

# UNITED STATES OF AMERICA

A Joint Submission to the United Nations  
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## **Racial Discrimination and Civil Rights**

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## EXECUTIVE SUMMARY AND INTRODUCTION

1. This joint submission to the Ninth Session of the United Nations Universal Periodic Review Working Group (hereinafter “Joint Submission”) is intended as a supplement to the report of the United States Government. It provides an enhanced picture of how racial discrimination continues to harm various communities across the U.S. Current conditions in the U.S. suggest that progress toward the goals of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD” or the “Convention”)<sup>3</sup> and the International Covenant on Civil and Political Rights (“ICCPR” or the “Covenant”),<sup>4</sup> has stalled, and in some cases, has shifted backwards in several key areas of concern to racial minorities.

- The Joint Submission provides information on key areas of concern under Sections B, C and D, as stipulated in the Guidelines for Preparation under the Universal Periodic Review.<sup>5</sup> The key areas of concern are racial discrimination, voting rights, housing and community development, education, employment and environmental justice.
- Pursuant to Sections B and D, we address the past, existing and planned legislative, judicial, administrative and other measures through which the U.S. Government has given effect to its undertakings under the Convention and its obligations under the Covenant.
- In regard to Section C, we address our belief that remedial and proactive action is needed to ensure that the U.S. is taking the necessary coordinated steps to ensure it is in full compliance at the federal, state and local levels with all ICERD and ICCPR treaty obligations.

2. The Joint Submission also offers recommendations for undertaking specific actions to strengthen the U.S. Government’s current strategy for fulfilling its obligations under the ICERD and ICCPR in specific areas of concern. Pursuant to its international human rights treaty obligations, the U.S. Government must be held accountable and compelled to fulfill all of the terms of these two instruments and to ensure that all of its laws and policies are non-discriminatory as written *and in their effect*.

### CONCERNS REGARDING THE NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS IN THE U.S.

3. The U.S. continues to interpret and limit application of international human rights conventions only to the extent of its own existing domestic laws. Its justification is that domestic laws at the federal and state levels provide adequate human rights protections. However, the well-documented persistence of human rights violations and racial inequality described in this report refutes this claim.

4. With respect to the ICERD and ICCPR in particular, the U.S. continues to maintain unnecessary reservations, understandings or declarations (“RUDs”) to the ICCPR and ICERD. When the U.S. ratified the ICCPR, it attached more RUDs to it than any other State

Party. Another specific concern is that the U.S. has taken no steps toward withdrawing or narrowing the scope of its reservation to Article 2 of the ICERD and broadening the protection afforded by the law against discriminatory acts perpetrated by private individuals, groups or organizations.

5. With the exception of Reservation 1 to the ICCPR Article 20 and free speech, none of the reservations are required by the U.S. Constitution. Read in conjunction with the U.S.'s reservation to Article 2 of the ICERD, the excessive number of RUDs undermines the U.S.'s statements that it accepts the modern, multilateral human rights regime.

6. The U.S. has yet to establish an independent human rights commission. However, in 2009, the U.S. Senate conducted the first-ever Congressional hearing on U.S. implementation of international human rights treaties<sup>6</sup> and civil society is advocating for the establishment of a national human rights body. These important first steps should be expanded on to develop a reliable set of mechanisms for holding the U.S. accountable for all of its international human rights obligations.

7. At the federal, state and local levels, statutes that protect civil and human rights are not uniform and vary considerably between state and local governments. We note with approval the series of January 20, 2010 memoranda sent by the U.S. Department of State to all Executive Branch agencies, State Governors and the Mayor of the District of Columbia describing the U.S.'s international human rights treaty obligations.<sup>7</sup> However, such efforts fall short of the coordinated approach to implementation of the ICERD and ICCPR needed to ensure full compliance at all levels of government. U.S. human and civil rights organizations have called for the reissue and updating of Executive Order 13017, which provided for the establishment of an Interagency Working Group on Human Rights Treaties for the purpose of “providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.”<sup>8</sup>

#### **CURRENT CHALLENGES TO THE U.S. GOVERNMENT’S FULL IMPLEMENTATION OF ITS OBLIGATIONS UNDER THE ICERD AND ICCPR AND THE PROTECTION AND PROMOTION OF HUMAN RIGHTS**

8. The U.S. has numerous federal statutes and regulations that prohibit and provide remedies for discrimination based on race, color, gender, ethnicity and national origin. Other statutes protect important political rights such as the right to vote. However, the priorities of the executive and legislative branches at any particular time, as well as the current trends in judicial philosophy, can have a major impact on the manner in which these statutes and regulations are enforced in practice. Because discrimination and civil rights violations are unfortunately pervasive in U.S. society, the existing network of laws is not always sufficient and, indeed, these laws are not consistently and fairly implemented and enforced with the goal of ending systemic racial discrimination in employment, education, voting rights, housing and environmental policies.

