

The United States of America's Compliance with the
Convention on the Elimination of All Forms of Racial Discrimination

Suggested List of Themes

Submitted by the Southern Poverty Law Center

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The Southern Poverty Law Center was founded in 1971 with the purpose of ensuring that the goals of the US civil rights movement would be realized for everyone. SPLC seeks to achieve its purpose through litigation, policy advocacy, education and community organizing, and is a catalyst for racial justice in the Southern US and beyond. SPLC also operates an internationally known Intelligence Project that tracks and exposes the activities of hate groups and other domestic extremists.

Suggested Themes and Questions

Article 2 – Systemic failure to undertake effective measures to adequately implement the Convention

The US maintains that human rights treaties are not self-executing and do not create individually enforceable rights under US domestic law,¹ but has not taken steps to legislatively incorporate the Convention into its domestic law, nor effective measures to incorporate it in policies and practices. US domestic courts do not address violations of the Convention, nor do agencies charged with enforcement of domestic laws and regulations related to racial equity and discrimination undertake to monitor, implement, or even consider, US obligations under the Convention. The US State Department monitors implementation of and compliance with the Convention by other states, but not the State Party's own implementation or compliance. The US asserts that it “has in place sufficient multiple and complementary protections and mechanisms to reinforce its ability to guarantee respect for human rights,”² but there is in fact no mechanism charged with doing so with regard to the Convention. The US has not taken any steps to create a national human rights institution or to charge any existing mechanism with overseeing the implementation of human rights treaties, nor does it have any apparent intention to do so.

In January 2021, President Biden issued Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.³ The order set forth a policy of pursuing “a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality,” programs, policies, and regulations and directed federal agencies to undertake reviews of their respective programs and to produce plans based on their findings. In April 2022, the White House announced the completion of these reviews and the issuance of racial equity plans by more than 90 federal agencies.⁴ While these initiatives certainly are to be commended, neither the reviews and nor the resulting plans include any consideration of implementation of or compliance with the Convention. The US cannot undertake a genuine effort to incorporate compliance with its obligations under Convention into its domestic policy without any consideration of those obligations in such a directly relevant process, particularly in the continued absence of an NHRI.

Suggested Inquiries:

- Developments in creating a permanent and effective coordinating mechanism, such as a national human rights institution, to ensure full implementation of the Convention.
- Developments with regard to monitoring of and response to governmental, national and local policies, laws and regulations which have the effect of creating or perpetuating racial

¹ US reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (24 June 1994).

² Combined tenth to twelfth reports submitted by the United States of America under article 9 of the Convention, due in 2017, CERD/C/USA/10-12, at para. 12.

³ [Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), 20 January 2021.

⁴ [Advancing Equity and Racial Justice Through the Federal Government](#), April 2022.

discrimination. Data, disaggregated by race, showing the racial impact of such laws, regulations and policies.

- Information as to whether and how compliance with the provisions of the Convention will be incorporated into the “comprehensive approach” contemplated by Executive Order 13985, in light of their absence from recently published racial equity plans.
- Information on how civil society organizations will be consulted with regard to the implementation of the provisions of the Convention following the Committee’s review.

Article 3 – Failure to eradicate practices related to racial segregation

A substantial proportion of public school funding in the US is based on property taxes – in some states, property taxes make up 40% or more of public school revenue.⁵ This creates huge gaps in funding between wealthier districts that serve mostly white students and poorer districts where the student population is mostly Black or Brown.⁶ There currently is a “\$23 billion gap between white and nonwhite school districts,” though they serve the same number of children.⁷

The increasing diversion of public school funding to private schools further threatens funding for schools with a higher population of Black and Brown students. Current tuition voucher programs established under state laws exacerbate school segregation while diverting public funds to private schools. A recent report showed white students substantially overrepresented in private schools, while Hispanic and Black students are underrepresented.⁸ In five Southern states (Alabama, Florida, Georgia, Louisiana and Mississippi), one in five students live in poverty, more than half are considered low income and one in three is Black.⁹

In October 2021, President Biden issued Executive Order 14050 establishing a White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans.¹⁰ The order recognizes the continued existence of “persistent racial and systemic injustices,” with the result that “Black students remain more likely to attend high-poverty and racially segregated schools” and “are inequitably disciplined and suspended from school at disproportionately higher rates.” The order announces admirable policy goals, including increasing understanding of systemic causes of educational disparities, access to high quality educational programs, excellent teachers, and equal educational resources for Black families, improving data collection regarding educational disparities, and promoting an engaged and positive school environment for Black students and families, but contains few details on its implementation. The order does not contain any mention of US obligations under the Convention. As of May 5, 2022,

⁵ [Public School Revenue Sources](#), National Center for Education Statistics, at Figure 3, last updated May 2021.

