by the Officer for Civil Rights and Civil Liberties.

Question (Soh)³⁷⁰: Please comment on how the new migration measures align with the Covenant and the previous concluding recommendations of the Committee in 2014.

³⁶⁴ ICCPR, *supra* note 18, at art. 7.

³⁶⁵ *Id.* at art. 12.

³⁶⁶ PHYSICIANS FOR HUM. RTS., *supra* note 83, at 2.

³⁶⁷ 4051ST Meeting, *supra* note 73.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

Royce Bernstein Murray, Senior Counselor, U.S. Department of Homeland Security (“DHS”)³⁷¹ noted that the U.S. is facing hemispheric migration challenges with outdated immigration laws that only Congress can fix. However, Senior Counselor Murray noted that the Biden-Harris Administration has worked diligently to create an unprecedented expansion of lawful pathways to enable individuals to approach the U.S. using safe, orderly, and humane pathways, which would prevent exploitation by ruthless smugglers who prey on noncitizens and other forced migrants. Senior Counselor Murray stated that the Circumvention of Lawful Pathways rule is one of DHS’s efforts to incentivize the use of the lawful pathways that it has created. Per Senior Counselor Murray, the rule does create a rebuttable presumption of asylum ineligibility for those who do not seek protection in another country through which they passed, or if they did not attempt to make an appointment to appear at a port of entry using the CBP One mobile application. Senior Counselor Murray further stated that there are exceptions to the Circumvention of Lawful Pathways rule, including for unaccompanied children, those with language barriers, those who lack literacy, or those who have other significant technical failures. Senior Counselor Murray stated that the CBP One application has enabled the scheduling of over 300,000 appointments for non-citizens to present themselves at one of eight ports of entry across the southwest border. Finally, regarding the mention of enhanced expedited removal, Senior Counselor Murray noted that all individuals who claim a fear of persecution or fear of return to their home country get a credible fear screening by a trained asylum officer, and an opportunity to consult counsel prior to that interview. Senior Counselor Murray stated that hundreds of privacy booths have been installed in CBP custody to provide an opportunity to consult counsel in a private space, and information about free legal service providers have been posted in all of those booths.

Following the initial round of responses received from U.S. representatives, Committee Member Soh asked the following additional question:

***Question (Soh)**³⁷²: Please provide more information on the mentioned fear screening. Could you please explain how the initial screening process, which only involves a visual scan for manifestation of fear of return to countries of origin, complies with obligations under Covenant, international refugee law, and the provision against non-refoulement?*

Royce Bernstein Murray, Senior Counselor, U.S. Department of Homeland Security (“DHS”)³⁷³ stated that individuals who are apprehended at the southwest border by CBP are affirmatively asked whether they have a fear of return to their home country. If individuals do express a fear of return, they are subsequently screened for protection concerns by a trained asylum officer. Senior Counselor Murray stated that what Committee Member Soh may be referring to regarding visual scans are for individuals who are interdicted at sea. Senior Counselor Murray noted that migrants who are interdicted at sea are generally repatriated to their country of origin or departure, unless they establish a well-founded fear of persecution or likelihood of torture. Senior Counselor Murray further clarified that, while under the care of the U.S. Coast Guard, if a migrant manifests a fear, verbally or non-verbally, of return to their country of origin, country of departure, or last habitual residence, the Coast Guard personnel are trained to refer these migrants to the U.S. Citizenship and Immigration Services (“USCIS”) for screening by an asylum officer. Senior

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

Counselor Murray added that if USCIS determines that a migrant establishes a credible fear at sea of persecution or torture, such migrants are voluntarily transferred to the Migrant Operations Center, at Naval Station Guantánamo Bay, where they receive another interview, this time to determine whether the migrant has a well-founded fear of persecution or establishes a likelihood of torture if returned to their country of origin or departure, as appropriate.

Committee’s Concluding Observations³⁷⁴:

The Committee expressed concern that the adoption of the administrative rule “Circumvention of Lawful Pathways,” the use of the CBP One mobile application, and the implementation of “enhanced expedited removal” procedures all excessively restrict the right to seek asylum.³⁷⁵ These programs all compromise the government’s ability to accurately assess the individual protection needs of asylum seekers and thereby increase the risk of breaching the principle of non-refoulement.³⁷⁶ The Committee also expressed concerns regarding immigrants’ mandatory and prolonged detentions in which they are not given access to legal counsel.³⁷⁷ The Committee found that facilities are overcrowded, do not provide access for basic needs, and lead to instances of violence and even death, including among children.³⁷⁸

The Committee recommended that the State party bring its immigration policies and legislation in line with international human rights and humanitarian standards.³⁷⁹ These policies should protect asylees and refugees, ensuring access to fair and efficient asylum procedures.³⁸⁰ The State party should also ensure the availability and accessibility of legal aid and language services.³⁸¹ If the State party determines that detention is necessary, efforts should be made to ensure that detainees are held for the shortest time possible and that the detention facility conditions conform to international standards, including the prevention of abuse, violence, and death.³⁸² Victims should be provided with access to full reparations, assistance, and protection.³⁸³

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 health care and social services for immigrants, migrants and refugees.³⁸⁴ 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. §265 of the 1944 Public Health and Service Act.³⁸⁵ Title 42 was invoked during the Trump Administration and it effectively closed the U.S.’s southern border and denied migrants and asylees entry during the COVID-19 pandemic.³⁸⁶

³⁷⁴ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 54-55.

³⁷⁵ *Id.* ¶ 54.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.* ¶ 55.

³⁸⁰ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 55.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ ICCPR, *supra* note 18, at art. 2.

³⁸⁵ PHYSICIANS FOR HUM. RTS., *supra* note 83, at 3.

³⁸⁶ *Id.* at 2.

The Committee did not provide questions on this issue.

Committee’s Concluding Observations³⁸⁷:

The Committee did not provide observations or recommendations on this issue.

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.³⁸⁸ The U.S.’s Presidential Proclamation No. 9645 was one in a series of executive actions commonly known as the “Muslim Ban” that discriminated against individuals from majority-Muslim countries who were seeking immigrant and non-immigrant visas to enter the U.S.³⁸⁹ The ban also included an Agency Memorandum to the President issued 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.³⁹⁰

The Committee welcomed Presidential Proclamation No. 10141, ending discriminatory bans on entry to the U.S., and revoking the earlier proclamation (No. 9645). However, the Committee was still concerned about information received of ongoing family separation leading to continued suffering for families and children. Committee Member Donders specifically raised the following questions:

***Question (Donders)³⁹¹:** What steps has the State party taken to remedy infringements on the rights to family life and nondiscrimination of people whose immigration visas were denied?*

Shoba Sivaprasad Wadhia, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security (“DHS”)³⁹² noted that on the first day of his presidency, President Biden signed Presidential Proclamation No. 10141, which ended the travel restrictions under Proclamations No. 9645 and 9983, directing the Department of State (“DOS”) to pursue the processing of visa applications for individuals from impacted countries consistent with applicable law and visa processing procedures. The additional ban suspended the entry into the U.S. of certain nationals from Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen for 90 days. Pursuant to the Proclamation, the Secretary of State, Antony Blinken, directed all U.S. embassies and consulates to resume visa processing for individuals who were subject to the restrictions and provided guidance to posts on prioritizing the adjudication of applications for those individuals who were subject to the ban. The DOS also provided guidance to consulates, stating that individuals whose immigrant visa applications were denied under the suspension and restriction could have their applications reconsidered, and those applications who were previously refused could renew their applications without having to pay additional fees. Non-immigrant visa applicants were also invited to file a new application for a temporary visit. Executive Order 14091 further advanced

³⁸⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45.

³⁸⁸ ICCPR, *supra* note 18, at arts. 2, 17, 23, 24, 26.

³⁸⁹ INT’L REFUGEE ASSISTANCE PROJECT, *The Continuing Impact of the Muslim Ban* 3 (SEPT. 2023).

³⁹⁰ *Id.* at 2-3.

³⁹¹ 4050TH Meeting, *supra* note 22.

³⁹² 4051ST Meeting, *supra* note 73.

racial equity and support for underserved communities throughout the federal government. Similarly, the Secretary of Homeland Security, Alejandro Mayorkas, had reaffirmed his commitment to non-discrimination and equal access to all.

Committee Member Donders also mentioned the visa reapplication process but emphasized that the procedure seems to be long and cumbersome. She also expressed concern about the backlog of pending files.

Question (Donders)³⁹³: Can the State party indicate how it deals with this backlog and how will it diminish procedural hurdles?

The State party did not provide answers to this question.

Question (Donders)³⁹⁴: How will the State party prevent similar bans in the future?

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)³⁹⁵ suggested that family unity is a priority of the Biden-Harris Administration. In the first month of holding office, President Biden issued Executive Order 14011 creating a taskforce for the reunification of families. In addition, DHS is focused on making recommendations and implementing policies to ensure that these kinds of family separations are not repeated in the future. Except under very limited circumstances, including the involvement of health risks and criminal prosecutions of extreme public safety risks, Executive Director Brané suggested that DHS is committed to a prohibition on the separation of families. Where separations do take place under those limited circumstances, the cases will be documented so that reunification can be implemented as soon as the original reasons for separation are no longer in place.

Committee’s Concluding Observations³⁹⁶:

The Committee was concerned that the impacts of the Executive Order 9645 (the “Muslim Ban”), later rescinded by Executive Order 10141, are still ongoing.³⁹⁷ These impacts include prolonged delays in family reunification caused by the ban, procedural hurdles, and a considerable backlog of visa applications, particularly affecting those whose applications were rejected during the ban.³⁹⁸ The Committee was also concerned about the lack of effective measures to prevent future discriminatory bans.³⁹⁹

The Committee recommended intensifying efforts to rectify the impact of Executive Order 9645 through two means.⁴⁰⁰ First, establish an accessible, fair, and effective reconsideration process of all visa applications still affected by the ban, particularly applicants who seek family

³⁹³ 4050TH Meeting, *supra* note 22.

³⁹⁴ *Id.*

³⁹⁵ 4051ST Meeting, *supra* note 73.

³⁹⁶ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 16-17.

³⁹⁷ *Id.* ¶ 16.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* ¶ 17.

reunification.⁴⁰¹ And second, adopt additional measures to prevent future bans such as the No BAN Act in Congress.⁴⁰²

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.⁴⁰³ The ICCPR also protects against inhuman or degrading treatment and ensures the right to liberty and security of persons in Article 7 and Article 9.⁴⁰⁴ Article 13 of the ICCPR further provides for fair deportation procedures.⁴⁰⁵ Through the ICE office, the U.S. Government imposes mandatory detention in a wide array of circumstances, including for individuals seeking asylum, persons with criminal convictions, and others in expedited removal.⁴⁰⁶

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised the issue of detention without due process of persons migrating to the United States.⁴⁰⁷ Committee Member Soh noted the receipt of numerous reports detailing the poor conditions, overcrowding, prolonged detention, and inadequate food, water, medical care, and sanitation in immigration detention facilities. Committee Member Soh stated that the Committee had received information concerning mistreatment and abuse, such as targeted violence, sexual violence, and exposure to extreme temperatures. Committee Member Soh also noted reports of excessive use of force by border agents that have resulted in the loss of life and other abuses, including racial profiling, illegal stops and searches, and mistreatment of migrants at the U.S.-Mexico border. Committee Member Soh said that while the State party report mentioned the local and national use of force review boards as an oversight mechanism, concerns had been raised about the boards' ineffectiveness.⁴⁰⁸ He noted the Committee's receipt of reports that victims struggle to access civil, criminal, and administrative justice, and that there is a lack of accountability for border agents' actions. On this note, Committee Member Soh raised the following questions:

Question (Soh)⁴⁰⁹: *What comprehensive reforms are being considered to improve the conditions of public and private immigration detention facilities? What steps are being taken to ensure transparency and accountability with ICE and CBP regarding their treatment of detainees and migrants?*

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security (“DHS”)⁴¹⁰ noted that DHS cares about safe and humane conditions and is committed to preventing abuses with regard to detention conditions. Per Officer Wadhia, this is

⁴⁰¹ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 17.

⁴⁰² *Id.*

⁴⁰³ ICCPR, *supra* note 18, at arts. 2, 6.

⁴⁰⁴ *Id.* at arts. 7, 9.

⁴⁰⁵ *Id.*, at art. 13.

⁴⁰⁶ PROJECT SOUTH, U. OF PENN. L. SCH. TRANSNATIONAL L. CLINIC, AND U. OF TEX. AT AUSTIN IMMIGR. CLINIC, UNITED STATES' IMMIGRATION DETENTION SYSTEM CONTRAVENES OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) 1 (Sept. 2023).

⁴⁰⁷ *LoI Fifth Periodic Report, supra* note 27, ¶ 21. *See also 4051ST Meeting, supra* note 73.

⁴⁰⁸ *U.S. Response Fifth Periodic Report supra* note 335, ¶¶ 90-91.

⁴⁰⁹ *4051ST Meeting, supra* note 73.

⁴¹⁰ *Id.*

why oversight matters, and stated that there are various layers of detention oversight throughout DHS. Officer Wadhia stated that this oversight includes the newly created Office of the Immigration Detention Ombudsman, the Office for Civil Rights and Civil Liberties, and internal oversight bodies at CBP and ICE.

Question (Soh)⁴¹¹: Within detention centers, please provide information on the voluntary work program and address the abuse of the program by private operators to pressure detainees into performing cleaning or kitchen labor for minimal compensation, otherwise facing retaliation including solitary confinement.

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴¹² stated that, regarding forced labor in detention, the recent versions of the performance-based national detention standards provide the opportunity to participate in voluntary work programs, and detained non-citizens shall receive, under these programs, monetary compensation for work completed in accordance with the facility’s standardized policies. Executive Director Brané noted that the compensation is at least \$1 a day under the national regulations and varies according to facility and local laws. She also stated that the facility shall receive an established system that ensures that detained citizens receive the pay owed to them before being transferred or released. Executive Director Brané further stated the inability to comment on pending litigation but added that guidelines regulate the use of disciplinary segregation for refusal to work but clarified that the standards require that the work be voluntary.

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security (“DHS”)⁴¹³ answered the question of segregation in immigration custody and stated that the practice is used on a limited basis and pursuant to a standard that has been created through the ICE detention standards. Officer Wadhia noted that there are two specific conditions under which segregation may be used by ICE—one is related to administrative segregation and the other related to disciplinary segregation. Officer Wadhia added that ICE is also committed to ensuring that those noncitizens, who are particularly vulnerable, are not housed inappropriately or involuntarily assigned to segregation solely on the basis of their vulnerability. Citing to the importance of the CRCL’s receipt of allegations of inappropriate use of segregations in immigration custody, Officer Wadhia stated that the CRCL continues to investigate those complaints, including, since 2020, the launch of a periodic review of ICE’s segregation oversight program.

Question (Soh)⁴¹⁴: Could the delegation elaborate on the oversight mechanisms and provide information on the number of use-of-force incidents reviewed, the results, and the remedies provided to victims? What steps are being taken to ensure that the use of force is limited and to provide victims with effective remedies?

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

Shoba Sivaprasad Wadhia, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security (“DHS”)⁴¹⁵ noted that, pursuant to statutory authority, the Office for Civil Rights and Civil Liberties investigates scores of complaints alleging profiling or discrimination based on race, religion, ethnicity, sexual orientation, health status, and national origin—often revolving around conditions of detention. Upon receipt of an allegation, Officer Wadhia stated that the CRCL carefully reviews the individual facts and circumstances surrounding each allegation to ascertain whether they have civil rights and civil liberties implications. Officer Wadhia further added that the CRCL’s investigations may include conditions that also reach use of force and extreme temperatures. In all complaint investigations, Officer Wadhia stated that the CRCL notifies the complainant or their representative of the results. As one example of an investigation, Officer Wadhia described the CRCL’s receipt of several allegations of disproportionate detention and bond denials for racial minorities, adding that the Office currently has open investigations looking at these issues. In one investigation, looking at the New Orleans area of responsibility, Officer Wadhia stated that allegations relating to inadequate medical care, improper use of force, and other abusive treatment of peaceful hunger strikers, imposition of segregation, racially discriminatory abuse of Black detained noncitizens, and unsanitary conditions were investigated. As stated by Officer Wadhia, based on four multi-disciplinary on-site investigations, the CRCL issued numerous recommendations. To express the CRCL’s breadth, Officer Wadhia noted that the Office also reviews complaints alleging violations related to language access. Officer Wadhia stated that the DHS is currently updating its language access plan and unleashing its first-ever Indigenous language access plan. Further, Officer Wadhia noted that complaints to the CRCL may be submitted in any language, and the complaint portal, which is available online, is available in ten languages.

*Question (Soh)*⁴¹⁶: *What steps are being taken to limit the use of immigration detention and to ensure due process, including access to legal counsel for all detained non-citizens without discrimination?*

The State party did not provide answers to this question.

Committee’s Concluding Observations⁴¹⁷:

The Committee expressed concern that the persistent practice of racial profiling by law enforcement officials, including officials in Customs and Border Patrol (“CBP”) and Immigration and Customs Enforcement (“ICE”), targets racial and ethnic minorities, specifically people of color.⁴¹⁸ The Committee was concerned by the lack of legislation that prohibits this practice.⁴¹⁹

The Committee recommended that the State party should employ effective legislation to prohibit law enforcement at all levels from racially profiling individuals.⁴²⁰ The legislation should establish measures to investigate, prosecute, and if necessary, convict all allegations of racial profiling and provide victims with appropriate remedies.⁴²¹ The Committee also recommended that the State

⁴¹⁵ 4051ST Meeting, *supra* note 73.

⁴¹⁶ *Id.*

⁴¹⁷ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 12-13.

⁴¹⁸ *Id.* ¶ 12.

⁴¹⁹ *Id.*

⁴²⁰ *Id.* ¶ 13.

⁴²¹ *Id.*

party should collect data for all incidents, complaints, and investigations of racial profiling by law enforcement agencies, including CBP and ICE.⁴²² Law enforcement officers at all levels should be trained in ethnic and cultural awareness as well as the unacceptability of racial profiling.⁴²³

ZERO TOLERANCE POLICY

Article 7 and Article 9 of the ICCPR establish that individuals in the U.S. have the right to freedom from inhumane or degrading treatment and a right to liberty and security of person.⁴²⁴ 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 13.⁴²⁵ The U.S.'s Zero Tolerance Policy, also known as the "family separation policy," targeted asylees who were suspected to have entered the U.S. illegally or have a criminal history, gang affiliation, or communicable disease.⁴²⁶

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised questions pertaining to paragraph twenty of the Committee's 2019 list of issues, which discusses the Zero Tolerance Policy, family reunifications, and the death of migrant children in CBP custody.⁴²⁷ Given that Committee Member Soh's questions primarily concern issues of non-refoulement, detention without due process, CBP authority, and immigration detention facilities, Committee Member Soh's questions, and the U.S. delegation's answers, are discussed under issues one, four, seven, and nine within the "Treatment of Non-Citizens, Refugees, and Asylees" section.⁴²⁸

Committee's Concluding Observations⁴²⁹:

The Committee expressed concern that, because of the "Zero Tolerance Policy," more than 5,000 children were forcibly separated from their parents at the southern border.⁴³⁰ The Committee was also concerned by reports that hundreds of children remain separated from their families, even after the rescission of the policy.⁴³¹

The Committee recommended three sets of actions to remedy the problem of migrant children being separated from their parents.⁴³² First, redouble all efforts to reunify separated children with their families.⁴³³ Second, prohibit family separations of migrants in the future.⁴³⁴ And third, provide victims of family separation with access to remedies and full reparations, including compensation and support services.⁴³⁵

⁴²² *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 13.

⁴²³ *Id.*

⁴²⁴ ICCPR, *supra* note 18, at arts. 7, 9.

⁴²⁵ *Id.* at arts. 13, 14, 17.

⁴²⁶ PHYSICIANS FOR HUM. RTS., *supra* note 83, at 2.

⁴²⁷ *LoI Fifth Periodic Report*, *supra* note 27, ¶ 20. *See also 4051ST Meeting*, *supra* note 73.

⁴²⁸ *See supra* Part II-F, Issue #1; *supra* Part II-F, Issue #4; *infra* Part II-F, Issue #7; *infra* Part II-F, Issue #9.

⁴²⁹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 52-53.

⁴³⁰ *Id.* ¶ 52.

⁴³¹ *Id.*

⁴³² *Id.* ¶ 53.

⁴³³ *Id.*

⁴³⁴ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 53.

⁴³⁵ *Id.*

IMPACT OF THE CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM

Article 2 of the ICCPR protects against discrimination by state parties, regardless of immigration status.⁴³⁶ The 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.⁴³⁷ 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.⁴³⁸ In practice, this program discriminates against AMEMSA (Arab, Middle Eastern, Muslim, and South Asian) immigration benefit applicants, employs heightened scrutiny of these individuals' applications, and results in delays to individuals gaining citizenship and immigration benefits.⁴³⁹ Within a five-year span, over 41,800 applications were subject to USCIS's application of CARRP, primarily affecting immigrants from Iraq, Iran, Yemen, India, and Pakistan.⁴⁴⁰

The Committee did not provide questions on this issue.

Committee's Concluding Observations⁴⁴¹:

The Committee did not provide observations or recommendations for this issue.

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.⁴⁴² 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.⁴⁴³

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised questions concerning CBP detentions and surveillance.⁴⁴⁴ Committee Member Soh noted that the use of the CBP One mobile application as an exclusive lawful pathway for asylum eligibility imposes significant, excessive burdens, exposing migrants to human rights violations as they attempt to obtain a CBP One appointment. Committee Member Soh further stated that he was appalled by reports of additional deaths of migrant children in the care of CPB, including the recent preventable death of an eight-year-old girl in May 2023.

Within this context, Committee Member Soh asked the following questions:

⁴³⁶ ICCPR, *supra* note 18, at art. 2.

⁴³⁷ 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) 12 (Sept. 2023).

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Concluding Observations Fifth Periodic Report, supra* note 45.

⁴⁴² S. BORODER CMTYS. COAL., *Report for the 2023 Review of U.S. Compliance with the International Covenant on Civil and Political Rights* 4 (Sept. 2023).

⁴⁴³ *Id.* at 5.

⁴⁴⁴ *LoI Fifth Periodic Report, supra* note 27, ¶ 20. *See also* 4051ST Meeting, *supra* note 73.

Question (Soh)⁴⁴⁵: Please provide up-to-date data on deaths occurring in CBP custody and information on investigations into these deaths. Also, what measures are in place to protect the lives of detained children and to provide full reparations to the families of the victims?

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴⁴⁶ stated that all deaths of persons in CBP custody are subject to the same protocols of review. Specifically, Executive Director Brané stated that for each death, the Office of the Chief Medical Officer reviews the case to determine whether the detained citizen received appropriate health care under the DHS’s nationally recognized standards of detention, health care, and practices. Additionally, as Executive Director Brané noted, the Office of Professional Responsibility, in coordination with Contract Subject Matter Experts (SMEs), conducts an objective examination of the facts and circumstances and determines whether relevant detention standards were followed. Executive Director Brané stated that the Office and SMEs determine whether any criminal or administrative misconduct occurred, and subsequently refer investigative findings to the appropriate law enforcement agency. Executive Director Brané added that the Office of Professional Responsibility and SME’s also identify any other areas of concern regarding the individual’s care while in custody and refer issues to the appropriate investigative agency to mitigate future incidents. Executive Director Brané further stated that upon completion, the reports are provided both to CBP senior leadership and to the Office for Civil Rights and Civil Liberties (CRCL). As Executive Director Brané noted, upon official reports of a death, CBP renders notifications to Congress, non-governmental organization (NGO) stakeholders, and the media, and post news releases on relevant data on their website. With respect specifically to the death of the eight-year-old girl in CBP custody this summer, Executive Director Brané stated that CBP’s Office of Professional Responsibility initiated an investigation and is conducting an exhaustive investigation and providing recommendations through the process. Finally, in terms of improving health care, Executive Director Brané added that the DHS is continuing to focus on improved health care access in CBP facilities in particular.

Question (Soh)⁴⁴⁷: Why are there continuous systematic failures that lead to such deaths (i.e., deaths of migrants in CBP custody), despite initiatives such as the enhanced medical directive?

The State party did not provide answers to this question.

Following the initial round of responses received from U.S. representatives, Committee Member Soh thanked the U.S. delegation for the information it provided on immigration detention, and noted some follow-up questions:

Question (Soh)⁴⁴⁸: Regarding the deaths in CBP custody, please provide further information on the provisions of full reparations to the families of the victims and the measures in place to improve health care services in CBP facilities.

⁴⁴⁵ 4051ST Meeting, *supra* note 73.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴⁴⁹ noted that health care in detention is part of DHS’s ongoing immigration reform program, which focuses on improving health services for all persons in its custody, including children in CBP custody. Executive Director Brané stated that the ICE service core provides direct health care to noncitizens in ICE custody; CBP has a similar program. Executive Director Brané further noted that the Office of Health Security and Chief Medical Examiner also reviews and provides input into health services in CBP custody. Per Executive Director Brané, the Office of Health Security is a new office, and they serve as the principal medical workforce and health safety and public health authority for the DHS. Executive Director Brané stated that the office is led by Chief Medical Examiner, and they unify all of the DHS’s medical workforce, health and safety, and public health functions under one organization in order to focus on improvements. She added that the workforce consists of approximately 1,700 federal civil servants, so there is a focus on staffing, and also includes public health services commissioned core officers. Executive Director Brané further noted that the CRCL investigates any complaints involving inadequate medical care.

Committee’s Concluding Observations⁴⁵⁰:

The Committee did not provide any observations or recommendations with direct reference to this issue. However, for the Committee’s comments regarding the CBP’s use of racial profiling, see “Detention Without Due Process,” *supra*.⁴⁵¹

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.⁴⁵²

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu raised concerns about nonimmigrant visa programs within the U.S.⁴⁵³ Committee Member Yigezu’s specific questions, as well as the U.S. responses, follow below:

*Question (Yigezu)*⁴⁵⁴: *What steps does the State party plan to take in updating and reviewing the H and J visa programs, as well as steps taken to develop standards and strengthen on-site inspection systems for monitoring unsafe working conditions? Additionally, what measures does the State party plan to implement to ensure that participation in those programs are voluntary and that employers comply with state and federal laws and regulations?*

Sarah Morgan, Director, Office of Internal Relations and Economic Research, U.S. Department of Labor (“DOL”)⁴⁵⁵ stated that immigrant and underserved workers face unique challenges at the work site including language, educational, and culture barriers that make it difficult to understand and know their rights as workers—the same rights guaranteed to all workers. Director Morgan said that generally, federal labor and employment laws apply to all

⁴⁴⁹ *Id.*

⁴⁵⁰ *Concluding Observations Fifth Periodic Report, supra* note 45.

⁴⁵¹ Refer to Section F, Issue 4, p. 54.

⁴⁵² ICCPR, *supra* note 18, at art. 8.

⁴⁵³ See *LoI Fifth Periodic Report, supra* note 27, ¶ 19 (noting as issue #19 the need for protections in temporary visa programs in order to prevent forced labor). See also *4050TH Meeting, supra* note 22.

⁴⁵⁴ *4051ST Meeting, supra* note 73.

⁴⁵⁵ *Id.*

workers, regardless of immigration status. When conducting investigations, Director Morgan noted that labor and enforcement agencies do not inquire about the immigration status of the workers in question. Per Director Morgan, the DOL has taken and is taking steps to strengthen protections for temporary workers through the H-2A temporary agricultural and the H-2B temporary non-agricultural workers program. To reduce workers vulnerability in exploitation, including human trafficking, Director Morgan added that the DOL, in cooperation with the Department of State and the U.S. Agency for International Development, issued guidance on fair recruitment practices for temporary migrant workers. Director Morgan stated that the guidance is part of a multi-agency effort to promote best practices by those countries and employers participating in the H-2A and H-2B programs. Director Morgan further noted that U.S. regulations prohibit recruiters from seeking or receiving fees from prospective workers and requires reimbursing workers for costs related to visa processing, border crossing, transportation, and housing. To strengthen the protection of all workers, Director Morgan stated that the Occupational Safety and Health Administration (“OSHA”) is authorized to issue law enforcement certifications and the support of applications for T and U visas when the agency identifies criminal activities, including forced labor or human trafficking, during workplace safety inspections. Director Morgan additionally noted that the DOL’s Wage and Hour Division has been issuing U visa certifications since 2011 and T visa certifications since 2015. Director Morgan stated that in September 2023, the DOL announced the issuance of a notice of proposed rulemaking on improving protections for workers in temporary agricultural employment in the U.S. Per Director Morgan, the proposed rulemaking proposes to amend the regulations governing the certification of temporary employment of non-immigrant workers, employed and temporary or seasonal agricultural employment, and the enforcement of contractual obligations applicable to the employers of the non-immigrant workers. Director Morgan noted that the proposed rules would provide new rules for worker self-advocacy, better protections against retaliation, make foreign labor certification more transparent, and enhance the DOL’s enforcement. Director Morgan further added that this proposal builds on rules published in October 2022 that modernize key aspects of the H-2A program. Director Morgan continued to note that the Wage and Hour Division conducts *motu proprio* investigations into employer compliance in the agricultural industry proactively because workers are not likely to file complaints with the Office. Director Morgan stated that the DOL’s outreach efforts include established Consular Partnership Programs with the Governments of El Salvador, Guatemala, Honduras and México. Per Director Morgan, the DOL also maintains a website offering information on the rights and protections available to migrant workers under federal law.

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)⁴⁵⁶ addressed the issues of human trafficking and forced labor, acknowledging that both remain far too common and prevalent across the country.⁴⁵⁷ Deputy Assistant Attorney General Smith enumerated concrete actions the Biden-Harris Administration had taken, including President Biden’s release of a national action plan to combat human trafficking in December 2021 and DOJ’s release of its national strategy to combat human trafficking in January 2022.⁴⁵⁸ Deputy Assistant Attorney General Smith explained that both documents align on three goals: prevention of human trafficking, prosecution of human trafficking cases, and protection of human trafficking

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

victims.⁴⁵⁹ Deputy Assistant Attorney General Smith highlighted the importance of partnerships at every level of government, which includes the creation of local and state-level anti-human trafficking taskforces which are supported by local and state law enforcement and provide comprehensive victim services.⁴⁶⁰ Deputy Assistant Attorney General Smith demonstrated DOJ's focus on criminal prosecutions by stating that in 2022, DOJ brought 162 human trafficking cases, charged 310 defendants, and obtained over 250 convictions.⁴⁶¹

Question (Yigezu)⁴⁶²: Could you please provide information on the use of forced labor, including forced labor in the case of minors?

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴⁶³ responded by acknowledging the performance based national detention standards that provide the opportunity to participate in voluntary work programs, and non-citizens in detention can participate—on a purely voluntary basis—and receive monetary compensation for work completed in accordance with the facilities standardized policies. Executive Director Brané stated that the compensation is in the amount of at least \$1 per day under national standards but varies in accordance with local laws. Executive Director Brané added that the facilities have an established system that ensures detained citizens all pay owed to them before they are transferred or released.

Committee’s Concluding Observations⁴⁶⁴:

The Committee did not provide observations or recommendations on this issue.

FAMILY SEPARATION AT THE U.S.-MEXICO BORDER

In its 2019 List of Issues, the Committee requested the U.S. to comment on the separation of migrant families at the U.S.-Mexico border, which continue to persist despite a court mandate ordering the reunification of families.⁴⁶⁵ The separation of families violates Articles 23 and 24 of the ICCPR.⁴⁶⁶

During the 139TH Session of the Human Rights Committee, Committee Member Soh noted with appreciation the establishment of a task force for the reunification of families in 2021.⁴⁶⁷ However, Committee Member Soh expressed his concern that there are over 800 children who remain separated from their families as a result of the Zero Tolerance Policy. Committee Member Soh's specific questions, as well as the U.S. responses, follow below:

Question (Soh)⁴⁶⁸: In addition to the information given by the delegation yesterday, what progress has been made by the Inter-Agency Task Force and what has prevented the timely reunification of families?

⁴⁵⁹ *Id.*

⁴⁶⁰ 4051ST Meeting, *supra* note 73.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Concluding Observations Fifth Periodic Report, supra* note 45.

⁴⁶⁵ *LoI Fifth Periodic Report, supra* note 27, ¶ 20.

⁴⁶⁶ ICCPR, *supra* note 18, at arts. 23, 24.

⁴⁶⁷ 4051ST Meeting, *supra* note 73. *See also LoI Fifth Periodic Report, supra* note 27, ¶ 20.

⁴⁶⁸ 4051ST Meeting, *supra* note 73.

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴⁶⁹ said that the Interagency Task Force for the Reunification of Families was established by Executive Order 14011 by President Biden in February 2021. Executive Director Brané stated that the Task Force has established a website called “together.gov” or “juntos.gov” where families could register to begin the reunification process. Executive Director Brané stated that the Task Force had identified over 4,000 children separated from their families who are within the scope of the executive order. Executive Director Brané said that, together with coordination of civil society, prior reunifications, and new reunifications identified by the Task Force, the DHS had reunified over 3,200 children with their families. Executive Director Brané noted that over 770 children have benefited and worked through the Family Reunification Task Force’s program on together.gov, and that there are over 200 children whose families have been contacted and informed of their access to reunification and other services but have not yet taken action. Executive Director Brané added that there are over 80 children who are registered and in the process of being reunified with their families at this moment.

Question (Soh)⁴⁷⁰: *What measures have been taken to successfully reunify all families to completely halt any further separations and to ensure that victims are provided with full reparations and have access to services to address the physical and psychological harm arising from separation?*

Michelle Brané, Executive Director, U.S. Department of Homeland Security (“DHS”)⁴⁷¹ stated that the Interagency Task Force for the Reunification of Families provides support for families to request parole. Families are eligible to receive parole for a period of three years, along with work authorization. Executive Director Brané stated that they are also provided with behavioral health services to provide them with assistance both pre-reunification, after the reunification, and throughout the process to address trauma experienced from the separation and, in many cases, to address the five years that families have been separated. Executive Director Brané further noted that on October 17, 2023, the United States announced a settlement agreement in the case of *Ms. L., et al. v. ICE, et al.*, which was the litigation around the policies of zero tolerance that led to many of these separations, and agreed to additional services that include housing assistance for families, some medical insurance support for families, and additional legal services for families going through the process, in addition to some streamlined access to immigration statuses.

Committee’s Concluding Observations⁴⁷²:

Please refer to Section F, Issue 5 Zero Tolerance Policy, *supra*.⁴⁷³ for comments regarding this issue.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Concluding Observations Fifth Periodic Report, supra* note 45.

⁴⁷³ Refer to Section F, Issue 5, p. 57.

Right to Life

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 36.⁴⁷⁴ Despite this, in the U.S., Black, Brown, and Indigenous communities face discriminatory deprivation of access to clean and affordable drinking water. The denial of this aspect of the right to life is compounded by the absence of information transparency at the federal, state, and local levels in the funding and operation of drinking water systems.⁴⁷⁵

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu raised concerns about access to safe and clean water.⁴⁷⁶ Committee Member Yigezu's specific questions, as well as the U.S. responses, follow below:

Question (Yigezu)⁴⁷⁷: Please clarify the State party's position regarding the obligation under Article 6 of the Covenant to address general conditions that might give rise to direct threats to life. What steps have been taken to address the inequalities and to ensure that the authorities were held accountable for the drinking water crisis in cities in which persons of African descent made up a large percentage of the population?

Karim David Marshall, Senior Advisor, Office of Environmental Justice and External Civil Rights, Environmental Protection Agency ("EPA")⁴⁷⁸ responded by stating that the EPA has awarded a grant of \$100 million to fund upgrades to the drinking water infrastructure in Flint, Michigan. Per Senior Advisor Marshall, the funding enabled Flint to accelerate its improvements. Senior Advisor Marshall noted that the Agency is overseeing the transition to a long-term drinking water source in the area, although its infrastructure meets national standards for lead. He stated that, as of September 2022, 95% of lead service lines have been replaced. He also noted that the Agency continues to monitor the replacement of all lead and galvanized service lines, while the use of orthophosphate treatment systems is also contributing significantly to reducing lead levels in the water.

Ann Marie Bledsoe Downes, Principal Deputy Solicitor for Indian Affairs, U.S. Department of the Interior ("DOI")⁴⁷⁹ stated that the Biden-Harris Administration has deployed record investments to tribal communities to address modern wastewater systems, clean drinking water, and climate adaptation along with other infrastructure needs. Principal Deputy Solicitor Downes stated that in November 2021, President Biden signed the Bipartisan Infrastructure Law, which invested more than \$13 billion directly into tribal communities, as well as made them eligible for millions more. Per Committee Member Downes, through the infrastructure law the DOI received \$466 million for the Bureau of Indian Affairs for infrastructure projects and climate resiliency

⁴⁷⁴ ICCPR, *supra* note 18, at art. 6(1); *see* Hum. Rts. Comm., *General Comment 36*, U.N. Doc. CCPR/C/GC/36 (2018).

⁴⁷⁵ INT'L ASSOC. OF OFF. HUM. RTS. AGENCIES. AND PROGRAM ON HUM. RTS. AND THE GLOB. ECON., *Drinking Water Access and Affordability and U.S. Compliance with the International Covenant on Civil and Political Rights 2* (SEPT. 12, 2023).

⁴⁷⁶ *See LoI Fifth Periodic Report, supra* note 27, ¶ 15 (framing the issue of access to water as a right to life guaranteed by the ICCPR). *See also 4050TH Meeting, supra* note 22.

⁴⁷⁷ *4050TH Meeting, supra* note 22.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

initiatives. She also noted that the DOI had received \$2.5 billion to help it fulfill settlements of water rights claims and to deliver water resources to tribal communities. She added that an additional \$48 million was deployed for climate adaptation initiatives.

Committee’s Concluding Observations⁴⁸⁰:

Regarding this issue, the Committee acknowledged the State party’s efforts in securing access to clean, safe, and affordable water but remains concerned about the water crises present throughout the country and the disproportionate impact the crises have on Black and Indigenous populations.⁴⁸¹

The Committee expressed that the State party should strengthen water crises prevention measures while ensuring access to clean, safe, and affordable water for all.⁴⁸²

FOOD SECURITY

Violations of the right to food can be construed as violations of the right to life under Article 6 of the ICCPR.⁴⁸³ As such, any violations by the U.S. of the right to food result in a direct violation of Article 6.⁴⁸⁴

The Committee did not provide questions on this issue.

Committee’s Concluding Observations⁴⁸⁵:

The Committee did not provide conclusions or recommendations on this issue.

FAILURE TO ADDRESS ENVIRONMENTAL CONCERNS

In its 2019 List of Issues, the Committee requested 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.⁴⁸⁶ The inherent right to life is protected under Article 6 of the ICCPR.⁴⁸⁷

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu raised concerns about the impact of climate change on citizens within the U.S.⁴⁸⁸ Committee Member Yigezu’s specific question, as well as the U.S. response, follows below:

Question (Yigezu)⁴⁸⁹: *Please explain what steps the State party has taken or planned to take to ensure the sustainable use of resources to address the disproportionate impact of climate change*

⁴⁸⁰ *Concluding Observations Fifth Periodic Report, supra note 45, ¶¶ 38-39.*

⁴⁸¹ *Id.* ¶ 38.

