

ICCPR List of Issues Submissions by the Meiklejohn Civil Liberties Institute

The Meiklejohn Civil Liberties Institute respectfully submits the following questions to the U.N. Human Rights Committee:

1. Does the criminalization of homelessness in the United States constitute human rights violations? (See page 2)
2. Does the lack of legal representation for low income people and lack of access into the legal profession for poor people and people of color constitute human rights violations¹? (See page 6)
3. Does mass incarceration in the United States constitute human rights violations²? (See page 9)
4. Does slavery in U.S. prisons as well as slavery of immigrant labor constitute human rights violations in the United States³? (See page 13)
5. Does criminalization of sex workers communications by FOSTA-SESTA constitute human rights violations? (See page 15)
6. Does police violence in the United States constitute human rights violations⁴? (See page 15)
7. Does the separation of children from their families and/or community within the United States' systems of immigration, foster care, or adoption constitute human rights violations⁵? (See page 17)

Reporting Organization: Meiklejohn Civil Liberties Institute

Since 1965 the Meiklejohn Civil Liberties Institute (MCLI) has been a leader in human rights education and advocacy related to compliance with Human Rights Law within the United States. In 2017 MCLI initiated the Campaign for the Human Rights of Landless People, and in 2018 MCLI co-founded the San Francisco Bay Area Landless Peoples Alliance (BALPA) with homeless communities and NGO allies⁶. The founding document for BALPA can be found here: <http://www.mclihumanrights.org/wp-content/uploads/2018/08/Declaration-of-Campaign-for-the-Human-Rights-of-Landless-People.pdf>

¹ See page 49, MCLI Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD), <http://www.mclihumanrights.org/wp-content/uploads/2018/06/2018.06.01-MCLI-Report-to-CERD-1.pdf>.

² See page 1, MCLI Shadow Report to CERD, supra.

³ See page 10, MCLI Shadow Report to CERD, supra.

⁴ See pages 12 and 53, MCLI Shadow Report to CERD, supra.

⁵ See page 51, MCLI Shadow Report to CERD, supra.

⁶ The Bay Area Landless Peoples Alliance was co-founded by First They Came for the Homeless an unincorporated association of homeless and formerly homeless residents, The Village an unincorporated association of homeless and formerly homeless residents, Land Action a California non-profit, the Meiklejohn Civil Liberties Institute a non-profit corporation, and Berkeley-East Bay Gray Panthers a non-profit corporation.

MCLI also submitted a Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD) that has not been reviewed due to the Trump administration's refusal to participate in the reporting process. MCLI asks the Human Rights Committee to review this Report to CERD within the Committee's monitoring process. That Report can be found here: <http://www.mclihumanrights.org/2018/06/01/mcli-shadow-report-to-the-u-n-committee-on-the-elimination-of-racial-discrimination/>

1. Question One: Does the criminalization of homelessness in the United States constitute human rights violations?

I. Issue Summary

In the United States many cities, counties, and state governments engage in criminalizing activities essential to life sustaining activity such as sitting, lying, sleeping, eating, urinating, defecating, loitering, panhandling, and seeking shelter. These laws and policies seek to criminalize homelessness with the intention of removing the homeless from communities by imprisonment or pressuring unhoused residents to leave their community.

These policies have been documented by U.N. Special Rapporteurs. U.N. Special Rapporteur on Extreme Poverty Philip Alston documented the mistreatment of the homeless in the United States in his report from May 4, 2018 which can be found here:

<http://undocs.org/A/HRC/38/33/ADD.1>⁸. U.N. Special Rapporteur on Adequate Housing Leilani Farha also documented the mistreatment of the homeless in the United States in her report from September 19, 2018 which can be found here: <http://www.undocs.org/A/73/310/rev.1>¹⁰.

The Western Regional Advocacy Policy Center (WRAP) recently commissioned a study by Policy Advocacy Clinic at the University of California, Berkeley School of Law which found that so-called "Business Improvement Districts" require the criminalization of homelessness as part of systematic policies designed to remove homeless residents from targeted downtown areas and main thoroughfares in order to convert public space for private businesses. The study by WRAP and the Policy Clinic can be found here: <https://wraphome.org/wp-content/uploads/2018/09/PAC-BID-Report-2018-web-rev.pdf>.

II. Concluding Observations and ICCPR Legal Framework

The criminalization of homelessness is discriminatory, violates the right to life, and constitutes cruel, inhuman or degrading treatment in violation of Articles 2, 7, 9, 17 and 26 of the International Convention on Civil and Political Rights (ICCPR) as well as Article 16 of the

⁸ See: Paragraphs 39, 43 through 46, and 77.

⁹ See Paragraphs 44, 46, 47, and 115 through 117.

¹⁰ See Paragraphs 44, 46, 47, and 115 through 117.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

In Paragraph 19 of the U.N. Human Rights Committee's concluding observations in 2014 the Committee stated as follows:

“While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment (arts. 2, 7, 9, 17 and 26).

The State party should engage with state and local authorities to:

- (a) Abolish the laws and policies criminalizing homelessness at state and local levels;
- (b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards; and
- (c) Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.”

III. Current U.S. Government Policy or Practice

Currently the United States Government does not directly control programs criminalizing homelessness although mistreatment of the homeless on federal property, within the federal courts, and within federal programs occurs. However, the U.S. Government has not taken any steps to stop the abuse of the homeless by state and local governments.