⁶ [Inequality in Public School Funding: Key Issues & Solutions for Closing the Gap](#), American University School of Education, 10 September 2020.

⁷ *\$23 Billion*, EdBuild, February 2019, at 2.

⁸ [Private Schools in American Education: A Small Sector Still Lagging in Diversity](#), 15, Jongyeon Ee et al., UCLA Civil Rights Project, Working Paper, 2018.

⁹ [Inequity in School Funding](#), Southern Poverty Law Center and Education Law Center, 2021.

¹⁰ [Executive Order on White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans](#), 19 October 2021.

the Initiative, housed at the Department of Education, had yet to appoint a director and had only one staff member.¹¹

Suggested Inquiries:

- Measures to combat racial segregation of schools, including measures to address inequities in school funding.
- Information regarding the concrete goals, timelines, and impact assessment mechanisms for implementation of Executive Order 14050, including consideration of the provisions of the Convention.
- Information regarding participation of and consultation with civil society in addressing factors that contribute to the educational achievement gap between racial groups.
- Data regarding racial disparities in school discipline and information on steps taken to address such disparities.

Article 4 – Failure to undertake effective measures to eradicate racial hatred and incitement thereto, or to prohibit public authorities or institutions from promoting or inciting racial hatred

In 2021, SPLC identified 1221 active hate and anti-government extremist groups across the United States. Involvement by members of extremist groups in US law enforcement and military agency activities, as members or acting on their own, is a very serious concern. Recent investigations by SPLC show that members of far-right white supremacist and other extremist organizations are active duty police officers in major metropolitan police departments, active duty military personnel, and are involved in intercepting migrants at the southern US border.¹²

Following the arrests of several military veterans and at least one active duty service member for their roles in the 6 January violence at the US Capitol, the Secretary of Defense ordered a one day “stand down” across military branches to address extremism within their ranks, and the Pentagon undertook a review of the issue. The Pentagon later published new regulations intended to help prevent extremist activities by active duty military personnel.¹³ The new rules don’t prohibit membership in white supremacist or other extremist organizations, just “active participation” in their activities.¹⁴ The rules fail to address racially disparate treatment of service members in the military justice system and contain no explicit definitions or prohibitions of hate crimes, hindering investigations into such crimes.¹⁵

The Federal Bureau of Investigation has published annual reports documenting hate crimes reported by the 18,000 police agencies across the US since 1991. Reporting is voluntary, and many

¹¹ [White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans](#), US Department of Education (visited 5 May 2022).

¹² *Active-duty police in major U.S. cities appear on purported Oath Keepers rosters*, NPR, 5 November 2021; [White Nationalists, Jan. 6 Protestors and QAnon: What You Need To Know About Border Vigilantes Along the Border](#), Southern Poverty Law Center, 02 December 2021; [Letter to the Honorable Mark Tanako, Chair, and the Honorable Mike Bost, Ranking Member](#), Veterans Affairs Committee, US House of Representatives, 11 October 2021.

¹³ [Pentagon issues rules aimed at stopping rise of extremism](#), PBS News Hour, 20 December 2021.

¹⁴ [Military still grappling with racism and extremism, investigation finds](#), PBS News Hour, 29 December 2021.

¹⁵ *Id.*

law enforcement agencies do not provide information. For the third year in a row, the number of agencies participating declined in 2020. In 2020, the FBI reported 8,263 hate crimes, a 13% increase over 2019 and the highest since 2001.¹⁶ Race-based crimes were most numerous – 63% of all reported hate crimes, the highest since 1996 and a 32% increase over 2019. The majority of the race-based crimes (55%) were directed at Black people, a 49% increase over 2019. Crimes directed against Asian American/Pacific Islander communities increased 56% over 2019.

