

# US Slammed For Failure to Fulfill Legal Obligation to “Eliminate All Forms of Race Discrimination”

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*Three weeks after the shooting of Michael Brown in Ferguson, the Committee on the Elimination of Racial Discrimination (CERD) published a report detailing how the United States has failed to fulfill its legal obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (Convention). The CERD report was scathing in its criticism of the US for not complying with the Convention’s mandates. Since the US ratified this treaty, thereby becoming a State Party, it is part of US law under the Supremacy Clause of the Constitution.*

States parties must comply with the obligations under the Convention, including submitting periodic reports to CERD regarding their progress in fulfilling their obligations. CERD is the body that monitors compliance of States Parties with the Convention. After reviewing the most recent US report, CERD responded with its concluding observations as follows:

CERD urged the US to prohibit racial discrimination in all its forms, including indirect discrimination. (The US currently prohibits only intentional discrimination, but not legislation and programs that are discriminatory in effect).

CERD urged the US to comply with the Convention’s mandate that States Parties adopt special measures to eliminate persistent disparities based on race or ethnic origin. (The US Supreme Court has narrowed the use of affirmative action in education).

CERD urged the US to specifically outlaw racial profiling. (The FBI, TSA, border enforcement officials and local police engage in racial profiling).

CERD urged the US to clean up radioactive and toxic waste, particularly in areas inhabited by racial and ethnic minorities and indigenous peoples. CERD also urged the US to prevent US-registered transnational corporations from adversely affecting, in particular, minorities and indigenous peoples. (Racial and ethnic minorities, and indigenous peoples are disproportionately affected by negative health impacts of pollution caused by extractive and manufacturing industries).

CERD urged the US to adopt legislation to prevent implementation of voting regulations with discriminatory impact. (The US Supreme Court invalidated procedural safeguards in the Voting Rights Act aimed at preventing the implementation of voting regulations that may have discriminatory effect). CERD also urged the US and all states to reinstate voting rights to persons convicted of felonies who have served their sentences.

CERD urged the US to abolish laws and policies making homelessness a crime. (A high number of homeless persons are disproportionately from racial and ethnic minorities, and

homelessness is criminalized by loitering statutes).

CERD urged the US to intensify efforts to eliminate racial discrimination in access to housing, and ensure affordable and adequate housing for all. (There is persistent racial discrimination in housing and a high degree of segregation and concentrated poverty).

CERD urged the US to develop a concrete plan to address racial segregation in schools, and increase federal funds for such programs. (Students from racial and ethnic minorities attend segregated schools with unequal facilities).

CERD urged the US to ensure that everyone, particularly racial and ethnic minorities, who reside in states that have opted out of Medicaid expansion under the Affordable Care Act (ACA), and undocumented immigrants and their families living in the US for less than five years, have effective access to affordable and adequate health-care. (The US Supreme Court allows states to opt out of Medicaid expansion, and undocumented immigrants and their children are excluded from coverage under the ACA).

CERD urged the US to fulfill its obligation to protect the right to life and reduce gun violence by adopting legislation expanding background checks and prohibiting the practice of carrying concealed handguns in public. CERD also urged the US to review Stand Your Ground Laws to remove far-reaching immunity and ensure strict adherence to necessity and proportionality when deadly force is used in self-defense. (There is a high number of gun-related deaths and injuries, and Stand Your Ground laws are used to circumvent the limits of legitimate self-defense).

CERD urged the prompt and effective investigation of each allegation of excessive force by law enforcement officials, prosecution of alleged perpetrators and effective sanctions for those convicted, re-opening of investigations when new evidence becomes available, and adequate compensation for victims and their families. (Brutality and excessive force by law enforcement officials against racial and ethnic minorities has a disparate impact on African-Americans and undocumented migrants crossing the US-Mexico border; US Customs and Border Protection (CBP) agents enjoy impunity for abuses committed against Hispanic/Latino Americans and undocumented migrants).

CERD urged legal protection for the rights of non-citizens, including protection of migrants from exploitative and abusive working conditions; dealing with breaches of immigration law through civil, rather than criminal immigration system; guaranteeing legal representation in all immigration matters; and raising the minimum age for agricultural field work. (Immigration enforcement is increasingly militarized, leading to excessive and lethal force by CBP personnel; local law enforcement increasingly uses racial profiling to determine immigration status; immigrants are detained for prolonged periods of time; and undocumented immigrants are deported without access to justice).

CERD urged the US to intensify efforts to prevent and combat violence against women, particularly against American Indian and Alaska native women, and ensure all cases of violence against women are effectively investigated, prosecuted and sanctioned, and victims are provided appropriate remedies. (A disproportionate number of women from racial and ethnic minorities continue to be subjected to violence, including rape and sexual violence).

CERD urged the US to take concrete and effective steps to eliminate racial disparities at all

stages of the criminal justice system. CERD also urged the US to impose, at the federal level, a moratorium on the death penalty with a view to abolishing the death penalty. (Members of racial and ethnic minorities are disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole (LWOP) and the death penalty).

CERD urged the US to intensify efforts to address racial disparities in disciplinary measures, as well as the “school-to-prison pipeline”; and ensure juveniles are not transferred to adult courts and are separated from adults in custody. CERD also urged the US to abolish LWOP for those under 18 at the time of their crime, and the commutation of sentences for those already serving LWOP. (Youth from racial and ethnic minorities are disproportionately arrested at school and referred to the criminal justice system, prosecuted as adults, incarcerated in adult prison, and sentenced to LWOP).

CERD urged the US to end administrative detention without charge or trial at Guantanamo and the closure of the prison facility there without further delay. CERD also urged the US to guarantee the right to a fair trial in compliance with international human rights standards, and to ensure that any detainee not charged and tried is released immediately. (Non-citizens continue to be arbitrarily detained without effective and equal access to the ordinary criminal justice system, and risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment).

CERD urged the US to adopt necessary measures to eliminate the disproportionate impact of inadequate criminal defense programs on racial and ethnic minorities, by improving the quality of legal representation and adequately funding legal aid. (There is no right to counsel in civil proceedings, which disproportionately affects indigent racial and ethnic minorities seeking effective remedies for evictions, foreclosures, domestic violence, employment discrimination, termination of subsistence income or medical assistance, loss of child custody, and deportation).

CERD urged the US to guarantee the right of indigenous peoples to effective participation in decisions affecting them, eliminate undue obstacles to recognition of tribes, protect sacred sites, and halt the removal of indigenous children from their families and communities. (There is a lack of concrete progress in guaranteeing informed consent of indigenous peoples in decisions that affect them, burdensome obstacles to tribal recognition, insufficient protection of sacred sites, and continued removal of indigenous children from families and communities through the US child welfare system).

CERD also urged the adoption of a National Action Plan to combat structural racial discrimination, and ensure that school curricula, textbooks and teaching materials address human rights themes and promote understanding among racial and ethnic minority groups.

CERD urged the US to recognize the competence of CERD to hear individual complaints. CERD also urged the US to ratify the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

Finally, CERD urged the US to widely publicize the CERD’s recommendations. When the US

ratifies a treaty, the legal obligations it assumes apply at the federal, state and local levels. And although, by ratifying a treaty, the US undertakes an obligation to publicize the terms of the treaty, the US government has not taken this responsibility seriously.

*Marjorie Cohn is a professor at Thomas Jefferson School of Law and a former president of the National Lawyers Guild. Her next book, "Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues," will be published this month.*

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