

# **The United States of America**

## **Summary Submission to the UN Universal Periodic Review**

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**Submitted by:**

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## **EXECUTIVE SUMMARY**

This joint submission filed by the U.S. Human Rights Network (USHRN), a coalition of civil and human rights organizations and advocates from across the country, provides information under Sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review (UPR). The USHRN recognizes the positive steps the U.S. government has made towards the advancement of human rights, but remains concerned about the large number of individuals whose fundamental rights as provided for under the Universal Declaration on Human Rights (UDHR) remain unprotected, and the racial, ethnic, and gender disparities that persist in the enjoyment of those rights.

- Section B examines existing frameworks in the U.S. for protecting and promoting human rights, and raises concerns about the lack of adequate mechanisms available to ensure the full implementation of the human rights provided for under the UN Charter, the UDHR, and the human rights treaties the U.S. has ratified, and addresses the need for the U.S. to ratify several additional core human rights treaties.
- Section C highlights some shortcomings in the U.S.' implementation of its human rights obligations, including its obligation to take affirmative measures to combat and redress discrimination and the historical vestiges of racism, and the need to do more towards the achievement of economic, social and cultural rights.
- Section D highlights a number of recommendations for actions the U.S. can and should take to protect and promote the rights contained in the UDHR and in fulfillment of its human rights treaty obligations. More detailed and comprehensive recommendations for action are provided in each coalition stakeholder report submitted in conjunction with this overarching report.

The USHRN recognizes the U.S. Government's efforts to engage civil society in onsite consultations, or listening sessions, throughout the country from February through April of this year as part of the UPR. While these consultations, the first of their kind, represent a positive step toward engaging with civil society in the U.S., they brought into sharp focus the need for ongoing open and transparent dialogue among members of affected communities and representatives from the federal, state, and local agencies, to collectively develop and implement durable solutions to the human rights concerns raised in this UPR process and beyond. In demonstrating its commitment to human rights and to inclusive and meaningful participation of civil society, we call upon the U.S. to recognize and act upon the need for: greater transparency in the selection of locations and agenda setting for the consultations, and more advanced notice to allow for more a more fully-participatory and inclusive process.

### **B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE**

1. Despite having played an active role in the creation of the United Nations, and the drafting of the UN Charter, the Universal Declaration on Human Rights, and the core international human rights treaties of the U.N., the U.S. has failed to ratify a significant number of those human rights treaties.<sup>1</sup> The U.S. remains alone in the international community in its failure to signal intent to ratify the Convention on the Rights of the Child (CRC), and stands with just Iran, Somalia, Sudan, Nauru, Palau, and Tonga as the only countries to have not ratified the Convention on the Elimination of

Discrimination Against Women (CEDAW). While we commend President Obama for signing the Convention on the Rights of Persons with Disabilities (CRPD), it too lingers without ratification.

2. The U.S. has also failed to ratify the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This failure, coupled with the non-ratification of CEDAW and the CRC, both of which include substantive economic, social and cultural rights protections, reflects a deeper failure to recognize and protect core economic and social rights. Ratification of the ICESCR would serve as an important demonstration during a time of economic crisis of its commitment to those core rights, including the right to housing, education, health, work, and social security.
3. For those treaties it has ratified, the U.S. has adopted broad Reservations, Understandings, and Declarations (RUDs) significantly undermining their effectiveness. While Article VI of the U.S. Constitution incorporates ratified international treaties as part of “the supreme Law of the Land,” the U.S. has taken the position that treaties are non-self-executing, and without the passage of implementing legislation, treaties such as the ICCPR and the ICERD remain unenforceable in U.S. courts. The U.S. has further hampered the realization of the rights contained therein by issuing as part of its regular package of RUDs a declaration that the federal government will only implement the treaties to the extent that it “exercises jurisdiction” over the treaty provision, raising federalism as a barrier to effective implementation at the state and local level. While U.S. domestic law is consistent in many ways with the standards set forth in the treaties, as the U.S. government repeatedly asserts, particularly with regard to civil and political rights, significant gaps persist in both law and practice between domestic law and our obligations under international treaty law, as discussed below.
4. The U.S. has historically relied on its RUDs and on claims that domestic law is largely in compliance with treaty obligations, to the detriment of the advancement of human rights. This is particularly true with regard to the U.S. failure to effectively combat discrimination, racism, and xenophobia. As the CERD reiterated in its most recent review of the U.S., antidiscrimination laws do not fully recognize the scope of racial discrimination as defined in Art. 1(1) of the ICERD, and specifically reminded the U.S. of ICERD’s requirement that States parties “prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.”<sup>2</sup> Recognizing the interdependence of rights, as is highlighted in the shadow reports submitted during the 2008 CERD Compliance Review, and as is reiterated in the CERD Task Force’s Report and those of many of the other Joint Reports submitted for this UPR, the failure to combat and redress *de facto* as well as *de jure* discrimination, has resulted in great disparities in the fulfillment of the promise of the range of rights articulated under the UDHR and our other treaty obligations.
5. Further hampering the advancement of human rights in the U.S. is the lack of an independent human rights commission to monitor compliance with human rights standards or an effective mechanism designed to ensure a coordinated approach towards the implementation of human rights at the federal, state, and local level.