Social media platforms are used to enable extremist groups and organize their activities. An SPLC analysis found Twitter was the number one platform used to organize the 6 January attack on the US Capitol, and documented Twitter's willful failure to address use of its platform to spread disinformation and hate.¹⁷ Hate and extremist groups have flourished on social media and other digital platforms and quickly regroup when companies carry out sporadic efforts to remove them.

Suggested Inquiries:

- Information regarding measures to improve collection of data on hate crimes, including by requiring all law enforcement agencies to report all such instances to the FBI.
- Measures to ensure all law enforcement officers are provided adequate training on investigation and reporting of complaints of hate crimes.
- Recently adopted or anticipated measures to combat racist hate speech, including in media or on the internet, and any progress toward withdrawing or narrowing the reservation to Article 4 of the Convention to take into account General Recommendation No. 35.
- Complete, accurate, and up-to-date statistical information regarding trends in instances of racist hate speech sufficient to measure the impact of efforts to combat racist hate speech.
- Data on incidents of racist hate speech and hate crimes involving active duty US military service members.
- Information on the implementation of recently adopted rules on active participation in extremist activity for active duty US military service members.
- Information regarding measures to identify and address white supremacy and other forms of extremism in non-military agencies, especially those with law enforcement functions.
- Recently adopted and additional measures to prohibit extremist activities by civilian government personnel and contractors, particularly those involved in law enforcement or immigration enforcement functions.
- Measures to address the role of digital platforms in supporting and enabling white supremacist and other extremist groups who advocate, incite, and carry out violence.

Article 5 – Failure to guarantee equality before the law and the enjoyment of rights without distinction as to race, colour, or national or ethnic origin

People of color in the United States, and in particular Black residents, continue to face barriers to participation in representative democracy on an equal basis with their white counterparts. Since the 2013 US Supreme Court decision in *Shelby County, Alabama v. Holder*, which struck down key aspects of a provision of the Voting Rights Act of 1965 requiring jurisdictions with a history

¹⁶ [FBI Releases Updated 2020 Hate Crimes Statistics](#), Federal Bureau of Investigation, 25 October 2021.

¹⁷ ['We Made Mistakes': Twitter's Embrace of the Extreme Far Right](#), Southern Poverty Law Center, 7 July 2021.

of racial voting discrimination to obtain federal approval before changing their voting laws, states have adopted dozens of new laws restricting and impeding voting access. The pace of the adoption of such laws accelerated over the last year.¹⁸ Congress has failed to reauthorize the preclearance requirement.

The imposition of new obstacles to voting access continues almost daily, with threats increasingly coming from far-right activists gaining or seeking to gain control of state and local election authorities.¹⁹ State election officials are taking steps to make access to voting much more difficult.²⁰ SPLC and other rights advocates recently requested that the Inter-American Commission on Human Rights conduct a public hearing on threats to voting rights and democracy in the US.²¹

The US is in the midst of a redistricting cycle that is consolidating power in one nearly all-white political party in southern states, where a significant majority of people of color still live. Redistricting has been one of the most effective and consistent tactics used to disenfranchise voters of color in the South. The current cycle is being manipulated to dilute the voting power of Black and other racial minority groups, despite their representing a majority of US population growth since the last cycle.²²

Disinformation spread using digital platforms has developed into a major threat to democracy in the US. Throughout the 2020 election cycle, disinformation was used to threaten and intimidate voters, as well as to mislead them in order to suppress turnout. Voters received robocalls, traced to far-right operatives, spreading lies about dangers associated with mail-in voting – particularly critical during an election impacted by a pandemic. Threatening emails were sent to Florida voters. They appeared to be from a far-right US hate group, but were later discovered to have originated in Iran. False information about voter fraud, including fake news stories and doctored videos, was widely spread on social media, engendering distrust in the election process.²³

More than five million Americans are denied the right to vote due to a criminal conviction, and almost half of that population resides in the South. Even where bars based on felony conviction have been eased, right-wing politicians continue to find ways to prevent people from voting, such as requiring them to pay all court-related debt before being allowed to vote.²⁴ Data estimates compiled by The Sentencing Project as of 2020 illustrate the racially disparate impact of these disenfranchisement laws in Alabama, Florida, Georgia, Louisiana and Mississippi:

¹⁸ [The race to change voting rules is on](#), CNN, 22 March 2022.