## **RACIAL DISCRIMINATION**

9. As discussed below, discrimination continues to occur within the U.S. in key areas. When these current issues are viewed as a whole, it is clear that the U.S. federal government fails to appreciate the structural makeup of racial discrimination within the nation; instead, the federal government only recognizes specific instances of racial discrimination.

10. For example, the U.S., in ratifying the ICERD, made certain telling reservations and declarations, most significantly, that, “[t]o the extent, however, that the Convention calls for a broader regulation of private conduct, the U.S. does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the U.S.” On its face, this reservation has the effect of substantially limiting the U.S.’s compliance with the treaty.

11. Additionally, in ratifying the ICCPR, the U.S. made additional reservations and declarations concerning key treaty obligations, including language acknowledging each treaty party’s pledge to eliminate the “advocacy of national, racial or religious hatred,” and to prevent subjecting anyone to “torture or to cruel, inhuman or degrading treatment or punishment,” while, in each instance, limiting the scope of the U.S.’s compliance to the bounds of the country’s Constitution.

12. In general, the U.S. limits its interpretation and adoption of these treaties to instances in which the U.S. is already in compliance, instead of extending its obligation to areas where improvement is needed. A recent report on racial discrimination notes egregious instances of continued racial discrimination intertwined in the nation’s legal and social structure.<sup>9</sup>

13. Clearly, when taken as a whole, these individual examples do not speak to a policy of adherence to international human rights standards but rather to the preservation of an institutional structure that preserves pervasive and widespread discrimination. If the U.S. wishes to become fully compliant with the ICERD and ICCPR, the U.S. Government must recognize that, in the face of the embarrassing statistics of the disparate impact of the laws discussed below on racial and ethnic minorities, the limits imposed by the U.S. Constitution or federal laws are alone insufficient for ensuring the human rights of all of its citizens. The absence of this recognition evidences an approach by which the U.S. chooses to fulfill its international human rights obligations in law but not in fact.

## **VOTING RIGHTS**

14. Section 5 of the Voting Rights Act of 1965 (“VRA”)<sup>10</sup> requires certain designated state and local governments to “pre-clear” any proposed changes to their voting systems with the Department of Justice before the changes go into effect. The purpose of the pre-clearance process is to ensure that the changes in election practices do not have a detrimental effect on the voting rights of racial, ethnic or language minorities. The pre-

clearance requirement has deterred and prevented many voting changes that would have harmed minority electoral participation and representation.<sup>11</sup>

15. Last year, the Supreme Court decided *Northwest Austin Municipal Utility District Number One v. Holder*, a constitutional challenge to the VRA. The Court concluded that the Appellant could seek a statutory exemption from the pre-clearance requirements of the Act.<sup>12</sup> While the Court did not rule on the constitutionality of the reenacted Section 5, the majority opinion detailed concerns about the constitutionality of the provision including federalism costs; improvements in the electoral conditions for minority voters in the southern United States; Section 5's departure from the principle of "equal sovereignty" among the States; the putative race-conscious nature of the Section 5 requirements; and the potential outdated nature of the Section 5 coverage formula.

16. There has been a history of using the felon disenfranchisement law to deny minorities rights such as voting.<sup>13</sup> Currently, of the 5.3 million disenfranchised voters, approximately 2 million are African-Americans.<sup>14</sup> This is coupled with the fact that, in 2008, 60 percent of the 2.3 million prison inmates in the U.S. were either African-American or Hispanic.<sup>15</sup> The Democracy Restoration Act ("DRA") is legislation pending before Congress that seeks to restore the federal voting rights of Americans that have been released from prison after a felony conviction.<sup>16</sup> Passage of this legislation would restore the federal voting rights of millions of disenfranchised voters.

17. Currently, the nation's capital, the District of Columbia, still has an African-American majority comprising 54.4 percent of the population.<sup>17</sup> To redress the negative racial impact caused by lack of representation, the U.S. Congress is considering legislation that would allow for Congressional representation for the District.<sup>18</sup> The legislation is currently stalled in committee, but even then, the U.S. Department of Justice has expressed doubts over the constitutionality of the legislation that is likely to face a long legal challenge before it can be fully implemented, if it ever becomes law.

18. There is a serious question about the quality of the American voter registration system. Restrictions on voter registration, problems with registration that prevent individuals from voting and failure of the voting infrastructure have been extensively detailed. While passage of the National Voter Registration Act (a.k.a. "NVRA" or the "Motor Voter Act")<sup>19</sup> has greatly increased the number of voter registrations, a large percentage of the minority population is not registered to vote, along with those that are poor or without a high school diploma. The U.S. voter registration system needs to be updated to ensure that regardless of race, wealth or social standing, everyone has access to vote.