⁴⁸² *Id.* ¶ 39.

⁴⁸³ ICCPR, *supra* note 18, at art. 6.

⁴⁸⁴ 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).

⁴⁸⁵ *Concluding Observations Fifth Periodic Report, supra note 45.*

⁴⁸⁶ *LoI Fifth Periodic Report, supra note 27, ¶ 15.*

⁴⁸⁷ ICCPR, *supra* note 18, at art. 6.

⁴⁸⁸ *See LoI Fifth Periodic Report, supra note 27, ¶ 15* (framing as issue #15 the threats to the right of life caused by climate change). *See also 4050TH Meeting, supra note 22.*

⁴⁸⁹ *4050TH Meeting, supra note 22.*

on low-income communities, Indigenous Peoples and persons of African descent. Does the State party intend to employ a precautionary approach to protecting its citizens from the impact of climate change and natural disasters?

Karim David Marshall, Senior Advisor, Environmental Protection Agency (“EPA”)⁴⁹⁰ responded by stating that the State party defines environmental justice as the just treatment and meaningful involvement of all people, regardless of race, color, income, national origin, tribal affiliation, disability or agency, with respect to environmental laws, regulations and policies. He noted that federal agencies have been directed to identify and address any disproportionately adverse human or environmental health effects that their programs, policies or activities are having on vulnerable communities. Senior Advisor Marshall stated that, in April 2023, the Biden-Harris Administration issued an executive order that requires federal agencies to submit a strategic plan on environmental justice within eighteen months, after which a four-year cycle of planning and implementation would be set in motion.

Committee’s Concluding Observations⁴⁹¹:

Regarding this issue, the Committee praised the State party for Executive Order 14008 “Tackling the climate crisis at home and abroad,” issued on January 27, 2021, by President Biden.⁴⁹² However, it remains concerned about the lack of specific information regarding precautionary measures the State party has or will adopt to protect people, specifically those most vulnerable to climate change and natural disasters.⁴⁹³

The Committee expressed that the State party should strengthen efforts geared towards the prevention and mitigation of climate change effects and of environmental degradation.⁴⁹⁴ This should include bolstering the corresponding legal framework(s) and the adoption of precautionary measures aimed at protecting those most vulnerable.⁴⁹⁵

CRIMINALIZATION OF HOMELESSNESS AND POVERTY

Article 6 of the ICCPR states that everyone has an inherent right to life, that the right shall be protected by law, and that no one shall be arbitrarily deprived of that right.⁴⁹⁶ 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 homelessness. Moreover, due to the pandemic, more unhoused persons are unsheltered than sheltered, with many of them being forced to live in encampments and in public spaces.⁴⁹⁷

⁴⁹⁰ *Id.*

⁴⁹¹ *Concluding Observations Fifth Periodic Report, supra note 45, ¶¶ 38-39.*

⁴⁹² *Id.* ¶ 38.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.* ¶ 39.

⁴⁹⁵ *Id.*

⁴⁹⁶ ICCPR, *supra* note 18, at art. 6.

⁴⁹⁷ 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).

During the 139TH Session of the Human Rights Committee, Committee Member Šurlan raised questions concerning the U.S.’ criminalization of homelessness.⁴⁹⁸ Committee Member Šurlan cited to U.S. claims of denied jurisdiction of the Committee to deal with this issue, though she did recognize the U.S.’ submittal of some information from which the Committee and the U.S. could continue this dialogue. Committee Member Šurlan noted that access to housing and the decriminalization of homelessness are essential to the right to life, and that having no access to food, water, health care, shelter, electricity, and sanitation infringes on this right, as well as the right to life with dignity. Committee Member Šurlan stated that homeless individuals experience poor health and are at higher risk of premature death than those with housing. Committee Member Šurlan further stated that bias-motivated violence against unhoused people has increased and has disproportionately affected racial and ethnic minorities, LGBTQIA+ youth, and persons with disabilities. Committee Member Šurlan also raised concerns with the increase in laws and policies across the U.S. that criminalize homelessness. She did, however, note the Committee’s recognition that the U.S. federal government has taken steps to end criminalization practices and to implement constructive alternative policies aimed at sustainably ending homelessness.

Committee Member Šurlan’s questions, as well as the U.S. responses, follow below:

Question (Šurlan)⁴⁹⁹: What further measures is the State party planning to undertake to prevent the criminalization of the everyday activities associated with homelessness?

Demetria McCain, Principal Deputy Assistant Secretary, U.S. Department of Housing and Urban Development (“HUD”)⁵⁰⁰ stated that HUD takes issues of homelessness, housing criminalization, and the lack of affordable housing very seriously. Turning first to the issue of LGBTQIA+ individuals, Principal Deputy Assistant Secretary McCain noted that, immediately after the *Bostock* decision, the Biden-Harris Administration announced in February 2021 that it would enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity. Principal Deputy Assistant Secretary McCain noted that since that time, and particularly in 2021, HUD processed more cases alleging sexual orientation and gender identity than ever. Principal Deputy Assistant Secretary McCain stated that HUD recognizes that LGBTQIA+ youth experience homelessness at a disproportionate high rate, with housing discrimination being a significant factor, particularly for transgender young people. She noted that the HUD has therefore drawn on its own experience with its youth homelessness demonstration program, as well as its previous programs, to shape some of the insights into what it is doing. Principal Deputy Assistant Secretary McCain pointed to HUD’s creation of an LGBTQIA+ toolkit which addresses the root causes of bias against LGBTQIA+ individuals. She stated that the toolkit is being made available to shelter providers and the public, and that it covers the rights, responsibilities, and competence-type of issues. Turning to enforcement, Principal Deputy Assistant Secretary McCain stated that HUD has received several complaints under these issues. Principal Deputy Assistant Secretary McCain shared an example of a landlord telling a transgender woman to act like a man, walk like a man, and talk like a man while they are on the property. Principal Deputy Assistant Secretary McCain stated that reports such as these are problematic, and

⁴⁹⁸ The criminalization of homelessness was identified as issue #9 in the Committee’s 2019 List of Issues. *See LoI Fifth Periodic Report, supra* note 27, ¶ 9. *See also 4050TH Meeting, supra* note 22.

⁴⁹⁹ *4050TH Meeting, supra* note 22.

⁵⁰⁰ *Id.*

that HUD will use all of its enforcement powers to address them. Turning to the criminalization of homelessness, Principal Deputy Assistant Secretary McCain stated that the best way to deal with the issue is to provide housing. She noted that providing housing is something that this Administration believes in, and that HUD will continue to work to address the problem. Principal Deputy Assistant Secretary McCain additionally referred to programs launched at the national level that deal with homelessness, including the All-In Program that was recently instituted by the White House, as well as the House America program. In tackling the issue of criminalization homelessness, Principal Deputy Assistant Secretary McCain also stressed the need for HUD to work with its local and state partners.

Steven Reed, Mayor of City of Montgomery, Alabama⁵⁰¹ noted that the issue of homelessness touches many cities, towns, and villages throughout the United States. He stated that mayors have been dealing with this issue in a variety of ways and have experienced challenges due to bureaucracy at the federal level, but also opportunities at the federal level being complicated by those at state levels that are looking to criminalize loitering and other issues around homelessness. At the local level, he noted that many mayors are expanding their city governments to try and work with housing authorities and private partners to create affordable housing initiatives. However, Mayor Reed called to the challenges arising from issues such as tent cities or the threat of retail to pull out of certain neighborhoods due to the unhoused population. As a result, he stated that mayors have had to balance concerns of how to respond to the community, and how to respond to those that are in need. Nonetheless, Mayor Reed noted that his city has been up to the challenge in addressing these concerns by investing in facilities and other programs, centralizing services and access, and using grants to invest in “tiny homes” and “Pala homes” initiatives.

***Question (Šurlan)**⁵⁰²: What steps is the State party taking to promote the adoption of the Right to Rest Act or the Homeless Bill of Rights in states that have not yet enacted them?*

The State party did not provide answers to this question.

***Question (Šurlan)**⁵⁰³: What mechanisms are in place to monitor mortality of unhoused individuals and what are the current statistics on their mortality in each state?*

The State party did not provide answers to this question.

***Question (Šurlan)**⁵⁰⁴: What measures have been taken to provide unhoused individuals with sanitary shelters, access to food and water, and access to health care, especially in small towns and rural areas, in order to prevent premature death?*

The State party did not provide answers to this question.

Following the initial round of responses received from U.S. representatives, Committee Member Šurlan noted that the answers provided concerning homelessness were very general and trusted

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

that the State party would provide more detailed answers. Committee Member Šurlan also raised the following additional question:

Question (Šurlan)⁵⁰⁵: *In the light of the Committee's understanding that restrictions such as the Sex Offender Registration and Notification Act have increased homelessness, what measures is the State party going to take to address this problem?*

Demetria McCain, Principal Deputy Assistant Secretary, U.S. Department of Housing and Urban Development ("HUD")⁵⁰⁶ stated that it is clear both by President Biden, who certainly recognizes second chances, and the Secretary of HUD, Secretary Marcia Fudge, that in fact people do need second chances. Principal Deputy Assistant Secretary McCain stated that HUD's regulatory agenda is forthcoming, and that HUD hopes to invite civil society to participate in the public comment process as HUD engages in a proposed rule to address the elimination of unnecessary criminal records on people as it relates to housing and HUD housing. She reiterated that HUD hopes to hear from the public, including civil society, on these issues.

Committee's Concluding Observations⁵⁰⁷:

Regarding this issue, the Committee is increasingly concerned about the growing number of local and state laws criminalizing homelessness and the dangers unhoused people face, including violence and premature death.⁵⁰⁸ It observed that marginalized people are at greater risk of experiencing homelessness.⁵⁰⁹

The Committee, while reiterating previous recommendations, expressed that the State party should abolish laws and policies that criminalize homelessness and adopt measures protecting unhoused people's human rights.⁵¹⁰ It should also provide legal, financial, and other incentives to decriminalize homelessness.⁵¹¹ The State party should also devote efforts to finding and creating solutions to homelessness that are in line with international human rights standards.⁵¹² Finally, the State party should review how criminal records policies and practices lead to homelessness.⁵¹³

ARMS TRADE

Article 6 of the ICCPR protects the inherent right to life.⁵¹⁴ 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.⁵¹⁵

⁵⁰⁵ 4050TH Meeting, *supra* note 22.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 40-41.

⁵⁰⁸ *Id.* ¶ 40.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ *Id.* ¶ 41.

⁵¹² *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 40-41.

⁵¹³ *Id.* ¶ 41.

⁵¹⁴ ICCPR, *supra* note 18, at art. 6.

⁵¹⁵ 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).

In follow up to the question Committee Member Kran asked the day before regarding due diligence with respect to the country's arms trade:

Question (Kran)⁵¹⁶: *How does the State party ensure that its foreign aid policy and actions do not contribute to human rights violations abroad?*

The State party did not provide answers to this question.

Committee's Concluding Observations⁵¹⁷:

The Committee expressed concern regarding the State party's continuous practice of utilizing armed drones in extraterritorial counterterrorism operation which result in killings.⁵¹⁸ Further, the Committee was concerned regarding the lack of transparency surrounding the legal and policy criteria for such drone strikes. The Committee recommended that the State party, using the Committee's general comment No. 36, should "revisit its position regarding the legal justifications for the use of deadly force through drone attacks."⁵¹⁹

⁵¹⁶ 4051ST Meeting, *supra* note 73.

⁵¹⁷ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 32-33.

⁵¹⁸ *Id.* ¶ 32.

⁵¹⁹ *Id.* ¶ 33.

Treatment of Persons Deprived of Liberty

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.⁵²⁰ In addition, Article 6(1) states that “no one shall be arbitrarily deprived of his life,”⁵²¹ 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.⁵²²

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu raised concerns about gun violence within the U.S. and the excessive use of force.⁵²³ Committee Member Yigezu’s specific questions, as well as the U.S. responses, follow below:

Question (Yigezu)⁵²⁴: Please clarify the State party’s plans for preventing and reducing gun violence. Does the State party intend to enact laws to block access to firearms for individuals who might misuse them, maintain and disclose records of all background checks, ban access to assault weapons and high-capacity magazines, adopting or strengthening laws to prevent perpetrators of domestic violence from having access to guns, repealing laws providing immunity to gun manufacturers and take steps to implement evidence-based violence reduction measures?

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵²⁵ stated that the State party is deeply concerned about the disproportionate impact that gun violence has had on communities of color and has consequently established a federal office to specifically address gun violence concerns. She stated that the Biden-Harris Administration supports and continues to push for common-sense gun violence legislation that would require background checks for all gun sales, ensure that terrorists could not buy a weapon in the country, ban assault weapons and high-capacity magazines, revoking gun manufacturers’ immunity from liability and curb the proliferation of ghost guns. Attorney Advisor Tessier noted that, in June 2022, President Biden signed the Bipartisan Safer Communities Act that enhances certain restrictions and penalties on firearm purchases, promotes evidence-based best practices for school safety and provides grants for mental health services, as well as emergency funding for mental health resources and school safety matters. Attorney Advisor Tessier added that the DOJ published the model extreme risk protection order legislation for states to adopt red flag laws to temporarily bar people in crisis from accessing firearms if they presented a danger to themselves or others. Per Attorney Advisor Tessier, it is particularly problematic when domestic violence and gun violence intersect. As a part of the broader commitment to end gender-based violence, she noted that the DOJ has acted as a leader to end violence against women.

⁵²⁰ ICCPR, *supra* note 18, at art. 2(3) (a)-(c).

⁵²¹ *Id.* at art. 6(1).

⁵²² *Id.* at art. 9(1) and 9(4).

⁵²³ See *LoI Fifth Periodic Report*, *supra* note 27, ¶ 14 (identifying gun violence, including in the context of domestic violence, as issue #14). See also *4050TH Meeting*, *supra* note 22.

⁵²⁴ *4050TH Meeting*, *supra* note 22.

⁵²⁵ *Id.*

Question (Yigezu)⁵²⁶: Does the State party plan to modify its legislation in order to move from the current standard of “objective reasonableness” to a stricter use of force in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the United Nations? Does the State party intend to abandon the doctrine of qualified immunity and establish effective mechanisms to ensure accountability and compensation for victims of the excessive use of force by law enforcement officials? Please address any steps the State party has taken or is planning to take to ban racial profiling at the federal, state, and local levels.

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)⁵²⁷ acknowledged that every person has the right to constitutional policing, and excessive use of force by law enforcement is inconsistent with that right. He stated that responding to incidents of excessive use of force requires a multi-pronged strategy to address offenses by law enforcement officers. Deputy Assistant Attorney General Smith noted that cases involving excessive use of force by law enforcement officers were brought to prosecution, and police officers who failed to fulfill their constitutional obligations were held accountable. He added that the police officers responsible for the killing of George Floyd in Minneapolis, Minnesota, have been prosecuted and convicted, along with the officers responsible for the death of Breonna Taylor in Louisville, Kentucky, who have been indicted. Additionally, he pointed to an investigation opened into the killing of Tyre Nichols in Memphis, Tennessee, by officers of the Memphis Police Department. Per Deputy Assistant Attorney General Smith, the DOJ is committed to seeking justice for those whose rights are violated by the excessive use of force by law enforcement officers. Deputy Assistant Attorney General Smith noted that the DOJ also uses civil litigation to combat the excessive use of force, including pattern-or-practice investigations into law enforcement agencies that have violated constitutional rights.

Deputy Assistant Attorney General Smith also stated that the DOJ is currently enforcing sixteen settlement or consent decrees in law enforcement agencies across the country whose staff had violated constitutionally mandated rights, engaged in excessive use of force or otherwise failed to comply with their legal obligations.

Deputy Assistant Attorney General Smith noted that the DOJ works with law enforcement agencies to improve training and enhance accountability and officers who use excessive force are disciplined and retrained. He also noted that the DOJ created a national accreditation standard for state and local law enforcement agencies pursuant to Executive Order 14074 on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety. Deputy Assistant Attorney General Smith explained that this standard promotes the best practices in the use of force, hiring and performance evaluations and ensures the appropriate use of body cameras and the submission of crime data to the Federal Bureau of Investigation. Deputy Assistant Attorney General Smith added that training and other resources have been provided to state attorney general’s offices, prosecutors, and other criminal justice personnel. Per Deputy Assistant Attorney General Smith, the DOJ has recently updated its racial profiling guidance and is working with law enforcement agencies at the federal, state, and local levels to ensure that they comply with that guidance so that they do not engage in unconstitutional policing.

⁵²⁶ *Id.*

⁵²⁷ *Id.*

Steven Reed, Mayor of City of Montgomery, Alabama⁵²⁸ stated that racial disparities and excessive use of force is not foreign to the city of Montgomery. He noted that Greg Gunn, an unarmed black man, was killed by a white police officer; he also noted that the killing of George Floyd sparked local innovation and efforts to think differently about keeping residents safe. Mayor Reed stated that in early 2021, the National League of Cities formed a task force, named “Reimagining Public Safety,” to provide practical steps to municipal leaders in areas such as alternative and innovative responses, violence prevention, jail use reduction, law enforcement accountability, and the role of credible messengers and community engagement. Mayor Reed stated that the task force has three goals, namely, to set out the 21st century police safety agenda; highlight promising public safety and justice reform policies; and identify opportunities for improvement, including amplifying the voices of local leaders in justice reform and public safety. Per Mayor Reed, in late 2021, the task force released two reports to inform local public safety action. He also noted that municipal leaders across the United States are committed to using innovative tools, including civilian review boards and bias training, to foster trust in the police force.

Royce Bernstein Murray, Senior Counselor, U.S. Department of Homeland Security (“DHS”)⁵²⁹ replied by saying that the DHS enforces strict standards of conduct for all employees, whether they are on or off duty, and investigates deaths resulting from the use of force, as well as following up on complaints relating to violations of civil rights and liberties. She noted that in January of 2021, U.S. Customs and Border Protection (CBP) released its updated Use of Force Administrative Guidelines and Procedures Handbook, which are both publicly available. She clarified that the CBP use of force policy is based on the Constitutional standard of objectively reasonable force, federal case law, and applicable DHS and CBP policies. She added that in February of 2023, DHS issued an updated department-wide use of force policy that contains standards and guidelines for use of force by DHS law enforcement and affirms the duty of all DHS employees to report inappropriate use of force. She additionally noted that accountability and appropriate corrective measures for excessive use of force are also addressed by the Office of the Inspector General within DHS that investigates such cases, potentially leading to criminal prosecution and a range of sanctions. Per Senior Counselor Murray, as part of its commitment to transparency and accountability, information about all instances of the use of force by CBP are made publicly available on DHS’s website.

Following the initial round of responses received from U.S. representatives, Committee Member Yigezu raised the following additional questions:

Question (Yigezu)⁵³⁰: *Why would the State party not meet the international standard of necessity and proportionality? What measures have been taken to combat the use of excessive force by law enforcement officials, which has led to a disproportionate number of deaths from racial and ethnic minorities? What challenges do you face in implementing legislation to prevent racial killings by excessive use of force, as seen in the killing of George Floyd? Please provide information on the actual impact of the measures taken to combat gun violence and respond to his questions about the State party’s reservations to certain provisions of the Covenant.*

⁵²⁸ *Id.*

⁵²⁹ 4050TH Meeting, *supra* note 22.

⁵³⁰ *Id.*

Johnathan Smith, Deputy Assistant Attorney General, U.S. Department of Justice (“DOJ”)⁵³¹ acknowledged that, given the size, diversity and plurality of the country and its history of racism and history, resolving the issue will require time, effort and all of its tools or resources. Deputy Assistant Attorney General Smith noted that, while the DOJ has urged Congress to act on measures, including the George Floyd Justice in Policing Act and the End Racial and Religious Profiling Act, is also proactively addressing those issues that were clearly not sufficient to solve those problems alone. Per Deputy Assistant Attorney General Smith, the DOJ demonstrates a commitment to upholding the constitutional rights of all people in the country. He also added that the DOJ is using other tools, including guidance documents to teach and remind law enforcement agencies about their obligations under federal law. Deputy Assistant Attorney General Smith pointed to Executive Order (EO) 14074 on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, which has been signed to improve law enforcement agencies, including data collection and the use of such critical aids, including body cameras. Per Deputy Assistant Attorney General Smith, the DOJ also provides over \$5 billion a year to law enforcement agencies and levies such funds with the understanding that they must comply with their obligations under the law. Deputy Assistant Attorney General Smith acknowledged that there is more work to be done, and while there are limits on their authority, the DOJ will continue to be aggressive in preventing racially driven excessive use of force.

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵³² noted the DOJ prioritizes the funding of projects designed to promote racial equity and the removal of barriers to access opportunities for historically marginalized communities. Attorney Advisor Tessier noted that, in 2021, United States Attorney General Merrick Garland reinvigorated the Office of Access to Justice to address disparities in the criminal and civil legal systems. She added that these efforts also include strengthening access to justice for Native American communities.

Aaron Ford, Attorney General, State of Nevada⁵³³ stated that the State of Nevada has banned the police force from using the types of chokeholds that have caused deaths, enacted state laws providing for judicial investigations into police departments alleged to have used discriminatory practices, limited the use of no-knock warrants, and required law enforcement officers to wear body cameras. Per Attorney General Ford , in Nevada, a background check is a mandatory requirement for purchasing a firearm and red flag laws are in place. He additionally noted that Nevada passed ghost gun laws that require specific registration of firearms to the owner.

Committee’s Concluding Observations⁵³⁴:

The Committee stated its concern regarding police brutality and excessive and deadly use of force by law enforcement officials.⁵³⁵ This included the excessive and deadly use of force by Customs and Border Protection (CBP) officers, which the Committee stated has a disparate impact on people of African descent, Indigenous peoples, persons of Hispanic and Latino origins, migrants,

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 36-37.

⁵³⁵ *Id.* ¶ 36.

and asylum seekers.⁵³⁶ The Committee was also concerned at reports of the lack of accountability in the majority of cases of excessive and deadly use of force by law enforcement officials.⁵³⁷

Recalling its previous recommendations, the Committee recommended that the State party should bring federal and state regulations, standards, and operational procedures governing use of force into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.⁵³⁸ The State party should impartially, thoroughly and promptly investigate all allegations of excessive use of force and that redress is accessible to victims or their families.⁵³⁹ Finally, the State party, to ensure the data is publicly available and included in the FBI's database, should make data collection and reporting of excessive or deadly use of force mandatory for all levels of law enforcement agencies.⁵⁴⁰

An additional area of concern the Committee addressed was killing using armed drones. The Committee stated its serious concern at the continuing practice of the State party of the killings in extraterritorial counterterrorism operations using armed drones.⁵⁴¹ Further, the Committee noted its concern of the State party's lack of full transparency regarding the legal and policy criteria for drone strikes, the alleged possibility of variations through classified plans, as well as the lack of accountability for the loss of life and for other serious harm caused, particularly to civilians. The Committee noted that the State party maintains its position that extraterritorial counterterrorism operations, including drone strikes, are conducted in the course of its armed conflict with Al-Qaeda and associated forces in accordance with its inherent right of national self-defense, and that they are governed by international humanitarian law as well as by the current Presidential Policy Memorandum that establishes standards and procedures that govern the use of lethal force outside of various active hostilities.⁵⁴² However, the Committee reiterated its concerns about the State party's broad approach to the definition of "armed conflict," including an overbroad geographical and temporal scope.⁵⁴³ While noting the adoption of the Civilian Harm Mitigation and Response Action Plan ("CHMR-AP"), the Committee was seriously concerned that CHMR-AP only applies to lethal strikes carried out by the Department of Defense and not by other agencies such as the Central Intelligence Agency ("CIA"). The Committee was further concerned at the very limited use of ex gratia payment to affected civilians and their families in recent years.⁵⁴⁴

The Committee reiterated its previous recommendations regarding the State party's its position on the legal justifications for the use of deadly force through drone attacks.⁵⁴⁵ The Committee's recommendations included disclosing all drone strike criteria, taking all feasible measures to protect civilians in drone attacks, conducting extensive investigations regarding alleged violations

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ *Id.* ¶ 37(a).

⁵³⁹ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 37(b).

⁵⁴⁰ *Id.* ¶ 37(c).

⁵⁴¹ *Id.* ¶ 32.

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 32.

⁵⁴⁵ *Id.* ¶ 33 (b)-(f).

of the right to life, and establishing accessible accountability mechanisms for victims of drone strikes whose home governments will not compensate them.⁵⁴⁶

An additional area of concern the Committee addressed was gun violence.⁵⁴⁷ While it welcomed the adoption of the Bipartisan Safer Communities Act in 2022 and the establishment of a federal office for gun violence prevention in September 2023, the Committee was gravely concerned at the increase in gun-related deaths and injuries.⁵⁴⁸ Further, the Committee noted its concern that these gun-related deaths and injuries disproportionately affect racial and ethnic minorities as well as women and children.⁵⁴⁹

Recalling its previous recommendations, the Committee encouraged the State party to effectively protect the right to life.⁵⁵⁰ In doing so, the State party should use legislative and policy measures to prevent and reduce gun violence, including background checks, banning assault weapons, restricting access to firearms by those most likely to abuse them, and ensuring access to effective remedies, “including by repealing immunities for any entity operating in the firearms industry.”⁵⁵¹

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.⁵⁵² Though juveniles can no longer be executed, the U.S. still has 2,414 individuals on death row and has executed more than 1,500 persons since 1970.⁵⁵³ Two specific issues were 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.⁵⁵⁴

During the 139TH Session of the Human Rights Committee, Committee Member Soh raised questions concerning the continued use of the death penalty in the United States.⁵⁵⁵ Committee Member Soh welcomed abolition of the death penalty in several states since the last Review, as well as the reinstatement of a temporary moratorium on federal executions. However, he noted that reports indicate that death sentences continue to be used at the federal and state levels with no apparent progress on legislation to abolish the death penalty. Committee Member Soh also commented on U.S. methods of execution, including concern with lethal injections due to the risk of excruciating pain and high rates of botched executions associated with the injections, as well as concern with the experimental nature and lack of transparency in protocols and administration for executions. Lastly, Committee Member Soh referenced reports stating that members of racial and ethnic minority groups are still disproportionately overrepresented in death row, and which cited

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.* ¶ 34.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 35.

⁵⁵⁰ *Id.* ¶ 35.

⁵⁵¹ *Id.*

⁵⁵² AM. CIV. LIBERTIES UNION AND PRINCETON POL’Y ADVOC. CLINIC, *Review of U.S. Criminal Legal System Compliance with the ICCPR and Recommendations for Policy Changes* 16 (Sept. 2023).

⁵⁵³ *Id.*

⁵⁵⁴ ICCPR, *supra* note 18, at arts. 6, 7.

⁵⁵⁵ *See LoI Fifth Periodic Report, supra* note 27, ¶ 13 (identifying the use of the death penalty as an infringement on the right to life under the ICCPR). *See also* 4050TH Meeting, *supra* note 22.

to other discriminatory problems, such as racial discrimination in jury selection and wrongful convictions due to cross-racial misidentification.

Committee Member Soh's questions, as well as the U.S. responses, follow below:

***Question (Soh)**⁵⁵⁶: Could the delegation indicate any progress made to pass legislation at the federal level and on any measures taken to incentivize states to abolish the death penalty, including information on the Federal Death Penalty Prohibition Act of 2023? Also, has the State party taken any steps to adopt a more permanent and visual moratorium?*

Aaron Ford, Attorney General, State of Nevada⁵⁵⁷ noted that while twenty-three states have banned the death penalty, twenty-four states still have it, and three that still have it, have a governor-imposed moratorium on it. The District of Columbia as a municipality also banned it. Per Attorney General Ford, Nevada's sole method of execution is lethal injection and essentially every state that has legal capital punishment prioritizes lethal injection as the chosen method, but some approve of secondary methods. Attorney General Ford noted that, although he does not support the use of the death penalty, he is bound to uphold the law as an elected official. Attorney General Ford stated that more than half the inmates sentenced in Nevada are persons of color, with a disproportionate number being Black. Moreover, he noted that the state legislative auditor found that simply prosecuting a death penalty case costs over half of a million dollars per case more than cases that do not seek the death penalty. He also pointed to a series of circumstances since 2006, which was the last time Nevada saw a death penalty execution, that have prohibited death penalty prosecutions or executions from going forward, including execution personnel backing out and the pharmaceutical companies refusing to sell drugs used for lethal injection. Per Attorney General Ford, even family members of some murder victims have come out against the death penalty. Attorney General Ford added that, before leaving office, the previous governor indicated that he wanted to try to commute all death penalties but was unable to do so. Attorney General Ford stated that there is growing momentum in the states to eradicate the death penalty, and that he believes it is ultimately only a matter of time before it is repealed in Nevada.

***Question (Soh)**⁵⁵⁸: Please comment on the concerns associated with lethal injections (i.e., excruciating pain, high rates of botched executions, and experimental and non-transparent protocols) and elaborate on the measures in place, or envisioned, to review execution methods, to prevent pain and prolonged suffering, and to fully respect Article 7.*

The State party did not provide answers to this question.

***Question (Soh)**⁵⁵⁹: Please clarify whether information on the composition of lethal injections is available to individuals facing death penalty and to the public.*

The State party did not provide answers to this question.

⁵⁵⁶ 4050TH Meeting, *supra* note 22.

⁵⁵⁷ 4051ST Meeting, *supra* note 73.

⁵⁵⁸ 4050TH Meeting, *supra* note 22.

⁵⁵⁹ *Id.*

Question (Soh)⁵⁶⁰: Please provide details of any concrete measures taken, or envisioned, to ensure that the death penalty is not applied in a discriminatory manner other than the procedural guarantees mentioned in the State party’s report.

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵⁶¹ noted that the U.S. Constitution prohibits the imposition of the death penalty based on race and there are special precautions in federal cases, including a juror certification requirement that decisions are not based on race. Still, as Attorney Advisor Tessier stated, overrepresentation of minority persons is a serious concern. Per Attorney Advisor Tessier, when Attorney General Garland imposed a moratorium on federal executions, he stated that serious concerns had been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disproportionate impact on people of color, and the troubling number of exonerations. Pursuant to the Attorney General’s moratorium and memorandum, Attorney Advisor Tessier noted that the DOJ is reviewing federal capital case policies and procedures. Attorney Advisor Tessier also stated that, at the federal level, the DOJ has a capital case review protocol, one of the goals of which is to ensure application in a nondiscriminatory manner. Attorney Advisor Tessier explained that the reviewers are not made aware of the race or ethnic origin of the defendants or the victims. In addition, Attorney Advisor Tessier noted that in January 2023, the justice manual was further updated to reflect that the determination of whether to pursue a capital prosecution is among the most momentous decisions prosecutors must make and that such a decision carries deep profound consequences for the accused and the victims’ families.

Question (Soh)⁵⁶²: Please provide information on the number of wrongful death sentence convictions since the prior reporting period and on any remedies provided. In addition, what measures have been taken to ensure the timely compensation of those wrongly convicted and to guarantee that they have access to services critical to a successful return to society?

The State party did not provide answers to this question.

Following the initial round of responses received from U.S. representatives, Committee Member Soh referenced civil society shadow reports which have noted that death by incarceration continues to disproportionately impact Black and Indigenous people in the United States. Considering these reports, Committee Member Soh raised the following additional question:

Question (Soh)⁵⁶³: Can the State party describe what it is doing regarding life sentences for political prisoners, in particular the case of Indigenous political prisoner Leonard Peltier, who has served 48 years in prison and is now 70 years old?

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵⁶⁴ noted that, as to Mr. Peltier, she had spoken in some length about his case during the civil society consultation earlier in the week. Given time constraints, Attorney Advisor Tessier noted that he currently has a

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² 4050TH Meeting, *supra* note 22.

⁵⁶³ *Id.*

⁵⁶⁴ 4051ST Meeting, *supra* note 73.

pending clemency petition and cannot comment further on it. However, Attorney Advisor Tessier added that the Sentencing Commission recently voted to expand the availability of compassionate release for elderly and ill inmates and those serving unusually long sentences. Attorney Advisor Tessier also stated that the First Step Act allows defendants to petition courts directly for relief, which has led to a large increase in the number of sentence reductions granted by federal courts.

Committee’s Concluding Observations⁵⁶⁵:

The Committee stated that it welcomed the reinstatement of a temporary moratorium on federal executions and the increasing number of states that have abolished the death penalty.⁵⁶⁶ The Committee stated that it remained gravely concerned at the continuing use of the death penalty and at racial disparities in its imposition, with a disproportionate impact on people of African descent.⁵⁶⁷ The Committee was also concerned at reports of a high number of persons wrongly sentenced to death and at the lack of adequate compensation for persons who are wrongfully convicted in retentionist states.⁵⁶⁸ The Committee regretted the lack of information regarding the allegations of the use of untested lethal drugs to execute prisoners and about reported cases of excruciating pain caused by the use of these lethal drugs and botched executions.⁵⁶⁹

The Committee recommended that the State party “take concrete steps towards the abolition of the death penalty” by establishing a federal *de jure* moratorium and by engaging with retentionist states to implement a nationwide moratorium.⁵⁷⁰ The State party should also “adopt further measures to effectively ensure that the death penalty is not imposed as a result of racial bias.”⁵⁷¹ Safeguards against wrongful sentencing and wrongful executions should be strengthened, including adequate compensation and support services for those who were wrongfully convicted.⁵⁷² Defendants in death penalty cases should be guaranteed effective legal representation throughout the whole adjudication process, including post-conviction.⁵⁷³ Lastly, the State party should ensure that execution methods comply with Article 7 of the Covenant.⁵⁷⁴

An additional area of concern that the Committee addressed was life imprisonment without parole.⁵⁷⁵ The Committee regretted the lack of sufficient information on measures adopted by the State party to make parole available and more accessible to all prisoners, including those sentenced to life imprisonment.⁵⁷⁶ The Committee was also concerned at the reports indicating that persons of African descent are disproportionately subjected to life imprisonment without parole sentences.⁵⁷⁷ Recalling its previous recommendations, the Committee recommended that the State party prohibit life imprisonment without parole for juveniles, regardless of the crime they committed. The State party should also abolish mandatory sentences of life imprisonment without

⁵⁶⁵ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 30-31, 46-47.

⁵⁶⁶ *Id.* ¶ 30.

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.* ¶ 31.

⁵⁷¹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 31.

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.* ¶ 46.

⁵⁷⁶ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 46.

⁵⁷⁷ *Id.*

parole in non-homicide-related cases.⁵⁷⁸ The State party should also make parole available and more accessible to all prisoners, including those sentenced to life imprisonment. Additionally, the State party should establish a moratorium on the imposition of sentences to life imprisonment without parole.”⁵⁷⁹

JUVENILE JUSTICE SYSTEM

Today, more than 32,000 people reside in prison for crimes committed before they reached the age of eighteen.⁵⁸⁰ Article 10 of the ICCPR requires that convicted children be separated from adults and treated in accordance with their age and legal status.⁵⁸¹ It further requires that juveniles be treated in proportion with their age and legal status.⁵⁸²

During the 139TH Session of the Human Rights Committee, Committee Member Soh noted the progress made by the State party concerning juvenile justice, including particularly the Juvenile Justice Reform Act of 2018. Nonetheless, Committee Member Soh noted several areas of concern and raised the following questions:

Question (Soh)⁵⁸³: Could the State party provide updated information on the exclusion of 17-year-olds from juvenile court jurisdictions and on the provision of life imprisonment without parole for juveniles?

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵⁸⁴ noted that more than two decades of research have shown that confinement negatively impacts youth mental and physical health and increases the rate of reoffending. Attorney Advisor Tessier said that many states have worked to reduce incarcerated youth populations. Additionally, Attorney Advisor Tessier stated that the Office of Juvenile Justice and Delinquency Prevention of the DOJ has community-based alternatives to youth incarceration initiatives that support states closing facilities in large youth detention centers. Attorney Advisor Tessier noted that the DOJ has also made some progress on leave without parole for juveniles, including Supreme Court cases that find that leave without parole is not permitted for non-homicide offenses and cannot be mandatory. Per Attorney Advisor Tessier, legislation introduced in Congress would also eliminate leave without parole in the federal system.

Question (Soh)⁵⁸⁵: Could the State party please explain how it ensures that states have the support they need to swiftly implement the Juvenile Justice Reform Act?

The State party did not provide answers to this question.

⁵⁷⁸ *Id.* ¶ 47.

⁵⁷⁹ *Id.* ¶ 46.

⁵⁸⁰ HUMAN RIGHTS AT HOME LITIGATION CLINIC, *Racism, Torture, and Deaths at the St. Louis City Jail* 9.

⁵⁸¹ ICCPR, *supra* note 18, at art. 10(2).

⁵⁸² *Id.* at art. 10(3).

⁵⁸³ 4050TH Meeting, *supra* note 22.

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

Question (Soh)⁵⁸⁶: What measures has the State party adopted to make parole available and more accessible to all prisoners sentenced to life imprisonment?

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁵⁸⁷ noted that there are various efforts aimed at permitting reduction of lengthy sentences. For example, Attorney Advisor Tessier stated that the Sentencing Commission recently voted to expand the availability of sentence reductions for those serving unusually long sentences. Attorney Advisor Tessier further stated that the Sentencing Commission has expanded the availability of so-called compassionate release for individuals in prison who are suffering from medical conditions. Attorney Advisor Tessier stated that the DOJ knows that effective sentencing reform entails considering reductions in sentences for inmates facing extraordinary and compelling circumstances who pose no threat to public safety.

Committee Member Donders noted that the Committee received information on the school-to-prison pipeline, defined as a set of policing and disciplinary practices that essentially channel students from the classroom into the criminal legal system. Committee Member Donders emphasized that school-related arrests and harsher disciplinary sanctions disproportionately impact students of African descent and Indigenous students.

Question (Donders)⁵⁸⁸: What measures does the State party take to combat the school-to-prison pipeline and to actually reduce the number of law enforcement officers in schools?

Catherine Elizabeth Lhamon, Assistant Secretary, U.S. Department of Education (“DOE”)⁵⁸⁹ noted that the DOE recently issued two guidance documents specifically on the issue of addressing the school-to-prison pipeline in addition to reducing the number of law enforcement officials in schools. Assistant Secretary Lhamon noted that the DOE designed those documents as practical tools to make sure that school communities, including parents and educators, know what the law is and know how to comply with the law. The DOE also routinely addresses the law enforcement question, especially the reduction of their participation and to ensure non-discrimination in schools as part of its resolution agreements. Assistant Secretary Lhamon noted a recent example in which the DOE resolved an investigation with a North Carolina school district. The school district confirmed there were significant disparities in how students were disciplined at school based on race when white student and students of color engaged in similar behaviors. Assistant Secretary Lhamon also noted the DOE’s satisfaction when the school district superintendent said how much she welcomed the resolution because they want to do better, and they are committed to do so. Assistant Secretary Lhamon noted that the DOE is working every day to ensure students’ experiences in school do not further the school-to-prison pipeline.

Committee’s Concluding Observations:

The Committee did not provide observations or recommendations for this issue, but it did address issues related to juvenile confinement and imprisonment. Please refer to the Committee’s

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*

⁵⁸⁹ 4050TH Meeting, *supra* note 22.

observations regarding “solitary confinement”⁵⁹⁰ and “life imprisonment without parole”⁵⁹¹ for more information.