## **C. PROMOTION AND PROTECTION OF RIGHTS ON THE GROUND**

### Equality and Non-Discrimination

6. Discrimination permeates all aspects of life in the U.S., and extends to all communities of color, and when coupled with discrimination on the basis of gender, sexual orientation, disability, or other bases, can have a devastating impact on the full panoply of fundamental rights provided for under

the UDHR. The U.S. response to Hurricanes Katrina and Rita bring into sharp focus the ways structural racism impacts all aspects of human security, from housing, food, employment, education, health, and environmental justice.<sup>3</sup> Unfortunately, courts narrowly interpret anti-discrimination laws, laws that themselves define discrimination more narrowly than international law. While some state and local laws provide protections on the basis of sexual orientation and sexual identity, those protections do not exist at the federal level. The limited bases upon which an individual is protected and may seek redress for discrimination falls short of the U.S.' obligations under the UDHR, ICCPR, and ICERD. Each of these provide protections from practices that result in discrimination, not just those undertaken with discriminatory intent and recognize the need to protect against discrimination on the basis of a broader range of categories, including language, property, birth, or "or other social status."

7. The result is a highly stratified society in which, for example, persons of color continue to live in isolated, segregated communities, and have been disproportionately affected by the current mortgage and foreclosure crisis.<sup>4</sup> Gross disparities in the U.S. educational system are the direct result of inequalities and discrimination in housing, compounded by judicial restrictions on affirmative action policies aimed at redressing structural racism and historical discrimination, lack of programming for English Language Learners, excessive and discriminatory school discipline, a persistent achievement gap, and use of restraints and seclusion in the school system as a means for "intervention" for children with disabilities.<sup>5</sup> The effects of excessive and discriminatory school discipline policies follow persons of color and sometimes directly result in discriminatory treatment in the criminal justice system which incarcerates African Americans and Latinos at rates far greater than Whites, due partly to ongoing racial profiling and discriminatory sentencing policies.<sup>6</sup>
8. Discrimination and segregation in housing and education, combined with discrimination in our criminal justice system, all contribute to inequalities in employment and discrimination in the enjoyment of the right to decent work. Discrimination in the employment opportunities and in the right to decent work persists because of relatively narrow and narrowly-interpreted anti-discrimination laws, denials of employment on the basis of criminal histories, and whole categories of workers who are disproportionately persons of color who are statutorily excluded from workplace protections.<sup>7</sup>
9. Race-based physical health disparities persist in the U.S. As is noted in the Joint Submission on the *United States and its Treaty Obligations to Eliminate Racial Health Disparities*, despite the U.S. obligation to "undertake to prohibit and to eliminate racial discrimination in all its forms" including in the right to "public health" and to "medical care," under Article of ICERD, "Racial and ethnic disparities in health outcomes in the U.S. are caused not only by structural inequities in our health care system, but also by a wide range of social and environmental determinants of health."<sup>8</sup> This is particularly true in the case of persistent racial disparities in reproductive and sexual health, as well.

#### Right to life, liberty, and security of the person

10. The U.S. persists in its imposition of the death penalty, and in doing so, has failed to meet its international legal obligations in four major ways: (1) the discriminatory and arbitrary imposition of the death penalty; (2) lack of compliance with the International Court of Justice's judgment in *Avena and Other Mexican Nationals*; (3) the execution of persons with mental disabilities; and (4) inhuman and degrading conditions of death row facilities.<sup>9</sup>
11. With regard to the treatment of persons with disabilities, Americans with disabilities experience daily

human rights violations, including involuntary euthanasia, forced psychiatric treatment, and forced institutionalization, which destroy their quality of life when not causing death outright. These acts violate virtually every article of the UDHR (and corresponding provisions of the ICCPR, CAT and CERD), specifically: Article 2 (non-discrimination); Article 3 (life, liberty and security of person), Article 5 (prohibition of torture and cruel, inhuman and degrading treatment), Article 6 (recognition as a person before the law), Article 7 (non-discrimination), Article 9 (prohibition of arbitrary detention), Article 12 (prohibition of interference with privacy and home), Article 13 (freedom of movement and residence), Article 18 (freedom of thought), Article 22 (realization of rights indispensable for dignity and free development of the personality) and Article 25 (adequate standard of living for health and well-being).<sup>10</sup>

