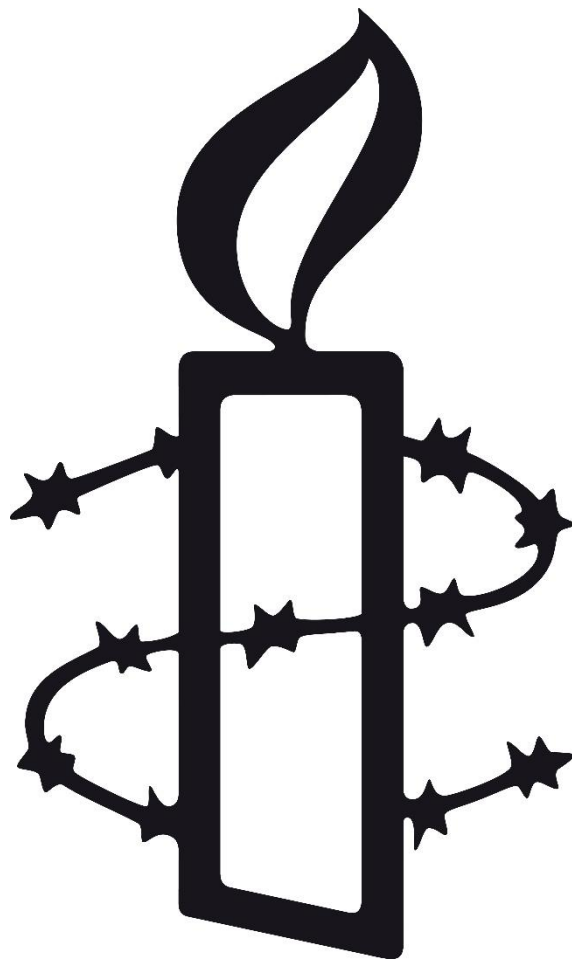


UNITED STATES OF AMERICA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
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In this submission to the UN Human Rights Committee, Amnesty International sets out how the USA continues to fail to live up to its human rights obligations on a range of issues including: implementation at the domestic level; the continued use of the death penalty; the use of lethal force by law enforcement; the prevalence of gun violence and the failure to protect the right to life; the failure to respect sexual and reproductive rights; the “targeted killing” program- violations of the right to life; the failure to protect the right to freedom of expression and peaceful assembly; discrimination and violations based on sexual orientation and gender identity; the failure to protect Indigenous women from gender-based violence; unlawful pushbacks, arbitrary detention, and ill-treatment against asylum seekers; reparations for the legacy of chattel slavery and colonialism; and, petrochemical pollution’s disproportionate impact on low-income and Black and brown communities. This submission is not an exhaustive list of Amnesty International’s concerns.

1. INTRODUCTION

Amnesty International submits this document ahead of the Human Rights Committee's review of the United States of America's (USA) fifth periodic report under the International Covenant on Civil and Political Rights (the ICCPR).

More than three decades after ratifying the Covenant, the USA continues to fail to live up to its human rights obligations on a range of issues including: implementation at the domestic level; the continued use of the death penalty; the use of lethal force by law enforcement; the prevalence of gun violence and the failure to protect the right to life; the failure to respect sexual and reproductive rights; the "targeted killing" program- violations of the right to life; the failure to protect the right to freedom of expression and peaceful assembly; discrimination and violations based on sexual orientation and gender identity; the failure to protect Indigenous women from gender-based violence; unlawful pushbacks, arbitrary detention, and ill-treatment against asylum seekers; reparations for the legacy of chattel slavery and colonialism; and, petrochemical pollution's disproportionate impact on low-income and Black and brown communities. This submission is not an exhaustive list of Amnesty International's concerns.

2. OBSTACLES TO IMPLEMENTATION AT THE DOMESTIC LEVEL (ARTICLE 2)

The Committee has repeatedly raised the issue of domestic implementation in its concluding observations, yet no steps have been taken by the administration towards reviewing or addressing the gaps between the ICCPR and US domestic law, for instance in the continued use of the death penalty, unfair trials for those charged with terrorism-related offenses at the Guantánamo Bay Detention Center, or the failure to hold those accountable for acts of torture and other violations in counter-terrorism actions.