## **HOUSING AND COMMUNITY DEVELOPMENT**

19. The persistence of racial and economic segregation in the U.S. is the result of a long history of public and private discriminatory action. Federal government policies accelerated the suburbanization of America's urban centers, resulting in Whites leaving cities for newly constructed suburbs and concentrating minorities in older, substandard housing in the urban centers.<sup>20</sup> While segregation is rooted in historical practices, it is maintained and even exacerbated by continued discriminatory practices. These include ongoing discrimination

in public housing; discrimination in the private rental, sales, lending and insurance markets; exclusionary zoning policies at the state and local level; and inadequate and insufficient housing opportunities for those receiving federal housing assistance.

20. The harms of racial segregation and concentrated poverty are well-documented. Racially isolated and economically poor neighborhoods “restrict employment options for young people, contribute to poor health, expose children to extremely high rates of crime and violence, and house some of the least-performing schools.”<sup>21</sup> Residential segregation confines minorities to geographically and economically isolated areas with substandard public schools and limited access to transportation, open spaces and employment opportunities.

21. The Obama Administration has taken significant steps to renew the nation’s commitment to federal fair housing policy and enforcement. Additional funds for housing have been requested in the fiscal year 2010 budget, representing an increase of 10.8 percent over the fiscal year 2009 budget.<sup>22</sup> The U.S. Department of Justice’s Civil Rights Division, tasked with enforcement of the anti-discrimination provisions of the Fair Housing Act, has announced that enforcement of fair lending laws is one of its top priorities. It successfully fought for additional funding to hire new attorneys to increase significantly its fair housing and fair lending enforcement responsibilities. This will hopefully lead to increased enforcement activity and prioritization of housing and lending discrimination complaints since we have been discouraged by recent enforcement efforts.<sup>23</sup>

22. The current mortgage and foreclosure crisis, and its impact on the nation’s economic well-being, is one of the country’s most pressing domestic issues. Largely overlooked, yet equally important, are its roots in decades of discriminatory housing and lending practices and in more recent racial discrimination in the housing and lending markets.<sup>24</sup> The disproportionate impact of foreclosures on minority homeowners and renters is causing one of the greatest losses of wealth in the American minority community in its history.<sup>25</sup> This makes the foreclosure crisis not only an economic issue, but also an important civil rights issue.

23. The past decade brought an increase in the availability of mortgages to minority communities, but it came primarily through a newly created subprime mortgage market that made mortgages available to higher risk and non-traditional borrowers at higher interest rates. The subprime market became inundated with widespread discrimination by predatory lenders who targeted marketing of expensive subprime mortgages to minority communities. Based on 2006 federal data, while only 17 percent of White homeowners had subprime loans, 54 percent of African-Americans and 47 percent of Hispanics had subprime loans.<sup>26</sup>

24. In addition to the current mortgage crisis faced by homeowners, low-income renters face an equally dire situation. Housing that is affordable is often inadequate, and housing that is adequate is often unaffordable. The proportion of households paying more than 30 percent of their income for housing – a level categorized as unaffordable – rose steadily from 1997 to 2007.<sup>27</sup> In 2007, approximately 22 percent of the 36.9 million rental households in the U.S. were spending more than half their income on rental costs.<sup>28</sup> The poorest and most vulnerable people face the heaviest burden in housing costs, with 8.8 million low-income households spending more than half of their income for housing.<sup>29</sup>

## EDUCATION

25. The U.S. education system is racially segregated, not by legal mandates but by policies that promote racial segregation. This racial segregation deprives minorities of equal educational opportunities. Unfortunately, this segregation is accelerating.<sup>30</sup> Presently, White students make up 56 percent of the public school population, but attend schools that are 76 percent White.<sup>31</sup> African-American and Hispanic students attend schools that are 29 percent and 27 percent White respectively.<sup>32</sup>

26. A number of factors contribute to racial segregation and unequal educational opportunities in the U.S. They include: school attendance zones promoting segregation;<sup>33</sup> consistent placement of minority students in lower level classes;<sup>34</sup> failure to counteract differences in parental income and educational attainment;<sup>35</sup> lower expectations by teachers and administrators for minority students;<sup>36</sup> and underperforming, poorly financed schools that perpetuate underachievement due to lower teacher quality, larger class size, and inadequate facilities.<sup>37</sup>

27. English Language Learners (“ELLs”) are another highly segregated student population. Nearly 70 percent of ELL students enroll in only 10 percent of all elementary schools, while 50 percent of elementary schools in the U.S. enroll no ELL students.<sup>38</sup> The challenges faced by students at schools with large numbers of ELL schools are greater than their peers. These students also suffer from significantly higher rates of poverty and health problems.<sup>39</sup> These schools also have more difficulty filling teacher vacancies, and are more likely to rely on unqualified substitute teachers or teachers with less experience.<sup>40</sup>

28. School segregation is also attenuated by small school districts in residentially segregated housing markets. Extreme residential segregation makes it difficult to integrate schools because some school districts are completely non-diverse. Racial segregation can lead to socio-economic segregation. In the U.S., 25 percent of African-Americans, 23 percent of Hispanics, and only 8 percent of Whites live below the poverty line.<sup>41</sup> The median income for White Americans in 2008 was \$55,530, while the median income for African-Americans and Hispanics was \$37,913, and \$34,218 respectively.<sup>42</sup> These economic disparities illustrate the likelihood of racially segregated schools becoming socio-economically segregated schools.