#### Administration of justice, including impunity and the rule of law

12. The U.S. continues to fall short of its human rights obligations in the administration of justice, particularly in relation to: racially disparate sentencing, sentencing of juveniles to life without parole, and collateral consequences of felony convictions; conditions of confinement that violate incarcerated women's reproductive rights, and rights of prisoners with psychosocial disabilities; treatment of individuals in supermax facilities; and, treatment of political prisoners. Furthermore, the Prison Litigation Reform Act presents significant barriers to prison oversight.
13. Racial profiling persists in the U.S. where policies and programs that allow for, or incentivize the use of racial profiling in criminal, immigration, and national security law enforcement proliferate, despite U.S. obligations under the ICERD, the ICCPR, and the UDHR to ensure the non-derogable right of all people under its jurisdiction to be free from discrimination.<sup>11</sup>
14. Dozens of political prisoners who were victimized by the U.S. government's political repression against African-Americans, Puerto Ricans, and Native American communities continue to languish in prison and endure solitary confinement, poor medical health care, various other forms of abuse, and perfunctory parole hearings resulting in routine denial of release. These violations have repeated themselves in the post-9/11 era under the guise of national security.<sup>12</sup>

#### Freedom of expression, association, and peaceful assembly, and the right to participate in public and political life

15. **Freedom of Expression and Association:** As is addressed in greater detail in the joint submission by charitable, development, grant-making, faith-based and peace-building organizations, U.S. security laws and policies create unnecessary and unreasonable barriers to the legitimate activities of civil society organizations.
16. **Freedom of Association:** As is detailed in the joint submission on labor rights and below, the rights of workers to engage in freedom of association and collective bargaining is severely hampered by statutory exclusions from protections to said rights, as well as procedural and other barriers to the protection and promotion of those fundamental rights.
17. **Right to participate in public and political life:** As is detailed in the report on criminal justice and right to work, collateral consequences of criminal convictions interfere with individuals rights to vote, and to obtain decent work. Residents of the District of Columbia remain disenfranchised, without a vote in Congress.

Right to work and to just and favourable conditions of work<sup>13</sup>

18. While the U.S. has recently undertaken renewed efforts to secure workplace rights and reduce unemployment at the aggregate level, the prevalence of exploitative, subsistence-only jobs combined with persistent unemployment rates.
19. **Employment promotion measures have not yielded a sufficient number of jobs for jobseekers:** Recently, the American Recovery and Reinvestment Act (ARRA) has created and saved jobs, and extended benefits to vulnerable populations, but did not employ direct employment programs to create new jobs.
20. **Anti-discrimination laws do not fully comply with ICERD:** The U.S. has a number of laws that protect against discrimination in employment, however, the definition of discrimination in current law does not meet the standard in Article 1 (1) of ICERD, and is inadequate in addressing policies and practices that appear neutral but put people of particular racial, ethnic or national origin at a disadvantage compared with other persons in the enjoyment of the right to work. For example, most state laws allow employers to refuse to hire people with a criminal record including people who were arrested but never convicted.<sup>14</sup> Given the persistent practice of racial profiling, and disproportionate arrest based on race, this practice has a disproportionate negative effect on African Americans. In application, Title VII of the Civil Rights Law of 1964, which prohibits employment discrimination, does not apply to employers with less than 15 employees, and thus sectors that tend to have fewer employees are *de facto* excluded.<sup>15</sup>
21. **Insufficient workplace accommodation for pregnancy and parenting:** The Pregnancy Discrimination Act offers incomplete protection for pregnant women in the workplace, because federal courts have interpreted the Act narrowly, leaving many allowable grounds to fire a pregnant worker.<sup>16</sup> Furthermore, the U.S. is the only industrialized country with no mandated maternity leave policy. The Family and Medical Leave Act guarantees up to 12 weeks unpaid leave for some workers, but because it is unpaid, many workers cannot afford to take advantage of it.<sup>17</sup>
22. **Federal labor laws exclude many low-wage workers:** Domestic workers, agricultural workers, and independent contractors—workers who are often low-wage, and predominantly women and racial/ethnic minorities in the case of domestic workers—are exempt from the full protection of labor laws creating uneven standards across labor sectors.<sup>18</sup> The Fair Labor Standards Act (FLSA), which establishes minimum wage and overtime pay guidelines, excludes live-in domestic workers.<sup>19</sup> As a matter of policy, the Occupational Safety and Health Act (OSHA) excludes domestic workers, depriving them of the right to a safe and healthy work environment, among other rights.<sup>20</sup> Furthermore, because labor laws assign rights to “employees” —a status narrowly defined—employers often misclassify employees as independent contractors or subcontractors denying them workplace protections.<sup>21</sup>

23. **Inadequate protection of the of basic workplace rights:** The absence of public oversight in high-violation industries has precipitated the lowering of standards in the labor market as a whole. The few existing legal protections against workplace violations are not adequately enforced.<sup>22</sup>
24. **Inadequate protection of right of association:** The National Labor Relations Act (NLRA) is intended to encourage collective bargaining, however its provisions only apply to the private sector, offer inadequate protection for workers, and are poorly enforced. In violation of obligations in article 22 of the ICCPR, there are five states<sup>23</sup> that completely prohibit collective bargaining in the public sector. In North Carolina, where the ILO has issued a decision asking the federal government to take steps to repeal the ban on collective bargaining<sup>24</sup>, groups contend that ban<sup>25</sup> has made it difficult to combat race and sex discrimination in the workplace.