Furthermore, the USA has failed to withdraw the limiting reservations and declarations to the ICCPR. For instance, Article 2(1) of the ICCPR requires the State Party to undertake "to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind".

The USA continues to incorrectly insist that Article 2(1) does not create obligations for a State Party with respect to individuals extraterritorially. The government ignores the Committee's example of those detained at Guantánamo Bay, limiting its response to this question to scenarios where individuals would be under its jurisdiction to "State Party-registered ships located beyond that State Party's territorial sea, or on State Party-registered aircraft flying in international airspace or in another State's airspace."¹

Recommendation:

- The USA should withdraw its reservations to the ICCPR, and cease to invoke and publicly disavow the "global war" doctrine it has used as part of counter-terrorism operations, fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures and ensure that the ICCPR is fully implemented in US law and applicable to all those subject to its jurisdiction, wherever those individuals may be located.

¹ CCPR/C/USA/5, para. 14.

3. CONTINUED USE OF THE DEATH PENALTY (ARTICLES 6 AND 7)

Since 2014, more than 210 people have been executed in the USA, 75% of them for murders involving white victims and 16% involving Black victims, continuing a long-standing pattern.² Some 2,400 people remain under sentence of death in 27 states, and on military and federal death rows.³

Seventy-four per cent of the 1,570-plus executions since 1972 occurred in seven states, all but one (Missouri) in the South.⁴ While Virginia abolished the death penalty in 2021, the other six are responsible for 83% of all executions since 2014, demonstrating that significant geographical bias has continued during the reporting period.

The USA's reservations to ICCPR articles 6 and 7 contravene international law, while the extent of its reservations and declarations was "intended to ensure that the United States has accepted only what is already the law of the United States".⁵ Its law allows for executions that violate its international human rights obligations, despite the "exhaustive system of protections" trumpeted in its Fifth Periodic Report. Executions are set despite concerns on the reliability of the conviction and the unfairness of the trial,⁶ or evidence of serious mental or intellectual disabilities,⁷ racial discrimination,⁸ inadequate legal representation,⁹ or prosecutorial misconduct¹⁰ The 1996 Antiterrorism and Effective Death Penalty Act facilitates executions by curtailing federal judicial review and successive petitions.¹¹

The death penalty remains susceptible to anti-human rights, 'tough-on-crime' politicization during election years, as occurred during the build-up to resumption of federal executions ahead of the 2020 Presidential elections. Florida has executed five men so far in 2023, its first executions since 2019, after presidential hopeful Governor Ron DeSantis signed their death warrants.¹²

Between July 2020 and January 2021, the federal government conducted 13 executions after a 17-year moratorium. The cases included examples of arbitrariness, racial discrimination, prosecutorial misconduct, mental disability, intellectual disability, and inadequate legal representation.¹³ There appears to have been no meaningful consideration of petitions for executive clemency as article 6.4 of the ICCPR demands.

President Biden promised to work for abolition of the federal death penalty and for the same in states. Today there is little to show for his pledge beyond reinstating a temporary moratorium on executions while the Department of Justice (DOJ) conducts a review of policies and regulations. The administration

² Death Penalty Information Center, Facts About the Death Penalty, <https://dpic-cdn.org/production/documents/pdf/FactSheet.pdf>, updated 29 August 2023. (DPIC, Facts About the Death Penalty)

³ Amnesty International, *Death Sentences and Executions 2022*, 16 May 2023 (Index: ACT 50/6548/2023), <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

⁴ Texas (583), Oklahoma (121), Virginia (113), Florida (104), Missouri (97), Georgia (76) and Alabama (71). Source: DPIC, Facts About the Death Penalty.

⁵ CCPR/C/79/Add.50, A/50/40 (1995).