29. Disparate school funding becomes an issue when students are separated by race and class. Most primary and secondary schools receive 25 to 50 percent of their funding through local property taxes.<sup>43</sup> Thus, local sources of funding are less available in property-poor school districts than property-rich school districts. Even with equitable improvements in school funding at the state and federal levels of government,<sup>44</sup> property-poor school districts with high concentrations of minority students remain disadvantaged by their limited local tax base.

30. The U.S. Government has not supported recent attempts to integrate schools. In 2007, the Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1*,<sup>45</sup> found a voluntary school integration program unconstitutional because it classified students by race, and relied upon this classification in a non-individualized mechanical way when making school assignments. At that time, the Executive branch of the U.S. Government

also opposed the Seattle School District’s integration plan and filed a brief arguing that diversity is not a compelling government interest.<sup>46</sup>

31. These restrictions on race-based integration conflict with the ICERD treaty obligations. In 2001, the Committee on the Elimination of Racial Discrimination (“CERD”) voiced its support for special measures and concern about “persistent disparities in the enjoyment of, in particular, the right to . . . equal opportunities for education.”<sup>47</sup> The CERD stated that such measures are an obligation under Article 2(2) of ICERD to ensure adequate development of certain racial groups.<sup>48</sup> More recently, the CERD expressed additional concern after the *Parents Involved in Community Schools* decision because the U.S. Supreme Court “further limited the permissible use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms” and restricted the U.S.’s ability to fulfill its Article 2(2) obligation to eliminate racial discrimination.<sup>49</sup>

32. Minority students in the U.S. achieve less academic success than White students at primary, secondary and post secondary levels of education. This nationwide phenomenon is commonly called the “achievement gap.” The CERD finds the “persistent ‘achievement gap’ between students belonging to racial, ethnic or national minorities, including ELL students, and white students” troubling and urged the U.S. to reduce the achievement gap by “improving the quality of education provided to these students.”<sup>50</sup>

33. Affirmative action programs consider characteristics like race and ethnicity to promote diversity and equal opportunities for historically disadvantaged minorities. The U.S. legacy of slavery, mistreatment of Native Americans and discrimination against non-English speaking immigrants forces minorities to struggle to achieve full social equality. African-Americans and Hispanics still have lower levels of education,<sup>51</sup> lower wages<sup>52</sup> and higher poverty levels<sup>53</sup> than the rest of the U.S. population. The U.S. Government utilizes affirmative action according to its own judgment and discretion.<sup>54</sup> This position is inconsistent with the ICERD. The ICERD creates an affirmative obligation to take special measures that ensure the full enjoyment of all social, economic and cultural rights by all racial and ethnic groups.<sup>55</sup>

34. The limited constitutional, statutory and judicial protection given to affirmative action programs makes them vulnerable to repeal. Many people feel that affirmative action results in reverse discrimination.<sup>56</sup> This has led to state passage of initiatives, such as California’s Proposition 209, Washington’s Initiative 200 and Michigan’s Civil Rights Initiative, ending long-standing state affirmative action programs. In the absence of a constitutional amendment or additional federal legislation, states may continue to rollback this ICERD guaranteed right.

## **EMPLOYMENT**

35. The Equal Employment Opportunity Commission (“EEOC”) has enforced equal opportunity laws since its inception, shortly after the signing of Title VII of the Civil Rights Act of 1964. Although the EEOC has done much on the enforcement front, race and color discrimination continues to exist in the workplace. In an effort to identify and implement new strategies that will strengthen its enforcement of Title VII and advance the statutory right to a



workplace free of race and color discrimination, the EEOC is in the process of instituting the E-RACE Initiative.<sup>57</sup> Specifically, the EEOC will identify issues, criteria and barriers that contribute to race and color discrimination, explore strategies to improve the administrative processing and the litigation of race and color discrimination claims and enhance public awareness of race and color discrimination in employment.

36. Additionally, the Obama Administration announced on February 1, 2010, that it requested \$385.3 million for the EEOC for fiscal year 2011 and \$162 million for the Civil Rights Division of the Department of Justice (the “DOJ”) in the 2011 Federal Budget.<sup>58</sup> Significantly, the requests represent an \$18 million dollar budget increase for the EEOC and a \$17 million dollar budget increase for the DOJ. The EEOC describes the \$18 million budget increase as allowing it to “improve enforcement initiatives, reduce the backlog, target systemic litigation, and reinvigorate Federal Sector enforcement.”<sup>59</sup>

37. Another major victory for civil rights and the fight against discrimination in the workplace is the passage of the Lilly Ledbetter Fair Pay Act. On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act to ensure that all Americans receive equal pay for equal work. President Obama also continues to support the Employment Non-Discrimination Act and has expressed his belief that anti-discrimination employment laws should be expanded to include sexual orientation and gender identity.