Right to social security and adequate standards of living, including rights to health, health care, and housing

25. The U.S. has not yet fully recognized economic and social human rights, including the rights to social security and adequate standards of living, nor does it protect and fulfill these rights. This human rights denial negatively impacts the entire U.S. population resulting in high income inequality and poverty rates, and lack of adequate social safety nets.<sup>26</sup>
26. **Right to Social Security:** In the U.S. the human right to social security, which ensures the basic resources necessary for a life with dignity, is not sufficiently protected. Social policies assume that a basic income can be generated from work, and fail to provide adequate supports to meet fundamental needs and prevent poverty. The U.S. has far greater income inequality than all Western democracies,<sup>27</sup> and the second-lowest rate among OECD countries for reducing inequality through public cash transfers.<sup>28</sup> Consequently, the official poverty rate in 2008 was 13.2%,<sup>29</sup> but around 30% of the population lacks an adequate income to meet basic needs.<sup>30</sup> As a result, around 58 million people face either food or energy insecurity, or both.<sup>31</sup> Poverty has been thoroughly racialized and feminized, with 24.7% of African Americans and 14.5% of women living below the federal poverty level, compared to 10.5% of Whites.<sup>32</sup> The U.S. makes limited benefits available in a very selective way, for special eligible groups only. The sole universal benefit is mandatory public retirement insurance through the tax-funded Social Security program of 1935, which only provides income near the federal poverty level. Employment related benefits are difficult to claim and inadequate to meet needs, yet few benefits exist independent of work, apart from a growing Supplemental Nutrition Assistance Program (known as food stamps). Since the legal right to welfare was ended in 1996 and replaced by Temporary Assistance for Needy Families (TANF) for women with children, the number of recipients has decreased by a third to around 2 million, leaving many poor families entirely disconnected from support.<sup>33</sup>
27. **Right to health.** The U.S. is the only high-income country without a universal health care system, even after recent reform efforts. Instead the U.S. has a highly commercialized, market-based system that relies predominantly on for-profit, private health insurance companies that are then publicly

subsidized. 101,000 people are estimated to die each year because of the way the health system is organized,<sup>34</sup> and 45,000 deaths per year are attributed to the lack of health insurance.<sup>35</sup> Yet having insurance coverage does not guarantee access to care: at least 25 million people are underinsured and likely to forgo care due to high deductibles and co-pays.<sup>36</sup> The U.S. also has fewer doctors and nurses than other high-income countries, and a less developed primary care infrastructure.<sup>37</sup> In addition to these burdens, women who seek reproductive healthcare services including abortion are further limited by state and federal laws obstructing access, discriminatory restrictions on funding and government failure to curb extreme private conduct designed to intimidate women and health care providers. In international comparison, the U.S. has some of the worst health outcomes among high-income countries, including high infant mortality and low life expectancy rates, despite spending more than twice as much on health care as any other country.<sup>38</sup> Unfortunately, the health reform law of 2010 continues to rely on the market-based system that has resulted in these failures, and access to health care will continue to depend more on a person's ability to pay than their health needs.

28. **Right to housing.** Despite receiving findings and recommendations on its failure to fully uphold the right to housing from numerous UN human rights monitors over the past four years, including a comprehensive report from the Special Rapporteur on the Right to Adequate Housing in 2010, the U.S. has taken no specific steps toward addressing the concerns raised by these bodies. While the U.S. dedicates significant resources to supporting homeownership and private development, these investments have hampered rather than furthered the human rights obligation of meeting the housing needs of all. Government policies have created the current housing crisis – which precipitated the 2008 global financial crisis – through deregulating mortgage lending, disinvesting in public housing and other affordable housing programs.

Right to education and to participate in the cultural life of the community<sup>39</sup>

29. Among the spectrum of social and economic rights, only the right to education has received some formal recognition in the U.S., primarily in state constitutions.<sup>40</sup> Consequently, primary and secondary schools are largely public and free, although post-secondary education is treated as a privilege with increasingly high fees attached. The U.S. scores poorly on access and quality indicators, with the lowest ranking of 28 high-income countries measured for secondary school enrollment math and science test performance.<sup>41</sup> Around 1.3 million children drop out of school each year,<sup>42</sup> more than 3.3 million are suspended and 102,000 expelled.<sup>43</sup> High stakes testing, lack of adequate funding, and zero-tolerance discipline policies, including jail-like environments with armed police officers, deprive many children of their right to education and dignity and push young people out of school.
30. The U.S. education system is highly segregated, stratified, grounded in a competition-based achievement model that is increasingly pursued through privatization – such as the creation of publicly funded but privately run charter schools – while public schools in low-income communities and communities of color suffer from underfunding, overcrowding, and forced closures, resulting in gross disparities in educational opportunities for students of color. More than half of African American male students and more than one third of Latino male students do not complete high school on time,<sup>44</sup> exemplifying severe educational disparities.<sup>45</sup>