⁶ Amnesty International, *USA: Woman's execution would violate international law* (Index: AMR 51/5420/2022), 30 March 2022, <https://www.amnesty.org/en/documents/amr51/5420/2022/en/>.

⁷ Amnesty International, *USA: Rocky Myers: Three Decades on Alabama Death Row, Seeking Justice*, (Index: 50/4408/2021), https://www.amnestyusa.org/wp-content/uploads/2022/03/Rocky-Myers-Case-Sheet_2022.pdf; Amnesty International, *USA: Further information: Man executed despite intellectual disability: Ernest Lee Johnson*, (Index: AMR 51/4861/2021), 8 October 2021, <https://www.amnesty.org/en/documents/amr51/4861/2021/en/>.

⁸ DPIC, *Legal Reform Advocates: Racial Justice Act Will Reshape California Death Row*, 25 October 2022, <https://deathpenaltyinfo.org/news/legal-reform-advocates-racial-justice-act-will-reshape-california-death-row>; M.L. Radelet & GM Pierce, *Race and Death Sentencing in North Carolina, 1980 – 2007*, North Carolina Law Review, Vol. 89, No. 6, 2011, <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4522&context=nclr>

⁹ Amnesty International, *USA: Alabama execution set – Call for clemency* (Index: AMR 51/5147/2022), 13 January 2022, <https://www.amnesty.org/en/documents/amr51/5147/2022/en/>.

¹⁰ Amnesty International, *USA: Father appeals for son's life to be spared: Thomas Whitaker* (Index: AMR 51/7902/2018), 14 February 2018, <https://www.amnesty.org/en/documents/amr51/7902/2018/en/>.

¹¹ Amnesty International, *USA: Further information: Missouri conducts its third execution of 2023: Michael Tisius* (AMR 51/6865/2023), 7 June 2023, <https://www.amnesty.org/en/documents/amr51/6865/2023/en/>.

¹² K. Jimenez, *Critics blast DeSantis for ramping up Florida death row scheduled executions ahead of 2024*, USA Today, 7 July 2023, <https://www.usatoday.com/story/news/nation/2023/07/07/florida-executions-ron-desantis-2024-bid/70385763007/>; Amnesty International, *USA: The Power of Example, Wither the Biden Death Penalty Promise?*, (Index: AMR 51/5484/2022), 27 June 2022, <https://www.amnestyusa.org/wp-content/uploads/2022/06/The-Power-of-Example-Whither-the-Biden-Death-Penalty-Promise-.pdf>. (The Power of Example)

¹³ Amnesty International, *The Power of Example*.

has defended existing federal death sentences, sought reinstatement of death sentences on appeal, and sought new death sentences at trial.¹⁴ In 2023, Congress reintroduced two federal abolition bills, however little movement is expected on either bill this legislative session.¹⁵ The USA continued its history of voting against a key resolution calling for the establishment of a moratorium on executions with a view to abolishing the death penalty in the plenary session of the UN General Assembly on 15 December 2022, the ninth time the USA has done so. At state level, the 40-plus executions since President Biden took office have met no opposition from his administration, nor has the President issued statements welcoming the abolition of the death penalty in Virginia and Washington.

Death sentences “must not be carried out as long as international interim measures requiring a stay of execution are in place”.¹⁶ The USA previously pledged its commitment “to cooperating with the human rights mechanisms of the United Nations, as well as the Inter-American Commission on Human Rights (IACHR)”.¹⁷ Since then, 18 people have been executed (13 since 2014) despite IACHR precautionary measures requiring stays of execution pending petition review or after review and findings of international law violations. Three federal executions between 2020-2021 proceeded despite IACHR findings of international law violations upon review of the merits of petitions or in the face of IACHR precautionary measures. The IACHR considers the USA’s non-compliance to be a situation of the “utmost gravity.”