The criminalization of homelessness primarily occurs under the control of local governments such as cities, counties, boroughs, or parishes as well as agencies controlled by state governments. The local governments and state agencies either pass laws or create policies that criminalize homelessness.

Due to the numerosity of local governments the types of laws and policies targeting the homeless are highly varied¹¹. Some laws prohibit sitting or lying in public. Other laws prohibit sleeping in public¹².

Some policies direct law enforcement to use existing laws to discriminatorily target the homeless. It is common for law enforcement to arrest or remove homeless people from public

¹¹ See pages 9 through 11, http://www.nationalhomeless.org/publications/crimreport/crimreport_2009.pdf

¹² See page 25, <https://www.nlchp.org/documents/Housing-Not-Handcuffs>

land by asserting that encampments violate trespassing or anti-camping ordinances¹³¹⁴. Other policies fail to provide a legal basis with public workers removing encampments while law enforcement stands by ready to arrest the homeless who resist with charges such as “obstructing justice”¹⁵.

There have been some U.S. Courts which have found that the criminalization of homelessness violates the U.S. Constitution’s Eight Amendment prohibition against cruel and unusual punishment. However, most federal courts have not, and it is unclear the extent to which such rulings have discouraged the criminalization of homelessness by local governments due to the fact that access to the courts by the homeless is limited due to a lack of resources and specialized education necessary to navigate the courts¹⁶.

IV. Human Rights Committee General Comments

In General Comments from this Committee on October 30, 2018 this Committee found that the Right to Life under Article 6 of the ICCPR imposed a duty to address homelessness. Not only has the United States failed to address homelessness the United States has increased the risks associated with homelessness by criminalizing life sustaining activity¹⁷.

V. Other UN Body Recommendations

U.N. Special Rapporteur on Extreme Poverty Philip Alston documented the mistreatment of the homeless in the United States in his report from May 4, 2018 which can be found here: <http://undocs.org/A/HRC/38/33/ADD.1>¹⁸. In the findings of that report it was concluded that the U.S. Government should decriminalize being poor and initiate a program to end poverty and reduce income inequality¹⁹.

U.N. Special Rapporteur on Adequate Housing Leilani Farha also documented the mistreatment of the homeless in the United States in her report from September 19, 2018 which can be found here: <http://www.undocs.org/A/73/310/rev.1>²⁰. In the findings of that report it was concluded that all nations, including the United States must upgrade informal settlements²¹. The report also noted that it would be necessary to end the criminalization of homelessness and

¹³ See: *Martin v. Boise*, Ninth Circuit Court of Appeal (September 4, 2018) <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>

¹⁴ See: *Sullivan v. City of Berkeley*, <https://www.leagle.com/decision/infdco20171102a99> and *Miralle v. City of Oakland*, <https://docs.justia.com/cases/federal/district-courts/california/candce/4:2018cv06823/334572/44>

¹⁵ See: *Pottinger v. Miami*, 810 F. Supp. 1551, 1556 (1992)

¹⁶ Discussed infra.

¹⁷ See Paragraph 26,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

¹⁸ See: Paragraphs 39, 43 through 46, and 77.

¹⁹ See: Paragraphs 71 through 73.

²⁰ See Paragraphs 44, 46, 47, and 115 through 117.

²¹ See Paragraphs 115 through 117.

policies discouraging residents from remaining in informal settlements or encampments prior to beginning policies for upgrading settlements²².

VI. Recommended Questions

What is the United States Government doing to end the criminalization of homelessness?

What is the United States Government doing to upgrade homeless encampments?

What is the United States Government doing to end homelessness?

VII. Suggested Recommendations

Federal law should be enacted prohibiting the criminalization of homelessness including an accessible process for homeless individuals to hold officials accountable for criminalizing life sustaining activities.

The United States Government should provide funding to upgrade homeless encampments including sufficient oversight and accountability to ensure that funds are properly allocated.

The United States Government should establish effective programs to end homelessness.

The United States Government should enact laws or direct funding in a manner to ensure that the demands of the Bay Area Landless Peoples Alliance are met as follows:

“First: All criminalization of homelessness must end immediately. All people who are sheltering themselves on public land will be immediately protected under the Eighth Amendment of the United States Constitution which demands that public authority provide for “safe havens” for all homeless people where they can shelter themselves with dignity. This will include provision by local governments of water, sewer, toilets, sanitation, and trash removal services.

Second: To live in dignity landless people in “safe havens” will be allowed to self-govern. “Safe havens” will be run by their residents, not outside agencies nor non-profits. Local governments will provide equivalent funding to train and hire residents to provide their own services rather than hire outside contractors.

Third: Collective punishment and all other activity designed to undermine “safe havens” will end. Local officials will not raid an entire “safe haven” based on the activity of one or a small number of residents. Local authorities will also not interfere with the internal composition of residents within a “safe haven” by removing individuals without probable cause nor forcing “safe havens” to accept new residents without their consent.

Fourth: All confiscation of landless people’s property will end, and all property immediately returned.

Fifth: Officials will communicate to all public agencies the location and status of all sanctioned encampments to coordinate transitional housing services.