### Indigenous peoples

31. The U.S. has not endorsed the UN Declaration on the Rights of Indigenous Peoples, and has not taken satisfactory measures to address the CERD 2008 concluding observations and recommendations vis-à-vis Indigenous, or those made by the Human Rights Committee in its 2006 review. The CERD specifically raised concerns about: the incidence of rape and sexual violence experienced by American Indian and Alaska Native women; reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining and logging, carried out or planned in areas of spiritual and cultural significance to indigenous peoples, and noted the negative impact those activities have on rights of indigenous peoples under Articles 5(d)(v), 5(e)(iv), and 5(e)(vi) of ICERD. The Human Rights Committee raised concerns about the lack of action on the part of the U.S. to ensure judicial protections against the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs, and urged the U.S. to secure the rights of all indigenous peoples under Article 1 and 27 of the ICCPR to provide for greater participation and influence in the decision-making affecting their natural environment, means of subsistence, and culture.

### Migrants, refugees and asylum-seekers<sup>46</sup>

32. The U.S. immigration system, while generous in many ways, is riddled with systemic failures to protect human rights. Some violations result from the statutory framework itself, while others are a matter of administrative policy or agency practice. The massive expansion of the immigration enforcement system has tremendous implications on the protection of the rights of non-citizens. According to a 2010 report, in fiscal year 2008 Department of Homeland Security officers apprehended at least 791,568 noncitizens; initiated 291,217 removal proceedings, detained 378,582 noncitizens, deported 358,886 noncitizens including 113,462 people through expedited removal.<sup>47</sup> Similarly, problems with the asylum and refugee protection systems have resulted in denial of protection to thousands of *bona fide refugees*. Finally, the U.S. regularly fails in its obligation to consider the unity of the family in its immigration laws, policies, and practices.

## **D. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

**The US Human Rights Network calls upon the government to take the following actions:**

33. ***With regard to the normative and institutional framework for addressing human right:***, to take immediate steps to ratify key international human rights treaties as laid out in the joint submission on *Treaty Ratification*; to endorse the Declaration on the Rights of Indigenous Peoples; to interpret the rights contained within ratified treaties in line with international human rights standards, including protections of economic, social and cultural rights; to remove any RUDs that undermine compliance with, or violate the object or purpose of, treaties; to adopt implementing legislation and optional protocols to ensure treaties are enforceable and that domestic law is in full compliance with treaty obligations; and, establish federal mechanisms to ensure comprehensive coordination and monitoring of treaty implementation and federal, state and local compliance with international human rights obligations.

34. ***With regard to its obligations to take affirmative measures to combat discrimination in all of its forms, and the right to equality and non-discrimination:*** adopt a National Action Plan on Racial Discrimination in line with the Vienna Declaration and Programme of Action, aimed at reducing disparities, that incorporates accountability measures; to encourage federal and state jurisdictions to adopt such plans and create inter-agency working groups to oversee their implementation; to ensure compliance with the obligations under ICERD, and adopt where necessary a definition of discrimination that complies with the definition found in article 1 of ICERD and General Recommendation XI, and implement a process by which policies and practices are reviewed for discriminatory impact; and ensure implementation of CERD recommendations from 2008; strengthen civil rights agencies' capacity to investigate racial or ethnic disparities in the enjoyment of the full range of rights provided for under the UDHR, including health, reproductive and sexual health, housing, education and employment.
35. ***With regard to the right to life, liberty, and security of person:*** immediately adopt a moratorium on executions as well as on the imposition of new death sentences until it revises its laws and practices that currently allow for the discriminatory and arbitrary application of the death penalty and the execution of prisoners with mental disabilities; implement the ICJ judgment in *Avena* by any means necessary, including Congressional legislation; revise its laws to prohibit the imposition of the death penalty against those with mental disabilities; and, review conditions of detention on death row and ensure that death row inmates are provided with access to educational opportunities, sufficient means of exercise, and occupational training; end the institutional bias in services for people with disabilities, and abolish civil commitment, allowing people to live freely in communities of their choosing; provide support, voluntary treatment and reasonable accommodation to prisoners with psychosocial disabilities; seek an end to racial discrimination within psychiatric systems; ensure educational opportunities for children and youth, but generally for all people in institutions; ban the practice of electroshock, forced drugging, restraints, seclusion, and aversives on people who are children, adults and seniors; and take steps to end all forms of physical, sexual, emotional, and psychological abuse and rape of all people using services for people with disabilities.
36. ***With regard to the administration of justice, including impunity and the rule of law:*** within the criminal justice system, take immediate action to ensure the criminal justice system complies fully with international treaty obligations under the CAT, the ICCPR, and the ICERD; ratify the Optional Protocol to the CAT, and ratify CEDAW, CRC, and CRPD; and seek enactment of legislation aimed at curtailing and redressing prison abuses. Furthermore, the U.S. should take immediate action to prohibit the practice of racial profiling by federal officers and banning practices that disproportionately target people for investigation and enforcement based on race, ethnicity, religion or national origin; rescind the 2002 DOJ Office of Legal Counsel (OLC) "inherent authority" memo that reversed historical trends to keep state and local law enforcement out of federal civil immigration work and issue a new memo clarifying that state and local law enforcement agents may not enforce federal immigration laws absent formal authority granted to them by the federal government; terminate the 287(g) program and all other federal immigration enforcement programs that rely on state and local criminal justice systems; and terminate the NSEERS program and repeal related regulations, and provide redress for those deported for lack of compliance with NSEERS but otherwise had an avenue for relief.