Article 6(6) expects retentionist States parties to be “on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future.”¹⁸ The USA has inched closer to that objective but is still far from meeting it. Since 2014, five states have abolished the death penalty with five additional Governors implementing moratoriums.¹⁹ However, other states moved in the opposite direction by lowering the threshold to sentence individuals to death in Florida or resorting to forms of execution in Idaho that are in contravention of Article 7.

Recommendation:

- Congress should adopt and the President should sign the Federal Death Penalty Prohibition Act of 2023 and swiftly resentence those already under sentence of death. All US states that retain the death penalty should issue immediate moratoriums on all executions and pass legislation to abolish this punishment from their statutes.

4. USE OF LETHAL FORCE BY LAW ENFORCEMENT (ARTICLES 2 AND 6)

The US government does not document how many people are killed due to police use of force. In response to the failure of government agencies to collect reliable and complete data, several NGOs and media outlets have tried to fill the void. They estimate that more than 1,000 people are shot and killed by police each year, and hundreds more are killed using other forms of force.²⁰ According to *The Washington Post*, 8,087 people died between 2015 and 2022 from police use of firearms alone.²¹ Congress passed the Death in Custody Reporting Act in 2014, requiring states that receive federal criminal justice funding to

¹⁴ Amnesty International, *The Power of Example*.

¹⁵ See H.R. 4633/S. 2299 and H.R. 1124.

¹⁶ CCPR/C/GC/36 (2019), para. 46.

¹⁷ Human rights commitments and pledges of the USA, UN Doc. A/63/831, p. 4.

¹⁸ CCPR/C/GC 36, para. 50.

¹⁹ Abolished: Delaware (2016), Washington (2018) New Hampshire (2019), Colorado (2020), Virginia (2021). Gubernatorial holds: Arizona, California, Ohio, Oregon and Pennsylvania. DPIC, *State by State*, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state>

²⁰ The Washington Post, “Fatal Force: 1,106 people have been shot and killed by police in the past 12 months”, 15 February 2023, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (Fatal Force); Mapping Police Violence, <https://mappingpoliceviolence.org/>.

²¹ Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States*, June 2015, https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf, p. 9. (Deadly Force).

report data to the DOJ on how many individuals die each year while in police custody or during arrest. However, the DOJ has failed to fully implement the program.

Black people are disproportionately impacted by this use of lethal force as they comprise nearly a quarter of deaths (23.4%) from police use of firearms and are killed by police at more than twice the rate of white people, despite being approximately 13% of the US population.²² The use of lethal force against Black people and other racialized groups in the USA should be seen in the context of a wider pattern of racially discriminatory treatment by law enforcement officers.²³ Amnesty International has previously raised concerns about these issues, including the failure of Congress to pass the End Racial and Religious Profiling Act (ERRPA), which would prohibit any law enforcement agent or agency from engaging in racial profiling.²⁴

There is no federal statute governing the use of lethal force in the USA. Instead, it is governed by common law and individual state laws. Despite some recent progress at the state level, these laws are too permissive and fall short of international law and standards on the use of force and firearms.²⁵ For instance, no state statute requires lethal force to be used only as a last resort and that non-violent and less harmful means be tried first or limits the use of lethal force solely to those situations where there is an imminent threat to life or serious injury to the officer or others, in violation of Article 6.

The Police Exercising Absolute Care with Everyone Act (PEACE Act), was first introduced in Congress in 2019.²⁶ If enacted, among other provisions, it would bar federal law enforcement officers from using deadly force unless necessary as a last resort to prevent imminent death or serious bodily injury, and only after reasonable alternatives have been exhausted – a more stringent standard than any current state statute or common law. It would also require states that receive specific federal funding to enact a similar use of force law in order to continue receiving those funds. The PEACE Act, along with ERRPA, was enfolded into the George Floyd Justice in Policing Act in 2020, however, Congress failed to pass that bill in 2021 and has yet to reintroduce the full bill during the current session.²⁷

Recommendation:

- Congress should reintroduce and pass, and the President should sign, the George Floyd Justice in Policing Act, which would include the provisions of the PEACE Act and ERRPA.