²² See Paragraph 46.

Sixth: Resolve that all landless people have the human right to assert self-defense against prosecution for activities necessary for survival. Prohibitions on sleeping, sitting, lying, panhandling, performing, and loitering in public will end. Individuals will be allowed to sleep in cars, and plans to reclaim vacant properties to provide housing will be put in place.

Seventh: All new housing shall prioritize housing for landless people including Section 8 housing and housing for truly low-income people such as those with an income below 30% of the Area Median Income. This goal shall include one or more of the following: eminent domain, community land trusts, housing cooperatives, affordability covenants, and changes to building, zoning, permitting, and other local codes to expand low-income housing opportunities.²³

2. Question Two: Does the lack of legal representation for low income people and lack of access into the legal profession for poor people and people of color constitute human rights violations²⁴?

I. Issue Summary

In the United States the majority of poor people cannot access the courts thus depriving poor people and people of color redress of grievances including grievances based upon human rights violations. Although individuals have the right to represent themselves in court, the ability to navigate the court system and have effective advocacy largely depends on specialized training exclusive to legal professionals such as attorneys²⁵.

In order to become an attorney in the United States an individual must attend an expensive law school and be approved by a bar association. The high cost of law school prevents poor people from becoming attorneys while the student debt accrued by those who complete law school deters new attorneys from representing poor people. Currently, African Americans comprise only 5% of active attorneys despite constituting 12.6% of the population. Hispanics constitute 5% of active attorneys despite constituting 17.1% of the population.^{26,27}

Poor people and people of color face human rights violations by local, state, and federal governments including criminalization of poverty, racially discriminatory state violence, deprivation of the right to housing, and deprivation of other human rights. However, in most

²³ See: <http://www.mclihumanrights.org/wp-content/uploads/2018/08/Declaration-of-Campaign-for-the-Human-Rights-of-Landless-People.pdf>

²⁴ See page 49, MCLI Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD), <http://www.mclihumanrights.org/wp-content/uploads/2018/06/2018.06.01-MCLI-Report-to-CERD-1.pdf>.

²⁵ See: <http://ncforaj.org/wp-content/uploads/2016/12/NCAJ-CHRI-9-15-16-Recommended-AtJ-National-Indicators-12-1-16-final.pdf>

²⁶ https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-10-year-demographics-revised.authcheckdam.pdf

²⁷ <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

cases poor people lack access to courts due to the high cost of legal services and the specialized education necessary for navigating the court systems.

II. Concluding Observations and ICCPR Legal Framework

Article 14 of the ICCPR states that “[a]ll persons shall be equal before the courts and tribunals.”

In both the Human Rights Committee’s concluding observations in [2014](#) and [2006](#) it was asserted that detainees in Guantanamo Bay had were entitled to proceedings before a court pursuant to Articles 2, 6, 7, 9, 10 and 14 of the ICCPR²⁸.

This Committee’s concluding observations from 2014 and 2006 do not reference the right to redress for those facing extrajudicial punishment such as the destruction of homeless encampments which are discussed above or extrajudicial killings or violence by law enforcement which are discussed below. There is also no reference to the right to counsel for immigrants, tenants, workers, poor families, or other marginalized groups in need of legal services to protect important human rights.

III. Current U.S. Government Policy or Practice

In the United States, bar associations including the American Bar Association (“ABA”) control the practice of law maintaining barriers to the inclusion of poor people and people of color without any substantial effort by the local, state, or federal governments to remedy this discrimination.

These disparities disproportionately effect people of color. Currently African Americans comprise only 5% of active attorneys despite constituting 12.6% of the population. Hispanics constitute 5% of active attorneys despite constituting 17.1% of the population²⁹.

Further, the ABA and state bars only allow attorneys from accredited schools that have prohibitively high tuition³⁰. The Public Service Loan Forgiveness Program provides an option for debt relief³¹. However, the United States Government does not provide sufficient funding to provide opportunities for public service for attorneys wishing to provide legal services for poor people.

²⁸ See paragraph 5 of the U.N. Human Rights Committee’s concluding observations in 2014.

²⁹ See: https://nces.ed.gov/programs/coe/indicator_coi.asp

³⁰ See:

http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills

³¹ See: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>

IV. Human Rights Committee General Comments

In the Human Rights Committee's General Comment No. 32 from August 23, 2007 this Committee stated in Paragraph 8 as follows:

“The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.”

V. Other UN Body Recommendations

Regarding access to the court's, the Special Rapporteur on the independence of judges and lawyers focused their attention on detainees in Guantanamo Bay affirming these detainees rights to access U.S. courts³²

The Meiklejohn Civil Liberties Institute requests that the Human Rights Committee broaden its inquiry into the U.S. court system and legal profession to ensure that poor people and people of color targeted with extrajudicial punishment and other deprivations of human rights have “equal access and equality of arms”³³.

VI. Recommended Questions

What is the United States doing to ensure poor people have access to legal services?

What is the United States doing to end race and class disparities in the legal profession?

What is the United States doing to make court systems more inclusive to people representing themselves who lack specialized training?

VII. Suggested Recommendations

The United States Government should enact policies and/or allocate funding to reduce the cost of law school including affirmative action to provide access to poor people and people of color in the legal profession.

The United States Government should establish programs providing legal representation to poor people.