38. Though improvements have been made by the current Administration, statistics on employment trends indicate that there is still a tremendous need for meaningful affirmative action measures, targeted programs and enforcement of existing laws. According to data compiled by the U.S. Department of Labor Bureau of Labor Statistics (“BLS”), of the 52,219 management, professional and related occupational positions available in 2009, only 8.4 percent were held by African-Americans, 6.2 percent by Asians, and 7.3 percent by Hispanics. The other 78.1 percent were held by Whites.<sup>60</sup> Additionally, over the last four years the number of charges of discrimination received by the EEOC has increased from 75,768 in 2006 to 93,277 in 2009, a 23 percent increase.<sup>61</sup> The number of harassment-based charges has risen from 23,034 in 2006 to 30,641 in 2009<sup>62</sup> and the number of race-based charges increased from 27,238 in 2006 to 33,579 in 2009.<sup>63</sup>

39. Among the major worker groups, the unemployment rates for African-Americans was 15.8 percent almost twice that of the 8.8 percent unemployment rate for Whites.<sup>64</sup> Additionally, as noted above, African-Americans and Hispanics were employed at a significantly lower rate in management and professional positions.<sup>65</sup> Furthermore, although the unemployment rate rose for all groups, the rates for minorities increased at a more rapid pace. African-American employment rates fell 10.9 percent points and White employment rates only fell a little more than half of that at 6.2 percent.

## **ENVIRONMENTAL JUSTICE AND HEALTHCARE**

40. Climate change has a disproportionate impact on low-income people of color and indigenous communities.<sup>66</sup> The U.S must take special care to ensure that any steps made to reduce emissions do not lead to increased burdens on its minority and low-income populations.

41. U.S. law provides only limited protection for Native Americans seeking to protect culturally or socially significant sites from environmentally harmful activities. Religious protections under the First Amendment do not extend to ostensibly neutral land use practices, even where those practices substantially burden the spiritual practices of Native Americans.<sup>67</sup> Further, recent federal court decisions have limited or called into doubt the ability of Native Americans to continue relying on two key federal statutes that protect sites of historical or cultural significance, the Religious Freedom Restoration Act and the National Historic Preservation Act.<sup>68</sup> The availability of legal remedies for Native Americans to address environmental harm is crucial given that they “have to contend with some of the worst pollution in the United States, and the places where they live are prime targets for landfills, incinerators, garbage dumps and risky mining operations.”<sup>69</sup> Proximity to these environmental hazards increases the risk of disease, birth defects and death.<sup>70</sup>

42. In its 2008 review of U.S. compliance, the CERD noted the persistent disparities in access to health insurance and health care among racial, ethnic and national minorities, and recommended that the U.S. continue its efforts to address those disparities.<sup>71</sup> Although the recent passage of health care insurance reform in the U.S. may prove to be a positive step towards ameliorating health care disparities, further steps are necessary to close the gap. Statistics on the prevalence of HIV/AIDS, heart disease, cancer, asthma and other diseases among minority groups reveal the consequences of unequal access to timely and quality health care. African-Americans have the highest death rate and shortest survival of any racial group in the U.S. for most cancers.<sup>72</sup> Of all racial and ethnic groups, American Indians and Alaska Natives have the highest sudden infant death syndrome rates (SIDS), highest rates of respiratory distress syndrome and highest mortality rate from H1N1 influenza.<sup>73</sup>

## CONCLUSION

43. The U.S. Government has taken several positive steps that indicate a greater willingness to engage in activities designed to achieve compliance with international human rights treaty obligations. However, it continues to have an *ad hoc* and, ultimately, unsatisfactory approach to ensuring the protection of the human rights covered by the ICERD and ICCPR.

## JOINT RECOMMENDATIONS

The U.S. Government should consider transforming the U.S. Civil Rights Commission into an independent, national human rights commission. The President should also reissue and update Executive Order 13017. In addition,

**to prevent the unlawful disenfranchisement of minority voters, the U.S. should:**

- *fully enforce federal voting laws and ensure the restoration of the right to vote after the completion of a criminal sentence; and,*

- *adopt the Democracy Restoration Act and support passage of laws granting the citizens of the District of Columbia the right to full congressional representation.*

**to eradicate discriminatory practices in housing, the U.S. should:**

- *create an independent, fair housing enforcement agency;*
- *revive the President’s Fair Housing Council, and act to ensure compliance with the “affirmatively, furthering fair housing” obligation; and,*
- *expand foreclosure relief programs to make loans more affordable and to mitigate the effects of discriminatory predatory lending.*

**to remedy the persistence of unequal education opportunities, the U.S. should:**

- *allow use of Title VI to permit challenges that address past discrimination, segregation and re-segregation; and,*
- *encourage and support non-discriminatory measures that encourage school integration.*