37. ***With regard to the right to work and to just and favourable conditions of work, including the right to freedom of association and collective bargaining:*** monitor job creation associated with the recovery to ensure that jobs are of decent quality and employment opportunities are provided in a non-discriminatory and gender-sensitive way, ensuring that current and future budget allocations, including fiscal stimulus funds, should go towards the creation of new employment that specifically includes women, people of color, and other economically marginalized groups; increase and index the minimum wage and move toward guaranteeing a living wage for all; place human rights conditions on subsidies for private job creation and private development; increase direct jobs creation based on human rights principles; strengthen administrative, legal, and legislative infrastructure to eliminate institutional barriers that have traditionally limited racial and ethnic minorities from accessing good jobs, and to ensure equal realization of the human right to work; adopt and enforce legal protections for basic rights at work, increasing public oversight in high-violation industries; cooperate with workers' groups to hold corporations accountable, and to develop and enforce employment regulations.
38. ***With regard to the right to social security and adequate standards of living:*** ensure a proper social support system is available for workers so that an adequate standard of living may be maintained by low-wage workers and in the event of unexpected unemployment or incapacity; ensure that public resources are used wisely to meet urgent needs by implementing the already-authorized single-family home disposition program to make for foreclosed homes owned by the government available to house homeless people, expand the types of properties available under the base closure and other federal vacant property programs, and create financial and tax-based incentives for state and local vacant property programs; stop the decrease in the number of available public and subsidized units even as the demand increases by mandating one-for-one and like-for-like replacement of lost subsidized units, and by providing incentives and subsidy structures to enable private owners to more easily continue participation in subsidized housing programs; and, protect homeless and low-income people from discrimination by creating federal protections against source-of-income housing discrimination; remove lifetime bans from subsidized housing for minor arrests; and ensure that localities that receive federal funds do not criminalize sleeping or conducting other life activities outside when there are no available shelter spaces.
39. ***With regard to education:*** Preserve education as a public good, invest in public schools based on need, and stop privatization where it exacerbates stratification and segregation; end school push-outs and instead provide learning environments that protect dignity, foster children's full development, and ensure a quality education for all children; and, eliminate funding disparities by ending schools' dependence on local property taxes; implement the recommendations of CERD regarding school segregation and discrimination in educational opportunities.
40. ***With regard to indigenous peoples:*** endorse, support and implement the UN Declaration on the Rights of Indigenous Peoples, and use it as a guide for interpretation of legally binding obligations regarding the implementation of the ICERD vis-à-vis Indigenous Peoples; establish new, effective, just and fully participatory mechanisms for addressing violations of the Treaties and other cases of land and resources rights as well as protection of sacred sites (based on both the 2006 Human Rights Committee and the 2008 CERD recommendations first sentence above); ensure the basic needs for health and well being, including housing, food, education; respect the right to self-

determination and subsistence of indigenous peoples as provided for under ICERD, as well as the cultural rights of indigenous peoples, as guaranteed under Article 27 of ICERD.

41. ***With regard to Migrants, refugees and asylum-seekers:*** reform U.S. refugee and asylum system to ensure that the U.S. meets obligations under the 1951 Convention, and, in particular, elimination of the one-year filing deadline for asylum claims and the elimination of the Tier 3 “terrorism” category; reform the immigrant detention system to end arbitrary detention and ensure that all those who are detained are afforded humane treatment which recognizes their inherent human dignity; and reform the U.S. immigration system to ensure that the ICCPR’s obligation to due process and to protect family unity is met, including immediate passage of legislation ensuring protection of family unity in deportation cases.

<sup>1</sup> See Joint Submission on *Treaty Ratification and Implementation* for a more in depth discussion.

<sup>2</sup> CERD/C/USA/6, para. 10.