EXTRATERRITORIAL USE OF FORCE AND U.S. COUNTERTERRORISM

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 due to the influence U.S. policies have on policies abroad.⁵⁹² 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 Trade Center Twin Towers had far-reaching effects on how the U.S. and the world view counterterrorism 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.”⁵⁹³ As a result, U.S. “security policies and the fight against terrorism have been exported worldwide,” especially in the Global South.⁵⁹⁴

During the 139TH Session of the Human Rights Committee, Committee Member Carazo expressed his concern with the impact on the human rights of civilians in places of combat and conflict.⁵⁹⁵ Committee Member Carazo stated that he was curious about the response by the Biden-Harris Administration to the violence that the Committee has seen in, for example, Ukraine as of 2022, and the most recent confrontation between Israel and Palestine.

*Question (Carazo)⁵⁹⁶: Can the world look forward to a declaration of peace and the suspension of aid/a gesture of peace by the Biden-Harris Administration in the conflicts in Ukraine and Israel/Palestine?*⁵⁹⁷

The State party did not provide answers to this question.

Committee’s Concluding Observations:

The Committee did not provide any observations or recommendations on this issue.

FORCED AND DEGRADING LABOR

The ICCPR prohibits subjecting persons to forced or compulsory labor.⁵⁹⁸ 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

⁵⁹⁰ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 44-45.

⁵⁹¹ *Id.* ¶¶ 46-47.

⁵⁹² CTR. FOR CONST. RTS., *Global Civil Society Letter-US ICCPR Review 1* (Sept. 2023).

⁵⁹³ *Id.*

⁵⁹⁴ *Id.* at 2.

⁵⁹⁵ *4051ST Meeting, supra* note 73.

⁵⁹⁶ *Id.*

⁵⁹⁷ Committee Member Carazo also noted his disappointment that he had not been able to pose a similar question to the Iranian delegation during its review the prior week.

⁵⁹⁸ ICCPR, *supra* note 18, at art. 8.

treatment.⁵⁹⁹ Recent legislation in Texas and the prison labor system compel persons to perform forced and/or degrading labor, and result in violations of Articles 7 and 8 of the ICCPR.

During the 139TH Session of the Human Rights Committee, Committee Member Yigezu questioned the United States delegation about forced labor in U.S. prisons.⁶⁰⁰ His specific questions, as well as the U.S. responses, follow below:

***Question (Yigezu)**⁶⁰¹: Reports also indicate that U.S. law excludes incarcerated workers from workplace protections, including minimum wage laws. Can the State party explain what steps it plans to take to eliminate forced labor in prisons and to curb the exploitation of workers who are forced to work under conditions of little to no pay?*

Aaron Ford, Attorney General, State of Nevada⁶⁰² acknowledged that the question presented relates to issues remaining from the convict leasing that was allowed under the Thirteenth Amendment to the Constitution, which prohibited slavery and servitude except in the case of incarcerated persons. Because of this recognition, Attorney General Ford stated that certain states have endeavored to pass minimum wage laws for prisoners. Per Attorney General Ford, those proposed laws have not been successful at the state level. He added, however, that efforts to address this issue will continue.

***Question (Yigezu)**⁶⁰³: Does the State party plan to grant the Occupational Safety and Health Administration (“OSHA”) jurisdiction over labor conditions and the establishment fair labor standards? What measures are you taking to implement the Abolition of Forced Labor Convention, 1957 (No. 105) and to ratify the Forced Labor Convention, 1930 (No. 29) of the International Labor Organization?*

Sarah Morgan, Director, U.S. Department of Labor (“DOL”)⁶⁰⁴ responded by stating that the DOL, in conjunction with the International Labor Organization (ILO), has filed thirteen periodic reports under ILO Convention No. 105 since its accession and is currently working on the next report. Since the previous report on this convention, Director Morgan noted that the DOL had not enacted new legislation or other measures that would affect the application of that Convention but noted that they anticipate reporting and responding on the most recent observations of that Committee. Per Director Morgan, the report is currently being reviewed by a Tripartite Advisory Panel on International Labor Standards for social partner comments. Director Morgan further noted that, in response to a 69% increase in illegal child labor, the DOL has significantly enhanced its enforcement efforts, including the establishment of an interagency taskforce to combat child labor exploitation. In addition, Director Morgan stated that the DOL’s Wage and Hour Division has launched a national strategic enforcement initiative focused on vulnerable young workers. Per Director Morgan, as a part of these efforts, between October 2022 and July 2023, the DOL assessed more than \$6.6 million in penalties against those conducting illegal child labor.

⁵⁹⁹ *Id.* at art. 7, 8.

⁶⁰⁰ 4050TH Meeting, *supra* note 22.

⁶⁰¹ 4051ST Meeting, *supra* note 73.

⁶⁰² *Id.*

⁶⁰³ *Id.*

⁶⁰⁴ *Id.*

*Question (Donders)*⁶⁰⁵: Why are agricultural and domestic workers not covered by the National Labor Relations Act, which guarantees the right to form and join trade unions?

Sarah Morgan, Director, U.S. Department of Labor (“DOL”)⁶⁰⁶ noted that throughout the State party’s history, unions have been the driving force for progress and workers’ rights to raising the standards for union and non-union workers.⁶⁰⁷ Director Morgan explained that the President has promised to be most pro worker and pro-union in history.⁶⁰⁸ Director Morgan expressed that the DOL was pleased that union support is higher than it has been in over half a century.⁶⁰⁹ In April 2021, the Biden-Harris Administration established a task force on worker organizing and empowerment with the mission to mobilize federal government policies, practices, and programs to empower workers to organize and successfully bargain with employers.⁶¹⁰ Director Morgan explained how the Administration has also called on Congress to fully and finally pass the Protecting the Right to Organize Act (“PRO”) which would make it easier for workers to organize unions and more difficult for businesses to engage in unfair business practices.⁶¹¹

Director Morgan explained that the National Labor Relations Board (“NLRB”) is an independent federal agency which enforces the National Labor Relations Act (“Act”), which guarantees the rights of workers and employees to bargain collectively to their employers and to engage in other protected, concerted activities or refrain from engaging in such activities.⁶¹² Director Morgan further stated that the NLRB investigates unfair labor practice claims rising under the Act and litigates on behalf of covered employees and employers to obtain relief from violations.⁶¹³ The NLRB also conducts extensive outreach with employers, employees, labor organizations, communication groups, and other organizations, including educating the public about their rights and responsibilities under the Act.⁶¹⁴ Director Morgan clarified that the Act exempts only some agricultural laborers from its protections of the right to form, join, decertify, or assist in labor organizations and to bargain collectively through representatives of their own choosing.⁶¹⁵ Director Morgan provided as an example that the Act does cover some workers in the agricultural supply chain including distribution employees, canning workers, store clerks, and slaughterhouse employees.⁶¹⁶ Director Morgan mentioned that approximately eight U.S. states, most prominently California and Arizona, have specific labor laws or have included agricultural laborers within their general, state-level, labor provisions.⁶¹⁷ Director Morgan explained that the Act excludes individuals employed in the domestic service of any family or person in their home and that if this one-to-one relationship between domestic employees and families does not exist, such as when domestic employees are employed by an enterprise that provides personal care and housekeeping

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.*

⁶⁰⁷ 4051ST Meeting, *supra* note 73.

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

⁶¹² *Id.*

⁶¹³ 4051ST Meeting, *supra* note 73.

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Id.*

services to hotels, hospitals, and condominiums, then the Act's exclusion would not apply.⁶¹⁸ Director Morgan stated that the NLRB rigorously investigates the status of the employees' alleged to be outside of its statutory jurisdiction, such as alleged agricultural, domestic workers, and that the NLRB will extend jurisdiction if the investigation shows that the workers properly fall within the statutory jurisdiction.⁶¹⁹

Committee's Concluding Observations⁶²⁰:

The Committee stated its concern that workers entering the State party under H-2A and H-2B work visa programs are at a high risk of becoming victims of trafficking and/or forced labor, in particular agricultural workers.⁶²¹ The Committee additionally stated that many employers force agricultural workers to pay for housing, food, medical care, or safety equipment despite the legal requirement that employers should pay for these costs.⁶²² The Committee also stated that there is a lack of effective inspections by competent authorities.⁶²³

The Committee recommended that the State party should increase its efforts to ensure full protection against forced labor for all categories of workers, particularly in the agricultural sector, including by increasing on-site inspections.⁶²⁴

FREEDOM FROM TORTURE

Article 7 of the ICCPR provides that every individual has the right to be free from torture and cruel, inhuman, or degrading treatment or punishment.⁶²⁵ The U.S. violates this article by creating cruel conditions in jails and prisons, failing to safeguard the due process rights of those detained, and choosing not to hold state actors accountable.

During the 139TH Session of the Human Rights Committee, Committee Member Šurlan raised questions concerning the definitions of torture and solitary confinement.⁶²⁶ Committee Member Šurlan referenced the U.S. 2021 report indicating that a range of federal and state laws prohibit conduct consisting in torture.⁶²⁷ However, Committee Member Šurlan noted that the specific offense of torture has not yet been introduced at the federal level. Committee Member Šurlan also noted that the State party's report did not address the admissibility of evidence obtained through torture or enhanced interrogation techniques in general, and specifically in the light of the Military Commissions Act of 2009.

⁶¹⁸ *Id.*

⁶¹⁹ 4051ST Meeting, *supra* note 73.

⁶²⁰ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 50-51.

⁶²¹ *Id.* ¶ 50.

⁶²² *Id.*

⁶²³ *Id.*

⁶²⁴ *Id.* ¶ 51.

⁶²⁵ ICCPR, *supra* note 18, at art. 7.

⁶²⁶ Issue #16 of the Committee's 2019 List of Issues discusses the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty. *See LoI Fifth Periodic Report*, *supra* note 27, ¶ 16. *See also* 4051ST Meeting, *supra* note 73.

⁶²⁷ *U.S. Response Fifth Periodic Report* *supra* note 335, ¶¶ 59-62.

Committee Member Šurlan further noted that solitary confinement of a detained person may amount to an act prohibited by Article 7.⁶²⁸ Committee Member Šurlan stated that available reports indicate that the use of solitary confinement is still very common in the U.S., including especially prolonged or even indefinite solitary confinement. Committee Member Šurlan referenced examples of prisoners held incommunicado for months, even years, some of them deprived of having any time outside or having any kind of contact with other human beings. In addition, Committee Member Šurlan noted that the Committee also received reports of numerous individuals developing mental health issues because of solitary confinement, including reports of individuals committing suicide. Committee Member Šurlan stated that prolonged or indefinite solitary confinement represents a violation of the ICCPR.

Committee Member Šurlan’s specific questions, as well as the U.S. responses, follow below:

***Question (Šurlan)**⁶²⁹: What steps is the State party taking to adopt a comprehensive prohibition of all forms of torture, cruel, inhuman, and degrading treatment or punishment into domestic law, and to ensure that penalties are commensurate with the gravity of the crime?*

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁶³⁰ stated that, regarding solitary confinement for correctional facilities, the Constitution prohibits the use of seclusion in a manner that constitutes cruel and unusual punishment, and the Constitution requires that prisoners put in solitary confinement are afforded due process. As to federal prisons, Attorney Advisor Tessier noted that President Bidens’s May 25, 2022, executive order requires the U.S. Attorney General, Merrick Garland, to report steps taken to limit the use of restrictive housing and to improve conditions of confinement. Attorney Advisor Tessier further noted that Attorney General Garland issued a report in February 2023 detailing steps taken to ensure that restrictive housing is rarely used, applied fairly, and subject to reasonable constraints. For prisoners in restrictive housing, Attorney Advisor Tessier added that an individual’s status is reviewed periodically, and inmates are not deprived of human contact, recreation, environmental stimulation, or medical and mental health care. Attorney Advisor Tessier noted that the Bureau of Prisons (“BOP”) and the DOJ are committed to further addressing and reducing the use of restrictive housing. Attorney Advisor Tessier stated that the BOP recently assembled a taskforce of senior BOP officials to conduct a nearer-term assessment and provide more immediate recommendations for steps that the BOP may take regarding restrictive housing.

***Question (Šurlan)**⁶³¹: Noting the Committee’s previous recommendations that the State party ensure the availability of compensation to victims of torture, what has been done since then in this regard?*

Finnuala Tessier, Attorney Advisor, U.S. Department of Justice (“DOJ”)⁶³² addressed the question regarding remedies for torture and noted that the DOJ was not aware of any acts constituting torture perpetrated in the U.S. that could not be prosecuted at the federal or state level

⁶²⁸ 4051ST Meeting, *supra* note 73.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*

⁶³² *Id.*

for lack of domestic legal authority. Attorney Advisor Tessier stated that U.S. law also provides a range of potential civil remedies for victims. These include injunctions, compensatory damages, and punitive damages, as appropriate. In addition, Attorney Advisor Tessier noted that the federal government is authorized to bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, including those that amount to torture or ill treatment.

Question (Šurlan)⁶³³: What measures has the State party taken to ensure the inadmissibility of evidence obtained through the use of torture or so-called enhanced interrogation techniques?

The State party did not provide answers to this question.

Question (Šurlan)⁶³⁴: Regarding solitary confinement of juveniles, under the First Step Act, the use of solitary confinement for juveniles in federal custody is prohibited except under limited conditions. What are those limited conditions?

The State party did not provide answers to this question.

Question (Šurlan)⁶³⁵: What measures is the State party taking to comply with the Mandela rules and to limit solitary confinement to a maximum of 15 days? What other measures are being taken to end the imposition of solitary confinement for excessive or indefinite periods of time, or for any period of time in cases involving juveniles or persons with serious mental health needs?

The State party did not provide answers to this question. However, Attorney General Ford answered the question from a state perspective.

Aaron Ford, Attorney General, State of Nevada⁶³⁶ noted that solitary confinement should be used as sparingly as possible, if at all. He also expressed that he believes wholeheartedly that it should not be used at all with juveniles—full stop. In fact, as Attorney General Ford stated, in Nevada, it cannot be used with juveniles. Attorney General Ford noted that Nevada was proud of this development. Beyond juveniles, he noted that the Nevada legislature passed restrictions on the use of solitary confinement in 2023 to lessen the impact it would have on inmates by ensuring that it is used as a last resort, and for the shortest time that is safely possible.⁶³⁷ Per Attorney General Ford, inmates in Nevada cannot be placed in solitary confinement for more than fifteen days, barring extreme circumstances. Attorney General Ford added that they cannot be placed in solitary confinement within 90 days of their release date, and they cannot be placed in solitary confinement if they have a mental health issue, unless their mental health practitioner orders such confinement. Attorney General Ford stated that it is known that solitary confinement hinders mental health recovery, and can cause issues with readjusting to society, so Nevada has put safeguards into effect. Attorney General Ford further noted that inmates in Nevada who are placed

⁶³³ *Id.*

⁶³⁴ 4051ST Meeting, *supra* note 73.

⁶³⁵ *Id.*

⁶³⁶ *Id.*

⁶³⁷ See also *supra* question and answer above, stating that Nevada prohibits the use of solitary confinement with all juveniles.

in solitary confinement are also allowed access to visitation, a telephone, and they receive a daily health and welfare check from a health care professional.

Following the initial round of responses received from U.S. representatives, Committee Member Šurlan referenced information received noting that, even in immigration detention, there are examples of persons being locked in solitary confinement. She raised the following additional question:

Question (Šurlan)⁶³⁸: *What measures has the State party developed for protection of immigrants in detentions from the possible misuse of provisions regarding solitary confinement?*

The State party did not provide answers to this question.

Committee Member Kran briefly mentioned the executive order renounced the Rendition Detention and Interrogation (“RDI”) program, however no U.S. government officials appeared to have been held accountable for creating, authorizing or implementing the program where the CIA secretly detained, transferred, and tortured over 119 individuals in secret overseas detention facilities without judicial process. She raised the following questions:

Question (Kran)⁶³⁹: *What plans does the U.S. have to thoroughly investigate the human rights violations resulting from the RDI program and to publicly post its findings?*

The State party did not provide answers to this question.

Question (Kran)⁶⁴⁰: *How will the U.S. ensure that the perpetrators who committed or conspired in rights violations such as systematic torture, are held accountable and punished?*

The State party did not provide answers to this question.

Committee’s Concluding Observations⁶⁴¹:

The Committee noted the information provided by the State party of a range of federal and state laws prohibiting conduct constituting torture or cruel, inhuman, or degrading treatment or punishment.⁶⁴² The Committee stated its serious concern that the specific offense of torture has not yet been introduced at the federal level.⁶⁴³ Recalling its previous recommendations, the Committee recommended that the State party should review its position regarding the criminalization of torture and enact legislation prohibiting torture as a distinct offense that is fully compliant with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment, and with Article 7 of the Covenant, in order to enhance torture prevention and ensure that evidence and confessions obtained through torture are inadmissible in legal proceedings without exception.⁶⁴⁴

⁶³⁸ 4051ST Meeting, *supra* note 73.

⁶³⁹ 4050TH Meeting, *supra* note 22.

⁶⁴⁰ *Id.*

⁶⁴¹ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 42-43.

⁶⁴² *Id.* ¶ 42.

⁶⁴³ *Id.*

⁶⁴⁴ *Id.*

The Committee recommended that the State party should also conduct thorough, impartial, and independent investigations into all torture allegations in accordance with the Istanbul Protocol,⁶⁴⁵ including investigations in facilities under its jurisdiction but outside of its territory.⁶⁴⁶ Perpetrators should be prosecuted and punished according to human rights standards if convicted.⁶⁴⁷ The State party should ensure that victims of torture receive reparations.⁶⁴⁸ The State party should conduct strong human rights training on judges, prosecutors, and law enforcement officers, which should include the Méndez Principles.⁶⁴⁹ Finally, the State party should “ensure that all persons deprived of their liberty have access to an independent and effective complaints mechanism for the investigation of allegations of torture and ill-treatment.”⁶⁵⁰

An additional area of concern the Committee addressed was accountability for past human rights violations. The Committee stated its deep concern with the limited number of prosecutions and convictions of members of the Armed Forces and other agents of the State party for human rights violations.⁶⁵¹ This includes the use of torture or other cruel, inhuman or degrading treatment or punishment of detainees under its custody, as part of its so-called “enhanced interrogation techniques” and in the context of the CIA secret rendition, interrogation and detention programs.⁶⁵² The Committee noted with concern that many details of CIA programs remain secret, creating obstacles for accountability and redress for victims and their families.⁶⁵³

The Committee reiterated its previous recommendations that the State party should impartially and independently investigate all cases of unlawful killing, torture, or other ill treatment, forced disappearances, or unlawful detention.⁶⁵⁴ All perpetrators, including those in command positions, should be prosecuted, and if convicted, sanctioned; as well as victims and their families should be provided with effective remedies.⁶⁵⁵ Additionally, the State party should declassify and release the report of the Senate Special Committee on Intelligence into the CIA secret detention programs and consider the full incorporation of the doctrine of “command responsibility” in its criminal law.”⁶⁵⁶

The Committee additionally addressed its concern over the use of solitary confinement.⁶⁵⁷ The Committee noted that Executive Order 14071 states that “restrictive housing in Federal detention facilities is to be used rarely, applied fairly, and subject to reasonable constraints.”⁶⁵⁸ However, the Committee was concerned about reports of the extensive use of solitary confinement within the State party’s jurisdiction, including prolonged and even indefinite confinement, and of its use

⁶⁴⁵ Also known as “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

⁶⁴⁶ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 42.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ Also known as the “Principles on Effective Interviewing for Investigation and Information Gathering.”

⁶⁵⁰ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶ 42.

⁶⁵¹ *Id.* ¶ 8.

⁶⁵² *Id.*

⁶⁵³ *Id.*

⁶⁵⁴ *Id.* ¶ 9.

⁶⁵⁵ *Id.*

⁶⁵⁶ *Concluding Observations Fifth Periodic Report*, *supra* note 45.

⁶⁵⁷ *Id.* ¶ 44.

⁶⁵⁸ *Id.*

with respect to juveniles and persons with mental disabilities and health needs.⁶⁵⁹ Recalling its previous recommendations, the Committee encouraged the State party to “bring all legislation and practice on solitary confinement, at the federal, state, local, and territorial levels,” in line with the Nelson Mandela Rules.⁶⁶⁰ The State party “should also prohibit the use of solitary confinement for juveniles and persons with intellectual or mental disabilities in prison.”⁶⁶¹

FREEDOM FROM ARBITRARY DETENTION – GUANTÁNAMO BAY

The Guantánamo Bay Detention Camp (“Guantánamo Bay”) is now in its 22ND year of use and remains open, despite assurances by the Biden-Harris 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.⁶⁶²

During the 139TH Session of the Human Rights Committee, Committee Member Šurlan raised issues concerning Guantánamo Bay.⁶⁶³ Committee Member Šurlan noted that nine years have passed since this Committee adopted its last Comps⁶⁶⁴ regarding the U.S., but the Committee is still facing the same essential issue currently. She further noted that fair trial and due process deficiencies in the military commission system have been recognized multiple times.

Committee Member Šurlan’s specific questions, as well as the U.S. responses, follow below:

Question (Šurlan)⁶⁶⁵: *When will the Guantánamo Bay facility be closed?*

The State party did not provide answers to this question.

Question (Šurlan)⁶⁶⁶: *What legal remedies are available to individuals who had been detained for years or even decades, sometimes without facing a standing trial?*

The State party did not provide answers to this question.

Question (Šurlan)⁶⁶⁷: *While the State party report says that no new detainees were transferred to Guantánamo Bay during the reporting period, there is still a legal basis that allows the transfer new of detainees to Guantánamo Bay under Executive Order 13823. What is the current status of Executive Order 13823, specifically the part where it orders that the detention camp will remain open, and the part where it allows for transport of additional detainees to Guantánamo Bay?*

⁶⁵⁹ *Id.*

⁶⁶⁰ Also known as “The United Nations Standard Minimum Rules for the Treatment of Prisoners.”

⁶⁶¹ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶ 45.

⁶⁶² THE CTR. FOR VICTIMS OF TORTURE, SHADOW REPORT TO THE FIFTH PERIODIC REPORT OF THE UNITED STATES 3 (Sept. 12, 2023). *See also* ICCPR, *supra* note 18, at arts. 9, 26.

⁶⁶³ 4051ST Meeting, *supra* note 73. *See also* LoI Fifth Periodic Report, *supra* note 27, ¶ 17 (identifying at issue #17 the continued detention of persons at Guantánamo Bay).

⁶⁶⁴ The Committee uses “Comps” as an abbreviation for “Concluding Observations.”

⁶⁶⁵ 4051ST Meeting, *supra* note 73.

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

Deborah Plunkett, Associate General Counsel, U.S. Department of Defense (“DOD”)⁶⁶⁸ stated that Executive Order 13823 is a 2018 measure asserting that the facility at Guantánamo Bay would stay open, and consistent with this, also asserted that transfers to the facility could continue. She noted that the Biden-Harris Administration, however, is dedicated to a deliberate and through process focused on responsibly reducing the detainee population and ultimately closing the Guantánamo facility. Per Associate General Counsel Plunkett, the Administration is actively working to develop an approach for responsibly reducing the detainee population and setting the conditions to close the facility. Associate General Counsel Plunkett further noted that until the facility is closed, however, the DOD will continue to ensure the safe, humane and legal care and treatment of the detainees. Associate General Counsel Plunkett stated that today, there are thirty detainees remaining at the detention facility at Guantánamo Bay, Cuba. She added that of those thirty detainees, sixteen are eligible for transfer, three are in continued law-of-war detention and eligible for the periodic review board process, nine are undergoing prosecution before military commissions, and two have been convicted through the military commissions process.

***Question (Šurlan)**⁶⁶⁹: In the previous Comps, the Committee expressed its concerns that detainees are not dealt with through the ordinary criminal justice system, after a protracted period of over a decade. Please share your views on this matter. Especially, is there still an intention to close the military commissions for future cases, or an intention to repeal Military Commission Act?*

The State party did not provide answers to this question.

***Question (Šurlan)**⁶⁷⁰: The Committee is aware of the report recently issued by the Special Rapporteur on human rights and counterterrorism. The Special Rapporteur found that current conditions and treatment of detainees in Guantánamo Bay amounts to ongoing cruel, inhuman, and degrading treatment, and they also meet the legal threshold for torture. The detainees in Guantánamo do not have access to adequate medical treatment, and survivors of torture and other ill-treatment by U.S. agents are not given adequate rehabilitative service. Bearing in mind its obligations under the ICCPR, how does the State party plan to address the mentioned issue?*

Deborah Plunkett, Associate General Counsel, U.S. Department of Defense (“DOD”)⁶⁷¹ stated that the U.S. was pleased to facilitate the visit of Fionnuala Ní Aoláin, the previous UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to Guantánamo Bay. She noted that this was the first time a UN Special Rapporteur visited the detention facility. Per Associate General Counsel Plunkett, the U.S. was gratified that UN Special Rapporteur Ní Aoláin recognized the U.S.’s openness, transparency, and leadership by example, as well as the U.S.’s ongoing commitment to upholding human rights. However, Associate General Counsel Plunkett noted that the U.S. disagrees with many of the factual and legal assertions the Special Rapporteur had made in significant respects. Regarding the Special Rapporteur’s finding that the cumulative effects of certain structural deficiencies at Guantánamo Bay amount to cruel, inhuman, and degrading treatment under international law, Associate General Counsel Plunkett stated that the U.S. respectfully, but empathetically disagreed

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ 4051ST Meeting, *supra* note 73.

with the Special Rapporteur’s conclusion. Per Associate General Counsel Plunkett, the United States condemns cruel, inhuman, and degrading treatment and punishment for any reason—such treatment is prohibited under both international and U.S. domestic law. Turning to the medical care at Guantánamo Bay, Associate General Counsel Plunkett stated that the DOD is committed to providing appropriate medical care for detainees at Guantánamo Bay, and to providing care that is comparable to that which U.S. military personnel receive while serving at Joint Task Force Guantánamo.

***Question (Šurlan)**⁶⁷²: Of the thirty remaining detainees in Guantánamo Bay, sixteen are eligible for transfer. How long have they been waiting to be transferred? Have they ever been charged with a crime, tried, or sentenced? If not, how does the State party explain the time they have spent in detention without facing charges and not receiving a trial?*

The State party did not provide answers to this question.

***Question (Šurlan)**⁶⁷³: Regarding the issue of transfer of detainees to other countries, the Committee is concerned with the information received that some transfer detainees have experienced further deprivation of their human rights, and some have been subjected to continued arbitrary detention and torture and other ill treatment. What measures has the State party developed to ensure that transfer detainees will not suffer further violations of their rights?*

Deborah Plunkett, Associate General Counsel, U.S. Department of Defense (“DOD”)⁶⁷⁴ stated that the Department of State leads the U.S. government’s efforts to identify appropriate receiving countries from which the U.S. could obtain security and humane treatment assurances for the transfer of eligible detainees. She noted that the Biden-Harris Administration is working to transfer members of the detainee population at Guantánamo Bay who have been determined to be eligible for transfer. This is an important step towards the ultimate goal of responsibly closing Guantánamo Bay. Per Associate General Counsel Plunkett, this is a very complex issue, and the U.S. needs the support of other countries. She added that the U.S. does not have a free hand to send detainees wherever it wants and needs to ensure the humane treatment of transferred detainees and the security of the United States. Additionally, Associate General Counsel Plunkett noted, as a matter of long-standing policy and practice, in all detainee transfers, the United States does not transfer any individual to a foreign country if there is a high probability that the detainee will be tortured, including those coming from the Guantánamo Bay facility. Associate General Counsel Plunkett stated that the United States only transfers a detainee when such a transfer is consistent with this non-refoulement principle. Per Associate General Counsel Plunkett, the United States accounts for the totality of all relevant factors relating to the detainee being transferred and the recipient government. She noted that such factors include, but are not limited to, the detainee’s allegations of prior or potential mistreatment by the receiving government; the potential recipient country’s human rights record; whether post-transfer detention is contemplated; the specific factors suggesting that the detainee in question is at risk of being tortured by officials in that country; and whether similarly situated detainees have been tortured by the recipient country.

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ *Id.*

Following the initial round of responses received from U.S. representatives, Committee Member Šurlan acknowledged that the issue of Guantánamo Bay is a complicated issue. However, she noted that it is an issue that can be solved by making a decision and then implementing it. She raised the following additional concern and question:

Question (Šurlan)⁶⁷⁵: *The State party did not respond within the 2021 report to the Committee’s question on the status and number of habeas corpus petitions filed on behalf of detainees before federal courts. Please use this opportunity and give us the answer to the question — what is the number and the current status of habeas corpus petitions?*

The State party did not provide answers to this question.

The U.S. asserted that the Covenant creates obligations only with respect to individuals who are both within its territory and its jurisdiction, contradictory to the Committee’s interpretation of Article 2, and International Court of Justice jurisprudence that State parties are required to respect and ensure human rights to all persons who may be within their territory. Committee Member Kran expressed concern that the U.S. is undermining its responsibilities by moving individuals out of their territory.

Question (Kran)⁶⁷⁶: *What steps is the U.S. taking to address these concerns in overseas detention facilities such as Guantánamo Bay, U.S. controlled sites in foreign countries and aboard, and U.S. ships and aircraft?*

The State party did not provide answers to this question.

Question (Kran)⁶⁷⁷: *How are detainees’ rights effectively protected in these facilities?*

The State party did not provide answers to this question.

Committee’s Concluding Observations⁶⁷⁸:

The Committee welcomed the State party’s facilitation of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism to the United States and Guantánamo Detention Facility technical visit at the beginning of 2023.⁶⁷⁹ The Committee also noted President Biden’s efforts to reduce the detainee population and ultimately close Guantánamo Bay. However, the Committee remained deeply concerned that no timeline for closure of the facility has been provided and some of the detainees have been held in the facility without trial or without any charges for more than twenty years.⁶⁸⁰ While noting the information provided by the State party of its commitment to ensuring safe, humane, and legal care of detainees, including appropriate medical care, the Committee remained concerned at the reports of the lack of specialized care and facilities to address the complex health issues of detainees.⁶⁸¹

⁶⁷⁵ *Id.*

⁶⁷⁶ 4050TH Meeting, *supra* note 22.

⁶⁷⁷ *Id.*

⁶⁷⁸ *Concluding Observations Fifth Periodic Report*, *supra* note 45, ¶¶ 48-49.

⁶⁷⁹ *Id.* ¶ 48.

⁶⁸⁰ *Id.*

⁶⁸¹ *Id.*

Recalling its previous recommendations, the Committee recommended that the State party should expedite the transfer of detainees so designated and the closure of Guantánamo Bay.⁶⁸² The State party should also end the system of administrative detention without charge or trial and ensure that detainees are afforded the fair trial guarantees enshrined in Article 14 of the Covenant. Additionally, the State party should further adopt measures to provide specialized health care to detainees.”⁶⁸³

RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

Racial disparities are pervasive throughout the U.S. criminal justice system. Black, Brown, and Indigenous communities experiencing far worse outcomes across the board than their white counterparts, which are violations of the equal protection that Articles 2 and 26 of the ICCPR provide.⁶⁸⁴

Committee Member Donders cited the ample documentation available on overrepresentation in detention of people of African descent, including women and youth, as well as people of national or ethnic minorities: Hispanic persons, American Indians, Alaskan Natives, Asians, Hawaiians, and other Pacific Islanders. Racial profiling by law enforcement, discriminatory practices in police encounters, prejudices amongst legal professionals and lack of quality in legal representation are some of the structural causes of higher rates of arrest and longer detention and pretrial detention of persons belonging to racial and ethnic minorities. Committee Member Donders also noted the Committee’s concern about the general increase in pretrial detention, as well as concern over reports received stating that Black and Hispanic defendants are clearly overrepresented in pretrial detention compared to their share of the total population.

Committee Member Donders’ specific questions, as well as the U.S. responses, follow below:

Question (Donders)⁶⁸⁵: *How does the State party combat systemic racism in the criminal justice system, including its underlying causes?*

Finnuala Tessier, Attorney Advisor, Criminal Division, U.S. Department of Justice (“DOJ”)⁶⁸⁶ noted that the U.S. has made it a priority to reduce racial and ethnic disparities in sentencing at all levels of the criminal justice system, including at the federal level. She stated that the President Biden’s Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities was the first executive order that President Biden signed after taking office. This was a clear recognition of the unbearable human, social, and economic costs of systemic racism and the urgent need for an ambitious agenda matching the scale of the challenge. She made clear that the U.S. is fully committed to enforcing the law in a fair and impartial manner, consistent with the principle of equal protection under the law and the U.S. Constitution and the principle set forth in the Department of Justice manual on the principles of federal prosecution. However, the U.S. recognizes the disparity in the U.S. criminal justice system. The United States Sentencing Commission (“Commission”) has done studies at the federal level and found that Black

⁶⁸² *Id.* ¶ 49.

⁶⁸³ *Id.*

⁶⁸⁴ ICCPR, *supra* note 18, at arts. 2, 26.

⁶⁸⁵ 4050TH Meeting, *supra* note 22.

⁶⁸⁶ *Id.*

males receive significantly longer sentences than white males. The Department has advocated to the Commission to address systemic sentencing reform in coming years reflecting President Biden's commitment to criminal justice reform. In 2022, Attorney General Merrick Garland issued a new charging policy requiring federal prosecutors to make an individualized assessment when deciding what charges fit the circumstances of each case, are consistent with the purposes of the federal criminal code, and fairly represent the defendant's conduct. This new policy disfavors the use of mandatory minimum sentences including drug offenses and specifically directs prosecutors not to use discredited statutes applicable to crack cocaine offenses.

Aaron Ford, Attorney General, State of Nevada⁶⁸⁷ acknowledged that as of 2021 Nevada's incarceration rate was 713 per 100,000 people. This figure was slightly higher than the national rate and considerably higher than the incarceration rate of other countries. Black Nevadans are overrepresented in the incarcerated population, while the White, Hispanic, and Asian communities are underrepresented. Black people account for nine percent of the Nevadan population, thirty percent of Nevada's prison population and thirty-two percent of the population in Nevadan jails. Indigenous persons are the only other overrepresented population in the Nevadan prison system, accounting for one percent of the total population and two percent of the prison population. In Clark County, Nevada's largest school district and the fifth largest in the United States, Black students account for the overwhelming majority of citations and bookings by school police, which underlines racial disparities in furtherance of the school-to-prison pipeline. In 2020, the Nevada legislature passed a bill that is estimated to transfer over \$543 million in state spending that will be allotted over a ten-year period for the purposes of investing in behavior and mental health care and providing law enforcement with more effective tools in intervening with mental health crises.

***Question (Donders)**⁶⁸⁸: What is the State party doing to reduce pretrial detention nationwide? To what extent are alternatives to pretrial detention systematically explored?*

The State party did not provide answers to this question.

***Question (Donders)**⁶⁸⁹: How does the State party combat this overrepresentation of racial and ethnic minorities and ensure that all detainees receive a fair assessment of the necessity of pretrial detention?*

The State party did not provide answers to this question.

***Question (Donders)**⁶⁹⁰: In deciding on pretrial detention, use is made of risk assessment tools. How does the State party ensure that such tools are free from racial, ethnic, or gender bias?*

The State party did not provide answers to this question.

⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.*

⁶⁹⁰ *Id.*

Another issue that Committee Member Donders expressed concern with was that some people remain in pretrial detention for a very long time because they cannot afford the monetary terms of cash bail. Committee Member Donders's questions on this issue were as follows:

Question (Donders)⁶⁹¹: *Can the State party indicate whether it is ready to revise or end the cash bail system so that it does not affect less fortunate people disproportionately?*

The State party did not provide answers to this question.

Question (Donders)⁶⁹²: *Which measures has the State party taken to ensure that parole and probation sentences are proportionate and applied only when necessary and that they do not sustain racial inequities in their imposition?*

The State party did not provide answers to this question.

Based on U.S. reporting, the disproportionate nature of sentences imposed on minorities has been reduced. The Committee, however, also has information that mandatory minimum sentences in relation to drug offenses have a greater impact on persons of African descent, even though they do not necessarily have higher rates of drug use or trafficking. Minorities also seem to be disproportionately affected by harsh, unsafe, and unhealthy prison labor.

Question (Donders)⁶⁹³: *Could the State party indicate how it ensures racial and ethnic equity in relation to penalties and prison labor?*

The State party did not provide answers to this question.

The Committee noted that disproportionate amounts of people with mental health conditions or disabilities are incarcerated in U.S. prisons. Many of these persons are of African descent.

Question (Donders)⁶⁹⁴: *Can the State party provide information to what extent the punitive approach is accompanied by medical and therapeutic support, based on the needs of these vulnerable persons?*

The State party did not provide answers to this question.

Committee's Concluding Observations⁶⁹⁵:

The Committee noted the impact of the First Step Act in reducing the federal prison population. The Committee continued to be concerned that persons belonging to racial and ethnic minorities, particularly those of African descent, Indigenous Peoples, and persons of Hispanic/Latino origin, are overrepresented in the criminal justice system and are disproportionately placed and held in

⁶⁹¹ 4050TH Meeting, *supra* note 22.

⁶⁹² *Id.*

⁶⁹³ *Id.*

⁶⁹⁴ *Id.*

⁶⁹⁵ *Concluding Observations Fifth Periodic Report, supra* note 45, ¶¶ 14-15.

pre-trial detention.⁶⁹⁶ Additionally, these groups are disproportionately affected by parole and probation sentences and are more often subject to prison labor and harsher sentences than their white counterparts.⁶⁹⁷

Recalling its previous recommendations, the Committee encouraged the State party to take additional measures to eliminate racial disparities at all stages of the criminal justice process.⁶⁹⁸ This should be done through the use of alternatives to incarceration and ensuring reasonable bail requirements, which support alternative pretrial release systems not reliant on cash bail.⁶⁹⁹ Regulations and policies that lead to racially disparate impacts at all levels should be amended, including mandatory minimum sentencing policies, and parole and probation sentences should be proportionate to the offense and only applied when necessary.⁷⁰⁰

⁶⁹⁶ *Id.* ¶ 14.

⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.* ¶ 15.

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

Addendum A*

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 and 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 U.S. 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 and 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 and We Testify	View document
Human Rights and Security Coalition	View document
Human Rights at Home Litigation Clinic and Roderick and Solange MacArthur Justice Center	View document
Human Rights Campaign	View document
Human Rights in Practice and 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, U.S. 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 and University of Texas at Austin Immigration Clinic	View document
Puerto Rican 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 and 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 and Equality (IOSDE) Indigenous Peoples and 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*.

Addendum B

Speakers' List - Civil Society Informal Briefing Thursday, October 12, 2023

Text of Statements Delivered by Speakers at the October 12, 2023 Informal Briefing (In Order of Appearance)

MONAIEKA FLORES

Guam

Hâfa Adai my name is Monaieka Flores, I am a member of Prutehi Litekyan: Save Ritidan, a community-based direct-action group in Guam and I am a descendent of the indigenous Chamorro people who have lived in the Mariana Islands for almost 4,000 years.

I am deeply honored to be here today to represent my homeland and people.

It is impossible to overstate the devastating impacts we are forced to endure because of U.S. colonization and militarization and the unjust policies and laws which fail to protect us from avoidable harm and prove to obstruct our political, economic, environmental, spiritual, and cultural sovereignty.