¹⁹ [‘Slow-motion insurrection’: How GOP seizes election power](#), Associated Press, 30 December 2021; [Here’s where election-denying candidates are running to control voting](#), NPR, 4 January 2022.

²⁰ [Rural Georgia County may close all but one voting spot](#), Atlanta Journal-Constitution, 30 December 2021.

²¹ [HRW, SPLC, and Partners Request Inter-American Commission Hearing on Barriers to the Right to Vote for Black, Native, and Latinx People in the United States](#), Human Rights Watch, 20 April 2022.

²² [Redistricting Litigation Roundup](#), Brennan Center for Justice, 20 December 2021.

²³ [Overcoming The Unprecedented: Southern Voters’ Battle Against Voter Suppression, Intimidation, and a Virus](#), Southern Poverty Law Center, 10 March 2021.

²⁴ [Voting Rights Restoration Efforts in Florida](#), Brennan Center for Justice, 11 September 2020.

Total Disenfranchised Due to Felony Convictions

State	Total Disenfranchised	Voting Age Population	Percent Disenfranchised
Alabama	328,198	3,671,110	8.94%
Florida	1,132,493	14,724,113	7.69%
Georgia	275,089	7,254,693	3.79%
Louisiana	76,924	3,452,767	2.23
Mississippi	235,152	2,228,659	10.55

Black Population Disenfranchised Due to Felony Convictions

State	Total Disenfranchised	Voting Age Population	Percent Disenfranchised
Alabama	149,716	962,519	15.55%
Florida	338,433	2,194,488	15.42%
Georgia	145,601	2,322,275	6.27%
Louisiana	47,951	1,087,270	4.41%
Mississippi	130,501	817,493	15.96%

Such disparities are potentially outcome determinative in close elections.

Suggested inquiries:

- Information on measures to restore federal oversight of changes in voting procedures at the state or local level and to prevent the implementation of changes that have a discriminatory impact.
- Information on the anticipated impact of changes in voting procedures on racial minority groups.
- Data showing the racial impact of recent changes in electoral districts.
- Recent developments and additional measures to ensure that all states restore voting rights to persons convicted of felony offenses who have completed their sentences of incarceration.
- Information on measures to combat the spread of disinformation and voter intimidation, particularly through the use of digital technologies and platforms.

Article 5 – Failure to eliminate racial discrimination with regard to the right to equal treatment before tribunals and other organs administering justice

The Committee has frequently inquired about racially disparate mass incarceration in the US. As the crisis of mass incarceration escalated over the past several decades, it left in its wake many long-term consequences that linger long after the sentence of incarceration has been served. These

consequences have devastating impacts, not only on formerly incarcerated individuals themselves, but on their children, other family members, and communities.

Black people are disproportionately represented in US prisons, often making up half or more of a prison population despite being a quarter or less of the jurisdiction's population. Children who experience parental incarceration are also disproportionately Black – more than 11% of Black children have had at least one incarcerated parent, as compared with just over 1% of their white peers.²⁵ They suffer many long-term consequences, including a higher risk of being placed in foster care,²⁶ difficulties in school that can end up in suspension or expulsion, and a lifelong higher risk of mental²⁷ and physical illness.²⁸

The financial consequences of incarceration are also enormous and long-lasting. Almost half of incarcerated parents were the breadwinners for their families,²⁹ and nearly half lived with their children prior to incarceration, leaving children much more likely to become impoverished and even homeless. Black children of incarcerated fathers are especially at risk of homelessness.³⁰ The non-incarcerated parent frequently experiences problems obtaining childcare, which inhibits their ability to work, and they often report being unable to pay for basic needs such as food, rent, utilities, and medical care.³¹ The expenses associated with incarceration are a tremendous burden. Traveling long distances to visit an incarcerated parent means costs for transportation and lodging. Charges for telephone communications, which must be paid by the family, are exorbitant. The correctional telecommunications industry collects \$1.5 billion annually from prisoner phone calls, with the average cost of a 15 minute call at \$5.74.³² In 2017, for example, families spent an estimated \$2.9 billion on prison phone accounts and commissary charges for purchases such as hygiene items, pens and paper, and food.³³

More than half of formerly incarcerated people are unable to find stable employment within the first year after release.³⁴ Those that are employed earned a median income of just \$10,000 per year.³⁵ More than half of formerly incarcerated people are unable to find stable employment within the first year after release.³⁶ Those that are employed earned a median income of just \$10,000 per year.³⁷ Lingering court debt also places a huge financial strain on the formerly incarcerated parent. One report found that the average family paid \$13,000 in fines and fees.³⁸

²⁵ [Cut Off From Caregivers: The Children of Incarcerated Parents in Louisiana](#), Southern Poverty Law Center, 2021, at 2.