5. PREVALENCE OF GUN VIOLENCE AND THE FAILURE TO PROTECT THE RIGHT TO LIFE (ARTICLES 2, 6, AND 9)

Gun violence in the USA is a human rights crisis.²⁸ The USA has both the highest absolute and highest per capita rates of gun ownership in the world, with guns easily accessible by those most likely to misuse them.

The right to own or bear firearms does not exist in international human rights law (IHRL), but every individual does have the right to be protected from firearm violence, whether perpetrated by private individuals or public officials. The USA is obligated by both binding treaties and customary IHRL to take

²² Fatal Force, www.washingtonpost.com/graphics/investigations/police-shootings-database/.

²³ DOJ, Office of Justice Programs, *Contacts Between Police and the Public*, 2015, Bureau of Justice Statistics Special Report. Appendix Table 4: Number and percent of U.S. residents age 16 or older with police-initiated contact, by type of contact and demographic characteristics, 2015, www.bjs.gov/content/pub/pdf/cpp15.pdf.

²⁴ Amnesty International, *United States of America: Submission to the UN Committee on the Elimination of Racial Discrimination (Index: AMR 51/5873/2022)*, 107th Session, 8-10 August 2022, 2022, <https://www.amnesty.org/es/wp-content/uploads/2022/07/AMR5158732022ENGLISH.pdf>, p. 13.

²⁵ *Deadly Force*, pp. 21-23.

²⁶ HR 4359 – Police Exercising Absolute Care With Everyone Act of 2019, www.congress.gov/bill/116th-congress/house-bill/4359.

²⁷ HR 1280 – George Floyd Justice in Police Act of 2021, www.congress.gov/bill/117th-congress/house-bill/1280.

²⁸ Amnesty International, *USA: In the Line of Fire: Human Rights and the US Gun Violence Crisis*, 2018, www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf; Amnesty International USA, *Scars of Survival: Gun Violence and Barriers to Reparations in the USA* (Index: AMR 51/0566/2019), 2019, www.amnestyusa.org/wp-content/uploads/2019/07/Scars-of-survival.pdf; Amnesty International USA, *From Pain to Progress: Confronting the Struggle on the Front Lines of America's Gun Violence Crisis*, 2021, heroes.amnestyusa.org/wp-content/uploads/2021/06/Amnesty-EGVReport-V5.pdf.

effective measures to protect human rights that are continually under threat in the USA by inadequate regulation of private gun ownership.

According to the Committee, every State must “exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.”²⁹ This includes an obligation to “take appropriate measures to address the general conditions in society that may give rise to direct threats to life,” such as “high levels of criminal and gun violence...”³⁰ States must accordingly “protect their populations . . . against the risks posed by excessive availability of firearms.”³¹

The USA has therefore committed itself not only to protecting the human rights of those under its jurisdiction from violation by government agents, but also to taking diligent measures to protect these rights from violation by private actors. The due diligence obligations of the USA under IHRL include prevention of foreseeable violence posing a threat to life or security of person. The establishment and robust implementation of strict gun control regulations and legislation, among other measures developed through effective, evidence-based violence prevention projects, are essential to protecting the rights to life and personal security.

According to the US Centers for Disease Control and Prevention (CDC), in 2021, 48,830 people died as a result of gun violence, with more than half due to suicide and accidents along with more than 400 mass shootings. Gun violence, which kills on average 123 people each day, is the leading cause of death among US youth ages 0-18.³² Gun violence in the USA also disproportionately affects racialized groups nationwide. More than half of all gun homicide victims in 2021 were Black men. Despite comprising approximately 13% of the US population, Black Americans represented over 61% of all gun homicide victims that year. Gun homicides are the leading cause of death among Black men ages 15–34, and the third-leading cause of death for Hispanic men in the same age range.³³

In 2022, the US Supreme Court invalidated New York state’s permit carry law, one of the most restrictive in the country.³⁴ As a result, similarly discretionary “may issue” permitting schemes in eight states and Washington, D.C. are likely invalid, and states will largely be unable to enact sensible firearm restrictions to protect people from gun violence.