Our decolonization has been stalled for 125 years and our people have suffered numerous harms since the United States took colonial control in 1898, including racist, discriminatory treatment by U.S. naval authorities; displacement from massive land seizures for military installations after World War II; illnesses linked to military contamination and the presence of nuclear weapons, radioactive vessels, and toxic chemical agents such as Agent Orange. Guam has 19 Superfund sites and at least another 90 toxic sites, possibly more with open detonation and burning of hazardous waste and the release of PFOS.

These harms are aggravated today by a massive U.S. military expansion in Guam. Without sufficient consultation and in complete disregard for our right to free, prior, and informed consent, plans have progressed for the construction of live-fire training ranges and other installations at sites of great importance to our people. This includes the clearing of 1,219 acres of limestone forest, essentially guaranteeing the extinction of endangered and threatened species including traditional medicinal plants, and the desecration of numerous ancestral burials. Once activated, 7 million ammunition will be fired at the ranges, posing great risk to our sole source aquifer.

We are already witnessing the loss of access to sacred areas, jungles to harvest our medicines, critical fishing grounds, and further dispossession from and contamination of Native lands. We are also experiencing a housing crisis as we are being outpriced by military households, sustaining a prolonged exodus of our people - all of which thwart our decolonization process.

The addition of military infrastructure in the Northern Mariana Islands and a missile defense system in Guam sets us up as sites of U.S. force projection in the region, making us a "First Strike Community" and target in potential conflict. The very real threat of extermination linked to U.S.

militarization is in direct breach of the United States' responsibilities to effectuate the people's health, safety, and welfare.

Uninterrupted colonization in the territories is unquestionably interconnected with the violent oppression and erasure of Black and Indigenous people everywhere, ultimately impacting our rights to life, health, and food, as well as our cultural survivorship. We want to determine a future that aligns with our indigenous values of respect, care, and sustainability, not one defined by strategic U.S. military interests and occupation. Si Yu'os Ma'āse' and thank you.

LAULANI TEALE

Aloha. My name is Laulani Teale. I am a Kanaka Maoli mother, Laau Lapaau, birth keeper, cultural peacemaker, and community organizer. I'm here with respected rural Maui midwife Ki'i Kaho'ohanohano, who has been leading cultural healing aid to West Maui since deadly fires ravaged Lahaina on August 8. All of us have been criminalized by the State of Hawaii for continuing ancient birth practices, which have been restoring health and self-determination that has been continually stolen from us since our country, Hawai'i, has been under occupation by the United States.

Our mothers are dying. Maternal death rates under standard care are far higher for Kanaka/Pacific Islanders than *any* other ethnic group in the US. These deaths are preventable. The cultural care provided by traditional midwives is a proven medicine for this catastrophe, yet *we* are called unsafe.

Colonial erasure and control of Indigenous traditions is not okay. Interference in the choice of who touches a person's body during childbirth is not okay. Indigenous people being displaced, erased, and forced into silent compliance with their own genocide is not okay. Our birthing traditions are needed to bring a new generation forward to restore our neutral, healthy country, and bring aloha and healing to all of humanity and our dear Mother Earth. Mahalo.

FERMIN ARRAIZA

Good morning members of the Committee.

Puerto Rico has the right to self-determination as a people, not a minority. In 1953 the U.S. managed to remove P.R. from the list of colonies of the UN and stop rendering reports under Art. 73 of the Charter, pursuant to Resolution 748 (VIII). After 70 years, the case of Puerto Rico is ripe to be revisited by the GA. All branches of the U.S. have confirmed.⁷⁰¹ what Ambassador Menon, from India, then denounced in 1953: The international community is witnessing the creation of new forms of colonialism. So is Sánchez Valle, Aurelius, Vaello (S.Ct.) but also PROMESA.

⁷⁰¹ See *Puerto Rico v. Sánchez-Valle*, 136 S. Ct. 1863 (2016) (declared Puerto Rico as a territory without sovereignty), *Fin. Oversight and Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020) (excluding PROMESA Board members from the Appointment Clause of the U.S. Constitution), *United States v. Vaello-Madero*, No. 20-303 (denying supplemental social security (SSI) to residents of Puerto Rico).

Since 1972, the Decolonization Committee have been reaffirming “the inalienable right to self-determination ... of Puerto Rico” pursuant to Resolution 1514 (XV).⁷⁰²

Under PROMESA (2016), a Control Board was appointed and governs despite never being elected by the People of Puerto Rico. It has disenfranchised the people and jeopardized the PR Police Reform.

However, Puerto Rico’s debt was provoked by Congress without the supervision of the UN. 70 years without reporting to the GA must not be left unattended. It violates international law and the principle of non-annexation. Since 1950, local plebiscites in PR are decided by U.S. citizens; not Puerto Rican nationals. The same happened in Guam, Alaska and Hawaii, forcing annexation in the later cases. U.S. Rule in P.R. has been characterized by political repression; discrimination; displacement; economic dependance, and military exploitation, making us a potential target of military retaliations.

This Committee must analyze the impact of the U.S. lack of reports before the UN General Assembly.⁷⁰³ To have colonies includes responsibilities: “the well-being ... of such peoples form ‘a sacred trust of civilization’” This has been ignored by the United States and must be redress with an expedited process of self-determination, including Reparations.

STEPHANIE AMIOTTE

Oglala Lakota Tribal Member; Legal Director, ACLU of SD, ND and WY

In 1877 Congress illegally seized the Black Hills from Sioux Nation Tribes in violation of the Constitution, and treaty trust obligations to protect and guarantee the future existence of Sioux Nation Peoples and their lands.

Presently, the U.S. allowance of mining claims fails to protect the Black Hills sacred Indigenous areas and harms the health of Sioux Nation Peoples in violation of ICCPR Articles 1, 18, 27 and 47.

Mining in the Black Hills resulted in two EPA Superfund sites which polluted drinking water supplies with 100 million tons of arsenic tailings. There are 248,000 acres of active mining claims there now - a sharp increase of 76,700 acres since April 2022. And twenty-five percent of well water tested in tribal communities in SD have unsafe arsenic levels according to the EPA.

Exposure to elevated arsenic in groundwater increases the risk of heart attack, stroke and lung cancer and other deadly diseases. Indian Health Services reports that Lakota’s die at 74% higher rate than all other Americans. Exposure to elevated arsenic in drinking water compounds this. Yet, Congress historically underfunds IHS by 52% annually. All this contributes to disproportionately high death rates.

Mining and the illegal occupation also interfere with spiritual and cultural use of the Black Hills. Lakota teenage suicide is 150% higher than other Americans. The National Indian Child Welfare

⁷⁰² Declaration on the Granting of Independence to Colonial Countries and Peoples; GA Res. 1514 (XV).

⁷⁰³ See ICJ Advisory Opinion (Namibia) (1971).

Association reports “Native children, adolescents, and young adults involved in ...cultural activities have lower rates of depression.” But mining operations threaten and limit cultural activities which cause disproportionate death rates by suicide.

We ask how will the U.S. fulfill its trust obligation to guarantee the Sioux Nation Tribe’s future existence when it illegally maintains possession of the Black Hills and allows excessive pollution of it which causes direct harm to the Tribe’s spirituality, culture, and future existence?

SUMMER BLAZE AUBREY

Thank you, Committee Members, for being here today.

The surveillance, excessive use of force, and repression Indigenous Peoples receive are violations of Articles 7, 9, 10, 14, 17, and 22.

In 2016, the Indigenous-led resistance against the Dakota Access Pipeline commenced in Standing Rock, North Dakota on the unceded Treaty territory of the Očhéthi Šakówiŋ. Over 800 criminal cases were brought against Water Protectors and the majority dismissed. We witnessed a convergence of state and local law enforcement with private security and military actors using counterintelligence tactics against peaceful Water Protectors and referred to them as “Jihadis.” *Dundon v. Kirchmeier* is an ongoing federal civil rights case filed based on the 10-hour barrage of impact munitions, chemical weapons, explosive grenades, and freezing water used on Water Protectors on November 20, 2016. Similarly, *Mitchell v. Kirchmeier* is based on injuries 21-year-old Diné activist, Marcus Mitchell, sustained after being attacked by law enforcement with a bean bag during demonstration. A lead pellet entered his left eye socket, shattering the orbital wall of his eye and cheekbone, and ripping his skin open nearly all the way to his ear.

We have seen an increased criminalization of Water Protectors on the front lines of extractive projects and nearly 900 people faced charges while protesting Enbridge Line 3 in Minnesota.

We also draw attention to our relative and Elder, Leonard Peltier, whom is the victim of severe surveillance and state repression and is the longest serving political prisoner in the United States. Mr. Peltier is enrolled in the Turtle Mountain Band of the Chippewa Indians and is Lakota/Dakota. He has spent 48 years in prison; 46 of those years in maximum security. It is time to grant Mr. Peltier clemency and heal this open wound.

LETETIA JACKSON

Good morning, I am Letetia Jackson, a plaintiff in Alabama’s Redistricting lawsuit, *Milligan v Marshall*, the Convener of the South Alabama Black Women’s Roundtable and Board member of Alabama Forward.

In June, the Supreme Court decided favorably for Black voters in Alabama (“AL”) agreeing with the District Court that AL’s 2021 redistricting map diluted Black voting power by packing many of us in a single district and “cracking” the remaining voters into three different districts, a likely a violation of Section 2 of the 1965 VRA. The State defiantly refused to follow the court’s order to draw a new map that included a second Black opportunity district. The District Court drew the new map.

Coincidentally, the one Black Congressional district we have in AL came as a result of a similar court battle in 1992, where the courts drew the congressional redistricting map because, again, AL defiantly refused to follow a court order from the highest court in the land, the Supreme Court.

The U.S. has long been in the forefront advancing democratic governing institutions around the world. One person, one vote is the critical element of what makes democracy work. However, to have the right to vote is one thing, but to have your vote count and matter is quite another. When Black voting power is diluted across several congressional districts, it is virtually impossible to exercise voting power and elect candidates of our choice.

While voter suppression in the Deep South is most often targeted at Black voters, it is by no means limited to our community. These laws impact other communities as well, like Latinx, Asian American, Middle Eastern, and Indigenous voters, among others. And voter suppression laws elsewhere in the country are specifically targeted to disenfranchise these communities, such as laws in states with large Indigenous communities that require you have a residential address to vote, knowing that addressing on Native lands is limited and many Indigenous voters use PO boxes. Or the refusal to situate polling places on reservations and limits on community ballot collection, a practice many Indigenous voters rely on when they live many miles from off-reservation polling places.

In my lifetime, Black women, the highest voting bloc in the US, have not always had the right to vote. After many decades of voter suppression laws known as “Black Codes” or “Jim Crow”, the 1965 Voting Rights Act changed that. But many of our ancestors died for our right to vote and for our voices to be heard.

Fast forward 58 years later, we find ourselves fighting the same fight. In 2013, a major erosion of the VRA resulted from the *Shelby v Holder* decision, when the Supreme Court struck down Section 5. It is not coincidental that this erosion came just one year after Black voter turnout exceeded that of White voters for the first time in history, reelecting the first Black President, Barack Obama.

What followed this election was a plethora of voter suppression laws across the Southern United States, with AL leading the way. This “backlash” resulted from our success at the ballot box, much like what happened in 1867 when Black Americans turned out in huge numbers across the South and elected 22 Black men to Congress. Black Code laws followed then as well, along with violence and intimidation against Black voters. It’s happening today in the US.

For example, one elderly Black woman in her 90s who had been using that same identification to vote for decades could not use that ID to vote in next election. You see, the new voter ID suppression law allowed only certain types of identification. Imagine in your 90s being told you need to get an approved government-issued photo ID and you need a birth certificate to be able to get one? Then, the State closed many of the offices where you could get the photo ID. Imagine learning it is now a crime to give water to voters waiting in long lines in the hot sun for hours to vote? This is happening in the United States of America!!

After we won our case, the Secretary of State completely shut down the voter registration app designed to make it easier for citizens to register to vote. However, we are not deterred. We will continue to educate and mobilize Black, Brown and other disenfranchised voters.

Our democracy is under attack. We need renewed attention on the national stage to hold the United States accountable for attempts to erode democracy. We must act with all expediency to fight against the drumbeat toward autocracy.

So, what needs to happen? We need Congress to pass the John Lewis Voter Advancement Act, the Freedom to Vote Act and to restore Section 5 of the VRA. We need our global and domestic allies to work with us to preserve and protect our democracy.

MONE HOLDER

Today, I come before you with humility and sincerity to address a harsh reality—the United States consistently infringes upon the fundamental right to vote.

In my home state of Florida, our voting hours continue to diminish, voter registration sites persistently malfunction, registration rolls are purged, and local governments obstruct accommodations for our disabled and non-English speaking voters.

In 2011, I joined an organization, New Florida Majority, which is now Florida Rising, one of the largest grassroots organizations in the state. We watched as access to the ballot box was aggressively stripped away leading up to the 2012 Presidential election.

I recall the whole state, and eventually the nation, being in uproar when Desaline Victor, a 102-year-old Haitian woman, stood in line for three hours on the first day of early voting and had to leave and return to cast her ballot at a library in North Miami. As a result, we worked with The Advancement Project and Senator Oscar Braynon II to sponsor the Desiline Victor Free and Fair Democracy Act (Florida Senate Bill 888)-to “modernize the state’s voting system and enshrine the right to vote into state law, we knew unfortunately that Act would not include the 1.5 million people who were disenfranchised from voting due to a prior felony conviction.

In 2018, The Florida Rights Restoration Coalition collaborated with my organization, and many others from each of Florida's diverse communities to pass Amendment 4, reinstating the voting rights of 1.5 million people. Devastatingly Florida Senate Bill 7066 was passed just months later. The recently enfranchised voters are now burdened with all court-related debt, which can amount to thousands of dollars, before their voices are heard. Rosemary McCoy and Sheila Singleton are two brave Black women from Jacksonville, Florida. They are mothers, grandmothers and community activists. Unfortunately, they could not have their rights restored due to a combined total of over \$20,000 in fines, fees, and restitution. Their bravery moved them to sue Florida’s Governor for violating women’s constitutional rights, including their right to vote under the 19th Amendment. They won their case, but ultimately, just weeks before the 2020 election, an appeals court ruled in favor of Florida. The system failed them. It failed all of us.

Subsequently, in 2022, a decade after 102-year-old Desiline Victor waited in line for 3 hours to vote-the passage of Florida Senate Bill 90 targeted Black and Brown voters with restrictions on early voting.

Senate bill 90 also established an "election police force." The first order of business for this force was to arrest 20 Floridians who casted a ballot in 2020. Although receiving voter registration cards and being told they were eligible to vote, these 20 men and women found themselves in legal trouble.

Less than a month ago, on September 29,2023, 65-year-old Marsha Ervin was arrested at her home in Tallahassee, Florida at 3 am for alleged voter fraud. Ms. Ervin had a previous felony conviction; however, she received a voter registration card and believed the state had done its due diligence before issuing it. Unfortunately, that was not the case.

The party in power consistently obstructs the voting rights of minorities, and under the current law, they continue to find ways to manipulate district maps to marginalize minority groups in the state. Which is why we sued the city of Jacksonville for gerrymandered maps, and won and we also brought litigation against the State and received a favorable decision to redraw the Congressional District 5 map.

When the Voting Rights Act was weakened in 2013, a void emerged, one that our legislatures and National leaders must fill to safeguard our right to vote.

Perhaps it is time for the United Nations and the international community to remind the United States that the strength of our democracy hinges on whether people can participate in the process of electing officials and holding them accountable.

I call on member states to support the adoption of legislation to restore the Voting Rights Act of 1965, establish national standards for fair elections and ensure equitable election administration. Furthermore, it is time to put an end to the disenfranchisement of citizens based on criminal convictions.

In closing, the challenges I face domestically, as a Black woman, and the Black children I raise, will persist if we continue on the current path of silencing communities through voter suppression. I believe that with the support of our global partners, the United States can overcome these challenges and triumph.

Thank you.

HAIFA JABARA

On August 12, 2016, our lives forever changed when our neighbor murdered my beloved son Khalid on our front porch. He was on the phone with me, warning me not to come home - our terrorizer living next door had a gun. Leading up to this moment were years of targeted attacks and racist remarks, which escalated from verbal harassment to finding myself in the Intensive Care Unit after he ran me over with his car, leaving me for dead. We thought that was the end, but just eight months after his arrest, a judge set him free to live next door, where his partner had a gun. A

few weeks after returning home, I listened to the fear in my son's voice, helpless to save the life I brought into this world as he was shot and killed.

We did everything right - we reported every violation, we filed a protective order, we worked with the police, and we trusted the justice system. Those institutions failed us, leaving us feeling vulnerable and betrayed by a government we once believed in. In the wake of this devastating loss, our family has channeled our grief into action. My children, Victoria and Rami, founded the Khalid Jabara Foundation as a living tribute to Khalid's memory and a testament to our family's unwavering determination to eradicate hate from our communities.

We are here today to share our story and continue Khalid's legacy, bring change, and ensure that no other family has to endure what we have suffered. In 2021, the Jabara-Heyer NO HATE Act became law, a pivotal piece of bi-partisan federal legislation in the ongoing battle against hate crimes in the United States. While this act provides a strong foundation, we must expand its scope, allocate resources, foster international collaboration, and prioritize education and awareness to achieve lasting change. By advancing these efforts, we can live in a world where love triumphs over hate, inclusivity, and empathy unite us, and no one lives in fear based on their background or beliefs.

Khalid, our protector and caretaker, was only 37 years old when he was taken from us. His final act was to save me, his father, and our other neighbors by warning us that this dangerous man had a gun. With his last breath, he displayed a bravery that none of us should ever be forced to summon. We ask our world leaders to act with bravery, now, to provide the reform and action necessary to ensure no more lives are lost at the hands of hate.

TAYLOR DUMPSON

Asco Wequassin, greetings, to the United Nations Human Rights Committee, and all those gathered here today. My name is Taylor Dumpson, and I am an Afro-Indigenous hate crimes survivor and attorney.

The words I share today are my own and are not affiliated with my employer.

Hate and extremism do not occur in a vacuum: they are the result of an endless cycle.

An endless cycle vacillating between discrimination, polarization, and dehumanization. A cycle with countless victims and intersectional targets. A cycle, in today's time, that is not limited to traditional methods of organizing and recruitment, but have extended into the online sphere.

And, a cycle I know far too well.

In May 2017, after becoming the first Black woman to serve as American University's student body President, I was targeted for a series of hate crimes—"in the real world" and online—none of which was prosecuted.

First came physical threats of lynching and violence, then came an onslaught of racist and gender-based cyber-harassment.

On my first day in office, a masked perpetrator hung bananas from nooses around campus with racial epithets, comparing me to a gorilla and references to my predominately Black, international sorority. Three days later, one of the world's most notorious Neo-Nazis doxxed me online, sharing my personal social media pages in an attempt to silence me by inciting a coordinated cyber-harassment campaign.

As a woman of color, I had long learned about the horrors of the transatlantic slave trade, the attempted genocides against my Narragansett ancestors, and the civil rights movement of the 1960s. But I hadn't realized how much of a global threat hate still was in the 21ST century.

Before the advent of the internet, global extremists used airwaves and political cartoons to espouse hate and recruit sympathizers to their causes, like the Holocaust, Apartheid, and the Rwandan genocide. But now, with the proliferation of the World Wide Web, extremists use the internet and inflammatory memes to spread their hateful, violent rhetoric all around the globe.

Unfortunately, the United States' failure to regulate hate-speech and online discourse, in the name of free speech absolutism, has contributed to the spread of mass violence against innocent people all over: from violence against women and children, people with disabilities, Indigenous people, racial and religious minorities, and members of the LGBTQ community.

This includes mass atrocities motivated by online radicalization like Buffalo, New York to Christchurch, New Zealand, to Oslo, Norway, Myanmar, and most recently Palestine and Israel.

As a superpower, the United States plays a large role in setting global norms, which includes protecting and enforcing the human rights of all, in person and online. And it must step up to the challenge of combating online hate, because failing to do so at this most urgent time has resulted in the United States being one of the largest, global producers of hate-fueled rhetoric, misinformation, and disinformation.

What we do now—whether we choose to act or delay—will directly impact our peers around the world and future generations.

We owe it to them to be good stewards of that responsibility.

Enàtch neèn ánowa, let my words stand.

SAMAH SISAY

Good morning, my name is Samah Sisay from the Center for Constitutional Rights and I am speaking on behalf of civil society organizations who are concerned with the United States' discriminatory and cruel incarceration and sentencing practices.

As the recent UN EMLER report on their visit to the U.S. highlighted, U.S. prisons and jails incarcerate a disproportionate amount of people who are suffering from physical and mental disabilities. Moreover, law enforcement agencies in the U.S. are inadequately equipped to deal with persons with disabilities, especially those in severe mental health crisis which has led to far too many deaths in custody. The management of persons with disabilities by the carceral systems

in the U.S. is punitive and incompatible with the needs of persons with disabilities, who are too often met with excessive force and torturous treatment.

Furthermore, extreme sentencing, including the death penalty, in the U.S. is torture and can trigger and worsen symptoms of physical and mental illness.

In 2019, the Human Rights Committee discussed the disproportionate length of sentences for racial and ethnic minorities and asked whether the United States “has considered establishing a federal moratorium on executions, with a view to abolishing the death penalty”. The United States has neither established a consistent federal moratorium on the death penalty much less abolished it.

Since 2014, authorities in the U.S. have executed more than 210 people. The number of executions has increased over the last two years, after a steady drop from 2018 to 2021. There are four more executions scheduled for this year. Of the 20 people executed in 2023, 8 identified as Black or Latinx.

Since 1973, 195 people have been exonerated from death row (or proven innocent), and exonerates are disproportionately Black. One of those Black exonerates is Paul Browning, whom Nevada juries twice sentenced to death and who was exonerated in 2020 after 32 years of wrongful imprisonment, most on death row.

While some people view life imprisonment, or death by incarceration, as an alternative to the death penalty, research shows that an increase in DBI sentences has not led to a decline in death penalty sentences in the United States.

Therefore, the U.S. must adopt an official moratorium on executions at the federal level and commute the death sentences of all people currently under sentence of death in federal custody.

TERRANCE WINN

At the tender age of sixteen, while my friends were getting ready to attend their high school prom or a military ball, I was instead locked away in solitary confinement, struggling to maintain my sanity. Starvation is a devastating experience that can take its toll on not only the body, but also the mind. The same process repeats itself when an individual is stuck in a one-man cell with no other form of stimulation. This often leads to a sudden, sudden, and intense sense of despair and ennui, eventually pushing some to take matters into their own hands and commit suicide.

The experience of being placed in a cruel form of isolation has cast a long shadow on my life. I’ve become something of a recluse, refusing to disclose my most personal secrets to almost anybody I’ve met. I’ve also taken to counting the small details around me, almost like I’m still trying to make sense of the chaos I’ve been through. It’s disturbing to think that the same type of treatment that would not be tolerated if inflicted on an animal is completely legal when used against a human being.

What’s more, I was also subjected to backbreaking labor while I was in prison. We worked in some of the toughest of conditions, with temperatures often reaching the hundreds, for meager

wages of only two- cent an hour. We were there purely for the purposes of punishment – there was no constructive or rehabilitative purpose.

My experience in solitary confinement was no doubt a traumatizing one. It filled me with an intense fear of trust, and it gave me a grim understanding of the legal rights of men versus animals. Even more so, it brought forth a difficult relationship with physical labor that still impacts me to this day. Although any type of jail time is undoubtedly a tough road to tread, little can compare to the deep, lasting struggle of solitary confinement.

IAN MANUEL

My name is Ian Manuel. At 13 years old I was arrested and then sentenced to life without parole. I was sent to an adult prison, and soon after I got there, I was placed in long term solitary confinement... Which the state of Florida defines as close management. I would remain in solitary confinement for 18 consecutive years. From November 1992-November 2010. From age 15 to age 33. According to a recent report, at least 120,000 people in the U.S. are being held in solitary confinement on any given day. Contrary to what the U.S. reports, solitary is not rarely used and it is not used only when absolutely necessary. It is routine.

Growing up in solitary confinement in the United States was difficult. I was kept in a small cell the size of a walk-in closet or bathroom. I was beaten and abused by sadistic correctional officers. The security would spray us with high-powered chemical agents/gas that took most of the oxygen out of the cell. Making it difficult to breathe. If the chemical agents got on your skin it would burn for hours. Making you feel like you were being roasted alive.

Sometimes we'd be tied to our beds and forced to have psychotropic medication injected into our buttocks to torture us. Other times they'd give us stitches without anesthesia to deliberately hurt us. As a deterrence to discourage us from attempting suicide.

I currently have two friends who have been held in solitary for over 25 years. Their names are Demetrius Mccutchen and Darryl Streeter. Who both have had their mental health unravel due to the inhumane conditions and length of stay in solitary confinement. They both have attempted suicide on numerous occasions. And need immediate mental health treatment and release from the confinement of these conditions.

The United Nations has declared it to be torture to keep a person in confinement for over 15 days. Well, I served 18 years in confinement. Which must be beyond torture.

It is atrocious and demonic. I ask that this body, this committee make a strong stance that these inhumane atrocities are unacceptable. And declare that they have no place in modern society. Help me put an end to this madness. So that no child, or human has to ever experience what I did as a kid. Thank you.

DEMETRICY MOORE

My name is Demetricy Moore. I was sentenced to life without parole (LWOP), what we call Death by Incarceration (DBI) in 1998. When I was arrested and sentenced to DBI, I was a young woman and a single parent of two daughters. My oldest was 4 years old and my youngest 6 months. My

arrest had a dramatic effect on me. For the first four years, I was wrecked with guilt and just trying to get through it. I made the decision to be there for my friend and, as a consequence, I was taken away from my family. Even though I didn't pull a trigger or kill anyone, it was a journey to forgive myself. Education was my place of refuge. As a female lifer, I had to fight for my education every step of the way. First, in the parish jail, I had to persistently fight to get my GED, as I did in prison to take college courses. Women sentenced to DBI in Louisiana especially struggle to access education and self-help resources. The years of denials that I faced in court, and the clemency rejection, did not allow me the opportunity to show that I had grown over the years, and that I had transformed my life.

Prison was not designed for a woman. We get strip searched, even on our menstrual cycles. We have little to no access to basic necessities. Based on the wages we make, we have to choose between buying a bar of soap or a sanitary pad. They attempt to strip us of our nurturing character. If we cry, they threaten us with solitary. If we try and support one another, they place us in solitary. They try to deprogram what we're designed to do, be nurturers.

Despite these immense obstacles, I'm one of many women lifers who has succeeded and made changes in our own lives.

I urge the Human Rights Committee members to call for an end to all life imprisonment in the United States, which is a form of torture and a death penalty.

LISETTE NIEVES

My name is Lisette Nieves. I am a woman, daughter, sister, aunt, mentor, and Community Leader with Release Aging People in Prison (RAPP) in NYC. I joined RAPP in 2020 to get involved with the campaign for Parole Justice Reform as a ray of light to bring my brother home. I am honored to be here with a delegation of individuals impacted by Death by Incarceration (DBI). I am here to be the voice for my brother who at the age of 17 was handed a DBI sentence of 49 ½ years to life. He is currently 57 and is not eligible for parole until 2031 at the age of 65 with no guarantee of release given NYS's track record of denying incarcerated individuals parole based on the one thing they cannot change - the nature of the crime. Parole boards must be guided by the presumption of release. Death By Incarceration is torture and a form of a death penalty, and it is a practice that treats human beings such as my brother as disposable. The UN EMLER has emphasized that "disproportionate, excessive and discriminatory sentencing beyond life expectancy" in the United States "is a cruel, inhuman and degrading treatment, in violation of international human rights standards protecting life, liberty and against torture."

It is said that when a loved one is incarcerated the family does the time with them. His incarceration has taken a toll on our whole family with the women carrying most of the emotional labor during his sentence. For the first three decades, my mother was his primary supporter and it had a negative impact on her mental health and wellbeing. Until her death, his incarceration was a pain that she carried deeply. When her health declined, that responsibility fell on me despite the fact that I have three other brothers. I went from supporting my mother in her care of my brother to being the one responsible for sending letters, packages, setting up visits, sending money for the commissary, and ultimately advocating for his freedom.

We are demanding that the UN Human Rights Committee label DBI sentences as torture and a violation of basic human rights. People impacted by DBI have a fundamental right to hope.

SIYA HEGDE

She/Her, Attorney, National Homelessness Law Center

Good morning, esteemed Committee Members. My name is Siya Hegde and I am an attorney with the National Homelessness Law Center. Thank you for the opportunity to testify today on issues relating to housing and the criminalization of poverty in the United States. My remarks will highlight the growing effects of criminalization agendas against the unhoused, in particular those living in small towns across the country where homelessness is increasing.

While the homelessness that exists in small towns and rural areas may not be as visible as it is in urban areas, encampment sites still remain prevalent, as do punitive policies and practices enacted by local governments. Outside big cities, there are fewer specialized services, inadequate shelter capacity and community-based housing, and insufficient access to health and human services, making unsheltered persons significantly more vulnerable to criminalization of poverty. And in an era of ever-increasing threats of climate change, the environmental impacts of extreme weather patterns have also disproportionately affected these individuals.

In Norristown, Pennsylvania, a town of approximately 36,000 residents, an estimated 17% of the population live under the federal poverty line. The county's only homeless shelter closed last year, so the vast majority of Norristown's unhoused residents simply have nowhere else to go and are forced to sleep outside.

In 2021, flooding from Hurricane Ida destroyed a 124-unit low-income housing development and damaged numerous other housing units throughout the town, increasing the town's homelessness count dramatically. More than 400 homeless individuals are on the waitlist for housing vouchers with the public housing authority, and that waitlist is closed. Norristown officials have actively opposed efforts to rebuild affordable housing or emergency shelter, declining federal funding that requires building affordable units, and instead, adopted an anti-camping ordinance, which the Norristown police use to demand that unhoused residents relocate from the forested areas where they sleep, or face fines, fees, or arrest.

As noted in our shadow report, the U.S. government has taken some positive steps to discourage criminalization at the state and local level in response to this Committee's 2014 recommendations, however, as this example demonstrates, they have not been enough to stop the practice from growing. Even worse, federal police with the National Park Service, U.S. Forest Service, and Bureau of Land Management themselves are engaging in criminalization. In one case in rural Idaho, federal police shot a disabled unhoused man more than 10 times in his wheelchair while serving an arrest warrant for living in his camper trailer on federal land, permanently paralyzing him.

We ask the Committee to strengthen its recommendations to the U.S. government, to stop criminalization by federal police agencies, and to take stronger steps against it at the state and local

level, and to redirect funding from law enforcement responses to the homelessness crisis to compassionate crisis response teams backed with adequate housing, shelter, and services.

Please see our report for more details and thank you for your time today.

SCOTT ROEHM

Director of Global Policy and Advocacy; Center for Victims of Torture

Thank you for this opportunity to address the Committee. I am the Director of Global Policy and Advocacy at the Center for Victims of Torture, the largest torture rehabilitation organization of its kind and a lead member of a coalition of over 30 non-governmental organizations that works to ensure that U.S. national security policies abide by its human rights obligations.

The legal and policy framework the U.S. created to facilitate its war-based response to the Sept 11, 2001 attacks resulted in a cascade of human rights violations that destroyed – and continue to destroy – hundreds of thousands of lives, primarily of civilian, Muslim, Black, and Brown people. Two decades later, this approach still underlies, or exacerbate, many of the other harms about which you have heard from U.S. civil society today.

I hope the committee will raise with the United States two of these issues in particular. First, the Guantánamo Bay detention facility:

What efforts is the United States making to resettle or repatriate all remaining detainees who have not been charged with a crime? What steps it is taking to end the fundamentally broken military commissions? And will the U.S. adopt a formal policy not to use, or defend the use of, evidence in any way tainted by torture in any legal or other proceeding for any purpose?

Second, the United States continued unlawful use of force outside of recognized armed conflict: What legal and policy standards, international human rights law standards in particular, does the U.S. adhere to in such uses of force?

You can find more detail on both of these issues – including additional suggested questions – in the 1-page summary document I have here. Thank you.

KEYANNA JONES

Good morning. My name is Reverend Keyanna Jones and I live in Atlanta, Georgia. I am a Christian minister and an organizer with Community Movement Builders, a Black, member-based collective of residents and activists serving working-class and poor communities.

I represent a broad, grassroots movement called Stop Cop City opposing a plan to cut down 85 acres of forested land and build a \$90 million dollar police training facility, to prepare officers for militarized combat with civilians. In response to my community's opposition to the plan, the State has used all of its tools to chill peaceful assembly, threaten freedom of thought, opinion, and expression, to criminalize protest, and, in one instance so far, to kill.

I have had to completely change the way I participate within the movement. My husband and I no longer show up at the same actions, so that someone can always be free to take care of our children, should one of us get arrested or worse.

In addition to the arrest and detention of lawyers and the mass surveillance of activists, bail fund operators and other supporters have been charged as “Domestic Terrorists” and further targeted with racketeering or “RICO” statutes designed for the mafia. In total, sixty people face serious jail time.

The state argues that RICO applies when like-minded people work together toward a common goal, so we are all worried about being indicted as part of a conspiracy for things like collaborating on art projects against Cop City!

Cop City is just one of the many police training facilities that has popped up across the country since the 2020 murder of George Floyd. Following the largest mass protest movement in U.S. history, law enforcement is now seeking to develop skills to violently suppress protest when the public mobilizes to news of the next George Floyd, or Rekia Boyd, or Tamir Rice, or Rayshard Brooks.

In January, in a coordinated raid of the forest, police killed a queer, Latinx environmental defender Manuel Paez “Tortuguita” Terán, shot at least 57 times. Taken together, these state actions signal a clear strategy to deter dissent in violation of the Covenant.

We demand that the federal government investigate the Georgia State and City of Atlanta law enforcement for their repression of the movement to Stop Cop City and to ensure that no federal resources have been and will be used towards such human rights violations. The U.S. government must urge state and local officials to drop all charges against organizers and activists and initiate its own investigation of the police murder of Tortuguita.

Keyanna's Personal Story:

“The impact of state repression shows itself in various ways among organizers and activists within the movement to Stop Cop City. Some of us are experiencing frequent surveillance by police, which in one case, includes officers parking across the street from the home of an activist and shining their headlights into her home during the night, so as to disturb her sleep. Others have been deterred from organizing and showing up for actions since the state decided to levy domestic terrorism charges against organizers and activists with the goal of chilling protest and the expression of freedom of speech. Charging individuals with domestic terrorism or related charges for common acts, such as attending a music festival, or wearing dark clothes, is the kind of repression that is scary and confusing. It is what has caused many to reevaluate how we show up in the movement against Cop City, and even caused some to walk away altogether.

I have completely changed the way I participate within the movement. My husband and I no longer show up at the same actions, so that one can always be free to take care of our children, should one get arrested. It means that we have to be careful about who we contact, and how. Because the domestic terrorism and RICO statutes in the state of Georgia are so expansive, we have to walk a very fine line, even with close friends who are also a part of the movement. The fact that the State

is taking the position that the RICO statute in Georgia simply requires that like-minded people work together toward a common goal, organizers are worried about being in danger of indictment for things like collaborating on art projects. If the art projects are symbols against Cop City, then could they be deemed “overt acts in furtherance of the conspiracy” to stop Cop City?

This is extremely alarming because the movement recently launched a campaign to place a referendum on an upcoming election ballot, and we are worried that that effort’s momentum will be affected by the RICO indictment. This campaign comprises numerous voting rights organizations and individuals, all working for the cause of direct democracy to get the referendum on the ballot. According to the Georgia prosecutors, could this activity (guaranteed by the Georgia State Constitution and protected under the First Amendment) be seen as an “overt act in furtherance of the conspiracy”? The prosecutors have sent us a clear message that even lawful participation in democratic processes, protected under the First Amendment, could be targeted for prosecution under their interpretation of the Georgia RICO statute. It tells us that dissent is a criminal act, as opposed to a central tenet of democracy, and will be punished to the fullest extent of the law.”

SUMMER BLAZE AUBREY

The Missing and Murdered Indigenous Women, Girls, 2-Spirit, and Relatives crisis is one of the worst plights facing Indigenous Peoples in the United States. Violence against our women, children, and queer relatives is directly tied to overt attempts to gain control of our Peoples and our lands. They hold knowledge and sacred duties within our communities and violence against them ensures that knowledge is not passed down leading to an erasure of our Peoples. Generally, the federal government has jurisdiction to prosecute these crimes, but the prosecutorial declination rate is 76% and 96% of these crimes are committed by non-Indigenous persons. Only 31 Tribes can prosecute these crimes and inability to prosecute directly interferes with the self-determination of Indigenous Peoples.

Further, we call the Committee's attention to the U.S. denial that access to safe and clean drinking water falls under the ICCPR. This denial denies our religious and cultural rights under Articles 18 and 27. The U.S. must acknowledge that water is a cornerstone of religious and cultural rights for Indigenous Peoples and cannot determine what is and is not sacred to Indigenous Peoples.

Wado and Siksiksimasiituk.

BETTINA HAGER/MADISYN LAMBRAKIS/MEREDITH ECKLER

Distinguished Members of the Committee,

The United States does not explicitly prohibit sex-based discrimination in its Constitution and, therefore, fails to comply with the ICCPR. The Equal Rights Amendment (ERA) is an amendment to the U.S. Constitution that guarantees protection against sex discrimination and has met all requirements for ratification. Yet, the government refuses to recognize and publish the ERA as the 28th Amendment. The ERA will elevate “sex” discrimination to the same level of judicial scrutiny as race, religion, and national origin. It would provide a stronger constitutional basis for Congress to pass new laws advancing sex equality and make existing rights less vulnerable to the persistent efforts by opponents of equality who would like to roll them back.

The urgent need for an explicit protection against sex discrimination was underscored by the Supreme Court's recent *Dobbs v Jackson* decision. A majority of the current Supreme Court made it clear that they believe that the Constitution should be read with the intention of those who wrote it, calling into question even the intermediate level of protections against sex discrimination we rely on under the Fourteenth Amendment. Recognition of the ERA would remove any question as to whether sex equality is protected in the United States.

The ERA can have far-reaching impacts on all aspects of women's human rights, including sexual and reproductive rights, the right to be free from violence, and the right to life with dignity. It would also provide much-needed protection against discrimination faced by the LGBTQIA+ community at a time when discriminatory laws targeting transgender people are on the rise at the state level and attempted at the federal level. An explicit sex equality provision in the Constitution will provide the most fundamental and structural protections necessary to safeguard against sex-based discrimination.

The ICCPR Women's Working Group strongly urges you to recommend that the U.S. government recognize and publish the Equal Rights Amendment as the 28TH Amendment to the U.S. Constitution and take every step necessary to implement the ERA and guarantee equality on the basis of sex.

JODI JELODOV

U.S. Army Veteran, Read by Ámbar Z. Reyes Pérez

My name is Jodi Jeloudov. I am a U.S. Army Veteran and a transgender woman.