**to address racial disparities in employment, the U.S. should:**

- *provide direct federal aid to urban areas as well as targeted unemployment benefits, job programs and educational incentives; and,*
- *reinstate the Equal Opportunity Survey which requires federal contractors to submit data on their pay practice - information that could then be used by the federal government when deciding which companies to audit.*

**to mitigate discriminatory environmental impacts on minorities, the U.S. should:**

- *exercise greater enforcement of Title VII of the Civil Rights Act of 1964 to ensure federal money does not support programs that have a discriminatory impact on communities based on race, color and national origin; and,*
- *enforce its existing environmental laws to guarantee protection of minority and low-income communities disproportionately burdened by pollution and industries that flagrantly violate the law.*

## **APPENDIX AND END NOTES TO JOINT SUBMISSION**

### **EDUCATION**

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<sup>1</sup> *African-American Ministers in Action* is a network of ministers across the country organized around five issues central to African Americans: civic participation, economic justice, equal justice, health care, and public education. *The Black Leadership Forum* is an alliance of over thirty national African-American civil rights and service organizations linked to advocate for the legislative and policy interests of African-Americans. *The Lawyers' Committee for Civil Rights Under Law*, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law. *Public Counsel* is the largest public interest pro bono law firm in the world. *The National Bar Association* is the oldest, largest national association of African-American lawyers and judges. *The National Coalition on Black Civic Participation* is a, non-profit, non-partisan organization dedicated to increasing African-American civic engagement and voter participation. *The Rainbow PUSH Coalition* is a multi-racial and multi-issue, progressive, international membership organization fighting for social change.

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<sup>3</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195.

<sup>4</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>5</sup> United Nations, Human Rights Council, *General Guidelines for The Preparation of Information Under the Universal Periodic Review*, Decision 6/102 (Sept. 27, 2007).

<sup>6</sup> *The Law of the Land: U.S. Implementation of Human Rights Treaties: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. (2009).

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<sup>7</sup> Harold Koh, U.S. Dep't of State, *Memorandum for State Governors* (Jan. 20, 2010); Koh, *Memorandum for Executive Branch Agencies* (Jan. 20, 2010); Koh, *Memorandum for State Governors* (Jan. 20, 2010); Koh, *Memorandum for Adrian M. Fenty, Mayor of the District of Columbia* (Jan. 20, 2010); Koh, *Memorandum for State Governors* (Jan. 20, 2010); Koh, *Memorandum for Governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands* (Jan. 20, 2010). All four memorandum are available at <http://www.state.gov/g/drl/hr/treaties>.

<sup>8</sup> Exec. Order No. 13107, 61 Fed. Reg. 68991 (Dec. 10, 1998).

<sup>9</sup> See Leadership Conference on Civil Rights, *American Dream? American Reality!: A Report on Race, Ethnicity, and the Law in the U.S.*, at Foreword (Jan 2008).

<sup>10</sup> 42 U.S.C. §§ 1973 to 1973aa-6.

<sup>11</sup> Brennan Center for Justice, *Blog, Democracy, Voting Rights & Elections* (June 22, 2009) (interpreting U.S. Supreme Court decision in *Northwest Austin Mun. Utility Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009)), [http://www.brennancenter.org/content/resource/namudno\\_v\\_gonzales/](http://www.brennancenter.org/content/resource/namudno_v_gonzales/).

<sup>12</sup> 129 S. Ct. 2504 (2009).

<sup>13</sup> Brennan Center for Justice, *Restoring the Right to Vote*, at 6 (2009).

<sup>14</sup> Democracy Restoration Act, S. 1516, H.R. 3335, 111th Cong. (2009).

<sup>15</sup> The Sentencing Project, *Facts About Prisons and Prisoners* (2009), (citing Bureau of Justice Statistics), [http://sentencingproject.org/doc/publications/inc\\_factsAboutPrisons\\_Mar2010.pdf](http://sentencingproject.org/doc/publications/inc_factsAboutPrisons_Mar2010.pdf).

<sup>16</sup> Democracy Restoration Act.

<sup>17</sup> U.S. Census Bureau, *State and County Quick Facts* (last revised Feb. 23, 2010), <http://quickfacts.census.gov/qfd/states/11000.html>.

<sup>18</sup> D.C. Voting Rights Act, S. 160, H.R. 157, 111th Cong. (2009).

<sup>19</sup> National Voter Registration Act of 1993, 42 U.S.C. §§ 1973gg *et seq.*

<sup>20</sup> Lawyers' Committee for Civil Rights Under Law, *Unequal Opportunity: A Critical Assessment of the U.S. Commitment to the Elimination of Racial Discrimination*, at 69 (2007).

<sup>21</sup> The National Fair Housing Alliance, *The Future of Fair Housing: Report of the Nat'l Comm'n on Fair Housing and Equal Opportunity*, at 5 (Dec. 2008) (quoting testimony of Prof. John Powell, Kirwan Inst. for the Study of Race & Ethnicity, Ohio State Univ.), [http://www.nationalfairhousing.org/Portals/33/reports/Future\\_of\\_Fair\\_Housing.PDF](http://www.nationalfairhousing.org/Portals/33/reports/Future_of_Fair_Housing.PDF) ("*Future of Fair Housing Report*").