In July 2022, President Biden signed the Bipartisan Safer Communities Act into law. The law provides funding for crisis intervention; requires people under 21 years of age to undergo enhanced background checks; closes the “boyfriend loophole” for dating violence misdemeanors; makes gun trafficking a federal crime; invests in anti-violence programs for communities most at risk for gun crimes; among other provisions.³⁵

Recommendations:

- Congress should implement a system of regulations and laws, including requiring background checks, licensing, training and regulation of all firearms, to restrict access to firearms by those most at risk of abusing them, take effective steps to implement evidence-based violence-reduction or protection measures where gun violence persists, and ban semi-automatic assault rifles, semiautomatic shotguns, semi-automatic submachine guns, large capacity magazines and other dangerous devices.

²⁹ CCPR/C/GC 36, para. 7.

³⁰ CCPR/C/GC 36, para. 26.

³¹ Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35 (2014), para. 9.

³² Sadat, L.N. & Madaline M. George, *Gun Violence and Human Rights*, 60 Washington University Journal of Law & Policy, 2019, p. 1.

³³ CDC, Gun Violence Archive Past Tolls 2020 Summary, www.gunviolencearchive.org/past-tolls.

³⁴ New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. ____ (2022)

³⁵ The Bipartisan Safer Communities Act of 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/06/Bipartisan-Safer-Communities-Act-SAP-1.pdf>.

6. FAILURE TO RESPECT SEXUAL AND REPRODUCTIVE RIGHTS (ARTICLES 2, 3, 7 AND 17)

In 2022, the US Supreme Court ended federal protections to the right to abortion. As of 12 September 2023, 15 states implemented total abortion bans or abortion bans with extremely limited exceptions, impacting millions of people of reproductive age. Multiple other states have implemented 6-week, 12-week, or 15-20-week bans.³⁶ Laws change quickly and face complicated challenges, creating a culture of uncertainty for many seeking abortion care. Many states are seeking to criminalize or have criminalized medication abortion, travelling out of state to receive abortion care, or assisting someone in a state with an abortion ban in travelling to receive abortion care.³⁷

Restrictions on access to abortions have negative effects on reproductive healthcare and the enjoyment of the highest attainable standard of physical and mental health. While abortion restrictions impact the rights of all people who can become pregnant, they disproportionately affect those from racial minorities and compound racial disparities in maternal and reproductive health services.

Abortion restrictions correlate with higher maternal death rates,³⁸ which disproportionately impact minority women.³⁹ In 2019, the maternal mortality rate for non-Hispanic Black women in the USA was 2.5 times higher than for non-Hispanic white women.⁴⁰ The maternal and infant death rates are higher in states that have banned or restricted access to abortion.⁴¹

The USA has also imposed multiple restrictions on the provision of funding for abortion even in states where abortion is legal that disproportionately impact Black and other racialized women. The federal Hyde Amendment has blocked Medicaid funding for abortion services for decades,⁴² placing an unnecessary financial burden on pregnant people who are seeking abortion, particularly racial minorities and low-income people. This has also disproportionately impacted Indigenous communities. Indigenous women are at high risk of sexual violence and may become pregnant following an assault, and the Indian Health Service (IHS) is often the only reproductive service provider for many Indigenous communities.⁴³ The IHS codified Hyde Amendment abortion funding regulations in 1996, severely limiting Indigenous women's ability to access abortion services, even in states where abortion is still legal.⁴⁴

Throughout the USA, women become subject to unique forms of regulation when they become pregnant with additional laws that target pregnant women, particularly those who are marginalized and those who use drugs. Often known as "fetal assault", "chemical endangerment" or "personhood" laws, these measures are used to arrest and prosecute women who experience pregnancy complications and conditions such as drug dependence. A patchwork of evolving laws and practices impact women in every region and state. Amnesty International found that such laws are used to justify non-consensual drug testing and the sharing of information with law enforcement and child welfare authorities, resulting in arbitrary and unlawful interference with the right to privacy of the individuals affected.⁴⁵

³⁶ The New York Times, "Tracking the States Where Abortion is Banned", www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html.