I had not yet transitioned when I joined the military, but from the start, I was repeatedly harassed because of my perceived sexual orientation and gender identity. I was then gang-raped in barracks by my fellow soldiers. When I reported the rape, Command did not believe me and said that if even if I had been assaulted, it must have been my fault. I was discharged under the military's "Don't Ask, Don't Tell" policy.

Though this policy has since been repealed, LGBTQ+, particularly transgender, service members, continue to face rampant harassment and targeted violence and could easily again be denied gender-affirming care and barred from military service.

As a transgender Veteran living in Florida, I have faced online bullying and threats, workplace discrimination and harassment by Wells Fargo Bank, and most recently being misgendered, deadnamed, and forced out of a women's restroom at the Veterans Affairs medical center. I struggle daily with the trauma of my past experiences and of this continued harassment and discrimination.

The U.S. has egregiously violated my human rights and the rights of so many other LGBTQ+, and particularly transgender service members and civilians. This grave injustice must be addressed properly and thoroughly, and it needs to end urgently.

LAURA LEMOON

Sex Workers and Survivors United, Read by Monika Jordan

I am scared to be who I am in my country. I have been bullied out of jobs for being Trans and fired from mainstream jobs for being a Sex Worker and have chosen not to outwardly transition because compounded with my public identity as a sex worker, I'm afraid what could happen to me.

Many Queer and Trans people access work in the sex trade because it is a low barrier. Being a visible LGBTQ sex worker means the compounded risk of profiling, entrapment, police violence, and criminal legal involvement, as well as client violence and homicide. LGBTQ Sex Workers are the most vulnerable among Sex Workers and are disproportionately impacted by the above.

A lack of protections also codify discrimination into the cultures of housing, social services, welfare, healthcare, employment and more. Working on the streets and being visible as an LGBTQ person can mean the difference between life and death and often leaves our fates and decision-making abilities in the hands of apathetic systems that don't care if we live or die.

Thank you.

EMILY KAUFMAN

Senior Articles Editor, Miami Law Race and Social Justice Law Review, Read by Robert Tyler Mathews

We live in a time of troubles, where the liberty of transgender people in this country is eroding. Action must be taken now, or many states such as Florida and Texas will successfully legislate transgender people out of society.

As a transgender woman living in Florida, I know that I can't stay here because of the cascade of legislation passed by the Florida legislature and signed into law by Governor Ron DeSantis, such as denying essential health services and preventing classroom instruction on gender. We are living through a dangerously regressive era.

Some of the most draconian laws ban trans youth from accessing gender affirming care. This will kill them, whether in the literal sense of them committing suicide or in the metaphorical sense of killing their spirit. Taking away these children's self-determination is an abuse of human rights and violates the basic principles of liberty our nation was founded on. Without explicit federal guidance on evidence-based care for trans youth, many state legislatures around the country feel emboldened to harm trans youth. It is time for the FDA to expedite review of Hormone Replacement Therapy ("HRT") for transgender youth so that there can be not even a shadow of a doubt that this care is safe, necessary, and effective.

We, the transgender community, represent a change to the way people think about gender and sex, this scares people. We are the boogeyman it is easy to hate. Without decisive action, transgender people in America will suffer. Our very existence is at stake. What will you do?

ALANA CARVALHO/ISHANI CORDEIRO

Disability Rights Working Group

Report submitted by Gender and Disability Justice Alliance, Women Enabled International, Autistic Women and Nonbinary Network, and Autistic People of Color Fund

Thank you for the opportunity to share a summary of the unique civil and human rights violations experienced by women and gender diverse people with disabilities in the United States.

Guardianship of people with disabilities is an overarching issue which affects all of the issues discussed in our shadow report, including access to sexual and reproductive healthcare, gender affirming healthcare, freedom of expression and the right to vote.

Guardianship gives decision making power over important aspects of a person with a disability's life, such as sexual and reproductive health and gender identity to a third party when a person is deemed unable to make decisions for themselves.⁷⁰⁴ No U.S. state has completely abolished guardianship as it relates to people with disabilities.⁷⁰⁵

Women and gender diverse people with disabilities face significant barriers to accessing needed sexual and reproductive health information, goods, and services and continue to experience forced reproductive health interventions.

Barriers include:

- A significantly greater risk of maternal mortality and morbidity, with Black and Indigenous women experiencing some of the highest levels of morbidity.⁷⁰⁶
- Forced sterilization in 31 states, which has a long history of use against people with disabilities and people of color.⁷⁰⁷

⁷⁰⁴ Although the U.S. has still not joined the 186 states parties to the Convention on the Rights of Persons with Disabilities (CRPD), its mandate for and definition of legal capacity found in Article 12 and the corresponding General Comment 1 are commonly referenced by U.S. advocates and provide helpful grounding. Article 12—equal recognition before the law—maintains that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.” CRPD, Art. 12(2). General Comment 1 clarifies the scope of this right, explaining that “Legal capacity is an inherent right accorded to all people, including persons with disabilities...it consists of two strands. The first is legal standing to hold rights and to be recognized as a legal person before the law...The second is legal agency to act on those rights and to have those actions recognized by the law.” CRPD General Comment 1, ¶ 14.

⁷⁰⁵ For example, Illinois has passed a law recognizing supported decision-making, whereas Michigan has not. Ill. Supported Decision-Making Agreement Act., 2021 Bill Text IL H.B. 3849. See *In Your State*, National Resource Center on Supported Decision-Making, <https://supporteddecisionmaking.org/in-your-state/>.

⁷⁰⁶ Asha Hassan et al., *Dobbs and disability: Implications of abortion restrictions for people with chronic health conditions*, 58 *Health Services Research* 197–201 (2022). Also see Donna Hoyert, *Maternal mortality rates in the United States*, 2021, Centers for Disease Control and Prevention(2023), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm> (last visited July 21, 2023).

⁷⁰⁷ 17 of the 31 states that allow forcible sterilization allow for permanent forced sterilization and some of these laws were passed as late as 2019. See *National Women's Health Law Center, Forced sterilization of disabled people in the United States* National Women's Law Center (2022), <https://nwlc.org/resource/forced-sterilization-of-disabled-people-in-the-united-states/> (last visited Jul 31, 2023).

- Barriers to accessing care and information, and inaccessible medical devices and furnishings.⁷⁰⁸
- Due to the Dobbs decision pregnant people with disabilities, including those who experience racism, face significant privacy, financial and logistical barriers to traveling to another jurisdiction to obtain an abortion.⁷⁰⁹

Gender-affirming healthcare (hereinafter GAHC or GAC) is widely acknowledged as a safe and essential component of a person’s sexual and reproductive health care.⁷¹⁰

Several laws and regulations across the U.S. disproportionately harm trans people with disabilities by specifically banning Medicaid from covering GAHC for its recipients.⁷¹¹ Even in states that have passed legislation protecting the rights of young people to gender affirming health care, these laws do not protect people with disabilities under guardianship.⁷¹² The right to seek out and consent to GAHC should be a fundamental right afforded to everyone regardless of guardianship status.

The U.S. is Substantially Limiting Freedom of Expression, especially in the Domains of Gender Identity.

Some states are passing anti-trans legislation meant to segregate facilities such as restrooms, prisons and shelters based on biological sex.⁷¹³ This type of legislation, not only blatantly violates the rights of gender diverse people, it also has unique implications for people with disabilities at large. These restrictions could be used to deny access to bathrooms for people with disabilities who may receive bathroom-related support from people of a different gender.⁷¹⁴

⁷⁰⁸ (e.g., exam tables, chairs, mammography equipment, and weight scales); See U.S. Access Board, *Advancing Equal Access to Diagnostic Services: Recommendations on Standards for the Design of Medical Diagnostic Equipment for Adults with Disabilities* (Dec. 6, 2013), <http://www.access-board.gov/guidelines-and-standards/health-care/about-this-rulemaking/advisory-committee-final-report/5-recommendations>

⁷⁰⁹ *WEI responds to Dobbs v. Jackson Women’s Health Organization Decision*, WOMEN ENABLED INT’L, (June 24, 2022), <https://womenenabled.org/news/wei-responds-to-dobbs/> (Last visited September 11, 2023).

⁷¹⁰ See, e.g., *Medical Organization Statements*, Transgender Legal Defense and Education Fund, <https://transhealthproject.org/resources/medical-organization-statements/> (last visited July 31, 2023).

⁷¹¹ See *Medicaid Coverage of Transgender-Related Health Care*, Movement Advancement Project, <https://www.lgbtmap.org/equality-maps/medicaid> (last updated July 31, 2023). 7(a) of the regulation expressly provides that, “Florida Medicaid does not cover the following services for the treatment of gender dysphoria: 1. Puberty blockers; 2. Hormones and hormone antagonists; 3. Sex reassignment surgeries; and 4. Any other procedures that alter primary or secondary sexual characteristics.” ¶ 7(b) specifies, in direct contradiction to the best available medical evidence, that “the services listed in subparagraph 7(a) do not meet the definition of medical necessity....” Florida Rule 59G-1.050, § 7 (2022).

⁷¹² *Lives on the Line: The Escalating Attacks on Trans, Non-Binary, Two-Spirit, and Intersex People’s Health*, Lawyer’s for Good Government, <https://www.lawyersforgoodgovernment.org/trans-health-report>.

⁷¹³ *Facility Requirements Based on Sex CS/SB 1674*, Florida Senate, (2023).

⁷¹⁴ For instance, a mother from Wichita, Kansas believes SB180, a recently passed state Bill that includes language defining male and female and allowing these definitions to determine areas like bathroom access, caused her and her adult son with disabilities to be removed from the women’s bathroom, which he uses so that his mother can assist him. See Leo Wilson, *88(R) HB 1804 - introduced version - Bill Text* Texas Legislator Online (2023), <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01804L.HTM> (last visited Sep 5, 2023).

People with disabilities are disenfranchised by barriers and restrictions to registering and voting.⁷¹⁵

- In 2016, only one state had an online voter registration system that was completely accessible.
- In 2020, 43 states' online systems for requesting mail-in ballots were not fully accessible.⁷¹⁶
- In 2020, nearly 24 percent of voters with disabilities voted early in-person, and over 51 percent of voters with disabilities voted by mail.⁷¹⁷ In 2021, however, three states passed laws limiting early voting, and ten states passed laws limiting vote-by-mail availability or eligibility.⁷¹⁸
- Only 10 states do *not* have any laws that restrict the right to vote based on disability.
- Voters with disabilities do not have equitable access to the benefits of internet as it relates to voting information.⁷¹⁹
- Voter ID laws disproportionately impact transgender people of color, low-income transgender people, unhoused transgender people, and transgender people with disabilities make up disproportionately high numbers of this population.⁷²⁰

We hope the Committee will ask the U.S. about these issues, and recommend that the United States take the following actions:

- Adopt laws and policies at the state and federal levels that reduce the harms of the Dobb's decision, prohibit forced abortion and sterilization, and make the Accessibility Standards for Medical and Diagnostic Equipment mandatory for all health care providers and manufacturers.
- Draft and implement robust federal legislation for trans youth and adults with disabilities that provides protection against discrimination based on gender identity. Federal legislation must protect the right to access gender affirming healthcare for transgender children and adults, including people under guardianship.
- Adopt federal legislation that protects and promotes freedom of expression of diversity and pride in terms of gender identity, sexual orientation, race and ethnicity, and ability and reduces the harms of state legislation.

⁷¹⁵ Lisa Schur and Douglas Kruse, *Fact Sheet on Disability and Voter Turnout in 2020*, Rutgers School of Management and Public Relations (2021), https://smmr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/FactSheet_Disability_Voter_Turnout_2020.pdf (last visited Aug 10, 2023).

⁷¹⁶ Duque Systems, *Inaccessible vote-by-mail application forms* (2020), <https://www.deque.com/blog/vote-by-mail-accessibility/> (last visited Sep 5, 2023).

⁷¹⁷ Lisa Schur and Douglas Kruse, *Disability and voting accessibility in the 2020 elections, final report*, Election Assistance Commission (2021), https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf (last visited Aug 10, 2023).

⁷¹⁸ Brennan Center for Justice, *Voting Laws Roundup: December 2021* (2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021> (last visited September 11, 2023)

⁷¹⁹ Lisa Schur, Douglas Kruse and Mason Ameri, *Disability, The Voting Process, and the Digital Divide*, Rutgers University (2022), https://smmr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_the_Voting_Process_and_the_Digital_Divide_EAC.pdf (last visited Aug 12, 2023).

⁷²⁰ Kathryn K. O'Neill et al., *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2022 General Election*, Williams Institute (2023), <https://williamsinstitute.law.ucla.edu/publications/trans-voter-id-impact/> (last visited Aug 11, 2023).

- Ensure that state and local government offices provide accessible opportunities for voter registration and that staff members are trained to assist citizens with disabilities with voting and registration. Adopt federal legislation to counter these restrictions and promote the accessibility and inclusivity of voting.

SHEREEN WHITE

My name is Shereen Arthur White. I'm the Director of Advocacy and Policy at U.S. NGO Children's Rights and a 2023 UN Fellow for People of African Descent.

U.S. government systems harm children and families, particularly those from Black and Brown communities. The accounts and stories of government harm are endless.

Countless mothers experience the ripping away of their children, even at mere months old. In one case, a Black mother and father's 13-month-old son was losing weight. Instead of receiving medical help for their son, child welfare agents forcibly separated them. Shortly after, their infant daughter, not yet two weeks old, was also taken by police officers. Though re-united, this trauma caused lasting harm to both the parents and children.

In a recent op-ed, a young person had this to say about family separation and her experience in the system, "When I was a child, New York City's Administration for Children's Services took me from my mom, changing my life forever – and not for the better. When I was taken, I was learning algebra as a ninth grader. But in the group home where I was placed, I believe I was receiving what amounted to third grade instruction. I keep in touch with a lot of those people I was in that group home with, and I only know of one other student who graduated besides me."

The experiences in what people think is a benevolent system are actually often violent and carceral. One young person shared, "So they actually put me in solitary confinement. I don't know if this was legal, but they actually had me strapped up in one of those strait-jackets. And they put me in a room by myself. I was only 12."

I share these accounts because in the United States the rights of children, and of their parents, are routinely violated by government systems, harming thousands of children each year. For example, on average, 700 children are forcibly separated from their parents every day and placed into government custody in the foster system--more than 200,000 children each year.

The majority of these children are taken from their parents because of conditions of poverty, not because they were ever physically abused. Black and Indigenous children and families are disproportionately harmed and separated by these practices, and so are children with disabilities. These children are then put into a system where they face poorer outcomes than if they had remained at home with their family. Once a child has entered child welfare they are less likely to graduate from high school and more likely to be unemployed, become homeless, and to be involved in the criminal legal system. In fact, there are more than 32,000 people in prisons for offenses they committed as children, disproportionately people of color.

In other words, these government systems take children of color, children living in poverty and children with disabilities, and funnel them directly into high rates of incarceration, homelessness, and deep and lasting harm.

ANTHONY ENRIQUEZ/ERIK CREW

**Daniel Tse: Recorded presentation to be played as introduction

I speak with the Committee based on my personal experience as an asylee in the United States from Cameroon. I survived harsh U.S. deterrence policies in my journey by foot to the U.S. through South and Central America. I was locked in immigration detention for 10 months, cut off from family and legal support. Against the odds, and unlike so many others, I won my own case without a lawyer.

Today, I work daily to shed light on the United States of America's treatment of foreign nationals, emphasizing the challenges faced by Black people in transnational migration, notably Haitians, Cameroonians, and people of African descent. Historically, the U.S. government has systematically discriminated against Black migrants, dating back to the forced immigration and exploitation of enslaved Black people. Today, the U.S. violates the rights of Black migrants to seek asylum freely through its policy of "Prevention through Deterrence." In essence, the U.S. hopes to make the migration and asylum-seeking process so miserable and dangerous that it will convince people not to leave their home countries.

As part of this strategy, the U.S. militarizes its border and pressures other countries in the Western hemisphere to do the same, forcing people escaping persecution to cross the deadly Darien Gap. It interdicts people at sea and holds them in cramped and filthy conditions before returning them to their home countries. And it uses mandatory and mass detention to disappear migrants to remote detention centers, isolating them from legal resources and community support and subjecting them to unsanitary and even torturous conditions.

I know all of this because it is part of my own story. When I fled Cameroon to escape persecution, I faced the difficult decision to cross the Darien Gap by foot because the U.S. had cut off all other options to safely seek asylum. The images of suffering and fear I saw in the faces of the people I traveled with remain with me today. The luckiest of us survived, emerging from the jungle in Panama to be taken to filthy, caged-in camps for migrants where the U.S. systematically fingerprints asylum seekers, ordering the Panamanian government to detain some indefinitely.

When I finally reached the U.S. border, I thought I would be safe. Instead, I was locked away in immigration detention for 10 months, where I personally experienced egregious conditions, leaving severe consequences on my and others' physical and mental health. I recall clearly how in April 2019, at around 3:00 am, guards woke me in my cell at the Theo Lacy Maximum Security Jail in Santa Ana California to prepare me to travel to my immigration court hearing. I was detained in the barracks, where the constant sounds of screaming, banging and crying echoed in the air. But as we walked past the Special Housing Units where people were held in solitary confinement, I realized that I was better off than them. Hearing human beings bang against the doors of solitary confinement, seeing desperate eyes through tiny square holes, I shuddered. Later, I learned that

studies show that Black immigrants like myself are more than six times more likely to be held in solitary confinement compared to other immigrants.

Ultimately, I am one of the fortunate few who emerged safely from immigration detention. I argued my case without a lawyer, as 70% of detained immigrants must, and I won. When I was finally freed, I completed my Master's in Law and went to work to ensure that others would not have to endure the abuses that I did. But so many of the people I traveled with and was detained with did not have the same outcome. Many were deported; some died. Today, I ask for the Committee's assistance in holding the United States accountable for its violations of the Covenant that continue to lead to so many tragic outcomes.

ANTHONY ENRIQUEZ REMARKS

As the Committee heard, the U.S. uses immigration detention as a deterrent and as a measure of first resort, imprisoning over 35,000 people a day in a nationwide network of remote prisons and jails cut off from legal assistance. This number has increased dramatically since the final days of the Trump Administration in 2020, which detained less than 20,000 people per day.

Today, over 90% of people in immigration detention are held in for-profit prisons. In 2022, private companies the Geo Group and CoreCivic made over \$1.5 billion dollars from government contracts to detain immigrants. These companies maintain their profit margins by providing substandard medical care and coercing detained people to work as sanitation and kitchen staff in exchange for \$1 day, which they must spend on purchasing basic provisions from the detention center commissaries.

The U.S. has declined to comment on conditions of its detention facilities in any of its reports to this Committee. But the true story of these conditions is told in more than 1,600 pages of secret inspection reports that a U.S. federal judge ordered released in August 2023. The reports by the Department of Homeland Security's Office for Civil Rights and Civil Liberties detail conditions common in U.S. immigration detention: negligent medical and mental health care leading to serious injury and death, conditions of confinement described as "unsafe and filthy," rape by prison guards, the torture of prolonged solitary confinement, and racist and violent abuse of people in detention, including pepper-spraying of individuals with disabilities. The lead Officer of the Office for Civil Rights and Civil Liberties will be present at the Official hearing, and I urge the Committee to question her regarding her office's inspection reports and their conclusions and whether she believes that its recommendations to close particularly dangerous detention centers, like the Winn Detention Center in Louisiana, are respected and followed by U.S. immigration authorities.

ERIK CREW, ATTORNEY

Haitian Bridge Alliance

Haitian Bridge Alliance and partners request that the Committee question the U.S. government and issue recommendations on a key part of the U.S.'s Prevention through Deterrence policies and practices towards non-citizens, including refugees and asylum seekers—the U.S.'s ongoing maritime interdiction program, Operation Vigilant Sentry, housed in the Department of Homeland Security.

U.S. maritime interdictions in the Florida Straits and the Caribbean Sea grew out of a specific intent to target, punish, and deter Haitian asylum seekers from gaining protection in the U.S. and a specific intent to evade obligations under international law. The U.S.'s program, operating since the 1980's, has become a model for Europe and Australia, who are similarly using these strategies to target African people and other non-citizens that the State deems undesirable. The U.S.'s and other States' use of maritime interdictions to deny and deter applications for asylum are only increasing, and now is a key time for the Human Rights Committee to press the U.S. to comply with international law.

The U.S. government maintains the position that its obligations to asylum seekers under international and domestic law are not engaged when it operates in international waters or extraterritorial settings, and it is explicitly flouting the Human Rights Committee and various international human rights mechanisms.

We request your urgent attention to this issue alongside all the Prevention through Deterrence policies and practices detailed in our Shadow Report, including border militarization, the mass detention system, ongoing deportations and pushbacks in violation of non-refoulement, and the externalization of U.S. border control to extraterritorial spaces, like in Mexico and in Panama's Darien Gap. We request the Committee take note of the unique and disparate impact these policies have on Black, Brown, and indigenous people in transnational migration.

JENNIFER LOVELAND-ROSE

Thank you. We appreciate the Committee's recognition that water is a component of the right to life. The U.S. government has not recognized this right. Instead, access to affordable, acceptable water in the U.S. is infected by both systemic racism and longstanding neglect.

Residents of Flint Michigan are still seeking justice 9 years after their water crisis began. As of the latest report, the lead level in their drinking water is 9 parts per billion, and the government still advises Flint residents to filter their water and, if they have health conditions, to avoid using their tap water at all.

Meanwhile, in Benton Harbor, Michigan, just 175 miles away from Flint, lead levels in the water were, from 2018 to 2021, even higher than those found in Flint. Benton Harbor is an impoverished, predominantly Black community. In 2023, a government audit found that the federal Environmental Protection Agency was at fault for not responding to the city's water crisis in a timely manner, leaving residents exposed to toxins that can cause neurological damage.

In Jackson Mississippi, also a city with a majority Black population, residents have had unpredictable, contaminated, foul smelling drinking water for years, continuing to the present. The federal government has sued the city, but residents of Jackson are frustrated with the lack of transparency and accountability in the funding and decision making of their water utility as well as the privatization measures taken in response to the lawsuit.

Recently the Supreme Court found that the federal government has no affirmative duty to provide drinking water access to the Navajo nation despite a treaty that confirms their right to live in that

location. For many indigenous people, the lack of drinking water infrastructure has led to a dependence on water from unregulated or hard-to-access sources.

Unaffordability, contamination, and water disconnection issues are not spread equally throughout the United States. Rather this is a manifestation of environmental racism where Black, brown, Indigenous, low income, and undocumented people experience drinking water issues at much higher rates than white, affluent communities. Multiple research studies confirm that water service shutoffs and lien sales leading to home foreclosures and evictions disproportionately impact people of color. This is a manifestation of systemic racism in government decision making around water.

We recommend that the federal government officially recognize the “Right to Life,” including the right to affordable, clean, and accessible drinking water and sanitation.

We recommend a federal law or policy requiring transparency in state disbursement of funding for water, with allocation prioritizing high need Black and brown communities with aging water systems.

We recommend implementation of processes to hold states accountable if funding is diverted away from predominantly Black and brown communities, and

We recommend passage of the Water Affordability, Transparency, Equity and Reliability Act to create a trust fund of at least \$35 billion a year dedicated to improving the nation’s drinking water and wastewater infrastructure.

It is only through greater transparency that decision makers can be held accountable for their funding decisions so that we can address the legacies of discriminatory practices in the provision of drinking water in the U.S.

SENATOR CRAIG HICKMAN

ICCPR Food Rights Working Group

Good morning, my name is Craig Hickman. I’m an organic farmer and small business owner in Maine. I serve as Senator in the Maine State Legislature and am co-author and original sponsor of the first state constitutional amendment in the United States that recognizes the human right to food.

I speak today on behalf of a growing coalition of food justice advocates and people with lived experiences of hunger, racial discrimination, and violations of the right to food that believe food and food sovereignty are fundamental human rights and a pathway to a sustainable and just food system.

Food is water. Food is soil. Food is light. Food is nourishment. Food is medicine. Food is life. You can imagine my surprise, then, some years ago when I discovered that state and federal agencies and courts in the United States have yet to recognize the right to food as a fundamental liberty

right. In fact, as recently as 2010,⁷²¹ the Food and Drug Administration, which regulates 80% of America’s food supply, argued⁷²² in federal court that people have no “right to consume or feed children any particular food,” that there is “no ‘deeply rooted’ historical tradition of unfettered access to foods of all kinds” and that people have “no right to their own bodily and physical health” and therefore cannot obtain any food we wish.

And yet, those same government agencies that are supposed to ensure food safety didn’t seem to care much about the quality of the meats available in the neighborhood grocery stores during my childhood in Milwaukee, Wisconsin. For the exchange of our food stamps and our hard-earned money, the only chicken available would be so yellow with age and degradation, my mother would soak it overnight in vinegar and lemon water to kill whatever might live on it, then stew it for hours in a pressure cooker to kill anything else.

We lived to tell about it.

Food is life.

No deeply rooted historical tradition of unfettered access to foods of all kinds? That’s an argument in favor of a failed paternalistic food policy served up with a steaming pile of revisionist history. Back in 1888, Supreme Court Justice Stephen Field argued:⁷²³

“I have always supposed that the gift of life was accompanied with the right to seek and produce food, by which life can be preserved and enjoyed, in all ways not encroaching upon the equal rights of others... [The] right to procure healthy and nutritious food and to manufacture it, is among those inalienable rights, which no state can give, and no state can take away.... It is involved in the right to pursue one’s happiness.”

More than 75% of the people's representatives and senators in the Maine Legislature concurred⁷²⁴—and came together—to provide a once-in-a-lifetime opportunity for the people of Maine to ratify and enshrine a constitutional Right to Food, the most fundamental of our natural rights. And so, with 61% of the vote, the people of Maine said YES.

Maine imports 92% of the food we consume. This makes our food supply vulnerable to disruptions of all kinds beyond our control, including extreme weather events and a pandemic, whether or not you are one of the too-many families in Maine struggling with hunger. Or one of the 20% of our children⁷²⁵ who goes to bed hungry every night. Our grocery stores have only enough food to last

⁷²¹ David Gumpert, *In Court Case, FDA Takes a Strong Stand Against Unabridged Food and Health Rights*, Grist (Apr. 29, 2010), <https://grist.org/article/in-court-case-fda-takes-a-strong-stand-against-unabridged-food-and-health-t/>.

⁷²² Brief in Support of United States’ Motion to Dismiss Plaintiff’s Amended Complaint, Farm-to-Consumer Legal Defense Fund, et al. v. Sebelius, No. C 10-4018-MWB (N.D. Iowa Apr. 26, 2010), <https://www.farmtoconsumer.org/litigation/ey100426--ds%20mtd%20memo%20in%20support.pdf>.

⁷²³ *Powell v. Commonwealth of Pennsylvania*, 127 U.S. 678 (1888).

⁷²⁴ L.D. 95, 130th Cong. (Me. 2021).

⁷²⁵ Gillian Graham, *More Mainers struggle to feed their families as agencies fear worst to come*, Portland Press Herald (Sept. 14, 2020), <https://www.pressherald.com/2020/09/13/more-mainers-struggle-to-feed-their-families-as-agencies-fear-worst-to-come/?rel=related>.

four days if the trucks stop coming from out of state.⁷²⁶ Consumer choice is illusory. Only four multinational corporations control the majority market⁷²⁷ share of nearly 80% of the groceries we buy. The prices of meat, poultry, fish and eggs have risen nearly 16%⁷²⁸ from before the COVID-19 pandemic.

For the Maine people to rely solely on inadequate government programs and charity to ensure that we all have access to nourishing food is to surrender to a dangerous dependence on a government too deeply influenced by corporations to protect and defend our right to nourish ourselves in self-determination and dignity.

As Henry Kissinger knew, if you control the food, you control the people. As Fannie Lou Hamer told us, if you can feed yourself, nobody can push you around or tell you what to do.

But Maine is not alone. Hunger and food insecurity in the fifty United States is not the result of a lack of enough food, but the result of a lack of a human rights approach to hunger that recognizes and addresses violations of small-scale food producers, food system workers' rights, environmental racism, and the corporate capture of natural resources as root causes of hunger.

Violations of the right to food in the U.S. are linked with structural discrimination based on race. Black, Indigenous, and communities of color are disproportionately and persistently food insecure.

Racial disparities in access to food are not a coincidence, but the result of a system designed to discriminate and dispossess. Repeatedly and since its creation, the U.S. has implemented policy and legislation that discriminates against people of color, hindering their (our) ability to participate in the land market and build generational wealth.

Black communities were redlined, restricting individuals' access to mortgages and class mobility. Black people were also excluded from federal farm programs—for decades the percentage of farm ownership in the Black community has dwindled.

Indigenous peoples were historically removed from their land and face drastic rates of food insecurity. Congress, in the early twentieth century, authorized leasing of lands allotted to Indigenous groups to non-indigenous groups, leaving Indigenous landowners vulnerable to exploitation. This continues to this day and Indigenous communities are forced to lease their land to corporations to obtain money for basic necessities, like food or gas money. Today, the U.S.'s lack of adequate oversight of corporate activities disrupts traditional hunting, fishing, farming, and gathering economies in Indigenous communities as pollutants fill these traditional foodways.⁷²⁹ Corporations have been able to “drill, frack, farm, and fell timber on Native lands” at the expense of Indigenous Peoples' land rights, which in turn, negatively impacts their access to food.⁷³⁰

⁷²⁶ D. Robin Beck et al., *Maine's Food System: An Overview and Assessment*, 20 *Maine Policy Review* 18 (2011).

⁷²⁷ Nina Lakhani, Aliya Uteuova and Alvin Chang, *Revealed: the true extent of America's food monopolies, and who pays the price*, *The Guardian* (July 14, 2021), <https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>.

⁷²⁸ Laura Reiley and Alyssa Fowers, *Here's why your food prices keep going up*, *The Washington Post* (Sept. 15, 2021, 8:38 AM), <https://www.washingtonpost.com/business/2021/09/15/food-inflation-faq/>.

⁷²⁹ Mills, *supra* note 52.

⁷³⁰ *Id.*

Moreover, labor in our food system is a direct extension of slavery – from chattel slavery, to sharecropping, to convict leasing, to forced labor in our agricultural fields today.

Today, Latinx immigrants make up the majority of the labor force in the food system, from farm work to food processing, and the service industry, yet in several states, food system workers, irrespective of immigration status, are not covered under minimum wage laws, are not considered “employees” under several state codes, and are excluded from forming trade unions and enjoying labor protections. Despite being the backbone of this nation’s food supply, food system workers’ right to feed themselves and their families in dignity is consistently violated.

These right to food violations happen against a backdrop of U.S. policies that have created a global climate crisis by producing more non-food crops than food crops and using highly mechanized mono-cropping practices that result in the loss of nutrients in the soil.

It is time for the right to food to become one of the highest considerations for policy makers at all levels of government in crafting public policy that uplifts the dignity and worth of every human being. It is time for the U.S. to adopt a rights-based national plan to end hunger that incorporates strong civic participation from those most affected by hunger, historical discrimination, and resource dispossession.

Where I come from, you don’t grow up dreaming that someday you’ll be in a position to inscribe your own words on the pages of a constitution.

But I am here to tell about it.

BREANA LIPSCOMB

SRH (Sexual and Reproductive Health and Rights Group)

I am Breana Lipscomb, reading this statement for the Working Group on Sexual and Reproductive Health and Rights.

The U.S. is a global outlier on two critical indicators of sexual and reproductive health and rights – reducing maternal mortality and liberalizing abortion laws. Decades of rising maternal mortality and severe regression in abortion protections have created a country where pregnant people are denied the ability to protect and direct their own lives. The widening gap between U.S. law and human rights standards sends a disturbing message about who the U.S. is willing to recognize and respect. As marginalized communities in the U.S. know, the mere existence of legal rights is not sufficient to ensure justice– but their absence is catastrophic.

In June 2022, the Supreme Court’s decision in *Dobbs* reversed 50 years of precedent and dismantled the federal right to abortion. For the first time in U.S. history, the Court took away a right grounded in personal liberty. The decision to destroy federal protection for abortion access, despite evidence of the harm it would cause, reflects a callous disregard for gender equality and the lives of people who can become pregnant.

Because of Dobbs, fundamental rights are now subject to debate at the state-level and anti-abortion politicians have cut off access to reproductive health care in many parts of the country. Since Dobbs, abortion is banned in 14 states, and severely restricted in many others.

Bans come in many forms. The 14 most restrictive states prohibit abortion at all stages of pregnancy. Other states restrict abortion after a certain point in pregnancy. States purport to have exceptions to save the life of the pregnant person and in some states, in cases of rape or incest. However, these exceptions are inaccessible for most.

Currently, 33 states have criminal abortion laws and 16 states have made providing an abortion at any stage of pregnancy a felony (though some bans have been blocked). Prosecutors have also threatened to prosecute abortion seekers and helpers by contorting the law or misusing other statutes.

These are not idle threats.

Even before Dobbs opened the door to new criminal laws, pregnant people were arrested and prosecuted for abortion and adverse pregnancy outcomes. From 2000 to 2020, at least 61 people were criminally investigated or arrested for ending their own pregnancies or helping someone else do so. These prosecutions disproportionately targeted poor and minority communities, reflecting stereotypes about gender, race, and other identities.

For example, in April 2022, a 26-year-old Latina woman living near the Texas-Mexico border was reported to authorities by a hospital where she sought post-abortion care. She was arrested and indicted on murder charges for a “self-induced abortion,” despite the fact that self-managed abortion is not a crime in Texas. Amid public outcry, the elected prosecutors dropped the charges, but the woman had already been jailed and her image shared widely in online media.

Even where it is not a crime to have an abortion, prosecutors find other ways to charge and punish people. Facing harsh sentences or lacking resources to fight charges, people are often pressured to plead guilty. Recently, a Nebraska mother was arrested for helping her 17-year-old daughter obtain abortion pills. Even though self-managed abortion is not a crime, the mother and daughter pleaded guilty to concealing human remains. The mother pleaded guilty to additional charges and was sentenced to two years in prison.

From 2006-2022, almost 1,400 people were arrested in relation to the circumstances or outcomes of their pregnancy, including pregnancy loss. In 2019, a pregnant Black woman in Alabama was shot in the stomach, resulting in the death of her fetus. Prosecutors arrested and indicted her on manslaughter charges on the theory that she initiated the dispute which led to the shooting.

The threat of criminal penalties also creates risk and uncertainty for health care professionals. In states like Texas, abortion providers currently face life sentences and \$100,000 fines for providing abortions. Providers face “dual loyalty” as they navigate often confusing, contradictory, and harsh abortion laws, making it difficult or impossible to fulfill their ethical and professional responsibilities to patients. Healthcare professionals are leaving states with bans, intensifying the lack of healthcare in those areas. Others are delaying when they start providing prenatal care to

avoid being investigated if the patient miscarries. Some are limiting the information they give to patients or write in medical charts. The majority of U.S. OBGYNs say that the Dobbs decision has undermined their ability to manage pregnancy-related emergencies.

This highlights why medical exceptions to abortion bans do not work. Although most state bans include exceptions in cases of life endangerment, these laws function as complete bans because health care providers are afraid to provide care.

For example, Amanda Zurawski nearly died because of Texas' abortion bans. Amanda was seventeen weeks pregnant when her water broke. There was no chance that her fetus would survive. At the hospital, she was told she could not have an abortion- the standard of care in her situation- because she did not have an acute infection. She was advised to stay within 15 minutes of a hospital and decided not to risk traveling eleven hours to the closest state where she could get abortion care. Two days later, after a life-threatening infection set in, the hospital finally agreed to induce labor. Because of the delay in care, Amanda spent 3 days in the intensive care unit. She survived, but the infection severely scarred her uterus and fallopian tubes, requiring additional medical procedures and threatening her future fertility.

When Kierstan Hogan's water broke early, she was taken to a nearby Texas hospital. Staff told her that if she tried to leave and seek care elsewhere, she could be arrested for trying to kill her baby. Nurses watched her use the bathroom to make sure she didn't push and forced her into religious counseling. After four days, Kierstan gave birth to a stillborn son. Kierstan recalls that less than 24 hours later "they came in with a wheelchair and all my belongings, and sent me home with papers saying that I was cleared to return to work the next day- as if nothing happened. "I was made to feel less than human. Texas law caused me to be detained against my will for five days and treated like a criminal, all during the most traumatic and heartbreaking experience of my life. This shouldn't happen to anyone, no matter who they are or where they live."

Amanda and Kierstan have filed a lawsuit challenging the Texas bans. Women who were forced to carry pregnancies to term knowing they would watch their babies die shortly after birth have also joined the case. Texas lawyers defending the bans have derided their efforts, accusing them of participating in "splashy news conferences" and arguing that courts are not the place for them to "tell their stories." Although these women could not be here in person today, they hope that the UN is a place where their experiences with cruelty will be treated with respect.

Exceptions for rape or incest are similarly ineffective. For example, a 12-year-old rape victim in Mississippi was unable to access care and was forced to give birth in August. Although Mississippi has an exception for rape there appears to be no clear process for granting an exception and no providers left in the state.

Lawsuits are an important mechanism to challenge abortion restrictions, but merely clarifying these exceptions will not achieve justice. Instead, abortion must be available to all, without restriction.

Yet, abortion bans and restrictions are multiplying in a country that has the highest maternal mortality rate among wealthy nations and deep racial inequities in maternal health outcomes.

Black and Indigenous people suffer from pregnancy-related deaths at 2-3 times the rate of white women. The majority of these deaths are preventable. Systemic racism, limited access to care, discrimination in health care settings, and legal barriers that prevent Black and Indigenous midwives from participating in the healthcare workforce, all contribute to adverse and inequitable outcomes.

While maternal health has gained increased attention in the U.S., many proposed solutions simply reinvest in the same healthcare systems that produced the inequitable results in the first place. Meanwhile, women of color are under-resourced and over regulated as they try to provide healthcare to their communities in a culturally appropriate way. The marginalization of U.S. midwifery is a prime example. Black and Indigenous midwives have been pushed out of a healthcare workforce that privileges white physicians, predominantly white educational institutions, and hospitals. Traditional Native Hawaiian midwives provided culturally affirming care to rural families as recently as June of this year. In July, a change in Hawaii state law made their practices illegal. Now, they too face criminal penalties for providing reproductive healthcare and the families they serve face the prospect of giving birth alone, without their trusted midwife.

For too many people in the U.S., health care is determined by where you live, how much money you have, and how much discrimination you will face in trying to stay healthy or seek care. This was the reality even before Dobbs. But Dobbs dismantled the legal floor preventing states from using their full power to ban abortion. Now, criminalization of healthcare is expanding, and healthcare sites are increasingly becoming sites of surveillance, control, and mistrust. For these reasons, it is imperative that the U.S. is reminded of its international human rights obligations.

In the interest of time, we will share our suggested recommendations in writing and we thank you for considering them:

1. Halt retrogression in abortion rights and ensure access to abortion with no restriction as to reason and no third-party intervention requirements, mandatory delay periods, or gestational limits, in line with WHO Abortion Care Guideline (2022) and other treaty monitoring bodies.
2. Recognize that all restrictions on access to abortion perpetuate gender discrimination in purpose and effect and disproportionately impact individuals facing intersecting forms of discrimination, and take steps at the state and federal levels to ensure that marginalized individuals and communities have both the legal protection and practical support they need to make abortion access meaningful.
3. Enact laws and policies at the federal and state levels to ensure all aspects of sexual and reproductive healthcare are accessible to people with disabilities. Laws and policies should also ensure people with disabilities, including people under guardianship, have choice and control over all aspects of their sexual and reproductive health.
4. Eliminate inequities in maternal health and ensure access to comprehensive reproductive health care—including midwifery and respectful maternity care—for every community.