<sup>22</sup> U.S. Dep't of Housing and Urban Dev., *FY 2010 Budget: Road Map for Transformation*, at 2 (May 7, 2009), <http://www.hud.gov/budgetsummary2010/fy10budget.pdf>.

<sup>23</sup> See Rainbow PUSH Coalition – Annual Wall Street Conference, *Remarks of Assistant Attorney General Thomas Perez* (Jan. 14, 2010), [http://www.justice.gov/crt/speeches/tp\\_rainbow\\_push.pdf](http://www.justice.gov/crt/speeches/tp_rainbow_push.pdf).

<sup>24</sup> *Future of Fair Housing Report* at 31.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 33 (based on 2006 data collected through the Home Mortgage Disclosure Act of 1975).

<sup>27</sup> Congressional Budget Office, *An Overview of Federal Support for Housing*, at 1-2 (Nov. 3, 2009). For a discussion of the origin and use of the 30% of income standard, see U.S. Department of Housing and Urban Development, *Trends in Housing Cost: 1985-2005 and the 30-percent-of-income Standard*, at 29 (June 2008).

<sup>28</sup> HUD FY 2010 Budget at 9.

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<sup>29</sup> Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including The Right to Development: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Raquel Rolnik, at 8-9 (Feb. 12, 2010).

<sup>30</sup> Gary Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge* (Jan. 2009), [http://www.civilrightsproject.ucla.edu/research/deseg/reviving\\_the\\_goal\\_mlk\\_2009.pdf](http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf).

<sup>31</sup> *Id.* at 13.

<sup>32</sup> *Id.*

<sup>33</sup> Roslyn Arlin Mickelson, *When Are Racial Disparities in Education the Result of Racial Discrimination? A Social Science Perspective*, 105 TCHRS C. R. 1062, 1070 (2003), <http://fog.its.uiowa.edu/~c07b154/mickelson.pdf>.

<sup>34</sup> *Id.* at 1063.

<sup>35</sup> *Id.* at 1064-65.

<sup>36</sup> George Farkas, *Racial Disparities and Discrimination in Education: What Do We Know, How Do We Know It, and What Do We Need to Know?*, 105 TCHRS C.R. 1128, 1135 (2003), <http://www.uiowa.edu/~c07b154/farkas.pdf>.

<sup>37</sup> *Id.* at 1130.

<sup>38</sup> Clemencia Cosentino de Cohen & Beatriz Chu Clewell, *Putting English Language Learners on the Educational Map: The No Child Left Behind Act Implemented*, at 2 (The Education Policy Center, May 2007), [http://www.urban.org/UploadedPDF/311468\\_ell.pdf](http://www.urban.org/UploadedPDF/311468_ell.pdf).

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.* at 5.

<sup>41</sup> U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the U.S.: 2008*, at 14 (Sep. 2009), <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> U.S. Department of Education, Education Finance Statistics, *Changes in Revenue Sources: Percentage Distribution of Total Revenue for Public Elementary and Secondary Education in the U.S., by Region and Revenue Source: 1989–90 to 2006–07* (2007), [http://nces.ed.gov/edfin/tables/tab\\_change\\_rev\\_src.asp](http://nces.ed.gov/edfin/tables/tab_change_rev_src.asp).

<sup>44</sup> Kim Reuben & Sheila Murray, *Racial Disparities in Education Finance: Going Beyond Equal Revenues*, at 1 (Nov. 2008), [http://www.taxpolicycenter.org/UploadedPDF/411785\\_equal\\_revenues.pdf](http://www.taxpolicycenter.org/UploadedPDF/411785_equal_revenues.pdf).

<sup>45</sup> *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701 (2007).

<sup>46</sup> *See Brief for the United States as Amicus Curiae Supporting Petitioner in Parents Involved in Cmty. Sch.*, 2006 WL 2415458 (Aug. 21, 2006).

<sup>47</sup> *Concluding Observations of the U.N. Comm. on the Elimination of Racial Discrimination U.S.*, U.N. GAOR 56th Sess., Supp. No. 18, ¶ 398, U.N. Doc. A/56/18 (Aug. 14, 2001), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.18.para.380-407.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.18.para.380-407.En?Opendocument).

<sup>48</sup> *Id.* ¶¶ 398-99.

<sup>49</sup> U.N., *Concluding Observations of the U.N. Comm. on the Elimination of Racial Discrimination - U.S.*, ¶ 15, 17, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).

<sup>50</sup> *Id.* ¶ 34.

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<sup>51</sup> U.S. Department of Education, National Center for Education Statistics, *Status and Trends in the Education of Racial and Ethnic Minorities* at 86-87 (2007), <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007039>.