³⁷ Amnesty International, "USA: One year on, overturning of Roe vs. Wade has fueled human rights crisis", 24 June 2023, <https://www.amnesty.org/en/latest/news/2023/06/usa-overturning-roe-vs-wade-fueled-human-rights-crisis/>.

³⁸ D. Vilda, et al., *State Abortion Policies and Maternal Death in the United States, 2015-2018*, 12 May 2021, ajph.aphapublications.org/doi/10.2105/AJPH.2021.306396.

³⁹ A.J. Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, 1 December 2021, read.dukeupress.edu/demography/article/58/6/2019/265968/The-Pregnancy-Related-Mortality-Impact-of-a-Total.

⁴⁰ National Center for Health Statistics, *Maternal Mortality Rates in the United States, 2019*, April 2021, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/E-Stat-Maternal-Mortality-Rates-H.pdf>.

⁴¹ The Commonwealth Fund, *The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions*, Issue Briefs, 14 December 2022, www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes.

⁴² Planned Parenthood, "Hyde Amendment", undated, www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion/hyde-amendment.

⁴³ Amnesty International, *The Never-ending Maze: Continued Failure to Protect Indigenous Women from Sexual Violence* (Index: AMR 51/5485/2022), 2022, https://www.amnestyusa.org/wp-content/uploads/2022/05/AmnestyMazeReportv_digital.pdf, pp. 10 & 23. (The Never-ending Maze)

⁴⁴ S.B. Arnold, *Reproductive Rights Denied: The Hyde Amendment and Access to Abortion for Native American Women Using the Indian Health Service Facilities*, October 2014, www.ncbi.nlm.nih.gov/pmc/articles/PMC4167108/.

⁴⁵ Amnesty International, *Criminalizing pregnancy: Policing pregnant women who use drugs in the USA* (Index: AMR 51/6203/2017), 23 May 2017, www.amnesty.org/en/wp-content/uploads/2021/05/AMR5162032017ENGLISH.pdf, p. 7.

Recommendations:

- The USA must codify into federal law the right of anyone who becomes pregnant to access abortion and end all state bans that limit or end access to abortion.
- The US government should take steps to make abortion services more accessible and affordable, particularly for members of marginalized communities facing the most systemic barriers when seeking an abortion.
- The US government must ensure equal access to quality, affordable healthcare for all, especially sexual and reproductive healthcare including maternal health services, family planning services, safe and legal abortion services and post-abortion care, without any coercion or discrimination based on racial origin or any other protected characteristics.

7. INDEFINITE AND ARBITRARY DETENTION, UNFAIR TRIALS, PROHIBITION OF TORTURE, RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 2, 6, 7, 9 AND 14)

7.1 ARBITRARY DETENTION AND UNFAIR TRIALS AT GUANTANAMO AND LACK OF ADEQUATE ACCESS TO JUSTICE FOR TORTURE

Thirty Muslim men remain arbitrarily and indefinitely detained in the detention facility at the US naval base in Guantánamo Bay, Cuba, in violation of international law. The USA has no plans to close the facility.⁴⁶

Sixteen of the 30 detainees have been cleared for transfer, some for over a decade. There appears to be inadequate movement to transfer the remaining detainees cleared for release who cannot be repatriated to their home countries, either due to ongoing conflicts or because Congress has banned transfers to those countries. Because Congress has blocked the transfer of any Guantánamo detainee to the USA, the Biden administration must arrange for them to be transferred to third countries where their human rights will be respected.