<sup>3</sup> See Joint Submission, *The Human Rights Crisis in the Aftermath of Hurricane Katrina*.

<sup>4</sup> See the following Joint Submissions for greater details regarding inequality and discrimination in housing: *From Civil Rights to Human Rights: Implementing U.S. Obligations under ICERD*; *Right to Adequate Housing in the United States*; and, Joint Submission on *Racial Discrimination*, submitted by the Lawyers Committee for Civil Rights, et al.

<sup>5</sup> See the following Joint Submissions for greater details regarding inequality and discrimination in education: *From Civil Rights to Human Rights: Implementing U.S. Obligations under ICERD*; *Right to Education*; and, *Racial Discrimination*, submitted by the Lawyers Committee for Civil Rights, et al.

<sup>6</sup> See the following Joint Submissions for greater details regarding inequality and discrimination in criminal justice: *From Civil Rights to Human Rights: Implementing U.S. Obligations under ICERD*; *Criminal Justice*; *The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion, and National Origin*; and, *Racial Discrimination*, submitted by the Lawyers Committee for Civil Rights, et al.

<sup>7</sup> *From Civil Rights to Human Rights: Implementing U.S. Obligations under ICERD*; *Right to Work*; *Migrant Labor*; *Labor Rights*, and, Joint Submission on *Racial Discrimination*, submitted by the Lawyers Committee for Civil Rights, et al.

<sup>8</sup> Joint Submission on *United States and its Treaty Obligation to Eliminate Racial Health Disparities*, at para. 7. See full submission for more information on discrimination in health and access to health care, as well as Joint Submission *From Civil Rights to Human Rights: Implementing U.S. Obligations under ICERD*; *Reproductive Rights*; and, Joint Submission on *Racial Discrimination*, at para. 42 submitted by the Lawyers Committee for Civil Rights, et al.

<sup>9</sup> See Joint Submission on *The Application of the Death Penalty in the United States*.

<sup>10</sup> See Joint Submission on *The Human Rights of Persons with Disabilities*.

<sup>11</sup> See Joint Submission on *The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion and National Origin*.

<sup>12</sup> See Joint Submission on *Political Repression and Political Prisoners*, and Joint Submission on *Domestic Repression*.

<sup>13</sup> For more information on the Right to Work and Just and Favourable Condition on Work, see the Joint Submissions on the *Right to Work*; *Towards Economic and Social Rights in the United States: From Market Competition to Collective Goods*; *Migrant Labor in the United States*; and *Labor Rights*.

<sup>14</sup> "What's the Law" in *After Prison: Roadblocks to Reentry*, <http://lac.org/roadblocks-to-reentry/main.php?view=law&subaction=4>

<sup>15</sup> "Domestic Workers Under Labor Law" in *Domestic Workers United*, <http://www.domesticworkersunited.org/media/files/63/DW-under-Labor-Law.pdf>

<sup>16</sup> U.S. House. 2009. Education and Labor Committee, Subcommittee on Workforce Protections. Testimony of Ann M. O'Leary, Executive Director of the Berkeley Center on Health, Economic & Family Security at UC Berkeley School of Law: Hearing on The Impact of Women's Growing Participation in the Workforce: "The Shriver Report: A Woman's Nation Changes Everything." 111th Congress, 1st sess., 13 November.

<sup>17</sup> Only 6 percent of all employees in firms with fewer than 100 employees receive any paid family leave. See, Employee Benefit Research Institute, "EBRA Data Book on Employee Benefits," updated August 2009, Table 4.1c.

<sup>18</sup> "Rural Labor and Education: Farm Labor" in United States Department of Agriculture: Economic Research Service, <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm#demographic>

<sup>19</sup> "Domestic Workers Under Labor Law" in *Domestic Workers United*, <http://www.domesticworkersunited.org/media/files/63/DW-under-Labor-Law.pdf>

<sup>20</sup> Id.

<sup>21</sup> "Independent Contractor Misclassification and Subcontracting" in National Employment Law Project, available at: [http://www.nelp.org/site/issues/category/independent\\_contractor\\_misclassification\\_and\\_subcontracting](http://www.nelp.org/site/issues/category/independent_contractor_misclassification_and_subcontracting)

<sup>22</sup> See Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, Center for Urban Economic Development/National Employment Law Project/UCLA Institute for Research on Labor and Employment, 2010.

<sup>23</sup> The five states that exclude public sector workers are: North Carolina, South Carolina, Georgia, Texas and Virginia. See, Emily Cohen, Kate Walsh and RiShawn Biddle, *Invisible Ink in Collective Bargaining: Why Key Issues Are Not Addressed* (National Council in Teacher Quality 2008).

<sup>24</sup> International Labour Office (ILO), Reports of the Committee on Freedom of Association, 344<sup>th</sup> Reports of the Committee on Freedom of Association, ¶999. GB.298/7/1, 298<sup>th</sup> Session. Geneva, March 2007.