The United States Government should establish programs reducing barriers for self-represented parties in court including reducing the need for specialized training and providing support to self-represented parties.

³² See paragraphs 100 through 109, <http://www.undocs.org/E/CN.4/2004/60/Add.1>

³³ See paragraph 8 General Comment No. 32 from August 23, 2007

3. Question Three: Does mass incarceration in the United States constitute human rights violations?

I. Issue Summary

The United States has the highest prison population in the world; imprisoning at a rate of 655 per 100,000 which is 4.65 times the global median of 141 per 100,000³⁴. Hispanics are incarcerated in the United States at a rate of 831 per 100,000 which is 5.89 times the global median. Blacks are incarcerated at a rate of 2,306 per 100,000 which is 16.35 times the global median³⁵.

The incarcerated population is also disproportionately poor with the pre-incarceration median annual income of 41% less than non-incarcerated people³⁶.

These high incarceration rates reflect both racist and classist systems of oppression at all stages in the criminal system from laws criminalizing poverty³⁷, lack of effective counsel for low income defendants³⁸, and failure to address implicit bias in law enforcement³⁹, judges, and juries. Additionally, these high incarceration rates reflect a general policy that emphasizes punishment rather than public safety and rehabilitation which is reflected in laws imposing disproportionate penalties and incentives for prosecutors to secure convictions regardless of guilt or innocence as well as obtaining the most severe sentences possible.

II. Concluding Observations and ICCPR Legal Framework

Article 2 of the ICCPR prohibits discrimination based on race, social origin, or property status, or other status.

Articles 7 and 10 of the ICCPR ensures dignity and prohibits torture and cruel, inhuman or degrading treatment or punishment.

Article 8 of the ICCPR prohibits slavery, servitude, and compulsory labor. The policies of slavery in U.S. prisons does not fall under the exceptions pursuant to section 3.(b) and 3.(c) due to multiple factors including the discriminatory nature of incarceration, the excessive nature of punishment, and the fact that prison labor is sold to private companies or used to displace paid workers.

Articles 9 and 12 of the ICCPR ensures the right to liberty and freedom for arbitrary arrest or detention.

Article 11 prohibits incarceration for inability to fulfill a contractual obligation.

Article 14, 16, 26 ensures equality before the courts and tribunals and due process.

³⁴ See: <http://www.prisonstudies.org/highest-to-lowest/prison-population-total>

³⁵ See: <https://www.prisonpolicy.org/reports/rates.html>

³⁶ See: <https://www.prisonpolicy.org/reports/income.html>

³⁷ supra

³⁸ supra

³⁹ infra

In this Committee's concluding observations from 2006 there were multiple references to mass incarceration. In Paragraph 32 the committee stated that the purpose of incarceration was for rehabilitation and that poor prison conditions discussed throughout the document were incompatible with that goal. In Paragraph 34 the Committee instructed the U.S. to end life imprisonment for children.

In this Committee's concluding observations from 2014 there were multiple references to aspects of mass incarceration. In Paragraph 6 the Committee expressed concerns about racial disparities in the criminal system. In Paragraph 7 the Committee instructed the State Party to increase efforts to eliminate racial profiling by law enforcement. Paragraph 23 the Committee stated the United States should stop allowing life imprisonment for children.

III. Current U.S. Government Policy or Practice

In 2016 there were 189,200 prisoners in the federal system from a total correctional population of 6,613,500⁴⁰. Accordingly, the federal government only incarcerates and directly supervises 2.8% of the total prison population in the United States. The remaining 97.2% of prisoners are incarcerated in the state and local systems which are not directly supervised by the federal government. Likewise, the laws, sentencing guidelines, law enforcement practices, prosecution, and court processes leading to the incarceration in state and local systems are under state or local control.

Despite the federal government's lack of direct control over state and local governments the federal government's policies and rhetoric have had a powerful influence encouraging local and state governments to increase arrests, convictions, and incarceration rates. Much of this was driven by the so-called "War on Drugs" beginning in the 1980s⁴¹.

In California the punishment for trespass is up to six months imprisonment pursuant to California Penal Code section 602. In California the punishment for obstruction of justice is up to one year of imprisonment pursuant to California Penal Code section 148. Both laws are commonly used for the purposes of criminalizing homelessness⁴².

Under California's "three strikes law" a person convicted of three offences can be imprisoned for life if one of those offenses is a violent felony⁴³. Given the criminalization of poverty and targeting of people of color by law enforcement members of these marginalized groups are at high risk of being imprisoned for life for a single violent offense. Communities facing criminalization can be charged with violent offences based upon altercations with law enforcement during their arrest for life-sustaining activity⁴⁴.

⁴⁰ See: <https://www.bjs.gov/index.cfm?ty=kfdetail&iid=487>

⁴¹ See paragraph 71, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>

⁴² supra

⁴³ See: <https://www.shouselaw.com/three-strikes.html#1>

⁴⁴ <https://www.businessinsider.com/r-los-angeles-woman-who-picked-up-police-baton-could-get-25-years-2015-7?op=1>

The aforementioned policies have led to longer sentences than other countries for people convicted of similar offences thus exacerbating the problem of mass incarceration⁴⁵.