²⁶ *Id.* at 6.

²⁷ *Cut Off from Caregivers, supra*, at 5.

²⁸ [The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults](#), National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, April 2013.

²⁹ *A Shared Sentence, supra*, at 2.

³⁰ *Cut Off From Caregivers, supra*, at 6.

³¹ *A Shared Sentence, supra*, at 3.

³² [The staggeringly high price of a prison phone call](#), Katrina vanden Heuvel, Washington Post, 30 November 2021.

³³ [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 25 January 2017.

³⁴ [A better path forward for criminal justice: Prisoner reentry](#), Brookings Institute, April 2021.

³⁵ *Examining the Intersection, supra*.

³⁶ [A better path forward for criminal justice: Prisoner reentry](#), Brookings Institute, April 2021.

³⁷ *Examining the Intersection, supra*.

³⁸ [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights, *et al.*, September 2015.

Suggested inquiries:

- Measures taken to address the racial disparities in US prison populations.
- Data, disaggregated by race and age, and by jurisdiction, regarding children experiencing parental incarceration.
- Measures taken to provide assistance to children of incarcerated individuals.
- Recent developments and additional measures to address the collateral consequences of the costs of incarceration and court-related debt.
- Information on efforts to remove obstacles to employment and housing for formerly incarcerated individuals.

Article 7 – Failure to undertake effective measures to combat racial prejudice and to promote understanding, tolerance and friendship among racial groups

In its 2014 Concluding Observations, the Committee recommended that the US “adopt a national action plan to combat structural racism, and to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.”³⁹ Unfortunately, the US has taken a sharp turn away from this recommendation in the area of education over the past two years.

Conservative groups and politicians characterize such education as unpatriotic, claim it serves to make white students feel ashamed or guilty about their racial identity, and are taking steps to prohibit teaching of accurate historical accounts of the role of race and of Black Americans in US history, some even going so far as to ban books touching on matters of race.⁴⁰ New state laws and regulations prohibit instruction about unconscious bias, discrimination, privilege, and oppression. Far-right politicians in the US House of Representatives have introduced legislation that would prohibit the Department of Education from funding proposed US history and civics education programs that reflect the diversity of the student body and create inclusive learning environments by, for example, “tak[ing] into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.”

These concerted attacks on instruction about issues of racism and discrimination have increasingly led to intimidation, harassment, threats, and even violent assaults against students, teachers and school board members. Combined with disputes related to COVID precautions, threats to people associated with schools have become so extreme that the National School Boards Association asked the Department of Justice to intervene. The Association’s letter, since removed from its website after aggressive backlash, “detailed more than twenty examples of violence, harassment

³⁹ Concluding Observations at para. 25.

⁴⁰ E.g., [In Texas, a Battle Over What Can Be Taught, and What Books Can Be Read](#), The New York Times, 10 December 2021; [Calls to Ban Books by Black Authors Are Increasing Amid Critical Race Theory Debates](#), Education Week, 30 September 2021.

and intimidation.”⁴¹ As a result, the Federal Bureau of Investigation is now tracking threats against educators.⁴²

Suggested inquiries:

- Update on the implementation, impact and evaluation of measures in the field of education and culture to combat racial discrimination, prejudice and intolerance.
- Information on the representation in school textbooks and curricula of persons of African descent and other minority groups.
- Recent developments and additional measures to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote understanding among racial and ethnic groups.

⁴¹ [National School Board Association Letter to President Biden](#), 29 September 2021; [First look: Thousands of school board members urge Biden to protect them](#), Axios, 30 September 2021.

⁴² [FBI tracking threats against educators after complaints from school boards, leaked email shows](#), District Administration, 17 November 2021; [Memo from US Attorney General Merrick Garland](#), October 4, 2021.