<sup>25</sup> North Carolina General Statute (NCGS) §95-98.

<sup>26</sup> For more information on economic and social rights in the United States, see the following joint submissions: *Toward Economic and Social Rights in the United States: From Market Competition to Collective Goods*; *Right to Adequate Housing the United States*; *Towards a Human-Rights Centered Macro-Economic and Financial Policy in the U.S.*; *Racial Health Disparities and Discrimination*; and, *United States' Compliance with its Human Rights Obligations in the Area of Women's Reproductive and Sexual Health*.

- <sup>27</sup>The U.S. ranks 73<sup>rd</sup> in the world according to the UN's Gini index; United Nations Human Development Report 2009, accessed at <http://hdrstats.undp.org/en/indicators/161.html>
- <sup>28</sup> CESR fact sheet, available at
- <sup>29</sup> U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2008.
- <sup>30</sup> <http://www.law.northwestern.edu/journals/njlsp/v4/n1/2/2Edelman.pdf>.
- <sup>31</sup> United States Department of Agriculture: Food Security in the United States: Key Statistics and Graphics, accessed at [http://www.ers.usda.gov/Briefing/FoodSecurity/stats\\_graphs.htm](http://www.ers.usda.gov/Briefing/FoodSecurity/stats_graphs.htm).
- <sup>32</sup> 2006-2008 American Community Survey, "Percent of People Below Poverty Level in the Past 12 Months." [http://factfinder.census.gov/servlet/STTable?\\_bm=y&-qr\\_name=ACS\\_2008\\_3YR\\_G00\\_S1701&-geo\\_id=01000US&-ds\\_name=ACS\\_2008\\_3YR\\_G00\\_&-lang=en&-redoLog=true&-format=&-CONTEXT=st](http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_3YR_G00_S1701&-geo_id=01000US&-ds_name=ACS_2008_3YR_G00_&-lang=en&-redoLog=true&-format=&-CONTEXT=st).
- <sup>33</sup> One in five former recipients ultimately became disconnected from any means of support, see <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/04/AR2009120402604.html>.
- <sup>34</sup> Nolte/ McKee, "Measuring The Health Of Nations: Updating An Earlier Analysis," Health Affairs, 27, No. 1 (2008), 58-71.
- <sup>35</sup> A. Wilper et. al., Health Insurance and Mortality in US Adults, American Journal of Public Health | December 2009, Vol 99, No. 12.
- <sup>36</sup> Cathy Schoen, Sara R. Collins, Jennifer L. Kriss, and Michelle M. Doty, [How Many Are Underinsured? Trends Among U.S. Adults, 2003 and 2007](#), in: *Health Affairs*, June 2008.
- <sup>37</sup> WHO 2007.
- <sup>38</sup> K. Davis, C. Schoen, S. C. Schoenbaum, M. M. Doty, A. L. Holmgren, J. L. Kriss, and K. K. Shea, *Mirror, Mirror on the Wall: An International Update on the Comparative Performance of American Health Care*, The Commonwealth Fund, May 2007
- <sup>39</sup> For more information, see Joint Submissions on *Education*, and *Toward Economic and Social Rights in the United States: From Market Competition to Collective Goods*.
- <sup>40</sup> *The Justiciability of Economic, Social, and Cultural Rights in the U.S.: Domestic Implementation of the Right to Equal Education*, Global Rights (October 2004), available at: [http://www.globalrights.org/site/DocServer/Final\\_Right\\_to\\_Education\\_\\_11.12.pdf?docID=1363](http://www.globalrights.org/site/DocServer/Final_Right_to_Education__11.12.pdf?docID=1363).
- <sup>41</sup> Susan Randolph/Sakiko Fukuda-Parr/ Terra Lawson-Remer, *Economic and Social Rights Fulfillment Index: Country Scores and Rankings*, Journal of Human Rights, forthcoming 2010.
- <sup>42</sup> Alliance for Excellent Education (2009), *The High Cost of High School Dropout*, available at: <http://www.all4ed.org/files/HighCost.pdf>.

<sup>43</sup> Dignity in Schools - FACT SHEET: School Discipline and The Pushout Problem, available at: [http://www.dignityinschools.org/files/DSC\\_Pushout\\_Fact\\_Sheet.pdf](http://www.dignityinschools.org/files/DSC_Pushout_Fact_Sheet.pdf).

<sup>44</sup> Given Half a Chance: The Schott 50 State Report on Public Education and Black Males, The Schott Foundation, 2008. <http://www.blackboysreport.org/files/schott50statereport-execsummary.pdf>.

<sup>45</sup> See Joint Submission on *Education* for evidence of how the U.S. violates provisions under CERD.

<sup>46</sup> For more information, see Joint Submissions on *Rights of Migrants, Refugees and Asylum Seekers*, and *Migrant Worker Rights*.

<sup>47</sup> ABA, *Reforming the Immigration System*, at 5.