IV. **Human Rights Committee General Comments**

In paragraph 2 of general comment No. 35 this Committee states:

“Article 9 recognizes and protects both liberty of person and security of person. In the Universal Declaration of Human Rights, article 3 proclaims that everyone has the right to life, liberty and security of person. That is the first substantive right protected by the Universal Declaration, which indicates the profound importance of article 9 of the Covenant both for individuals and for society as a whole. Liberty and security of person are precious for their own sake, and also because the deprivation of liberty and security of person have historically been principal means for impairing the enjoyment of other rights.”

In paragraphs 10 through 23 of general comment No. 35 this Committee states that Article 9 of the ICCPR prohibits arbitrary detention.

In paragraphs 15 and 19 of general comment No. 32 this Committee states that Article 14 of the ICCPR ensures the right to a fair and public hearing by a competent, independent, and impartial tribunal. Three-strikes laws and minimum sentencing guidelines interfere with the independence of the courts in the United States.

V. **Other UN Body Recommendations**

On August 18, 2016 the Working Group of Experts on People of African Descent released its report on its mission to the United States of America⁴⁶. Throughout its report the Working Group denounced mass incarceration in the United States specifically as it pertained to people of African descent.

In Paragraph 50 of the Report of the Working Group on Arbitrary Detention on its visit to the United States of America on July 17, 2017 the working group found as follows:

“...the Working Group has identified several areas where systemic problems within the criminal justice system are resulting in the arbitrary deprivation of liberty. These include: lengthy pretrial detention; the lack of effective legal representation; economic and racial disparities; disproportionate sentencing; prolonged use of administrative segregation and restrictive housing; the treatment of juveniles; and the use of prisons to house inmates with psychosocial disability. While the prison population in some institutions is falling,

⁴⁵ See: <http://www.justicepolicy.org/uploads/justicepolicy/documents/sentencing.pdf>

⁴⁶ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>

the Working Group is nonetheless concerned about the high rate of incarceration across the United States.”

Further, the Working Group expressed concerns of lengthy pretrial detention⁴⁷, lack of effective legal representation⁴⁸, economic and racial disparities⁴⁹, and disproportionate sentencing⁵⁰.

VI. Recommended Questions

What is the United States Government doing to reduce the population of incarcerated people in federal, state, and local facilities?

What is the United States Government doing to eliminate racial and economic disparities in incarceration in federal, state, and local facilities?

What is the United States Government doing to eliminate mandatory minimum sentencing, three-strikes laws, and other laws at the state, federal, and local level that interfere with judicial independence in sentencing?

What is the United States Government doing to provide education, training, and other rehabilitative opportunities within federal, state, and local facilities as well as programs upon release providing opportunities for former inmates in order to reduce recidivism and improve their quality of life?

VII. Suggested Recommendations

The United States Government should enact laws and policies ensuring the release of inmates in federal, state, and local facilities who are serving sentences disproportionate to the seriousness of their offenses or serving sentences based upon the criminalization of status such as homelessness, poverty, status, or racially discriminatory laws and policies.

The United States Government should enact laws and policies ensuring the reduction of sentences for crimes at the federal, state, and local levels to ensure that sentencing conforms to international norms.

The United States Government should enact laws and policies ensuring that there are sufficient programs for incarcerated people to access rehabilitation, education, training, and other programs assisting with the transition out of incarceration and avoiding recidivism.

⁴⁷ See paragraphs 51 through 53

⁴⁸ See paragraphs 54 through 56

⁴⁹ See paragraphs 57 through 59

⁵⁰ See paragraphs 60 through 62

4. Question Four: Does slavery in U.S. prisons as well as slavery of immigrant labor constitute human rights violations in the United States?

I. Issue Summary

The United States Government violates prohibitions against slavery, involuntary servitude, and forced labor by using incarcerated people for slave labor. Further the H-2B visa program continues to cause the abuse of workers including human trafficking and/or forced labor.

The Thirteenth Amendment to the United States Constitution did not outlaw slavery of incarcerated people. Poor immigrant workers are at risk of slavery due to economic conditions created by U.S. policies, and there are few resources committed toward preventing human trafficking and/or forced labor.

II. Concluding Observations and ICCPR Legal Framework

Slavery constitutes the following violations:

Slavery – Article 2, Slavery Convention and Article 8, ICCPR

Racism – Article 2, ICERD;

Workers – Articles 23 and 24, UDHR and Articles 6 and 8, ICESCR;

Cruel, Inhuman or Degrading Treatment – Article 16, ICAT and Article 7, ICCPR;

Due Process – Article 9 and 14, ICCPR,

Dignity – Article 10, ICCPR

In Paragraph 14 of this Committee’s Concluding Observations from 2014 this committee recommended that the United States Government should “review its laws and regulations to ensure full protection against forced labour for all categories of workers and ensure effective oversight of labour conditions in any temporary visa programme.” This Committee specifically expressed concern that the H-2B program placed workers at risk of trafficking and/or forced labor.

III. Current U.S. Government Policy or Practice

The Thirteenth Amendment of the United States Constitution did not abolish slavery. A loophole in the law allowed for slavery to continue in the United States as punishment for a crime. Accordingly, prisoners are used as slave labor. This is particularly appalling given the history of slavery in the African-American community and extremely disproportional rate of incarceration among Blacks as discussed above.