At a minimum, the U.S. should explicitly prohibit any policies or practices that result in the prosecution, punishment, or surveillance—especially in health care settings—of individuals and their helpers for pregnancy outcomes, including abortion, miscarriage, or birth.

Addendum C

**Speakers' List - Civil Society Formal Briefing
Monday, October 16, 2023**

Indigenous Justice

CHIEF GARY HARRISON

My name is Chief Gary Harrison, and I am the traditional chief of Chickaloon Native Village.

We need to decolonize Alaska. They never decolonized Alaska in accordance with the U.N. Charter Chapter 11 Article 73, where they were supposed to bring us up to our own form of government and education, etc. Only the Original Peoples of Alaska were to vote on decolonization; however, there was a law on the books that Indigenous persons had to prove they could read and write English and have 5 white people sign that they were competent to vote. Only colonists, the miners, the merchants, the military, and other ne'er do-wells like politicians were able to vote in the statehood of Alaska. Some of the effects of colonization are the lack of subsistence rights, Indigenous Peoples should have the first choice, rather than compete with the sports hunters and fishers, commercial hunters and fishers, and so-called local communities.

We also have the trawlers that have been out in the waters in the mouths of the rivers of Alaska and almost every river has had a crash in population of Salmon.

We have the problem of the people moving and interrupting the migration paths of the caribou and with climate change we have the change in the plants. Wildfires are an extreme issue because Indigenous Peoples no longer are able to manage the forests and ash run off pollutes the waters and the Salmon are directly impacted. Moreover, trees shade the rivers and keep the temperature cool to protect the fry of the Salmon.

We have high rates of missing and murdered Indigenous Peoples, our Peoples are dying in prisons. I also support the decolonization and de-occupation of Hawai'i. I also support the colonial struggles Indigenous Peoples face in Puerto Rico and Guam.

JUNE LORENZO

Human rights are interrelated, interdependent and indivisible. Thus our submissions demonstrate the need to broaden recommendations to other minimum standards provided in the UN Declaration on the Rights of Indigenous Peoples well as other international human rights standards.

Colonialism, its legacy and present-day manifestations form a common thread in our submissions. Last year the UNCERD prefaced its recommendations to the United States with a reference to Human Rights Council Resolution No. _____, stating that “the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that indigenous peoples were victims of colonialism and continue to be victims of its consequences, ...” Indigenous Peoples call upon the HRC to include in its observations and recommendations the role that colonialism has and continues to play in the denial of rights to Indigenous Peoples.

Over 350 Nation-to-Nation Treaties, which embodied the mutual recognition of sovereignty, are the basis for many Indigenous Peoples' legal and political relationships in the United States. The U.S. Constitution provides that Treaties, along with the Constitution and federal laws, constitute "the supreme law of the land." Art.VI, cl.2.

Many of these treaties include water rights that go with the land and right to subsistence.

Recommendations in 1995 and 2005 from this Committee that the United States review its policy regarding extinguishment of aboriginal rights on the basis of the plenary power remain unanswered. The U.S. continues to assert that it has sole jurisdiction to determine, decide, and control the process for redress of Treaty violations or to unilaterally abrogate legally binding Treaties based on the "plenary power of Congress."

Recommendation: That the U.S. implement just, bi-lateral, fully participatory processes 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 the UN Declaration on the Rights of Indigenous Peoples

Despite this Committee's 2014 recommendation regarding protection of sacred areas and the right to free, prior and informed consent, the U.S. has adopted few if any "measures to effectively protect sacred areas" against desecration, contamination and destruction. The U.S. continues to insist on "consultations" that fall short of FPIC as provided in the UNDRIP.

Other major legal impediments to protection of sacred areas are doctrine of discovery, which the U.S. Supreme Court reinvigorated in 2005, the 1872 Mining Law, which privileges mining over other uses of land and allows companies to extract minerals for nominal fees. Additionally Indigenous peoples often face a bias toward Judeo-Christian religions when they use the legal system.

Many sacred areas in the U.S. have been desecrated or are under threat from extraction of coal, oil, uranium, copper, lithium, and tourism and industrial development. These actions and inactions constitute on-going violations of Article 18(1) and Article 27 as well as failure to implement previous HRC recommendations.

Recommend that: the U.S. implement provisions of the UNDRIP regarding protection of sacred areas, including water. More human rights bodies are recommending that state parties apply the standards of the UN Declaration on the Rights of Indigenous Peoples in implementing human rights treaties.

NATALI SEGOVIA

Indigenous Peoples and Original Nations face countless challenges including dispossession of ancestral lands and sacred sites, Missing and Murdered Indigenous Women Girls and Two Spirit Relatives, violation of treaty rights, religious rights, and militarization. These stem from failure to harmonize U.S. legal norms with obligations under the Covenant and result from a lack of equal protection. Religious rights of Indigenous prisoners are routinely violated, and traditional practices are disallowed. The group most likely to be killed by law enforcement are Indigenous Peoples

followed by African Americans. Historically, Indigenous Peoples are excluded and underrepresented from statistics. Indigenous women are incarcerated more than any other group in the U.S. and the Indigenous incarcerated population is up 85% since 2000. Despite the Indian Child Welfare Act (ICWA) - legislation to protect federally-recognized Indigenous children— our children are routinely removed from our communities because BIA manuals lack Tribal input and ICWA training for judges is sorely inadequate. Likewise, our communities face criminalization for traditional, Indigenous midwifery practices, reproductive healthcare, including abortions, stillbirth, and miscarriage. Sacred areas and ancestral lands are regularly desecrated and destroyed from lack of free prior informed consent and prior, meaningful consultation. Indigenous Peoples are found at frontlines because our communities are considered expendable and deemed environmental sacrifice zones. Lack of access to clean drinking water is rampant and the existence of extractive industry projects threaten sources of water that are found on ancestral Indigenous lands. Militarization threatens our subsistence as in the case of the jet fuel contamination by the U.S. Navy at Red Hill on Oahu and threats to drinking water on Guam and Puerto Rico due to military occupation. Water is not only a resource, it is sacred. “Water is Life” is a vital truth, necessary for all future generations. Because of this, water is tied directly to our civil and political rights, the ability to self-govern and our right to self-determination.

ROH KEOLA KAUHANE CASTRO

Aloha mai kakou, esteemed Committee Members: We call on the United States to respect the Self-Determination of the Indigenous Peoples and Original Nations of Alaska, Hawaii, Puerto Rico, and Guam. To this end, we demand the Decolonization and De-Occupation of the illegally annexed states of Alaska and Hawaii. In the case of Hawaii, our monarchy was overthrown in 1893 by the United States and Hawaii was thereafter illegally annexed and continues to be illegally occupied to this day. In 1971, the Intl Court of Justice affirmed the principle of non-annexation which the United States must respect. We also call upon and demand the de-militarization and de-occupation of the de-facto colonies of Puerto Rico and Guam. Kanaka Maoli/Native Hawaiian peoples and the United Confederation of Taino Peoples, respectively-- also demand Hawaii and Puerto Rico be returned to the list of non-self governing territories eligible for decolonization. The United States must initiate and expedite a decolonization process immediately. Our Peoples and Nations have suffered for long enough. These decisions must be made with full transparency for-- and with input from-- Indigenous Peoples and Original Nations – not by U.S. citizens residing in occupied territories.

Discrimination and Hate Crimes

MANJUSHA KULKARNI

My name is Manjusha Kulkarni and I am executive director of AAPI Equity Alliance and co-founder of Stop AAPI Hate, the nation’s leading aggregator of anti-Asian hate incidents. Since March 2020, we have received over 11,000 direct reports from all 50 states; these include verbal harassment, discrimination in housing, retail and the workplace and in some cases, physical assaults. Sadly, this represents only the tip of the iceberg as a recent study by University of Chicago found that 45% of Asian Americans have experienced illegal discrimination in the past few years.

Beyond countering interpersonal hate and racism, we are currently confronting the alarming surge in anti-Asian scapegoating within American politics. Many policymakers are unjustly blaming Asian people for economic, national security, and public health issues, and they are promoting

policies that are putting innocent people in harm's way. Following Florida's recent enactment of an alien land law, thirty-three states have proposed land bans which prevent Chinese immigrants from purchasing or in some cases, even renting property simply because of their national origin. Additionally, the federal government, based upon its current interpretation of Foreign Intelligence Surveillance Act, has conducted warrantless surveillance on innocent Asian Americans.

Most of the hate experienced by AAPIs is not criminal in nature, but still causes significant harm. In the UChicago survey, half of respondents said anti-Asian hate impacted their mental health almost a third said that they switched schools, jobs or where they shop because of it.

It is high time the federal government acts. Specifically, we call on the U.S. Congress to (1) fund state and local government efforts to address discrimination; (2) codify a language access coordinator at the U.S. Department of Justice, (3) update Title II of the Civil Rights Act to include retail stores and other businesses where discrimination occurs. Additionally, Congress must reform FISA to prevent the harms of unfettered warrantless surveillance on everyday Asian Americans. And finally, the federal government must immediately act to address unconstitutional state land ban efforts.

Thank you for the opportunity to share my community's experiences and recommended actions to address the harm they have felt.

Criminal Legal System

MARISOL GARCÍA ALCÁNTARA

Me llamo Marisol García Alcántara y soy originaria de la Ciudad de México. El 15 de junio de 2021, viajé a Nogales, Arizona. Ahí, un agente de la Patrulla Fronteriza me disparó en la cabeza. Recuerdo estar en el carro con otras personas y de pronto sentí que algo golpeó mi cabeza y todo se volvió completamente oscuro. A los pocos minutos llegó la ambulancia y me llevaron al hospital. Ahí fue donde me enteré lo que había pasado.

Sólo dos días después de la operación me trasladaron a un centro de detención, donde estuve 22 días y posteriormente me deportaron a México. En ese tiempo, no recibí ningún tratamiento médico ni tampoco algún funcionario del gobierno estadounidense me preguntó sobre lo ocurrido y nadie investigó al agente que me disparó.

Aún tengo fragmentos de bala en la cabeza, por lo que corro el riesgo de sufrir ataques epilépticos y parálisis facial. Además, mentalmente esta situación me ha afectado profundamente. No puedo trabajar debido a los graves ataques de ansiedad que me provocó la situación que viví.

En este tiempo, he tenido la oportunidad de conocer a otras familias que están pasando por situaciones similares a la mía e incluso en algunos casos, la Patrulla Fronteriza ha acabado con la vida de sus familiares.

El gobierno de los Estados Unidos no respeta los derechos humanos de las personas, es por eso que hoy estoy aquí, para elevar las voces de aquellos que han muerto, o que han sufrido violencia a manos de los agentes de la Patrulla Fronteriza y para exigir que se nos trate con dignidad y con respeto por el simple hecho de ser seres humanos.

English Translation by: Ámbar Z. Reyes Pérez

My name is Marisol García Alcántara and I am originally from Mexico City. On June 15, 2021, I traveled to Nogales, Arizona. There, a Border Patrol agent shot me in the head. I remember being in the car with other people and suddenly feeling that something hit my head and everything became completely dark. An ambulance arrived in just a few minutes and I was taken to the hospital. That was where I found out what had happened.

Only two days after the operation, I was transferred to a detention center where I was detained for 22 days and then deported to Mexico. During that time, I did not receive any medical treatment nor did any U.S. government official ask me about what happened and nobody investigated the agent who shot me.

I still have bullet fragments in my head which means I am at risk of suffering from epileptic attacks and facial paralysis. Additionally, this situation has profoundly impacted me mentally. I cannot work due to the grave anxiety attacks what the situation I lived through gave me.

In this time, I have had the opportunity to meet other families who are going through similar situations to mine and in some cases, Border Patrol has ended their family members' lives.

The government of the United States does not respect people's human rights, that is why I am here today, to elevate the voices of those who have died, or those who have suffered violence at the hands of Border Patrol agents and to demand that we are treated with dignity and with respect simply because we are human beings.

Housing and Criminalization of Poverty

GAIL COLLETTA

Good morning, I am Gail Colletta, President of the Florida Action Committee (FAC). My remarks to the Committee will emphasize the sex offender residency restrictions (known as SORRs) and its effects on rendering people homeless.

United States federal law mandates that each state has its own Sex Offender Registry, which does not limit where registered persons can live. However, states have increasingly been developing SORRs.

Let me tell you about Ira A., a 71-year-old man diagnosed with cancer while being rendered homeless because of Florida's SORRs. His doctors wouldn't operate on him until he had a safe place to recover. Because of the state's exclusion zones, the county Sheriff's office rejected Ira's right to access a rehabilitation center, an assisted living facility, a shelter, even his sister's home. Ira was tragically killed by a hit and run driver who left him to die on the street. A man that old, sick, and frail should not have been homeless, especially when his family was ready and willing to care for him in their home. Sadly, this is not an isolated story.

In some cases, SORRS effectively banish registrants from living in entire cities.

The problems caused by SORRs are particularly severe for registrants reintegrating into society. FAC receives calls from probation officers and treatment providers locating housing for registrants. The number of registrants increases annually, as registration is for life in Florida.

There is no empirical evidence to support that SORRs reduce sexual offending or recidivism. Rather, numerous studies, even by the U.S. Department of Justice, demonstrate that SORRs create barriers to stability successful reentry.

In closing, let me emphasize that SORRS — as well as the entire sex offender registry scheme in the U.S. — reflect a colossal failure of policy – a failure, which the U.S. government nonetheless continues to promote to other countries to implement. Not only do SORRs cause direct harm without any benefit to public safety, but SORRs breach several enumerated Human Rights Violations as outlined in our shadow report and, it is a cruel and inhumane system of law that forces human beings to live without dignity.

We ask this Committee to hold the U.S. government accountable by condemning and eradicating these sex-offender residency restrictions for their consequential, often lifelong impacts on individuals' rights to receive adequate, humane housing and stability.

Thank you for your time.

DAVID PEERY

Miami Coalition to Advance Racial Equity

I'm David Peery, Executive Director of the Miami Coalition to Advance Racial Equity. I'm also a lawyer and a person who has experienced homelessness on Miami streets.

We're seeing an alarming rise in America's cities enacting laws that criminalize homelessness. Since 2006, we've seen a more than 50% increase in the number of criminalization laws across the nation.

Federal agencies have used their own police powers to criminalize homelessness. Earlier this year the Park Police evicted and arrested people experiencing homelessness at McPherson Square in Washington, DC.

These laws are not only inhumane and cruel. Blaming the victims of poverty, rather than attacking poverty itself, precludes the systemic reform necessary to address an economy that manufactures poverty and breeds homelessness.

These laws are expensive, and a fiscally irresponsible waste of tax-payer dollars. It costs nearly twice as much to incarcerate someone rather than house them with case management services. Saddling persons with fines and criminal records entraps them into poverty makes it harder for onto attain housing and escape the cycle of homelessness.

In just two days from now, the City of Miami Beach will enact an ordinance that arguably will be the nation's cruelest criminalization law. The city will empower police to arrest the homeless who

refuse shelter. But the city prohibits shelters within the city limits, so its homeless must face the stark choice of deportation out of the city or arrest.

These laws are disproportionately enforced against people of color, given disparate representation in the homeless population. In short, criminalization is an expensive way to make homelessness worse.

Cities are also criminalizing service providers who aid the homeless. For instance, the City of Miami passed the Large Group Feeding ordinance that prohibits charities from serving food to groups of unhoused people without a permit and at non-designated locations.

This Miami is using hunger as a weapon against the poor.

SIYA HEGDE

National Homelessness Law Center

Good morning, esteemed Committee Members. My name is Siya Hegde, and I am an attorney from the National Homelessness Law Center.

Since this Committee's 2014 Concluding Observations were issued, the movement to decriminalize homelessness in the U.S. has gained traction in the civil society sector, gradually shifting the narrative about housing justice. However, we also need the Committee to recognize the rise of involuntary commitment laws that disproportionately affect unhoused persons with mental disabilities, condemning their infringement of human rights under the ICCPR.

Over the last 60 years, U.S. federal courts have dictated varying legal standards authorizing involuntary commitments. States and municipalities are lowering these standards and using forced treatment policies as a proxy to criminalize homelessness. Without addressing the lack of affordable, adequate housing as a central root cause of the housing crisis, many of these policies further the false, harmful narrative that mental illness triggers homelessness and weakens public safety.

In one example, the New York City mayor implemented a punitive involuntary mental health directive under the guise of public safety in November of 2022. It largely targets those persons who, according to police, cannot attend to their "basic living needs," a standard that wholly disregards how unhoused persons often cycle through a revolving door of institutions, hospitals, jails, and shelters in the absence of a safety net. Criminalizing one's capacity to care for themselves has invited unprovoked, violent attacks against unhoused persons – as demonstrated by a white, former marine sergeant's senseless killing of Jordan Neely, an unhoused Black man struggling with mental health.

In the past week, the California Governor signed legislation to attempt a structural reform of the state's mental health movement. However, this is not a systemic solution to solving the homelessness crisis in a state with 30% of the nation's total homeless population. Not only would these bills expend twice as much funding for treatment facilities over permanent supportive

housing, but they would bolster California's CARE Court system, authorizing police to initiate a court-mandated civil commitment process.

We urge the Committee to strengthen its recommendations to the U.S. government by incorporating the abolished use of carceral, civil involuntary commitment systems constricting the civil liberties of unhoused persons. Government funding must be re-routed for non-policing, trauma-informed crisis response teams, and pathways to stable, permanent, and adequate housing.

Please see our report for more details and thank you for your time today.

Privacy, FOE, FOAA, and GWOT

HINAKO SUGIYAMA AND CAROLINE MARKS

I am a clinical supervisor at the International Justice Clinic at UC Irvine Law. And I am Caroline Marks from Asian Law Caucus.

Our statement is about dragnet surveillance by federal law enforcement agencies.

Exploiting the lack of federal data protection law, Immigration and Customs Enforcement (ICE) now covertly obtains bulk access to information from every single available source, including private-data brokers and tech companies, to arrest, deport, and silence people. This data is then consolidated into databases and applied automated analytical tools, unveiling people's location, activities and traits. Immigrants who have spent years in the U.S. are subject to arrest and deportation just because they obtain a driver's license or sign up for essential utilities.

We are confident that this practice violates Articles 17 and 19, which require legality, necessity, proportionality, and legal safeguards.

The U.S. must put surveillance under the rule of law.

Since 9/11, Arab, Middle Eastern, Muslim, and South Asian communities face invasive surveillance and intrusion into their daily lives by federal law enforcement. The 'national security' law enforcement apparatus targets the individuals, and communities we represent at Asian Law Caucus, violating their human rights daily.

Many are afraid to attend their places of worship and grow close to community there, keenly aware of the many stories of FBI informants infiltrating their religious communities and spaces. In *FBI v. Fazaga*, an FBI informant's conduct even became so concerning, that community members were forced to report him to the FBI.

Many also feel the need to censor even mundane communications with family or online searches. Section 702 of the Foreign Intelligence Surveillance Act allows law enforcement to access, without a warrant, private communications. Abuse is rampant. Backdoor searches were run on the identifiers of 133 individuals arrested in connection to BLM protests. These queries were run to determine whether the FBI had "any counter-terrorism derogatory information on the arrestees," even though there were no prior suspected connections between the arrestees and any terrorist activity.

We respectfully suggest the Committee ask U.S. Delegates what steps they will take to ensure state's surveillance's practices comply with ICCPR.

MALIK READY

Read by Berbeth Foster

I am reading this statement on behalf of Malik Ready.

My name is Malik Ready. I am a student, scholar, educator and grassroots organizer with the Dream Defenders, based in Tallahassee, Florida.

In 2020, following the tragic deaths of Breonna Taylor, George Floyd, and Tony McDade, I participated in peaceful protests against police brutality with other Tallahassee residents. During a march to the Tallahassee Police Department, I was hit by a driver deliberately targeting protestors advocating for freedom and justice. I endured trauma and physical limitations, and I walk with a limp as a result. But the greater harm lies in Florida's legislation like HB1, which curtails the right to protest and can lead to felony convictions, resulting in a loss of voting rights. The state's measures clearly target the Black Lives Matter movement.

Our government has displayed a complete indifference to communities of color, from vaccine distribution to racist rhetoric. Just this week, the governor used the conflict in Israel to declare a state of emergency for the explicit purpose of granting additional resources to local police in quashing pro-Palestinian demonstrations. Floridians need to be able to protest police brutality, gun violence and laws that seek to harm LGBTQ+ people, immigrants and other marginalized groups. It is more important than ever to uplift this struggle on an international stage as the state of Florida repeatedly disregards the well-being of its Black and Brown communities. I ask that you urge the United States government to use all available means to protect freedom of expression, assembly and association for all Floridians.

AHMAD ABUZNAID

Members of the Committee, my name is Ahmad Abuznaid, with the U.S. Campaign for Palestinian Rights.

This review of the U.S. is happening while a dire, unprecedented humanitarian crisis unfolds in Gaza. Article 6 of the ICCPR protects the right to life - but there is mounting evidence that the U.S. is complicit in the most extreme assault to this right in Gaza: genocide. We urge you to ask the U.S. about its complicity in the atrocities that Israel is committing.

While the U.S. maintains its position that its obligations under the ICCPR do not extend beyond its borders, this Committee has long refused this argument. Further, the Genocide Convention prohibits complicity in genocide and imposed a duty on the U.S. to prevent it. The U.S. is failing in all of these international obligations.

There is unambiguous evidence that Israel is committing the crime of genocide against Palestinians in Gaza. Since October 7, Israel has carried out an indiscriminate bombing campaign against the 2.2 million Palestinians living there, while cutting off all basic necessities to the population,

including food, water, electricity and medical supplies. It has used white phosphorus bombs in Gaza, which are, by design, weapons of an indiscriminate nature. On October 13, it warned 1.1 million people living in the northern part of Gaza to evacuate to the south within 24 hours. As people fled, Israel bombed them. A UN expert said “Israel has already carried out mass ethnic cleansing of Palestinians under the fog of war.” End quote.

Israel has revealed its genocidal intent through statements by top government officials - and it has acted upon them.

And with full knowledge of this, the U.S. has doubled down in its support of this genocide—by pledging additional military aid, diplomatic, and political backing.

These developments demand a firm approach from the committee to ensure that the rights of all people are protected under the ICCPR. The U.S. must cease its support of a regime that is committing genocide of the Palestinian people. If we don’t act now, then the words “Never again”, will be just that, words.

DIALA SHAMAS

Members of the Committee, my name is Diala Shamas, I’m a staff attorney with the Center for Constitutional Rights.

As we are watching a genocide unfold in Palestine, with what looks like full complicity of the United States, we are also witnessing a parallel assault on those rising up to protest this genocide domestically.

The public dehumanization of Palestinians at the highest level of U.S. government has led to skyrocketing repression of activism and all expressions of support for Palestine.

In his only major speech on the situation, President Biden was silent on the killings of Palestinian civilians, he parroted misinformation and called for the mobilization of law enforcement resources to respond to potential domestic threats. Biden’s speech did a familiar two-step: dehumanization and criminalization - a chilling hallmark of the most repressive regimes throughout history. Other elected officials have quickly followed: The New York City Mayor has accused protestors for Palestinian rights of support for terrorism. City Council members have shown up at student rallies brandishing weapons. And Governor Ron De Santis of Florida just announced a state of emergency and called all Palestinians antisemitic.

In just the last week, we have received reports of FBI officials visiting and questioning people in mosques. Immigration agents seeking to interrogate Palestinians in immigration detention. And we know that state repression emboldens private repression. Palestinians and Muslims have been targeted for hate crimes. People have lost their jobs, been subjected to online harassment, contracts canceled. All for expressing their opinions or associating with those calling out atrocities committed by Israel.

Our submission focused on how the “War on Terror” has metastasized to repress a range of social justice movements in the U.S. Many of us watching this past week have felt how evocative this

moment feels to those early days of the War on Terror - days universally acknowledged as a time of acute human rights crisis. Twenty years on, the infrastructure, technologies and other developments of the last two decades make the consequences exponentially more severe. The situation is escalating at terrifying speed. The Human Rights Committee must act.

Women's Rights

STEPHANIE SCHROEDER

U.S. Marine Corps Veteran, Statement via Zoom

My name is Stephanie Schroeder, and I am a Veteran of the U.S. Marine Corps.

While I was on active duty, I was violently raped by a fellow Marine. I told my Commander, but instead of supporting me, he accused me of lying, called me derogatory names and promptly retaliated against me. My rapist was never punished. Instead, he was allowed to keep his career and retire “honorably” with full military benefits and his pension. This was a betrayal on the deepest level.

Later, I reported a superior to Command for sexually harassing me and threatening my life. I was again disbelieved, in spite of having numerous witnesses, called derogatory names again, and told that this is what I deserved for causing trouble. When the superior entered my room and sexually assaulted me, I was disciplined for having a man in my room. This was another betrayal at the deepest level. I was in physical danger with no safe place to retreat to. It didn’t matter where I went. I could never be safe. This caused lasting and persistent trauma.

I was wrongfully discharged from service, ostensibly based on a false mental health diagnosis but really in retaliation for the reports I had made. It took me years to prove that I had been wrongfully discharged and obtain the benefits that I desperately needed.

The sexual violence I experienced was horrific, but the military’s retaliation against me was even worse. I have permanent disabilities due to Post Traumatic Stress Disorder (PTSD) related to my service in the Marine Corps. I struggle every day with physical pain from a broken jaw and broken back, anxiety, nightmares, and flashbacks, all for having the audacity to serve my country as a woman. I will always bear the scars of serving my country, but it doesn’t have to be this way for the next generation of warfighters. The U.S. needs to fix the toxic culture that enables sexual violence, hold perpetrators accountable, prevent retaliation, and ensure that all survivors are afforded meaningful redress, protection, and support.

DENICE LABERTEW

Good morning. My name is Denice Labertew, of Women Lead Network.

Today, I’ll prioritize two harms experienced by women incarcerated the United States: forced sterilization and the criminalization of self-defense for survivors of gender-based violence.

While women make up only 10% of the prison population of the U.S.’s more than 1.2 million incarcerated people, over the last 4 decades the number of incarcerated women nationally increased by more than 700% .

Recent disclosures from women prisoners and detainees in California and Georgia, and a report from the National Women’s Law Center, reveal a continuing pattern of non-consensual sterilization constituting cruel, inhuman, and degrading punishment and today forced sterilization remains legal in 31 states. These non-consensual medical procedures have subjected these women to medical experimentation without their consent.

Additionally, while the ICCPR articulates that “all persons shall be equal before the courts and tribunals, sentencing in criminal trials is disproportionate for women when the victim is an abusive partner.” Gender-based violence survivors are often prosecuted in the United States for “fighting back” and their sentences are 3-4 times more severe than an abuser who kills their spouse, due to limited defenses that prevent survivors from raising the abuse in court as a mitigating factor at trial or sentencing.

These are our recommendations:

1. Develop strategies for diversion to keep women out of carceral settings.
2. Articulate clearly and ensure the oversight of “informed consent” in all medical procedures for women prisoners.
3. Implement strategies to increase community based supportive services for survivors of abuse.
4. Standardize the use of court procedures that ensure the presentation of evidence of abuse and victimization.

BETTINA HAGER

Dear members of the Committee, Good morning, my name is Bettina Hager, and I am here on behalf of Equality Now, the ERA Coalition, the U.S. End FGM/C Network, Unchained at Last, and the Alliance for Universal Digital Rights.

Child marriage is legal in 40 U.S. states, including five states without any minimum age of marriage. At least 300,000 minors were legally married between 2000 and 2018, some as young as 10. In most U.S. states, child marriage is considered a valid defense to statutory rape. The laws serve to condone child marriage and perpetuate sexual violence. We urge you to recommend that the U.S. government prohibits child marriage and set the minimum age of marriage at 18, with no exceptions.

We also submit that approximately 513,000 women and girls in the U.S. have undergone or are at risk of female genital mutilation either in the U.S. or abroad. Despite a federal law against FGM, the practice continues and requires a comprehensive approach to end it. We urge you to recommend that FGM laws are implemented, strengthening state-level laws, and collecting data on FGM.

Finally, the U.S. Constitution does not explicitly prohibit sex-based discrimination or gender inequality. Despite meeting all the requirements for ratification, the U.S. government refuses to recognize the Equal Rights Amendment as the 28TH Amendment, which will provide an explicit prohibition of sex discrimination in the Constitution. The ERA can have far-reaching impacts on all aspects of women’s human rights, including sexual and reproductive rights, the right to be free

from violence, and the right to life with dignity. We urge you to recommend that the U.S. government comply with its obligations under the ICCPR and take every step necessary to implement the ERA as the 28TH Amendment.

MEREDITH ECKLER

One of the worst crises that are being ignored in the United States is the devastation that COVID19 has had on women head of households, mothers, and female caregivers. As stated in our previous intervention, over 50% of heads of households are women and 81% of caregivers are women. Women are significantly more likely than men to experience long COVID. 965 women per 1 million died because of the pandemic, and more women die each day. Most COVID-19 deaths occur among adults, not children, however, a tragic consequence of adult deaths is that high numbers of children have lost their parents and caregivers to COVID-19-associated deaths. In April 2020, more than 140,000 children in the United States experienced the death of a parent or grandparent caregiver. There is an urgent need to mount an evidence-based comprehensive response focused on those children at greatest risk in the states most affected. We recommend alternatives to foster care such as supported lodgings and boarding schools for children who have been orphaned by the pandemic.

MADISYN LAMBRAKIS

Two pandemics, namely HIV/AIDS and Covid-19, continue to disproportionately impact women, constituting humanitarian crises. Initiating our discussion, we'll address HIV/AIDS, a pandemic devastating women in the United States. The World Health Organization estimates that almost 20 million women were living with HIV in 2021. 50% of those affected by HIV are women, many of these women became infected after being forced into having sex. Women are most often diagnosed when pregnant, considering becoming pregnant or hospitalized with an acute illness. Research on women and HIV/AIDS regarding treatment, adherence, and opportunistic infections is deficient. Women lack access to treatment, and women's representation in treatment advocacy initiatives remains wanting. The number of women living with HIV is growing. We recommend that the United States create education programs targeted at young and older women on the prevention of HIV/AIDS and continue to research and develop a vaccine.

Sexual and Reproductive Health and Rights

INAS-KHALIDA MAHDI

Good morning, I'm Inas-Khalidah Mahdi, Vice President of Equity Centered Capacity Building at Reproductive Health Impact. RH Impact uses a collective leadership model guided by Black women to dismantle oppressive reproductive healthcare and related systems for the well-being of Black people. I am a Black woman, a researcher, social epidemiologist, a homebirth mama, and a member of The Black Mamas Matter Alliance.

The history of Black birthing people in the U.S. is rife with circumstances of injustice perpetrated by national, state, and local governments. We affirm the tenets of the human rights-based reproductive justice framework founded by 12 Black women that all people are valued, have fundamental human rights, including the right to have a child or not have a child, and should be supported by government and health systems to achieve the best possible health outcomes across their reproductive lifespan. We do this in the face of the U.S.' systemic failure to respect, protect and fulfill its human rights obligations to Black and Indigenous birthing people.

Black and Indigenous people report experiencing mistreatment at higher rates across their maternity care continuum, throughout pregnancy, and in their birthing experiences. In 2020, the U.S. had the highest rate of maternal mortality and morbidity among all high-income countries, with Black and Indigenous birthing people bearing the brunt of the impact. Research has demonstrated that the majority of these deaths and long-term consequences are preventable.

Black women scholars emphasize that Black women's social positioning in the U.S. has created circumstances that lead to their racialization and discrimination in health care settings and result in mistreatment, neglect, and other harms including unnecessary medical interventions, violations of informed consent, and coercion in white-dominated maternal care spaces.

Healthcare systems that have orchestrated these human rights harms cannot be financed and empowered by the government to be the leaders of systems change. The government must invest in new models that Black and Indigenous women and birthing people have envisioned for our reproductive and maternal wellbeing. Doing so not only ensures positive outcomes for our communities and other marginalized groups but can improve health outcomes for all birthing people.

DR. JENNIFER LINCOLN

I am Dr. Jennifer Lincoln, a practicing obstetrician and gynecologist who uses social media to educate the public on reproductive health and abortion. I am also the co-founder of Obstetricians for Reproductive Justice.

The *Dobbs* decision has left many abortion seekers and healthcare providers in the United States afraid to discuss, provide, or seek abortion care, even when it is legally permissible, even in life-threatening situations. People are also afraid to seek postabortion care.

Even in the midst of medical emergencies, abortion seekers are being forced to stop and consider the potential legal ramifications of seeking life-saving care before getting the medical attention they need. They are afraid to ask their own physicians for abortion or postabortion care for fear they will be turned over to authorities and arrested. As a result, some of these scared individuals message me for help. One such patient, on learning she could call a national hotline, was still afraid of getting information about safe abortion care. She said, "I don't have to tell them I'm in Texas, right? I'm still bleeding so so much...I'm bleeding through two pads." Patients are feeling forced to communicate about healthcare decisions anonymously via encrypted text messages or hotlines out of fear of surveillance and prosecution.

Similarly, physicians have reached out to me sharing stories of patients being discharged from hospitals without treatment for ectopic pregnancies, which are life-threatening and for which treatment is not prohibited under current abortion ban exceptions. This is because the criminalization of abortion has effects well beyond the text of the laws: even hospital staff are scared of being prosecuted or sued for providing essential healthcare services.

When I became a doctor, I took an oath to care for my patients and to be a defender of human rights. We as healthcare professionals call on the U.S. government to fulfill its international human rights obligations.

DR. MICHELE HEISLER

I am Dr. Michele Heisler, a practicing physician and the medical director of Physicians for Human Rights. I would like to share preliminary findings from our recently completed research in which we interviewed 30 clinicians who care for pregnant people in Louisiana. In that state, near-total abortion bans threaten clinicians with severe civil and criminal charges if they provide abortion care outside of TWO narrow exceptions: if the fetus has a fatal condition and if the pregnant person's life is at risk.

Every clinician interviewed described fear of prosecution just for providing information or referrals to patients seeking an abortion in states where it is still legal. Many described anguish about being unable to provide requested abortion care to pregnant patients who did not meet the laws' narrow exceptions including those who suffered severe intractable depression and whose condition would worsen with pregnancy; and deeply traumatized patients who were pregnant after being raped. As one maternal fetal medicine specialist told me:

“There are patients that I lose... a lot of sleep about... I know [they] wish [they] could have terminated the pregnancy...I know [they] are at a high risk of dying or having a bad health outcome. But [they] didn't quite make the cut off for us to be able to offer [abortion care], and [they] just couldn't get out of state.”

Many clinicians also described the disproportionate impact of the laws on their low-income patients and their sense of moral injury for failing them.

Overwhelmingly, clinicians voiced distress about the difficulties they faced providing care even in cases that meet Louisiana's narrow exceptions. They described delays in care from having to secure adequate documentation and additional tests to prove the pregnant person's life was at risk or that the fetus had a fatal condition. Specialists in urban hospitals recounted being overwhelmed by referrals from hospitals throughout Louisiana that are now afraid to treat what had been routine pregnancy complications.

Laws like Louisiana's place physicians in the wrenching “dual loyalty” position of being unable to meet their ethical obligations to their patients for fear of legal and professional harm. They also compel physicians to comply with laws that endanger the lives of their patients, cause them suffering, and violate their rights to life, health, equality, and to be free from cruel, inhuman and degrading treatment.

NIA MITCHEL

I am Nia Mitchell, Vice President of the Research and Policy Center at Reproductive Health Impact and a Collaborator with Black Mamas Matter Alliance. On behalf of the Sexual and Reproductive Health and Rights Workgroup, which includes 27 U.S. organizations working in the reproductive rights, health, and justice movements, I respectfully offer these recommendations. To address the harms described by my colleagues, and improve the lived conditions of Black and Indigenous communities as well as other communities that have and continue to be marginalized, the U.S. must:

1. Immediately halt the retrogression in reproductive rights and ensure access to abortion with no restriction as to reason and no third-party intervention requirements, mandatory waiting

periods, gestational limit, or criminal punishment in line with WHO Abortion Care Guideline (2022) and other treaty monitoring bodies.

2. Take steps at the state and federal levels to ensure that marginalized individuals and communities have both the legal protection and practical support they need to make abortion access meaningful. This includes enacting laws and policies at the federal and state levels to ensure all aspects of sexual and reproductive healthcare are accessible to people with disabilities.
3. Eliminate inequities in maternal health and ensure access to comprehensive reproductive health care by focusing funding, policies, and programs on the solutions and interventions that the most affected groups want and need—including community-based midwifery and respectful maternity care in Black and Indigenous communities.
4. And at a minimum, explicitly prohibit any policies or practices that result in the prosecution, punishment, or surveillance—especially in health care settings—of individuals, providers, and those that provide non-clinical support for conduct during pregnancy and pregnancy outcomes, including abortion, miscarriage, or birth.

Thank you for your consideration.

LGBTQI+ Rights

NIC STELTER

Legal Intern, Human Rights Clinic, University of Miami School of Law

Since 2021, we have seen an avalanche of anti-trans bills sweeping state legislatures across the United States. This year alone, we have seen over 500 anti-trans bills introduced, violating the right to freedom of expression, the right to security of person, of privacy, and the right to life.

Transgender people, or “demons” as some state lawmakers refer to us during sessions, are the subject of a moral panic. Once we were made the villain, it was easy to justify banning us from public bathrooms. It was easy to justify banning books, because who would want to acknowledge us? It was easy to force transgender teachers to quit, because who would want people like us teaching their children? It was easy to ban healthcare for hundreds of thousands of children, because who would want their child to be one of us? It was easy to censor transgender lawmakers from speaking out, because who would want us to have a voice?

All the while, the federal government refuses to stop states from violating our rights enshrined in the ICCPR. Why has the United States still not enacted comprehensive legislation prohibiting discrimination on the basis of gender identity? In their 2021 submission, the United States government holds up Title IX as the protector against violations in education settings. Title IX should remove funding from states violating the rights of transgender people. But it has not been used a single time. I ask, why? Why has the federal government refused to act in the face of book bans that seek to erase the existence of the LGBTQ+ community? Why has the federal government refused to act when state employees are prohibited from discussing their identity? Why has the federal government refused to act, when states ban life-saving medical care?

PILAR GONZALEZ NAVARRINE

Law student, Cornell Law Gender Justice Clinic

My name is Pilar Gonzalez Navarrine, and I am a member of the Cornell Gender Justice Clinic.

As the earlier statement by Stephanie Schroeder suggests, sexual assault in the U.S. military is a pervasive problem that is fostered by a culture rife with misogyny and harassment. Enabling this culture perpetuates harmful beliefs on sexual orientation and gender identity and places LGBTQ+ service members, as well as women, at particular risk of discrimination, harassment, and sexual assault. This toxic climate is compounded by low reporting and conviction rates, social and professional retaliation, weak prevention efforts, and inadequate and unequal access to remedies in military or civilian courts.