<sup>52</sup> U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the U.S.: 2008*, at 6 (2009), <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

<sup>53</sup> *Id.* at 14.

<sup>54</sup> *Periodic Report of the U.S. of America Submitted under Article IX of the International Convention on the Elimination of all Forms of Racial Discrimination to the Committee on the Elimination of Racial Discrimination*, ¶¶ 126-27, 129, U.N. Doc. CERD/C/USA/6 (May 1, 2007).

<sup>55</sup> *Concluding Observations of the U.N. Comm. on the Elimination of Racial Discrimination U.S.*, U.N. GAOR, ¶15, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008); *Concluding Observations of the U.N. Comm. on the Elimination of Racial Discrimination U.S.*, U.N. GAOR 56th Sess., Supp. No. 18, ¶¶ 399, U.N. Doc. A/56/18 (Aug. 14, 2001), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.18,paras.380-407.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.18,paras.380-407.En?Opendocument).

<sup>56</sup> *Periodic Report of the U.S. of America*, ¶ 133, U.N. Doc. CERD/C/USA/6 (May 1, 2007).

<sup>57</sup> See EEOC.gov, *The E-RACE Initiative*, <http://www.eeoc.gov/eeoc/initiatives/e-race/index.cfm>.

<sup>58</sup> See Office of Management and Budget, *The Federal Budget: Fiscal Year 2011*, [http://www.whitehouse.gov/omb/factsheet\\_key\\_americas\\_workers/](http://www.whitehouse.gov/omb/factsheet_key_americas_workers/).

<sup>59</sup> See EEOC *Fiscal Year 2011 Congressional Budget Justification* (Feb. 2010), <http://www.eeoc.gov/eeoc/plan/2011budget.cfm>.

<sup>60</sup> See U.S. Department of Labor Bureau of Labor Statistics, *Employment Statistics*, <http://www.bls.gov/cps/cpsa2009.pdf> (“DOL Employment Statistics”).

<sup>61</sup> See U.S. Equal Employment Opportunity Commission, *Charge Statistics FY 1997 Through FY 2009*, <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.

<sup>62</sup> See U.S. Equal Employment Opportunity Commission, *Harassment Charges FY 1997 Through FY 2009*, <http://www.eeoc.gov/eeoc/statistics/enforcement/harassment.cfm>.

<sup>63</sup> See U.S. Equal Employment Opportunity Commission, *Race-Based Charges FY 1997 Through FY 2009*, <http://www.eeoc.gov/eeoc/statistics/enforcement/race.cfm>.

<sup>64</sup> *Id.* The unemployment rates for Hispanics was 12.4% and for Asians 8.4%.

<sup>65</sup> See DOL Employment Statistics.

<sup>66</sup> Morello-Frosch, *et al.*, *The Climate Gap: Inequalities in How Climate Change Hurts Americans and How to Close the Gap*, at 5 (2009).

<sup>67</sup> *Lyng v. Northwest Indian Cemetery Ass’n*, 485 U.S. 439, 448-53 (1988) (holding no constitutional protection under the Free Exercise Clause for Native Americans where Forest Service admitted that proposed timber harvesting and road construction would substantially burden their spiritual practice, because the state action was one of “general applicability” and not directed at religious practice).

<sup>68</sup> The Religious Freedom Restoration Act of 1993 limits the federal government’s ability to “substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability . . . .” 42 U.S.C. § 2000bb-1(a). However, courts have severely narrowed the scope of the statute by restricting the definition of a “substantial burden” to instances involving direct government coercion, either in the denial of benefits or the threat of civil or criminal sanctions. See, *Navajo Nation v. US Forest Serv.*, 535 F.3d 1058, 1068 (9th Cir. 2008). The National Historic Preservation Act requires federal agencies to consult with affected tribes before proceeding if a proposed undertaking will have an effect on historic properties to which those tribes attach religious and cultural significance. See, 16 U.S.C. §§ 470a(d)(6), 470f. However, some courts have concluded there is no private right of action to enforce the statute, forcing aggrieved parties to instead submit to an administrative



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review process that is extremely deferential to the agency's decision. *See, San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1098 (9th Cir. 2005).

<sup>69</sup> Bullard, *Environment and Morality: Confronting Environmental Racism in the United States*, United Nations Research Inst. For Social Development Programme Paper No. 8, at iii (2004).

<sup>70</sup> Maantay, Chakraborty and Brender, *Proximity to Environmental Hazards: Environmental Justice and Adverse Health Outcomes, Strengthening Environmental Justice Research and Decision Making: A Symposium on the Science of Disproportionate Environmental Health Impacts* (2009).

<sup>71</sup> *Concluding Observations of the U.N. Comm. On the Elimination of Racial Discrimination*, *supra* note 44 ¶ 32.

<sup>72</sup> American Cancer Society, *Cancer Facts and Figures for African-Americans 2009-2010*, at 1,7.

<sup>73</sup> American Lung Association, *State of Lung Disease in Diverse Communities: 2010*, at 6-7.