However, the slave labor of incarcerated people is not sufficient to replace the system of slavery prior to the passage of the Thirteenth Amendment in the agricultural industry. Immigrant

workers were brought into the U.S. to replace the labor previously provided by slavery. However, the economic model of farm work remained largely unchanged⁵¹. While workers in other industries were provided a minimum wage, 40-hour maximum work week, and 8-hour maximum work day, farm workers were specifically exempted from equal pay and equal working conditions under an exemption to the Fair Labor Standards Act of 1938, as amended § 213 (a)(6).

Further, H-2A seasonal guest workers are not allowed to change jobs after arriving in the United States thus violating the protection against slavery and involuntary servitude⁵². Other workers are trapped into slavery by human traffickers. The Coalition of Immokalee Workers has uncovered numerous slave rings where workers were forced to work by “beatings, shootings, and pistol-whipping”⁵³.

IV. Human Rights Committee General Comments

In paragraph 2 of General comment No. 35 this Committee found that “Article 9 recognizes and protects both liberty of person and security of person”

V. Other UN Body Recommendations

In paragraph 28 of Report III (Part 1B) of General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)⁵⁴ by the International Labour Organization it was noted that the United States Government stated that their prison labor practices would not conform with the Forced Labour Convention, 1930 (No. 29).

However, on September 25, 1991 the United States Government ratified the Abolition of Forced Labour Convention, 1957 (No. 105).

VI. Recommended Questions

What is the United States Government doing to end forced prison labor of federal, state, and local inmates?

What is the United States Government doing to provide the same labor protections for prisoners and immigrants that are available to other workers including, but not limited to, the minimum wage, 40-hour work week, and eight-hour work day?

What is the United States Government doing to ensure that appropriate resources are allocated to investigate and eliminate human trafficking, slavery, and forced labor without criminalizing workers?

⁵¹ <http://nfwm.org/education-center/farm-worker-issues/timeline-of-agricultural-labor/>

⁵² Ibid.

⁵³ <http://www.ciw-online.org/slavery/>

⁵⁴ See: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf

VII. Suggested Recommendations

All labor programs for incarcerated people in the United States should be voluntary and prisoners should be guaranteed the same labor protections and wages as non-prisoners.

The H-2A seasonal guest worker program should be modified to ensure that workers are guaranteed the same labor protections and wages as U.S. citizens.

The United States Government should increase resources for investigations of human trafficking, slavery, and forced labor while ensuring to not place workers at risk of arrest or deportation.

5. Question Five: Does criminalization of sex workers communications by FOSTA-SESTA constitute human rights violations?

[MCLI is in the process of drafting an analysis on this issue and requests that the Human Rights Committee monitor this issue in the absence of further analysis]

6. Question Six: Does police violence in the United States constitute human rights violations?

I. Issue Summary

The disproportionate impact of police violence on African-Americans has recently led to the Black Lives Matter movement. The United States Government does not provide data on extrajudicial killings or other uses of force by law enforcement.

Further, there has been increased advocacy against the militarization of law enforcement⁵⁵. Such militarization is contrary to recommendations by this Committee that the United States Government conform with the recommendations within the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁵⁶.

Some local law enforcement agencies have attempted to embrace de-escalation tactics rather than militarized tactics⁵⁷.

II. Concluding Observations and ICCPR Legal Framework

Extrajudicial violence by police constitutes the following violations of human rights:

Racism – Article 2, ICERD;

Murder – Article 6, ICCPR;

⁵⁵ See: <http://stopurbanshield.org/>

⁵⁶ See: https://www.geneva-academy.ch/joomlatools-files/docman-files/in-brief6_WEB.pdf

⁵⁷ See: <https://www.nytimes.com/2015/05/05/us/police-start-to-reconsider-longstanding-rules-on-using-force.html?module=inline>

Genocide – Article 3, CPPCG;
Cruel, Inhuman or Degrading Treatment – Article 16, ICAT and Article 7, ICCPR;
Due Process – Article 9 and 14, ICCPR,
Dignity – Article 10, ICCPR;
Women – Articles 2, 3, and 15, CEDAW

In Paragraph 11 of this Committee’s Concluding Observations from 2014 this committee recommended that the United States Government should step up efforts to prevent excessive use of force by law enforcement and improve reporting of incidents of excessive force.

III. Current U.S. Government Policy or Practice

In 1994 the United States Government passed the Violent Crime Control and Law Enforcement Act⁵⁸. Section 210402 of the Act requires that “The Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.” Despite this requirement the United States Government does not compile statistics of extrajudicial killings by law enforcement nor the number of injuries caused by law enforcement.

However, the Guardian reports that 1093 people were killed in 2016 by U.S. law enforcement⁵⁹, and the Washington Post reports that 995 people were killed by law enforcement in 2018⁶⁰.

IV. Human Rights Committee General Comments

In paragraph 12 and 13 of General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights this Committee that law enforcement should use lethal force only when strictly necessary in order protect life from an imminent threat and that “less-lethal” means of crowd control should be used including providing protective equipment reducing the risk of resorting to lethal force.

V. Other UN Body Recommendations

In paragraph 20 of the Report of the Working Group of Experts on People of African Descent on its mission to the United States of America published on August 18, 2016⁶¹, the Working Group expressed deep concerns at the “alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent in the United States.