Transgender service members are particularly vulnerable to these violations: a 2020 survey revealed that 93% of transgender service members experienced gender-related discrimination in the military. Moreover, transgender service members lack sufficient protection of their right to serve in the military given that this right rests on presidential policy and is under threat from politicians who seek to reinstate the ban on transgender troops. Legislators have introduced bills that would once again bar transgender individuals from serving and deny transgender service members and Veterans access to gender-affirming health care.

So, our questions to the U.S. government are the following: Why has the federal government not yet passed legislation protecting the right of transgender individuals to serve in the military? What is the U.S. doing to increase reporting on the experiences of trans service members? To actually hold commanders accountable for creating a healthier unit climate that is respectful of gender identity? To ensure that the new offices of special trial counsel have the resources and independence they need to be successful and to overturn legal doctrines that exclude military sexual assault survivors from remedies that are available to civilians? The time for equality, dignity, safety, and justice for transgender and other LGBTQ+ service members is long overdue.

Disability Rights

VALERIE NOVACK

My name is Valerie Novack. I am a member of the U.S. Gender and Disability Justice Alliance and am briefing the Committee today on behalf of the Disability Rights Working Group.

There are approximately 42.5 million people with disabilities in the U.S., making up a substantial portion of the country's population. Due to discrimination, stigma, stereotypes, and other factors based in their disability and other statuses, people with disabilities face unique and disproportionate violations of their civil and political rights. Today, I will address two of these related violations.

First, many people with disabilities in the U.S. are deprived of legal capacity and subjected to guardianship or conservatorship, where their decision-making power is legally taken away and given to a third party. When a person is placed under guardianship, their guardian may be able to control decisions in many personal aspects of their life, including related to their sexual and reproductive health and gender identity, and people under guardianship may face restrictions on

other civil and political rights, such as the right to vote. No U.S. state has completely abolished guardianship as it relates to people with disabilities, and the continued use of guardianship puts the full range of civil and political rights for people with disabilities in jeopardy.

Second, women and gender diverse people with disabilities face significant barriers to accessing sexual and reproductive healthcare and continue to experience violations of their autonomy in this regard, including forced reproductive health interventions. For instance:

1. Forced sterilization, which has a long history of use against people with disabilities and people of color, is still permitted in 31 states for people with disabilities.
2. People with disabilities, including those who experience racism, are disproportionately impacted by the recent laws banning abortion in several states. Those who experience physical disabilities or chronic illness may experience pregnancy complications that necessitate efficient access to abortion to preserve their lives and health, at the same time that doctors are increasingly unwilling to perform abortions. Furthermore, pregnant people with disabilities may not be able to afford to travel to another jurisdiction to obtain abortion, and even if they can, they face significant disability-related accessibility barriers to such travel.
3. Even in places where abortion is legal, sexual and reproductive healthcare services, information, and medical devices and furnishings are often not disability accessible, limiting access.
4. Because they experience disproportionate rates of unemployment, poverty, and low incomes, many people with disabilities rely on government-provided medical insurance called Medicaid to access healthcare. However, several laws and regulations across the U.S. harm trans people with disabilities by banning Medicaid from covering gender affirming healthcare for its recipients.

It is vitally important that the Human Rights Committee question the U.S. on the civil and political rights of people with disabilities and make recommendations to the U.S. on these and other issues that are inclusive of our lived experiences. In particular, we hope the Committee will recommend that the United States take the following actions:

1. Recognize deprivations of legal capacity as a form of discrimination against people with disabilities and interpret the Americans with Disabilities Act to require that states adopt supported decision-making regimes for people with disabilities.
2. Adopt laws and policies at the state and federal levels that recognize a federal right to abortion, prohibit forced abortion and sterilization, and make the existing Accessibility Standards for Medical and Diagnostic Equipment mandatory for health care providers and manufacturers.

Children's Rights

JAMES DOLD

The abysmal U.S. record on children's rights is the result of a lineage of racism dating back to slavery, as seen through the disparate impact on children of color, living in poverty and/or with disabilities in the criminal legal, education, and child welfare systems.

Approximately 54,000 vulnerable children are brought into adult courts every year. The vast majority of them are youth of color. A 2023 report by Human Rights for Kids report found that

there are more than 32,000 people in U.S. prisons for crimes committed as children. Children of color make up 80 percent of this population which is larger than the entire prison population in 171 other countries in the world (80%). Nearly one-third of people who have been incarcerated since childhood were sentenced to life or de facto life without parole. And more than 1,000 children who were 14 or younger at the time of their offense remain incarcerated today.

This is in direct violation of Articles 10 and 14 of the ICCPR and may constitute a crime against humanity.

What is worse is that these children have been overwhelming abused and neglected. A recent ACEs survey collected from women who have been incarcerated since childhood revealed that 84% had been physically, sexually, and emotionally abused prior to their incarceration. More than 70% witnessed substance abuse and domestic violence in their homes, and nearly 60% had at least one parent who was incarcerated. Yet, the justice system rarely identifies or effectively responds to these levels of severe childhood trauma. Instead, they are caged like animals in jails and prisons with adults where they experience physical and sexual violence. For their protection they are often placed in solitary confinement, which further harms them.

Children with disabilities are also grossly overrepresented in the U.S. prison population for offenses committed as children. Approximately 65-70 percent of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than that of the general population. The criminal legal system fails to provide special education and related services to incarcerated youth and young adults across the nation.

It is not just the U.S. justice system that harms vulnerable children. Rather, it is the destination point where youth are referred to by the education and child welfare systems. The K-12 school system continuously refers students with disabilities, especially black and brown students with disabilities, directly into the juvenile justice system. More than 50% of children who end up in the U.S. foster care system will be arrested, convicted, or detained in the criminal legal system before they reach the age of majority - also known as the foster-care-to-prison-pipeline.

To begin addressing these human rights violations, the following actions are recommended:

1. The President should issue an executive order banning the placement of ALL children under the age of eighteen (18) in adult jails or prisons;
2. The President should immediately review and consider people who committed their crimes as children for Executive Clemency and/or Pardons with great weight given to child status, growth, maturity, and rehabilitation;
3. The President should push the U.S. Senate to ratify the Convention on the Rights of the Child.

Thank you for your time and consideration,

Non-citizens Rights

RAMONA CASAS

Southern Border Communities Coalition

Soy Ramona Casas y vivo en el Valle del Río Grande al sur de Texas.

Emigré a los Estados Unidos de México y ahora soy ciudadana estadounidense.

En los últimos 36 años he visto el aumento de la vigilancia fronteriza en mi comunidad hasta el punto de que sentimos que vivimos en una zona militar.

Agravando la situación, ahora los agentes de la policía pueden preguntar a las personas sobre su estatus migratorio, confundiendo la línea entre la inmigración y la aplicación de la ley de sistema criminal. Esto ha traído incertidumbre a mi vida como residente fronterizo. Si un inmigrante es objeto de una parada de tráfico se enfrenta a la posibilidad de arresto, deportación y separación familiar.

Debido a la discriminación racial, personalmente siempre llevo conmigo mi pasaporte a todos lados donde voy, aunque soy ciudadana estadounidense y no planeo viajar fuera del país. Sé que si no hago esto, podrían interrogarme y la Patrulla Fronteriza o la policía no creerá que soy ciudadana debido a mi color de piel y acento. Este es un hecho común.

Para la comunidad inmigrante, la región fronteriza se siente como una una prision sin barrotes, donde los inmigrantes estamos dentro de los Estados Unidos pero enfrentamos una vigilancia migratoria desenfrenada y discriminación a manos de la Patrulla Fronteriza y la policía.

English Translation by: Ámbar Z. Reyes Pérez

I am Ramona Casas and I live in the Rio Grande Valley in southern Texas. I immigrated to the United States from Mexico and I am now a U.S. citizen.

In the last 30 years, I have seen the increase in border surveillance in my community to such a degree it feels like we live in a military zone.

Aggravating the situation is the fact that police officers can ask people about their migratory status, confusing the lines between immigration and the application of the laws of the criminal legal system. This has brought uncertainty to my life as a border resident. If an immigrant is the object of a traffic, they are confronted with the possibility of arrest, deportation, and family separation.

Due to racial discrimination, I always carry my passport with me everywhere I go even though I am a U.S. citizen and I do not plan to travel outside of the country. I know that if I do not do this, I could be interrogated by Border Patrol or the police and they will not believe I am a citizen due to the color of my skin and my accent. This is a common occurrence.

For the immigrant community, the border region feels like a prison without bars, where immigrants are inside the United States but face a rampant migratory surveillance and discrimination at the hands of Border Patrol and the police.

ARTURO AGUILA

Arturo Aguila, Southern Border Communities Coalition

My name is Arturo Aguila. I'm an immigrant from Mexico and a U.S. citizen.

I live in the City of Las Cruces, New Mexico. It feels like a prison without bars to me and others who share my ethnicity.

My city is surrounded by 6 immigration checkpoints inside the United States. My community has to prove their legal status and be subject to searches even when we are not traveling to another country. This form of arbitrary policing creates fear and isolates my community from the rest of the state, and the country.

In the United States it is legal for the Border Patrol to use racial profiling as one of their techniques. Because of the color of my skin, I constantly suffer racial profiling by border patrol agents when I travel to visit my mother in Los Angeles, California.

As a community leader, I have heard hundreds of stories of dark skin immigrants in my community who are not able to travel outside of our city even for medical, educational or other vital reasons because of these checkpoints.

I have raised my family, children and now grandchildren in Las Cruces, inside the radius of these internal checkpoints. It is my fear, and certainty that one day, my grandchildren who are second generation U.S. citizens will continue to suffer the same racial profiling that I and so many others face from Border Patrol.

For these reasons I travel all the way to Geneva, Switzerland, speaking to the United Nations Human Rights Committee, to the world, so that I can share the violations of our human rights and dignity that I, my family and my community face daily by the U.S. government

JANINE BOUEY

Southern Border Communities Coalition

My name is Janine Bouey. I was detained and sexually assaulted by Customs and Border Protection at the port of entry in San Diego, CA when returning to the U.S. after a dental appointment.

When I was standing in line a CBP officer pulled me out of line after I rejected his advances. He brought me inside the CBP building where I was subjected to a body search where I had to put my hands up against the wall and spread my legs. This is where I was first sexually assaulted.

Afterwards the first officer reappeared and took me to primary inspection. He gave the CBP agent my U.S. passport. I was accused of not being a citizen. I couldn't believe this was happening to me as I am a U.S. citizen, retired LAPD Police and a veteran.

After my immigration check I was placed in an immigrant holding pen where I was subjected to a canine search. Shortly thereafter I was taken to another room where I was sexually assaulted a second time. They took all of my belongings and handcuffed me to the bench.

Next, they took me to a jail cell where I was subjected to a strip and body cavity search. Even though they found nothing, they put an alert on my passport. When it was all over, I was sent out the back door and to the CBP parking lot and told “these things happen.”

I tried to seek justice in my case and filed a lawsuit. In the middle of my case, the Supreme Court came down with a decision foreclosing any opportunity to pursue my case in federal court.

I am still suffering from PTSD and very much impacted by what happened that day. I came here today because I want to make sure this never happens again to anyone.

Human Trafficking and Forced Labor

REESE TINTAYA

My name is Reese Tintaya and I am a member of the Cornell Gender Justice Clinic. I have learned a lot about trafficking prevention by doing one thing: listening to those who are directly impacted by anti-trafficking laws. The anti-trafficking laws in the United States do not prevent trafficking, but rather place inescapable burdens on already vulnerable groups, like sex workers. These laws criminalize not just sex workers themselves, but their families, friends, and anyone they choose to have a relationship with, cutting sex workers off from necessary resources and placing them at an increased risk of exploitation.

LAURA LEMOON

I was raped in November of 2019 by a sex work client who I had agreed to meet, even though I did not want to and my gut told me not to. I cried on my way there cause I didn't want to do sex work anymore and I cried on the way back because of the rape. I did not screen this man, or try to ascertain whether or not he would be a safe client, because that was irrelevant in my desperate financial situation; I had \$1250 in rent to pay the next day. Had I had anywhere else to turn, I would have had an alternative to putting myself in a situation I knew was dangerous. Redistribution of wealth is a loaded term, but when I say it, what I really mean is justice, equity, and making wealthy corrupt politicians accountable. I am a sex trafficking survivor and a survivor of violence in the sex trade and redistribution of wealth is something that is essential if people are to have options that reduce the likelihood of labor exploitation, including work in the sex trade. What this looks like, for me, is a government that isn't allowed to misuse public monies with impunity and gut the system we have set up to allegedly eliminate poverty, like my government has.

If the U.S. wants to end trafficking, it needs to focus on making sure systems like unemployment, welfare, and disability are firstly easily accessible and secondly, funded robustly and honestly, as they could be, if the U.S. did not so egregiously misuse these monies. Redistribution of wealth is not "giving away" money to unworthy, lazy poor people - it is an equal investment in the American peoples' quality of life and it is trafficking prevention.

As a sex worker and a sex trafficking survivor, we experience a huge amount of financial discrimination. Many of us are barred from having bank accounts, or have our bank accounts canceled out of nowhere. This is the same with financial apps like PayPal, and credit card companies like Visa and Mastercard. Discrimination in the financial sector means people who have engaged in the sex industry are at constant risk of being "found out" and having massive financial fall out because of this. No adult can build wealth without access to a bank account. It just doesn't happen. When people tell me they want to stop sex trafficking, I usually tell them to stop excluding us from mainstream society, then. And this is equally true today. For anyone who cares about stamping out human trafficking, I would say then you must allow sex workers and survivors a place in "normal" society. Putting us on the margins of society financially puts us on the margins, period. And at the margins is where those with evil intent wait to exploit and abuse.

LORELEI LEE

Hello, my name is Lorelei Lee, and I am a trafficking survivor, I am a sex worker of two decades, and after organizing with my fellow sex workers, survivors, and sex working survivors, I went to law school, and I became a Professor of Law. In the United States, sex workers are considered criminals. We are criminalized as a status. In most states, we are also criminalized for being trafficked. Our very survival is illegal. Our government has decided the best way to address trafficking is to profile us on the street, to raid our workplaces, to arrest all of us, and sort it out after the fact. Once we are arrested, we are left with nothing.

Occasionally we are given bags of menstrual products and deodorant. Occasionally we are given mandated counseling in which we are told that the work we've done to survive is bad for us, to go back to the minimum wage jobs that did not allow us to survive. Criminalization of sex work drives trafficking not simply because of the individual traffickers who use our bail as collateral, who use our getting kicked offline by laws like 2018's FOSTA-SESTA to force us to rely on them both to gain income by getting us clients, and as a first line of defense against both police and client violence. But sex work criminalization allows every single person who is not a sex worker to have power over us. We are told at legislative hearings that we cannot be heard because the government doesn't listen to criminals. We are told by online platforms, by indoor public spaces, and by financial service providers we previously used to organize and to protest, that our country's laws have made us unserveable. That we must not be seen by anyone. We are here because our government does not want to protect us, does not want us to survive. We are here because we can't survive unless you see us. Thank you.

Food Justice

KAREN SPILLER

Good morning! I am Karen Spiller with Food Solutions New England, lifting up the non-negotiable need for racial equity and food justice in the food systems, one that feeds and serves us all.

I speak in service of and in community with stewards of the land and sea, urban and rural, with black, brown, and indigenous, growers, farmers, producers and entrepreneurs; with justice-minded policy makers; power building agencies and groups; across identity, culture, ethnicity, and geography.

Last week, Senator Craig Hickman of Maine, co-author and original sponsor of the first state right to food constitutional amendment in the U.S., spoke about how food is life.

However, the food system in the United States poses a risk to life. Our food system is dominated by toxic chemical fertilizers used to grow crops and maintain fields, leading to significant environmental pollution and harm to the food that people eat and those living on that land.

Black, brown, and Indigenous communities are more likely to be located near large polluting industries. Harmful effects increase with years of exposure and have long-term intergenerational consequences.

We urge the Committee to recommend to the U.S. to:

1. Strengthen local and regional food systems as a pathway to restore food autonomy to communities, and to reduce the environmental harms caused by large-scale farming.
2. Hold large-scale agricultural companies and extractive industries liable for their impacts on life-sustaining resources such as clean water and food.

Violations of the right to food are also linked with violations of the right to non-discrimination. Our food labor systems depend on the essential work of Black, brown, and Indigenous communities, yet these groups also suffer the highest rates of food insecurity in the U.S. They are also often excluded from worker protections, including the right to form trade unions. Immigrant agricultural workers face egregious labor law violations due to their immigration status and the lack of protection available to them. Black farmers have been historically excluded from land purchases by federal programs and policies, the absence of legal protections, and limited access to capital through discriminatory lending practices.

We urge the Committee to recommend to the U.S. to:

1. Examine current lending practices to integrate sustainability and racial equity considerations for small food producers.
2. Raise the federal minimum wage to a true living wage, recognizing that poverty is the root cause of hunger.
3. Pay reparations to communities whose labor has been systematically exploited and have been dispossessed of their land since the founding of the U.S.

NHRI and Domestic Treaty Implementation

ALISA WARREN

Thank you to the distinguished Committee members. I'm Dr. Alisa Warren, and I serve as President of the International Association of Official Human Rights Agencies or "IAOHRA". We are a professional association of state and local human rights government agencies in the United States and beyond.

IAOHRA member agencies serve nearly 250 million people across the US, and actively engage in enforcing state and local anti-discrimination laws, as well as educating to protect fundamental rights—which advance the principles of the ICCPR.

Our work is critical to give international human rights meaning at the state and local levels. Our agency members are statutorily charged with enforcing the Human Rights laws in our jurisdictions and work to prevent discrimination, bias, and hate.

Today, we implore you to press the U.S. government to TAKE IMMEDIATE ACTION to advance human rights at the state and local levels by creating a United States National Human Rights Institution (NHRI), and by providing meaningful education and support to state and local government actors for human rights implementation.

Since the Committee's review in 2014, the U.S. has made no progress towards establishing an NHRI.

1. The Concluding Observations from the Committee's 2014 review of the U.S. note that the U.S. "has only limited avenues to ensure that state and local governments respect and implement the Covenant, and that its provisions have been declared to be non-self-executing at the time of ratification."
2. The Committee recommended that the U.S. "strengthen and expand existing mechanisms mandated to monitor the implementation of human rights...[and] provide them with adequate human and financial resources or consider establishing an independent national human rights institution."

Yet almost a decade later, the U.S. does not have a comprehensive approach to human rights that incorporates all levels of government.

The U.S. knows the value that NHRIs provide. It has supported the establishment of NHRIs in other countries, particularly in North Africa and Southeast Asia.

1. Yet there is no federal infrastructure to support human rights education, monitoring, or implementation.
2. Consequently, state and local officials are often unaware of their obligations stemming from U.S. ratified treaties.

The U.S. cited the State Department's website as meeting U.S. obligations, but this passive site alone falls far short of ICCPR standards.

There is strong support among civil society organizations to establish an NHRI.

1. Multiple civil society coalition letters and reports have been sent to the U.S. urging the establishment of an NHRI
2. In December 2022, more than 100 civil society organizations sent a letter to the White House Domestic Policy Council urging creation of a commission to study the establishment of an NHRI
3. At the most recent CERD review, an NHRI was a central focus of IAOHRA, and
4. In March 2023, IAOHRA sent a letter to the Biden Administration and the U.S. Congress on the need for an NHRI

An NHRI would support unprecedented progress toward domestic implementation of U.S. human rights commitments. Please work with us to convince the U.S. government that this is a necessary step for a rights-respecting nation. Thank you.

SHAROF AZIZOV

U.S. Non-Compliance with Article 4 of the ICCPR: Concerns and Recommendations for Alignment

Distinguished members of the UN Human Rights Committee,

We are here today to address a pressing issue that has persisted in the United States for decades—the country's non-compliance with its obligations under Article 4 of the International Covenant on Civil and Political Rights (ICCPR), which unfortunately was not included into the List of Issues addressed by the Committee to the Government of the United States in 2019.

This issue is not an isolated incident but indicative of a broader systemic failure to align domestic laws and practices with international human rights standards. It is a matter of grave concern that warrants immediate and sustained attention from both the U.S. government and the international community.

Since the NEA's inception in 1976, U.S. Presidents have declared an astounding 70 national emergencies. Alarming, over 30 of these remain active, with routine annual extensions. The national emergency related to Iran, for instance, has been in place for over four decades, and the one concerning Syria has been renewed for over 16 years. Additionally, a national emergency concerning Cuba has been active since 1996. Such frequent and prolonged declarations have effectively positioned the U.S. in a de-facto permanent state of emergency, a situation that starkly deviates from international law's principles.

Our association, "Justice for All International / Justice pour Tous Internationale," expresses profound concern regarding the U.S.'s tendency to perpetually renew a significant number of its emergency declarations. This pattern, with some emergencies enduring for decades, places the U.S. in an almost continuous state of emergency. This status sharply contrasts with the ICCPR's emphasis on the exceptional and temporary nature of such emergencies. We strongly advocate for the U.S. to conclude these extended states of emergency and ensure that future declarations are in strict alignment with international law's benchmarks.

Moreover, the U.S.'s contention that the ICCPR lacks domestic applicability, viewing it as non-self-executing, contradicts established international legal perspectives and the customary practices of many states. It is imperative for the U.S. to reevaluate its position on the ICCPR's domestic application, ensuring consistent adherence to its obligations both nationally and globally.

The United States has frequently invoked "unusual and extraordinary threats" to its national security, foreign policy, and economy as grounds for issuing emergency declarations and sanctions. This practice diverges from the strict criteria set forth in Article 4 of the ICCPR, which mandates that such emergencies must pose an imminent, existential threat to the nation. Furthermore, the U.S. has failed to bring its National Emergencies Act (NEA) and the International Emergency Economic Powers Act (IEEPA) into compliance with Article 4 of the ICCPR, even after its ratification in June 1992.

To address these systemic issues, we propose the following recommendations:

1. The U.S. government must critically reassess its criteria for emergency declarations and sanctions, ensuring they align with the provisions of Article 4 of the ICCPR.

2. The U.S. should modernize its legal framework governing emergency declarations to include clear criteria that align with international human rights standards, particularly Article 4 of the ICCPR.
3. The U.S. must introduce stringent oversight mechanisms to ensure that the President's exercise of emergency powers and sanctions imposition aligns with both domestic principles and international obligations.
4. The U.S. should maintain open communication with relevant international bodies, such as the UN Secretary-General and the UN Human Rights Committee, consistently updating them about its emergency declarations and the rationale behind them.

By adopting these measures, the United States can demonstrate its commitment to human rights and begin to align its domestic laws and practices with its international obligations under the ICCPR. The international community must also play its part by offering support for these reforms and holding the United States accountable for its human rights obligations.

We urge the Members of the UN Human Rights Committee to consider these recommendations with the urgency and gravity they warrant.

Sincerely,

Sharof Azizov

Founder and Secretary of the Board

Association "Justice for All International / Justice pour Tous Internationale"

ALKA PRADHAN

My name is Alka Pradhan from the Military Commissions Defense Organization, which represents Guantánamo Bay prisoners facing prosecution. Nothing I say represents the opinion of the U.S. Department of Defense.

The Guantánamo military commissions continue to violate the ICCPR, most notably through the use of evidence obtained by torture and CIDT. Even more alarming, the men remaining at Guantánamo are deteriorating quickly because the U.S. refuses to allow any independent medical providers to provide the comprehensive medical and psychological treatment that they need. Let me be clear: the U.S. prioritizes the cover-up of torture and subsequent medical conditions over the proper care of the men in custody, in violation of Articles 2 and 10 of the ICCPR, and an active violation of the CAT article 14.

As an example - my client Ammar al Baluchi sustained traumatic brain injuries from his CIA torture, and at the age of 46, suffers from cognitive decline, many psychological ailments including PTSD, and last year was diagnosed with a spinal tumor. The Working Group on Arbitrary Detention in Opinion 89/2017 examined his circumstances and called for his release, but the U.S. government has not responded, nor made any changes in his conditions of confinement or medical care.

Our suggested questions from the Committee to the U.S. delegation:

- Will the United States provide comprehensive medical treatment for Mr. al Baluchi and the other torture victims still at Guantánamo, including independent medical evaluations?

- Will the United States abolish the illegal military commissions system and disavow the use of torture-derived evidence and other due process violations?
- Will the United States address the findings of the U.N. Working Group on Arbitrary Detention calling for the release of Mr. al Baluchi and other Guantánamo detainees based on findings of arbitrary detention and medical conditions stemming from torture?

More details about these points can be found in our submitted report and we have a one-page summary in case of interest.

Thank you.

Addendum D

**Directly-Impacted Speakers' List - Civil Society Informal Briefing
Tuesday, October 17, 2023**

Indigenous Justice

ROBERTO BARRERO, READ BY NATALI SEGOVIA

Respectful greetings, the United Confederation of Taíno People (UCTP) represents Indigenous Taíno Peoples whose traditional homelands are now considered U.S. Territories, in particular, Puerto Rico and the U.S. Virgin Islands. While we are supportive of the concerns of Puerto Rican Nationals, our concerns are distinct and stem from the lack of implementation of the UNDRIP (UN Declaration on the Rights of Indigenous Peoples) as a minimum standard by the U.S and the territorial government of Puerto Rico.

The continuing failure of the U.S. and Puerto Rican governments to recognize the Taíno as Indigenous Peoples evidences non-compliance with the ICCPR, especially Article 1 (self-determination), as well with the OAS Declaration on the Rights of Indigenous Peoples.

Taino Peoples are marginalized domestically and internationally as our “home countries” are not full members of the UN or the OAS. Remedy and redress of rights affirmed by international and U.S. law remain in limbo, violating ICCPR Article 2. This “limbo status” violates the right to equal protection of the law, hindering the right of Taíno Peoples to fully enjoy their own culture and violating ICCPR Articles 26 and 27. The U.S. and the territorial government of Puerto Rico should interpret the ICCPR consistently with UNDRIP and other relevant international law.

The USA violates human rights when it excludes the non-federally recognized Taíno from consultations or other processes designed to protect the rights of Indigenous Peoples. Taíno Peoples retain rights under UNDRIP Articles 18, 19, and 32 (FPIC) prior to the State taking any legislative or administrative measures that may affect them, their lands, sacred sites, or natural resources.

GABE GALANDA/HUY, READ BY SUMMER AUBREY

Background: Huy, pronounced “Hoyt,” is an Indigenous non-governmental organization headquartered in Washington State in the United States of America. Huy was formed to provide support for Indigenous persons incarcerated in state prisons and local jails. More information about Huy is available at www.huycares.org. Huy submitted information to the Human Rights Committee in relation to the United States’ 5TH Periodic Report.

Ongoing Violations of Incarcerated Indigenous Persons’ Religious Freedoms: Indigenous persons in the United States of America suffer one of the highest incarceration rates of any racial or ethnic group and are disproportionately sentenced to serve life sentences or other long sentences in state prisons. Scholars have stated that, “walking the red road in the white man’s iron house is the path to salvation, the way of beauty, and the only road to rehabilitation and survival.”

Throughout the United States, incarcerated Indigenous persons are subject to illegal restrictions preventing them from accessing traditional cultural items and ceremonies and otherwise obstruct participation in traditional Indigenous religious practices. Violations include:

1. refusing to honor religious dietary restrictions, even when honored for other religions;
2. denying access to ceremonies and previously accessible ceremonial grounds;
3. refusing access to existing Indigenous religious services and acts of retaliation;
4. refusing to hire an Indigenous spiritual advisor or allow Indigenous volunteers; and
5. refusing to allow Indigenous ceremonies in larger gathering spaces, even when other groups are permitted to use those same spaces.

The U.N. Special Rapporteur on Religious Freedom or Belief in the mandate's first-ever report on Indigenous Peoples stated: Banning indigenous spiritual practices in prisons, including sweat-lodge, pipe and drum ceremonies, the growing of long hair and 'smudging,' may hinder traditional healing, intergenerational transfer of knowledge, rehabilitation and 'cultural survival' upon release.

These violations relate directly to several concerns raised by the Committee with respect to the United States' 5TH Periodic Report, including the concern for racial disparities in the criminal justice system and treatment of persons in detention, protection of Indigenous peoples' traditional ways of life and rights to consultation and the United States' continuing failure to implement the International Covenant on Civil and Political Rights at all levels of its federal system.

Requests to the Human Rights Committee: Huy requests the Committee make the following recommendations to the United States of America:

1. That the U.S. take immediate measures to halt the violations of incarcerated Indigenous persons' religious freedoms at state and local levels and engage in consultation with Indigenous communities to jointly address the needs of incarcerated Indigenous persons.
2. That the U.S. promptly respond to the 2013 Letter of Inquiry jointly sent to it by the U.N. Special Rapporteurs on the Rights of Indigenous Peoples and on Freedom of Religion or Belief.

MONAIEKA FLORES

Hâfa Adai my name is Monaieka Flores, I honored to represent my island Guam and our Indigenous CHamoru/Chamorro people. Indigenous people and people of color continue to suffer several ongoing indigenous and human rights violations at the hands of the United States military. Anywhere the U.S. military touches the ground, there are devastating impacts of environmental destruction and desecration of the sacred. The U.S. military is the actor of U.S. colonization and the two cannot be separated. The ongoing hyper militarization of Indigenous lands such as Guam are in complete violation to our right to self-determination.

We want the U.S. to immediately begin a process of decolonization and repair for U.S. colonies. We want the U.S. to take all effective steps necessary to end military expansion and fully demilitarize its overseas possessions or "territories" as a commitment to decolonization.

If we look at the communities represented here today, we can identify several issues of violent militarization. From the contamination at Red Hill, Makua Valley, and Kaho'olawe in Hawaii, to Vieques, Puerto Rico, to buried hazardous waste in Alaska. The issues go beyond the borders of the United States reaching all the way to Australia with nuclear contamination and even the fuel at Red Hill is being transferred to the Philippines. Poor communities, communities of color, and Indigenous peoples across the nation are also facing impacts from Open Burning and Open Detonation and PFOS contamination. In Guam, a firing range will fire 7 million ammunitions a year over our sole-source aquifer.

Saina Ma'āse' and thank you.

JUNE LORENZO

All stages of Nuclear fuel cycle have impacted Indigenous peoples in the southwest US. Uranium mining, milling, making of nuclear weapons at Los Alamos NM, and now proposed storage of spent nuclear fuel in southern New Mexico.

Laguna Pueblo, in New Mexico. Uranium mining from 1959 to 1982. Numerous impacts on life style, environment, and health of Laguna People. For decades to come. Only recent attention to contamination by U.S. government agencies.

1. Destruction of many sacred areas by mining.
2. Extraction made possible by doctrine of discovery and the 1872 Mining Law- both deny Indigenous peoples their right to FPIC.
3. U.S. should comply Article 1 right to self-determination as peoples and right to free prior and informed consent; and Article 6 right to life. UNGA resolution that right to a clean, healthy and sustainable environment is a human right.
4. New wave of proposed uranium mining. Under the 1872 Mining law, mining is prioritized as a use for land so companies can claim a right to mine on federal lands. The U.S. government insists that "consultation" with affected Indigenous Peoples is sufficient, and that it is "required" to grant mining permits.

HRC General Comment 36 on Art 6 right to life: "duty to protect the right to life requires State parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" and specifically names human rights defenders, victims of domestic and gender-based violence and human trafficking, children, indigenous peoples." Many of these statuses are intersectional for Indigenous Peoples, and are implicated when mining comes to our communities.

We ask that the HRC take note of this fact when making its recommendations to the United States.

STEPHANIE AMIOTTE

The Lakota People's ties to the Black Hills, South Dakota inherently are spiritual and cultural but they are not being protected by the Nat'l Forest Service.

248,000 acres of active mining claims in the Black Hills, representing a sharp increase from 76,700 acres since April 2022.

The U.S. allowance of mining operations in the Black Hills destroys its many individual sacred sites.

1. Mining pollutes the Rapid Creek Watershed in the Black Hills which supplies vital drinking water to 100,000 people predominantly poisoning the well water that Indigenous People drink in the region.
2. 25% of private wells tested in tribal communities in South Dakota had arsenic at or higher than the amount deemed safe by the EPA.
3. Elevated arsenic levels in ground water significantly increase risk of heart attacks, stroke and diabetes and other deadly diseases.

The U.S. underfunds Indian Health Services by 52% leaving over one-half of the Indigenous Populations with mental or physical health care.

The U.S. Contamination and degradation of the Black Hills compounds adverse health of Indigenous People in South Dakota.

According to the National Indian Child Welfare Association “cultural identity and ethnic pride result in greater school success, lower alcohol and drug use, and higher social functioning in Native children, adolescents, and young adults. Native children, adolescents, and young adults involved in their tribal communities and cultural activities have lower rates of depression, alcohol use, and antisocial behavior.”

Indian Health Services report that Lakota’s die at higher rates than other Americans from suicide (74% higher) teenage suicide rate is (150% higher).

Discrimination and Hate Crimes

JOVANNY SEBASTIÁN HERNÁNDEZ

My name is Jovanny Sebastián Hernández. I'm a field organizer in southern New Mexico for the New Mexico Dream team. I live and work in Las Cruces, New Mexico and am a U.S. citizen.

Southern New Mexico in general is very rural, and as a rural community, we lack access to a lot of things.

One of the biggest problems in this region is the extensive presence of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), especially Border Patrol agents, in my community.

Here in Las Cruces we are surrounded by six Border Patrol checkpoints. We have a Border Patrol station in the middle of the city, and another one in nearby El Paso, Texas. Driving around the region, you’ll see Border Patrol agents on the highways, backroads, and public lands, both near and far from the border.

To a community that is already so marginalized in a lot of ways, so far from the large population centers in our state, it creates a culture of fear and isolation. It really traps us in a bubble, and whether you can pass through the checkpoints depends on your immigration status.

This literally corrals us in a small region, and reduces the ability for our communities to dream of a better future.

Having Border Patrol so close all of the time is dangerous, and there is always an element of fear in the community. We're quite literally surrounded by hundreds of miles of nothing. And that feeling of isolation and that massive overwhelming pressure and presence of Border Patrol only serves to increase that fear, worry, and isolation.

Because my family lives outside the region, I have to cross at least one Border Patrol checkpoint to see them even though they are also inside the United States. My experiences with them have only ever been primarily hostile. When approaching the checkpoint, Border Patrol speaks to me in a dehumanizing way because of the way that I look. The way they look and speak to me makes me feel less than and makes me feel like a criminal for traveling in my own home.

Border Patrol has stopped me four times when traveling through their checkpoint between Alamogordo and Las Cruces, NM. During these stops, Border Patrol has made me get out of my vehicle for no reason.

They have searched my vehicle, asked me invasive questions about who I am, my family, and my family history. Unfortunately, experience with the Border Patrol's arbitrary enforcement is nothing new for my family. When my parents crossed into the United States maybe 35 miles southwest of Las Cruces, their experience was awful.

My uncles were beaten by Border Patrol agents and separated from their mother, even though they were children at the time. Border Patrol took invasive biometric data from them, including blood samples, fingerprints, and other private information.

Border Patrol physically, emotionally, and mentally abused my aunts, uncles, mother, and grandparents, and that abuse leaves scars. These harms and the impunity of Border Patrol are carried over to the younger generation and passed down.

The project of border enforcement is to make us think that we have to sit back and take it, that we have no dignity, power, agency and that we mean nothing to Border Patrol. The goal is to make us believe that we cannot speak for ourselves or advocate for our communities. This is a pain that we often ignore and bury deep down.

It's an ongoing struggle for me to really believe that dignity is intrinsic to me and my community, and that no government policy made by someone thousands of miles away can change what I deserve, what my family deserves, what my community deserves. And that is dignity, that is respect. And that is the right to live somewhere that we love without that fear.

TED WOMACK

My name is Ted Womack and I am a Black 32-year-old male. I was born and raised in Southeast San Diego in a predominantly minority neighborhood. I have personally had at least 100 encounters with law enforcement, ranging from being stopped to talk to having multiple officers pull guns on me. Where I live and grew up, it is normal to feel scared to leave your street. Not because of the people in the neighborhood, but because there might be a lot of police in the neighborhood looking for somebody, and they might choose you to be that somebody. It is normal for people in my neighborhood to look more in their rearview mirrors to see if police are following them, then looking at the road in front of them.

I had to learn from a young age to protect myself from law enforcement. I know that when I see an officer, I have to look him straight on. I can't look too shaky, or in distress, or too excited, but also not too lurky. I have to be in this weird middle space so they don't see me as anything. Growing up, the police went out their way to mess with me and as I came of age, it created this space inside of me where I can't look at the police with respect or expect they are going to protect me. I can't look to a police officer and expect they're going to make a good judgment. In my experience that does not happen.

Throughout all of my encounters with law enforcement, I think most of my experiences consist of officers abusing the powers of their job. Acting as if the powers of their job made them unable to be wrong.

Growing up cops would approach me and my friends wherever we were hanging out. For instance, we could be playing 2 hand touch at a park and cops would walk up and say, "Hey you and you, you on probation or parole? What gang are you from?" Completely unprovoked. Even after we say no, they don't leave. They stay for another 10-30 minutes depending on the officer.

They ask more questions like where do we live? What are you doing? Why are you hanging out here? Do you have drugs? Are you selling? They try to find something to mess with us about. It is just a never ending cycle of questions. Sometimes they'll come with their notepad and write down everybody's names and check them in their system one by one. So it could take a while.

In Southeast San Diego, police assume that most black people in that area are part of a gang. They assume we are on the "Gang Injunction List." If you are on that list, it makes it so you can't be around certain people. Police use the list as a reason to approach you or whoever else may be around you. It doesn't matter if you are hanging out in the neighborhood, at a football game, buying groceries, at a car wash - police can approach you and ask, who are you?

A typical traffic stop in Southeast San Diego happens when you are at a traffic light and a cop happens to pull up behind you. You go through the stoplight once it's green and then they turn on their lights and sirens, it never fails. Most of the time it's two officers in the car. Both officers get out of the car and one comes up on each side. The first thing they ask is "Are you on probation or parole? Do you have weapons in the car?" Not license and registration or proof of insurance. I can count on my hand when I've been asked for my license, registration and proof of insurance. Instead they ask, are you on probation or parole? Are there weapons in the car? Then you look up and there are three or four more police cars. It happens to me every time.

One time I was at a stoplight and a cop pulled up next to me in the other lane. When the light turned green they turned their lights on and pulled me over. When I asked why they pulled me over they said, "We pulled you over because your music is too loud. It's a noise violation." At the time I was driving a 1996 Nissan Sentra and all of my speakers were busted. I could not turn the music on in my car.

If you're a person of color driving a nice car in my neighborhood, you are going to be pulled over. I remember my mom and dad bought me a brand new Mustang for getting a new job. Two or three days later my dad and I woke up and went to get gas around 7AM. As soon as I drove off my street, I got pulled over. The cop comes up and says, "we have a report of a stolen car with this description."

I am usually cordial with officers, but I was instantly angry. I said, "ma'am, look at the paper plate. It has my name on it. Look at my ID." She said, "We just wanted to make sure. If you could hang tight for a second, let me verify that this isn't a stolen car." I repeated myself, "ma'am, are you reading the paper plate? This is my ID and this is the registration from the DMV. What else do you need to see for you to realize this car isn't stolen? What are we doing? You have me outside of my vehicle in front of a preschool with a whole bunch of little black kids watching me get pulled over and you saying my car is stolen and it's a brand new car. What are we doing?"