⁵⁸ See: <https://www.congress.gov/bill/103rd-congress/house-bill/3355/text/enr>

⁵⁹ See: <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>

⁶⁰ See: <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>

⁶¹ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>

In paragraphs 21 through 23 the Working Group called on more transparency and accountability for police killings. In paragraphs 24 through 26 the Working Group highlighted studies that concluded that patterns of racism are prevalent in instances of abuse by law enforcement.

VI. Recommended Questions

What is the United States Government doing to gather, compile, and publish data regarding law enforcement use of force?

What is the United States Government doing to train law enforcement to avoid the use of force including, but not limited to, lethal force?

What is the United States Government doing to end discrimination by law enforcement?

VII. Suggested Recommendations

The United States Government should gather, compile, and publish data regarding law enforcement use of force?

The United States Government should enact laws and policies ensuring that federal, state, and local law enforcement receive training to avoid the use of force including lethal force?

The United States Government should enact laws and policies to ensure that federal, state, and local law enforcement end discrimination through training, hiring practices, and other policies based upon community input.

7. Question Seven: Does the separation of children from their families and/or community within the United States' systems of immigration, foster care, or adoption constitute human rights violations?

I. Issue Summary

In the United States children from poor parents and children of immigrants are taken from their families and often placed into foster care or adoption. Further, a lack of programs for poor parents pressures them to place their children into adoption. Children placed into foster care and adoption lack protections ensuring contact with biological parents. Children placed into foster care and adoption lack protections ensuring contact with their racial and cultural groups. Children placed into foster care and adoption whose parents speak languages other than English are not ensured opportunities to learn the language of their biological parents.

II. Concluding Observations and ICCPR Legal Framework

Racism in adoption and foster care constitutes the following violations of human rights:

Genocide – Articles 2(e) and 3, CPPCG;
Children – Articles 8 through 22, 29 through 30, CRC; Article 23, ICCPR,
Mothers – Article 5(b), CEDAW;
Racism – Articles 2, 5 and 7, ICERD;
Cruel, Inhuman or Degrading Treatment – Article 16, ICAT and Article 7, ICCPR;
Due Process – Article 9 and 14, ICCPR,
Dignity – Article 10, ICCPR

In paragraph 15 of the Concluding observations on the fourth periodic report of the United States of America published April 23, 2014 this Committee expressed concern about children being separated from their families during the immigration process. In paragraph 25 this Committee expressed concern for “the restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices”.

III. Current U.S. Government Policy or Practice

In 2018, the Trump administration began removing children from their parents while immigrating into the United States if they lack immigration documentation and if their efforts seeking political asylum or other forms of relief are denied. The Trump administration acknowledges that many of these families do not speak English as their primary language. These officials have made it clear that they believe immigrants who do not speak English are undesirable based on prejudicial beliefs about the language and culture of many immigrants’ countries of origin.^{62, 63} President Trump has gone so far as to refer to the country of origin of many immigrants currently coming into the United States as “shithole countries”⁶⁴.

In addition to abducting children from families immigrating to the United States, there has been ongoing problems with international adoptions into the United States. Children brought to the United States for adoption have been abducted and abused with adoption agencies committing acts of fraud.⁶⁵

This discrimination in adoption and foster care also occurs domestically. According to Susan Dusza Guerra Leksander of Pact an Adoption Alliance, “The biggest unifying factor of why

⁶² Carranza, Rafael and Gonzalez, Daniel “AG Jeff Sessions vows to separate kids from parents, prosecute all illegal border-crossers” May 8, 2018, The Republic | azcentral.com (See: <https://www.azcentral.com/story/news/politics/immigration/2018/05/08/ag-jeff-sessions-vows-separate-kids-parents-border/591924002/>)

⁶³ Willis, Jay “The White House chief of staff argues that undocumented families “don’t integrate well” into “our” modern society” May 11, 2018, GQ (See: https://www.gq.com/story/john-kelly-xenophobia-showing?intcid=inline_amp)

⁶⁴ Watkins, Eli and Phillips, Abby “Trump decries immigrants from ‘shithole countries’ coming to US” January 12, 2018, CNN (<https://www.cnn.com/2018/01/11/politics/immigrants-shithole-countries-trump/index.html>)

⁶⁵ Light of Day Stories “Ethiopia Moves to Officially End International Adoption” October 16, 2017 (See: <https://lightofdaystories.com/2017/10/16/ethiopia-moves-to-officially-end-international-adoption/>)

people place their children into adoption is low income.” Eighty-nine percent of birth mothers and 65 percent of birth fathers have annual gross personal incomes of less than \$20,000. Economic disadvantage is the leading reason, worldwide, that children are available for adoption.⁶⁶

In the U.S. there are insufficient resources provided to low-income parents to maintain family integrity. Further, there are few resources available for counseling these birth parents and little guidance is given to adoption practitioners.^{67, 68}

There are numerous legal issues effecting a birth parent's decision to adopt that vitiate the voluntary nature of a parent's decision to place their child into adoption. What we know about people who make a voluntary placement⁶⁹:

- Women in their early to mid-20s-Single parents, and occasionally married parents, with other children
- Women with extreme personal difficulties
- Teenagers
- Young women from conservative ethnic, religious and cultural communities
- Survivors of rape
- Recent immigrants
- Parents expecting a baby with a disability who feel unable to meet their needs

As discussed above and as MCLI's Report to CERD⁷⁰ indicates, there are numerous factors in the United States that cause poverty to disproportionately affect African-Americans and Latinos. Poverty is also disproportionately high among numerous other racial minorities. In addition, people of color face other racially discriminatory policies involving the removal of a child from their birth family.⁷¹

In 2012 a Black child was nearly twice as likely to enter foster care as a White child, while a Native American child was almost two and half times more likely to enter foster care. Further, Black and Native American children in the foster care system stay there longer, experience more placements, and are less likely to be returned home or get adopted. In 2012, While 8% of White children who entered foster care before the age of 3 were never placed in a permanent home before adulthood this occurred to 14% of Native American children and 17% of Black children.⁷²

In 1978 the United States passed the Indian Child Welfare Act due to the fact that 85 percent of children placed into adoption and/or foster care were removed from tribal families.

⁶⁶ Early Growth and Development Study, National Health Institute, 2016

⁶⁷ <https://www.adoptioninstitute.org/wp-content/uploads/2017/03/Understanding-Options-Counseling-Experiences-in-Adoption-Qualitative-Study.pdf>

⁶⁸ <https://www.adoptioninstitute.org/wp-content/uploads/2016/11/Understanding-Options-Counseling-Experiences-in-Adoption-Phase-One-Report.pdf>

⁶⁹ The Donaldson Institute, Safeguarding the Rights and Well-Being of Birthparents, 2007

⁷⁰ See: <http://www.mclihumanrights.org/wp-content/uploads/2018/06/2018.06.01-MCLI-Report-to-CERD-1.pdf>

⁷¹ Brown, Allison, “Like The Sky Being Blue – When I started working in child welfare, I was shocked by the institutional racism.” September 1, 2015, Rise (See: <http://www.risemagazine.org/2015/09/like-the-sky-being-blue/>)

⁷² Selivanoff, Shrounda and Hagle, Alise “The Color of Hope: Race can affect whether parents get the support to overcome.” September 1, 2015 Rise (See: <http://www.risemagazine.org/2015/09/the-color-of-hope/>)

Expectant parents of color considering adoption do not have the same choice of families as white parents considering adoption.⁷³ This lack of options for birth parents of color requires extra effort to ensure that adoptees are placed with a family that will ensure access to the language, culture, and community of the child's ancestry. Without policies in place to ensure this access the default for adoptees of color is that they will more likely be raised by a family without the same ancestry. With few resources available to provide guidance to birth or adoptive parents there are no meaningful policies in place to preserve the child's heritage and avoid forced cultural assimilation and subsequent trauma.⁷⁴

Expectant parents of color (or white woman expecting a child of color) are not educated by professionals about the long-term effects of transracial adoption on adoptees, are not told that they can keep looking until they find a family that shares their child's race, are typically told that people of color do not adopt and are convinced to choose a white family.

IV. Human Rights Committee General Comments

In paragraph 1 of Thirty ninth session (1990), General comment No. 19: Article 23 (The family), this Committee stated as follows:

“Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family”

In paragraph 5 of Thirty fifth session (1989), General comment No. 17: Article 24 (Rights of the child) this Committee stated as follows:

“The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas nondiscrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the nondiscrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every

⁷³ See: adoptimist.com

⁷⁴ Freeman, Ellie “Transracial doesn't mean what Rachel Dolezal thinks it means” June 15, 2015 Media Diversified (See: <https://mediadiversified.org/2015/06/15/transracial-doesnt-mean-what-rachel-dolezal-thinks-it-means/>)

field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.”

In paragraph 6 through 8 of the General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights published September 27, 1993 the Committee stated that Article 18 guarantees that children receive a religious and moral education in conformity with their own convictions.

V. Other UN Body Recommendations

On June 18, 2018 U.N. High Commissioner for Human Rights Zeid Ra’ad Al Hussein in remarks at the opening of the 38th session of the Human Rights Council called for the United States Government to “end the practice of forcible separation of these children” quoted the American Association of Pediatrics that the practice constituted “government-sanctioned child abuse”.

VI. Recommended Questions

How is the United States Government ensuring that children remain with their parents whenever possible and ensuring that children have access to their birth parents, their culture, and their language when removal is necessary or adoption occurs?

How is the United States Government supporting low-income parents to ensure family integrity and ensure that parents are not subject to economic coercion in the adoption process?

How is the United States Government ensuring that officials responsible for child removal are properly trained to maintain family integrity and have sufficient cultural and language competency to understand the needs of children and parents from diverse cultures?

VII. Suggested Recommendations

The United States Government should end child removal in the immigration process.

The United States Government should enact laws and policies ensuring that low-income parents have sufficient support to ensure the well-being of their children.

The United States Government should enact laws and policies improving cultural and language competency of case workers with the power to make decisions resulting in child removal.

The United States Government should enact laws and policies guaranteeing that children in foster care and adoption have access to their birth parents whenever possible as well as access to their culture and language.

The United States Government should enact laws and policies prioritizing placement of foster children and adoptees in families from the same racial and cultural group who speak the language of the child's parents whenever possible.