I remember my dad telling me I need to calm down. The officer came back and eventually said it was a mistake. Afterwards my dad cautioned me that I can't get mad like that, if it was another officer it could have been really bad.

If I'm in southeast San Diego, and officers approach me, nine times out of ten they are going to detain me. Sometimes it is because I don't want officers to search my car, so they detain me until they figure out whether I'm on probation or parole. I've been detained in situations where I don't want to allow officers to take photos of me or lift my shirt up to see if I have gang tattoos. It doesn't matter where I am, it happens. It has happened to me when I've been walking down the street, in front of a family member's house or literally sitting on a park bench and eating.

For example, recently, I was walking from my house to 7-Eleven maybe 50 yards away. On the way, I saw a cop look me dead in the eyes from his car. I wondered what they were doing. On my way back I hear a weird sound behind me, I look back and it's the cop car creeping slowly behind me. I asked the officer what's up and he asked if he could talk to me. I said, yeah, what's up?

He asked for my name. I told him my name was Ted and asked, "Are you investigating something? Are you looking for somebody? What's up?" He responded, "I'm gonna detain you." When I asked why, he told me it was because they were looking for somebody in the neighborhood. I asked again, "Why are you detaining me? Who are you looking for?" The officer said they were looking for some kid. I told him, "I'm not a kid. I'm 32. Who are you looking for?" The officer proceeded to put me in handcuffs and dumped everything I bought from the store on the ground.

Shortly after, a higher ranking officer who I believe was a sergeant appeared. I asked him what was going on. He informed me they were responding to a domestic violence call in the neighborhood. I told the sergeant that his officers watched me walk to the store and back and

decided to stop me and put me in handcuffs. The sergeant defended his officers and said it seemed like I fit the description. When I asked for the description of the individual, they described someone with completely different clothing than what I had on.

I insisted that I didn't match the clothing description and I'm not a kid and asked again why they were detaining me. The sergeant responded, "this is just our practice. This is just how we have to be." They ended up letting me go and I asked for each of their cards. I immediately contacted the precinct right after they left and asked to file a complaint. When I described what happened, the person on the phone began to tell me how the same thing happened to him the week before when he was at the beach with his family. Despite this having happened to him, he defended the officers actions and said this is normal and how they operate. He refused to take my complaint.

Officers frequently ask if they can search my car when they pull me over. When I say no, they respond with comments such as, "if you don't have anything to hide... or why can't I search your car?" It makes me angry. Why do I have to have something to hide because I don't want you to search? Why can't I be late for work? Why can't I just want to go through the rest of my day? Why can't I just not want to be bothered by you? Why does it have to be that I'm guilty because I won't let you search?

I have been in the car where people consent to officers searching the vehicle. Most of the time they say yes because they don't know they can say no. Sometimes it is because of the pressure officers put on people. One pressure tactic police use when someone denies a search, is threatening to bring a dog out to see if it alerts. The officer lets the driver know it will take at least 30 minutes for the dog to arrive. People don't want to wait 30 minutes, so they consent. Officers have these different tiers of things they do to pressure you to consent to search. That is why a lot of people end up giving them permission.

One day I walked by Lincoln High School and waved hello to my father who worked there as a security guard. By the time I got to the alley behind Lincoln High School, there were three or four cop cars with cops getting out of their vehicles and drawing guns on me. I was confused, upset, and didn't know what was happening. My dad rolled up because he was getting security calls on his walkie talkie that something was going on in the alley behind the school.

When my dad gets there, he sees me and my friend standing there and police pointing guns at us. The police tell him they received a report that somebody was making threats at the school. I told them, this is my dad and I was just waving hello. How am I a threat to the school? My dad asked the same question and they looked at each other and said, well, somebody called it in. When I asked what was called in, they told me the caller said somebody was walking past the school making threats. You could tell the police were confused because they knew they should follow the call, but were also realizing the situation they were in.

So they're confused. I'm confused, I'm upset, my dad's upset, but the guns are still drawn on me this whole time. The security and administration from Lincoln High School talk to the police, a sergeant pulls up and then the officers dispersed. Nobody apologized. They just left.

I felt like no matter what, I was always going to be at the mercy of these people who have the

authority to make people safe, but they're putting me in danger. I was 19 or 20 years old. The people who pointed guns at me were the people who were supposed to be protecting me. I cried all the way home and started hyperventilating. I tried to tell my mom what happened, but I couldn't even get words out. I was mad and frustrated that I was left feeling like a victim.

The majority of police officers in neighborhoods like mine, do not show people dignity because they are in places where people don't know them and they feel like they cannot be held accountable. That's it. And that's all. If they were in their own neighborhoods policing their neighbors, they wouldn't do the same thing. They wouldn't treat their neighbors kids the same way they treat kids from across town that they have never seen before.

I have decided to provide my statement because I want to change what interactions look like for the safety of my little cousins and son. My son is autistic non-verbal and would not listen to a police command. I know that police harm those who do not take their commands. I have to do what I can to make it better so he is never in a situation where he is harmed for just being him.

Criminal Legal System

ROBERT SALEEM HOLBROOK

Members of the Committee - my name is Robert Saleem Holbrook, I am the executive director of the Abolitionist Law Center.

I am here with a coalition of groups from across the U.S.— including people formerly sentenced to death-by-incarceration and their families. When I say death by incarceration, I am referring to life sentences— but I want to be clear that these sentences do not reflect any respect for life. They are just another form of a death sentence that treats human beings as disposable and deprives people of dignity and the right to redemption.

We are here this week to urge the Human Rights Committee to call on the U.S. to end its racially discriminatory practice of death by incarceration - as a violation of the international prohibition on torture. In the United States over 200,000 people are serving Death by incarceration sentences, 15% of the country's prison population. 46% are Black although only 14% of the total U.S. population is Black: *It's not a coincidence the majority of the people serving death by incarceration sentences in the United States are people of color because mass incarceration has its roots in the United States origins in slavery and settler colonialism and treating nonwhite peoples as disposable*

In 2009 the sentence of death by incarceration brought my sister to Geneva to advocate at the UN for the abolition of one form of DBI - life without parole sentences for children. In 2014 this committee recommended that the United States LWOP for children. My sister's advocacy and this Committee's recommendation is in part the reason I am able to be here today after serving 27 years in prison as a child lifer. But the United States still engages in this practice.

And fundamentally – it is urgent for the Committee to go further.

As the UN Expert Mechanism on Racism in Law Enforcement has recently recognized:

Any sentence that exceeds life expectancy—all life imprisonment, all death by incarceration—is cruel, inhuman and degrading, in violation of international human rights standards protecting life, liberty and against torture.

We urge this Committee to do the same.

This Committee has called for an end to the death penalty - life imprisonment is a form of the death penalty and must also be abolished.

We urge this Committee to hold the United States accountable to international human rights standards and ask the U.S.: What are state and federal governments doing to abolish death by incarceration sentences? Are governments repealing laws that permit or mandate this sentence? Will federal and state executive branches exercise their clemency powers to release people who are serving these sentences?

This demand for accountability is urgent - urgent to ensure our fundamental right to life, and our right to be free from torture and racial discrimination at the hands of our government.

Privacy, FOE, FOAA, GWOT

JAMES CONNELL

I am James Connell from the Military Commissions Defense Organization. Nothing I say represents the position of the Department of Defense.

Instead, I speak on behalf of Ammar al Baluchi and Mohammad Rahim, prisoners for over 15 years at Guantánamo Bay. The U.S. tortured Ammar in secret black sites for three and a half years before transferring him to Guantánamo. Ammar was tortured in CIA black sites not for information, but as a human training prop to allow new interrogators to obtain their certification to torture others. Rahim was the last man transferred from a CIA black site to Guantánamo, and remains the last Afghan at Guantánamo, a legacy of the abandoned war in Afghanistan.

I speak on behalf of Ammar and Rahim because they have been systematically silenced by the US. When Ammar sought to complain to the Committee Against Torture, the U.S. prohibited military commission defendants from corresponding with international bodies. When Ammar sought to describe his suffering at Guantánamo through art, the U.S. prohibited the release of art by prisoners. When Ammar sought independent medical evaluation through the humanitarian law-based Mixed Medical Commission process, the U.S. excluded Guantánamo prisoners from its protections. As recently as last week, a U.S. official testified in Guantánamo that every word Rahim utters is treated as classified on the basis of national security.

The U.S. seeks to execute Ammar, a civilian, after convicting him in an extraordinary military commission, and to detain Rahim indefinitely. The U.S. is using evidence derived from torture to support those efforts. Ammar, Rahim, and others like them in Guantánamo rely on this Committee to call for redress because they cannot.

HANNAH GARRY

Effective Remedies for Torture and Prolonged Arbitrary Detention of Individuals Subjected to the U.S. “Enhanced Interrogation Program”

Thank you distinguished Committee. My name is Hannah Garry, I am a professor of international law and executive director of the Promise Institute for Human Rights at UCLA Law.

Today, I bring this statement on behalf of my client, Mr. Abu Zubaydah, who calls for effective remedies for himself and others, including my client Mr. Bin Amin, subjected to torture and prolonged arbitrary detention as a result of the U.S. “enhanced interrogation program” following 9/11.

I am deeply aggrieved that Abu Zubaydah cannot speak to you himself because he has been detained by the U.S. government for a shameful 21.5 years without change, trial or even a habeas hearing, and is currently held at Guantánamo Bay.

Mr. Abu Zubaydah was the first victim of the U.S. torture program. He was the “test case” for psychologist contractors who developed brutal techniques used on over 100 other Muslim detainees. Abu Zubaydah was tortured at black sites in multiple countries, including prolonged confinement in a small box, waterboarding 83 times, isolation for 47 days, sleep deprivation, and sexual violence. Abu Zubaydah and other victims of torture suffer from severe physical and psychological injury, which Guantánamo’s medical facilities are inadequate to address.

This year, the UN Working Group on Arbitrary Detention (UNWGAD) declared that the treatment of Abu Zubaydah and other detainees may constitute torture and crimes against humanity. The UN Special Rapporteur on Countering Terrorism found that their treatment may amount to torture. And the Council of Europe expressed its ‘deepest concern’ about the ‘urgent humanitarian situation’ and the U.S. failure to implement two European Court of Human Rights Judgments condemning this torture.

There is no justification for torture under the ICCPR, full stop. I urge the Committee to note our shadow report and join the chorus of UN and European human rights bodies calling for an immediate end to this ‘flagrant denial of justice’ over decades. Further, please pose the following questions to the U.S. Government today:

Questions for the U.S. Government

1. What steps will the Biden Administration take to release Abu Zubaydah and other detainees without delay to safe destinations for rehabilitation?
2. Will the USG officially acknowledge its torture program, as has been by several U.S. Supreme Court Justices, federal courts and Congress?
3. Will the USG apologize to Abu Zubaydah and others it has tortured? To the American people whose tax money was used to inflict torture? To the victims of 9/11 where they cannot get justice because of torture tainted evidence?
4. What other concrete measures will the USG take to provide truth, reparations and guarantees of non- recurrence of torture?

Thank you.

MADISON MARKHAM

My name is Madison Markham, and I graduated from New College of Florida in May with a degree in Sociology and Gender Studies. New College is a public college in Florida that has come under attack by the state government, who seek to erase the college's progressive identity. Most students there chose New College because of its progressive and inclusive reputation.

In January 2023, the Florida government installed new leadership to orchestrate an authoritarian takeover of the institution that made myself, my peers and many of my professors feel unwelcome at the school. We felt unable to express any opposition to the takeover, fearing retaliation.

I spent my final semester balancing writing my honors thesis and organizing against the takeover alongside my peers. I saw college administrators and state officials denigrate my academic program, faculty, and peers. I had to change my email address after it was shared in an article accusing faculty of indoctrinating students, and I didn't publicly advertise my thesis defense to avoid the risk of negative attention and harassment.

As a Sociology and Gender Studies student, I felt my academic interests devalued. As a queer student, I felt unwelcome at the institution.

With support of the Florida government, the new leadership dismantled the campus diversity and inclusion office, eliminated the Gender Studies Program, eradicated gender-neutral bathrooms, denied tenure to well-qualified faculty, destroyed student murals, threatened to expel all student protesters, and more. Their actions have primarily targeted LGBTQ people, people of color, and religious minorities on campus.

Combined with legislation limiting academic freedom, the authoritarian takeover has caused nearly a quarter of returning students and one-third of faculty members to leave New College. If I had not graduated this year, I also would have transferred.

I – along with hundreds of New College students and alumni – believe that without action from the United States government, the takeover at New College will become a playbook for replication across the country.

Current and former Floridians have faced an array of human and civil rights violations that are already being copied in other states. During these sessions, you have heard about repression in Florida in the context of education, trans rights, protest and dissent, and other areas, issues where the federal government has yet to adequately intervene.

We urge you to please hold the United States accountable and ask what it will do to use all available means to protect freedom of expression and the “freedom to seek, receive and impart information and ideas of all kinds.”

RENEE O'CONNOR

My name is Renee O'Connor, and I am a proud educator in my 13th year of teaching in a predominately black high school in Miami Gardens, FL. A few years after I started teaching, I realized that most of my students knew very little about the important role Black Americans played in shaping America. Their experience with Black history was limited to 28 days in February—a time that we celebrate in the United States as Black History Month. After advocating for 2 years, I was finally able to teach an African American History course. Since developing the class, I have taught more than 2000 students and shared the curriculum with educators across the country.

Over the last year, the Florida government has instituted radical changes, forcing teachers to retract and in some instances erase what we teach in the classroom. This year, the Florida government banned the teaching of Advanced Placement African American History in Florida. This both harms Black students and delegitimizes the field of African American Studies.

For me, the biggest affront came this summer when new Florida curriculum standards around African American history were passed and included nonsense such as “slaves developed skills which, in some instances, could be applied for their personal benefit”.

I wouldn't even consider voicing that absurdity. Florida's current education climate is stifling, repressive and regressive.

Teaching African American history is not only about our attempt to reckon with the past and make sure the mistakes American made can never happen again, but it is a way to promote a more tolerant and just society - isn't this what America is all about?

As much as I love teaching, I can't be in the classroom right now. I am on sabbatical and not sure if I will return. I will not be a part of an education system that not only withholds the truth, but deliberately lies to their students.

This is my protest, by leaving the classroom I can speak out and fight.

Today, I urge you as members of this committee - to ask the U.S. government how they plan to make sure that teachers in Florida are granted their freedom of expression to teach the truth without fear of being targeted or losing their jobs.

Students in Miami, students in Florida and Students across the U.S. deserve to learn the truth about this country, even when these truths are uncomfortable.

AHMAD ABUZNAID

US Campaign for Palestinian Rights

Committee Members, I spoke to you yesterday about Israel's genocide against the Palestinian people and the U.S. government's complicity.

As the genocidal death toll continues to rise, well over 2000 Palestinians have been murdered, including over 1,000 children. And that's not counting the large amount of bodies that health officials in Gaza estimate are still laying under the rubble.

I know that it will take courage for one of you to raise U.S. complicity in your coming review of the U.S. If you need examples of the sort of courage you will need to muster, look no further than the Palestinian people. We are a people teaching life even as the Israeli regime tries to rob us of it. We are a people whose right to self-determination has been denied, but never defeated. We are a people that continue to stand up against injustice, even when we stand alone. I am the grandson of survivors of the first Palestinian Nakba in 1948, watching with all of you as another Nakba unfolds before our eyes. Like my ancestors, I refuse to be silent, regardless of the risk. I invite you to join me. I know that if such a body fails, in this particular genocidal moment, to reassert its commitment to the right to life, our collective humanity will be profoundly diminished.

I am also the Executive Director of the U.S. Campaign for Palestinian Rights, a national US-based Palestinian advocacy organization. As a result of our advocacy for Palestinian human rights, equality and justice, our organization was recently the target of an outlandish lawsuit accusing us, human rights defenders, of material support for terrorism – ironically, naming our support for the rights of Palestinians in Gaza. This is what we originally came to Geneva to talk about: how the terrorism accusation is used to smear Palestinians, dehumanize us, and silence us. And the U.S. laws and practices that criminalizes not only every form of Palestinian resistance to the status quo, but as we are seeing in the last week, threatens our very existence.

As U.S. politicians and mainstream media beat the war drums for genocide, repeat dehumanizing rhetoric and misinformation about our people - has not only emboldened Israel's genocidal acts, but has also had alarming consequences in the U.S. the Governor of Florida, my home state, has labeled all Palestinians as antisemites. In Chicago, a 6-year-old Palestinian boy Wadea Al Fayoume was stabbed to death, with his mother critically injured in the same attack. Yesterday a man in metro Detroit was arrested after he openly on social media tried to recruit others to join him in hunting down Palestinians in Michigan. During times like this, when coming together with the community is critical, we're seeing threats to our efforts to even be together: venues hosting Palestine events are receiving countless threats of disruption and violence. Parents are afraid to send their children to school.

The Committee must hold the U.S. accountable for both its complicity in this genocide, and for the dangerous domestic environment where my people cannot state our truth. We choose life, Members of the Committee, what do you choose?

Women's Rights

Speakers redacted.

Sexual and Reproductive Health Rights

KI'INANIOKALANI KAHO'OHANOHANO

Maternal health conditions in Hawaii are horrific.... Due to the diverse needs of each individual island and the challenges each island faces, there is much to consider, and solutions to access to

care for all pregnant people can be very challenging within the typical western medical system, which is often difficult to access, especially in rural areas. This combined with a patriarchal, Western oppressive medical system based in institutionalized racism, discrimination, and the discrediting of traditional practices which have carried our people through generations, add to the disparities that pregnant people face in Hawaii. For generations, the people of Hawaii have been oppressed and affected heavily by forced assimilation as a result of the illegal occupation of the Hawaiian kingdom.

Historically, we see that all of our religious, spiritual, healing practices, including but not limited to "hanau" (birth), were intentionally discredited and pushed underground for over a century, ultimately leading to almost complete erasure and loss of practice, as those who chose to practice were heavily scrutinized, attacked, persecuted, and sometimes worse. There is much documentation that shows how our kupuna,(elders) fought to protect our identity as Kanaka Maoli, as we continue to do today. It has been very difficult for us to maintain who we are as a people amidst the oppression and forced assimilation that has occurred and continues to occur, in our homeland. Our kupuna often would rather die than submit to those who came to destroy us as a people. For essentially 130 years, we have fought to maintain our identity, in an occupied Nation, where it has not been fashionable to be Hawaiian. The romanticized version the world knows of Hawaii, does not acknowledge this truth or the struggles of our people as we have been forced to become someone else's children.

I began my response with all of this as this is the foundation of where I believe are disparities in this maternal healthcare crisis stem from. As we all know, the United States is the most dangerous of all industrialized nations to give birth in. Native Hawaiians and Polynesian peoples suffer extremely high disparities. Maternal mortality rates for a native Hawaiians and Polynesian pregnant people, are 450% higher than white women in the United States, while 80% of all maternal deaths were deemed preventable. These numbers are derivative of a Western obstetric model that has encroached upon our people for generations. These numbers are higher than any other ethnic group in the United States. The lack of access to culturally competent maternal care, or any care at all in many cases due to lack of resources especially in rural areas add to these numbers. For instance, in Maui, where I reside, and have been offering traditional healing work, and traditional birth support for over 20 years in my community, we only have one hospital for all three islands which are considered Maui County. Our hospital does not have a NICU, and has very limited services. Our Cesarean rates are extremely high and our hospital does not offer vaginal birth after cesarean as an option often leading to forced sterilization after a third baby. There are many rural areas in which families must either drive if able, over 3 hours to see a doctor for prenatal and postpartum care. On the islands of Molokai and Lanai, which are part of Maui County, they are forced to leave home to receive care on Maui or Oahu, which is only attainable by plane or boat. This process of evacuation birth, displaces families from their homes, their support systems, and leaves them alone and vulnerable in one of the most important life experiences. This leads to many complications, and often they return home prematurely only to be transferred again if complications arise in the postpartum. In instances like these, the mother is the patient, and not the baby...this forces mamas and babies to be separated as early as three days postpartum, until mama is released to go home which could be a matter of days or weeks, interrupting crucial bonding time, and often making it hard to establish nursing and connection to their babies. This often contributes to difficult postpartum and increased postpartum depression.

These outcomes are a result of widespread inequalities in the U.S. both in and outside the healthcare system. Respectful maternity care is not the norm in the U.S. People of color are routinely subjected to discrimination including verbal abuse stereotyping etcetera in healthcare settings. The intense medicalization of birth in hospitals has contributed to environments where physicians and hospitals make a lot of decisions for patients and patients have little control and are denied informed consent and autonomy in their decision making.

In Hawaii, as well as globally, pregnant people seek out community-based midwifery care for a variety of reasons. Sometimes it's because they have had a negative traumatic experience in clinical setting and want more control over what happens to them and their body, but also because there are important joyful things, cultural/religious traditions meeting people where they are engaging whole families and community as support. Traditional midwives can also complement healthcare system by providing care for people that can't easily get to other settings, monitoring health and counseling people on what they may need to seek out different types of care, and interventions. We are not able to effectively accomplish collaborative care if traditional practitioners are made illegal. Native Hawaiian midwives have always existed as have midwives in other cultures but they are increasingly unsupported and even targeted throughout history as well as today.

For years, midwives have been pushed out of practice and many parts of the U.S. and continued to be further marginalized preventing them from working collaboratively with other parts of the healthcare system. After over a decade of fighting legislation which would criminalize traditional practices in Hawaii, a law passed eliminating cultural and religious midwives in Hawaii. As of July 1ST, 2023, after over 20 years of practice, for myself, and for some up to 40 years of practice, traditional midwives have been outlawed. We now face financial and criminal penalties. While the families that may choose us face possible repercussions such as CPS intervening as home birth without a license provider in Hawaii is not an option. This is not creating more safety and threatens traditions that are important for maintaining health in the context of colonization. The experience of Hawaiian, Pacific islanders, indigenous and black midwives, as well as the family's they serve, is important to share with international communities as they work to improve maternal health around the world as it demonstrates why technology and facilities aren't enough. The importance of including indigenous and marginalized communities and cultures in how we build health care systems, is vital. Consequences of ignoring issues of autonomy, equity, and culture, and only focusing on clinical factors and not incorporating human rights principles more holistically only add to higher disparities.

Pregnancy is a heightened state of wellness, not an illness. We were born to do this. Limiting choice and bodily autonomy goes against our basic human rights. We have brought these issues to the CERD committee in the past, and are here again to ask for support in our efforts to continue to heal our peoples disparities by reclamation of our traditional practices, which is statistically proven to lower disparities.

KWAJELYN JACKSON

My name is Kwajelyn Jackson and I am the Executive Director of Feminist Women's Health Center in Atlanta, GA, a small independent clinic providing abortion care in the Southern U.S. since 1976. I am here in Geneva to bring attention to the escalating public health and human rights crisis being worsened by the U.S. Supreme Court Dobbs decision that overturned Roe. The

ongoing attacks on bodily autonomy and self-determination affect the human rights of every person who has the capacity to become pregnant and have an ongoing impact on families and whole communities and their destinies -- especially the communities that have historically been forced to the margins. Because of the court's decision to roll back constitutional rights, we are regularly turning people away from the needed and necessary health care that we should be able to provide. As a Black woman living in the South who is a descendent of enslaved people, I have both witnessed and experienced the prolonged neglect, disregard, and harm that the U.S. has shown to our communities over multiple generations, ignoring our needs and denying us basic dignity in health care, education, housing, and so many other areas of life, while allowing systemic racism and unchecked white supremacist violence to flourish. Most of our patients are Black people, young people, queer and trans people, and especially, poor people, who are often already struggling to support the children they have, to keep them safe from violence in their neighborhoods and schools, to keep them fed and clothed, to keep them in childcare while they work, often multiple jobs to make ends meet, to protect them from police surveillance and state-sanctioned police violence, to maintain a safe warm place to live, to survive an ongoing pandemic. Some are trying to escape violence in their own homes and believe that this pregnancy might keep them in harm's way. Some are facing chronic conditions, mental and physical disabilities, that may be exacerbated by a continuing pregnancy, yet our experienced physicians cannot intervene on their behalf, without the risk of losing their licenses or facing incarceration. While our Black and Indigenous communities try to survive under inhumane conditions, many of the Southern and Midwestern states where they live have completely banned abortion care and criminalized pregnancy outcomes, while simultaneously being the epicenter of some of the worst maternal health outcomes in the US, where maternal death for our Black and Indigenous mamas continues to rise. Our staff must endure harassment and violent threats nearly every day from armed anti-abortion extremists who are allowed to gather at the foot of our driveway without fear of consequence. These conditions are unacceptable. The United States must be held to account and must enact system change at the municipal, county, state, and federal levels to truly disrupt the harmful and violent systems of oppression that continue to persist.

INAS-KHALIDAH

I stand here today as a Black mother and a survivor of childhood sexual abuse, who has experienced a diminished quality of care that did not recognize the pervasiveness of disrespect, sexual abuse and violence experienced by Black pregnant people. My positionality informs my work as a researcher, an anti-racism and respectful care trainer, a social epidemiologist, and doctoral candidate researching human rights and equitable outcomes for Black birthing people.

Because of my personal lived experience, I am very sensitive to intersecting oppressions, sexual abuse, and the heightened potential to aggravate post-traumatic stress disorder during perinatal care. My research centers on how Black women and birthing people experience care and what strategies center Black women as the architects of necessary solutions.

All of this may sound intuitive, however within the healthcare system, bodily autonomy is restricted, respectful care is virtually absent and Black women's knowledge of our bodies and experiences is routinely rendered less valid than those in positions of power. The result of which is the continued marginalization of Black birthing people, leading to disrespect, neglect, mistreatment and punitive measures meant to silence us.

In 2020, the U.S. had the highest rate of maternal mortality and morbidity among all high-income countries, with Black and Indigenous birthing people bearing the brunt of the impact. Black and Indigenous women and girls are experiencing sexual victimization at rates significantly higher than their peers. In fact, 60% of Black women in the U.S. report experiencing the violence and trauma of sexual assault and abuse before age 18. Sexual violence and assault survivors often suppress their sexual assault related trauma as a coping strategy. During pregnancy, childbirth, and breastfeeding periods, suppressed sexual trauma can be activated by the physiological processes of the perinatal period. Why then is this substantial violence ignored and/or minimized in communities, society, and maternal care facilities? This is only possible because Black women and girls' sexual abuse herstories have been frequently erased from mainstream consciousness.

As early as the capture and kidnapping of enslaved African women and girls, sexual abuse and violence perpetration against Black women and girls in the U.S. has been minimalized and disregarded as a critical issue in societal concerns. In fact, narratives detailing enslaved women and girls' experiences suggested, and oftentimes explicitly stated, that as a group, Black women were considered property and thus “unrapable.”

Additionally, stereotypes of Black women as lascivious, promiscuous, combative, unwomanly, domineering, and lacking in virtue flooded the American consciousness as a result of racialized narratives painted in American society. These narratives extend into present day with many survivors finding difficulty in making their sexual abuse claims heard by law enforcement, local authorities, and society at large.

The U.S. government has done little to address the persistent devaluation of Black women in social settings or through policy making, as evidenced by our current maternal health crisis. This narrative directly contributes to ongoing harm to Black women in their quest for human rights, dignity, respect and appropriate medical care.

The dominant culture of sexual and maternal health care is influenced by historical and ongoing medical racism and gender bias which contribute to the practices, health sciences, research and intervention development present across the public health landscape. While the literature tells us that reactivation of suppressed trauma, hypervigilance and anxiety about invasive medical procedures are normal among survivors, pervasive racist ideas about behaviors within medical care settings indicate that any behavior deemed “undesirable” is an act of aggression, non-compliance, or a safety concern.

Despite advancements in technology within healthcare settings, our system still doesn't prioritize equity or the humanity of the black/brown people, and we are forced to navigate health systems that dehumanize and discriminate against us. This is even more challenging for survivors of violence.

As a researcher and anti-racism, respectful care, and trauma informed trainer, what I have ascertained about our healthcare system is that it reflects social stratification, power over certain groups and ongoing racism, mistreatment, and degradation evident in other areas of our society, including education and economic access, and other opportunities for wellbeing.

Moving towards improvements in maternal mortality and morbidity must consider wellbeing, resist retraumatization just as much as the utilization of hemorrhage carts.

For far too long, Black women and birthing people have been either intentionally or unintentionally ignored in the creation of systems, policies, etc. It is time for health systems and practitioners to listen to the voices of the most marginalized for the purpose of bringing forth reproductive justice. The United States government has an obligation not just to lower maternal mortality but to also build a healthcare system that all people can rely on to meet their sexual and reproductive health needs and unfortunately that system does not yet exist for Black women in the U.S. There are many of us building a new system of care and the U.S. government should be reinforcing our work and prioritizing the leadership of communities disproportionately impacted by adverse maternal health outcomes, not reinvesting in the same structures that produced the harm in the first place.

The government must eliminate inequities in maternal health and ensure access to comprehensive reproductive health care by focusing and funding, policies, and programs on solutions and interventions that most affected groups want, need, and lead—including community-based midwifery and respectful and trauma-informed care in Black and Indigenous communities.

LGBTQI+ Rights

LORELEI LEE

Disabled Sex Workers Coalition, Sex Workers and Survivors United, Cornell Gender Justice Clinic

Dear Human Rights Committee members,

Thank you for this opportunity to send you these additional brief remarks on sex work and trafficking. We in Geneva, and our cohort in the United States are all incredibly grateful for the question you asked of the U.S. today on the profiling of transgender sex workers. As a trans, disabled, and nonbinary sex worker and survivor myself, the question resonated deeply for me. Sex workers, survivors, and sex working survivors almost all carry multiple and intersecting oppressions. Thus, our need for justice is shared with all oppressed and marginalized groups. Tragically, these intersecting oppressions we carry compound the stigma and isolation we already face as criminalized people.

It has taken me twenty-three years to make it to these rooms, here in Geneva, where the fights for justice and liberation are centered and seen. And today, between meetings, I sobbed for my beloved cohort members who – because of compounded stigma – are not alive to see the incredible progression we are making. I began to organize with my co-workers because it was the only thing that I could think to do to honor Sequoia, who was stabbed and killed by a client; Alexander, whose partner found him on the floor, having shot himself in the head; for August, who hung herself; for Dahlia, who shot herself; for Amber, who survived cancer, but not stigma; for Holly, who did not survive cancer because she had no healthcare; and for my childhood friend, Bella, who started doing sex work with me because, she said, “I wouldn’t let you do this alone,” and whose body was found in a hotel room, by police who they treated her like she was not even a person.

All of these deaths of people I worked with, laughed with, celebrated birthdays, loved. All of these deaths also preventable if we had actual access to both medical and physical, nonjudgmental healthcare. All of these deaths preventable if the United States would remove the isolating weight of criminalization that hangs on sex workers and trafficking survivors alike.

The criminalization that makes it unsafe for us to be outdoors, together, because we will become visible to them, but also, kills us, because to be hidden from police is to work alone, and sex workers and survivors equally cannot live without each other in a country whose laws encourage our neighbors, our police, and our families to look at us with only disgust and contempt. Like we are not even human. In these conditions, we do everything we can to take care of each other, but it is not enough.

The United States must transform their understanding of what trafficking and sex work actually are. They are simply the same work done under different conditions. They are two ends of a spectrum of control to lack of control over working conditions. And it is people in the sex trades, who in our current criminalized system are isolated, and who would, otherwise, be able to seek remedies to bad working conditions publicly, together.

Thank you so much for your time.

Disability Rights

VALERIE NOVACK

Thank you for the opportunity to provide additional context around the unique civil and human rights violations experienced by women and gender minorities with disabilities in the United States as they relate to their rights to bodily autonomy.

Women and gender diverse people with disabilities face significant barriers to accessing sexual and reproductive healthcare and continue to experience violations of their autonomy, particularly when under guardianship. Pregnant people with disabilities are at significantly increased risk of developing complications during pregnancy that may necessitate an abortion. but with the current legal reality, physicians are fearful to perform necessary abortions. Even before the recent Dobbs decisions reproductive and sex-based healthcare choice was limited for people with disabilities

For instance, while it is legal to forcibly sterilize disabled minors in 17 U.S. states.⁷³¹

- I myself, worked (and eventually gave up) attempting to get desired reproductive healthcare to avoid pregnancy due to disability for over a decade. I am privileged enough financially to afford to travel for abortion from my state should it become necessary for my health and safety. Many do not have this ability.
- A member of the U.S. Gender and Disability Justice Alliance, who uses a wheelchair and is in her 40s reports that she has never been screened for cervical cancer because she cannot find a OBGYN that has an accessible exam-table and equipment in her area . She has consistently been told that she must bring somebody with her to the exam to help with

⁷³¹ Id.

transferring even though this request is a violation of privacy. These barriers persist despite women with physical disabilities being at increased risk for cervical cancer.⁷³²

Current attempts to limit gender affirming care for trans and gender non-conforming people has had impact on disabled people with legal bills noting disabilities as a reason to deny access to healthcare.

- At least 3 states have explicit mentions of mental disability or autism in their restrictions and barriers to accessing gender affirming care.⁷³³
- As the autistic lawyer and activist Ma’ayan Anafi shared, “...when I was first seeking gender-affirming care, a doctor told me he wasn’t comfortable treating me because he didn’t think my autism was “under control.” Another provider, a therapist, refused to write me a letter supporting my treatment because of my disability. They weren’t the only medical professionals who doubted my gender identity or hesitated to provide me with gender-affirming care, and I soon learned that I had to hide or downplay my autistic traits to get the care I needed—something that many autistic people don’t have the privilege to do.”⁷³⁴

It is vitally important that the Human Rights Committee question the U.S. on the civil and political rights of people with disabilities. In particular, the effects of inaccessibility and guardianship on the rights of people with disabilities

Children’s Rights

JAMES DOLD

For the record my name is James Dold. I am a human rights lawyer and founder of Human Rights for Kids, a non-profit organization with consultative status that works to advance human rights protections for children in the U.S. consistent with Convention on the Rights of the Child and International Covenant on Civil and Political Rights. I am also a survivor of child sexual abuse and child labor trafficking. When I was 13 years old, I was abused and exploited by a volunteer parent in my Boy Scout Troop. I was groomed by this individual during the summer after my seventh grade year in middle school. The sexual abuse began later that fall and continued through my sophomore year in high school. During that time, I developed what clinician’s call a traumatic bond with my abuser, which is where a dysfunctional attachment occurs in the presence of danger, shame, or exploitation.

My abuser created a cycle of physical, emotional, and sexual abuse which was exacerbated by the inherent power imbalance between a young teenage boy and a woman in her late twenties. With the promise of love and protection, I was convinced to run away from my home and to live instead with her family. That is when, however, the abuse and exploitation worsened. The traumatic bond I developed in the face of persistent and repeated physical, emotional, and sexual abuse left me

⁷³² Jessica L. Gleason et al., Risk of adverse maternal outcomes in pregnant women with disabilities, 4 JAMA Network Open (2021).

⁷³³ <https://19thnews.org/2023/05/trans-laws-autistic-youth-mental-health/>

⁷³⁴ See” Ma’ayan Anafi, *It’s Time to Embrace Disabled Trans People*, NATIONAL WOMEN’S LAW CTR. (Mar. 31, 2023), <https://nwlc.org/its-time-to-embrace-disabled-trans-people/> citing Press Release, Office of the Attorney General Andrew Bailey, Missouri Attorney General Andrew Bailey Announces Emergency Regulation on Gender Transition Interventions for Minors (Mar. 20, 2023)

willing to do anything my abuser asked of me. She exploited this vulnerability and turned me into a live-in domestic servant where I cooked, cleaned, and took care of younger children in the house, while continuing to live through the cycle of abuse, trauma, and violence she had created to control me.

My personal experiences as a survivor, as well as my professional experiences as an advocate and human rights lawyer have given me a unique perspective into the human rights violations taking place against children in the United States, including those committed by the federal and state governments.

For example, despite the fact that federal law recognizes all children exploited in prostitution as victims of sex trafficking, many are still arrested and prosecuted across the country. Between 2010 and 2020, more than 6,200 children were arrested and prosecuted for prostitution and commercialized vice in the United States. Approximately 690 of these children were 14 years of age or younger.

The crimes that child sex trafficking victims are forced to commit are varied, but beyond prostitution, they can include both non-violent, as well as violent offenses.

Many are transferred to the jurisdiction of adult courts where they receive the same mandatory sentences that an adult would, including life imprisonment. Barbara Hernandez, for example, was just 16 years old when she was sentenced to life without the possibility of parole in Michigan. Barbara's trafficker used her as "bait" to lure 28-year-old James Cotaling to an area where he had planned to steal his car, but instead ended up killing him. Barbara, like so many sex trafficking victims, was forced by her trafficker to assist in the commission of a crime – a form of labor trafficking.

No child should be prosecuted for a crime they commit as a result of being trafficked. The criminal responsibility for every underlying offense a child trafficking victim commits rests solely with the trafficker themselves and not with the child. But the federal and state governments do not see it this way and continue to violate these children's human rights.

Instead of addressing underlying issues such as poverty, trauma, disability, or lack of social services, U.S. policies resort to incarceration as a solution for behavioral or social issues that marginalized children face. The U.S. must invest in support services, including mental health services, to not only promote the safety and well-being of our children, but to also prevent them from being pushed into the criminal legal system.

Non-citizen's Rights

No statements were given on this issue by civil society.

Human Trafficking and Forced Labor

LOTUS LAIN

Free Speech Coalition, DecrimSexWorkCalifornia, Sex Workers and Survivors United

It's only fitting that I, the Black Femme Sex Worker, be the last speaker being heard here today. Oftentimes people like myself are spoken over, spoken for and not ever even considered to be seen and heard, so I thank you for your time. Sex workers and sex trafficking survivors, experience such a huge amount of financial discrimination it often leads towards our vulnerability to more trafficking.

Any association a person has with the sex industry — such as participation in the adult industry or being a sex educator, or even having been a survivor of prior trafficking, can get us barred from having personal bank accounts, business accounts or can get our bank accounts shut down out of the blue without any explanation or opportunity for revival. This also happens with financial apps like PayPal and Square. Credit card companies like Visa and Mastercard can set the tone for how one expresses themselves with their own bodies online in the safety of their own homes. Discrimination in the financial sector means anyone involved in the sex industry is at constant risk of being "outed" and losing not only our bank accounts but our ability to pay rent, buy food, have healthcare or care for our families— which all lead to vulnerability to human trafficking. Lack of access to banking gives someone else control of our money, which leads to actual vulnerability to trafficking.

Most people think they want to stop sex trafficking, but that would require them to stop excluding us sex workers from participating in mainstream society. For anyone who cares about stamping out human trafficking, then listen to the voices of sex workers and survivors. We implore you to STOP the rampant banking discrimination, STOP the employment discrimination, STOP housing discrimination — all of which, keeps us vulnerable to human trafficking. Keeping us on the margins of society puts us at financial risk for trafficking. Existence in the margins is where those with ill intent wait to exploit and abuse us. Sex work is only dangerous because of the way society treats our work and us. A lot of good can be learned from listening to sex workers and survivors, united.