The detainees at Guantánamo do not have access to adequate medical treatment, and survivors of torture and other ill-treatment by US agents are not given adequate rehabilitative services. Prior to being transferred to Guantánamo, some detainees were subjected to torture and/or enforced disappearance, for which there has been no accountability or redress. Most have been subjected to torture or other cruel, inhuman, or degrading treatment at the naval base, for which there has been little or no accountability or remedy. Some have been on hunger-strike and some have been subjected to force feeding. The Senate Intelligence Committee's report on the Central Intelligence Agency's torture remains classified, years after the limited investigations conducted into those crimes were closed without charges being brought against anyone.

The US Supreme Court ruled in 2008 that Guantánamo detainees have a right to habeas corpus, but detainees are often denied hearings for many years. The "global war on terror" paradigm which the US government uses to justify endless detention and global use of lethal force has also imposed substantial obstacles to courts declaring the indefinite detentions unlawful. Even favorable rulings in federal courts have not resulted in the immediate release of detainees.

Of the 30 detainees remaining at Guantánamo, eight - including five men accused of participating in the 11 September 2001 attacks - have been charged with crimes that carry a maximum sentence of death in military commissions that do not meet international due process standards. Contrary to international guarantees of equality before the courts and to equal protection of the law, the use of the military commission system is blatantly discriminatory and contravenes fair trial rights: US nationals accused of

⁴⁶ UN Doc. CCPR/C/USA/5, para. 64.

similar terrorism-related offences continue to receive the protections of the ordinary US criminal justice system while non-nationals held at Guantánamo are deprived of those protections.

Amnesty International takes the view that military courts should not have jurisdiction to try civilians, owing to the nature of these courts and because of concerns about their independence and impartiality. The Committee has held that trials of civilians by military or special tribunals must be strictly limited to exceptional cases where “necessary and justified by objective and serious reasons”, and where “with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials”.⁴⁷ That is not the case here. The ordinary courts were open, available and experienced in dealing with prosecutions in terrorism cases.

7.2 THE CASE OF LEONARD PELTIER

Leonard Peltier is a Native American activist with the American Indian Movement who is serving two consecutive life-sentences related to the deaths of two Federal Bureau of Investigation agents at the Pine Ridge Native American reservation in South Dakota on 26 June 1975. He has been imprisoned for more than 47 years. Serious concerns remain about the political nature of the case and the fairness of the legal process which led to his conviction and sentencing.⁴⁸

In June 2022, the UN Working Group on Arbitrary Detention (WGAD) concluded that the “deprivation of liberty of Leonard Peltier, being in contravention of articles 2, 7 and 9 of the Universal Declaration of Human Rights and articles 2(1), 9 and 26 of the [ICCPR], is arbitrary...”⁴⁹ The WGAD called upon the USA to “release Mr. Peltier immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law,” to investigate the circumstances surrounding Peltier’s arbitrary detention, and to take measures against those responsible for violating his human rights.⁵⁰ The WGAD requested that the USA provide it with a report in follow up. As of the date of this submission, that request is still outstanding.

Leonard Peltier has repeatedly been denied clemency by successive US Presidents and currently has an application that is pending with the DOJ. As of 12 September, no action has been taken on his clemency application. His next parole hearing is in December 2024, when he will be 80 years old.

Recommendations:

- The USA should immediately close Guantánamo and commit to the resolution of each detainee’s case in full, through their transfer and release without further delay and in accordance with international law; or if there is sufficient admissible evidence under international law to prosecute internationally recognizable criminal offences then to do so through fair judicial resolution before a federal court without recourse to the death penalty. Restrictions should be lifted on transferring detainees from Guantánamo to the USA or to third countries where their rights will be protected.
- The DOJ should approve Leonard Peltier’s application for clemency and the President should commute his sentence.

⁴⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007).

⁴⁸ For additional information regarding Leonard Peltier’s case, see Amnesty International USA’s website, www.amnestyusa.org/campaigns/free-leonard-peltier/.

⁴⁹ UN Human Rights Council, Opinion Adopted by the Working Group on Arbitrary Detention, 7 June 2022, A/HRC/WGAD/2022/7, www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-72-USA-Advance-Edited-Version.pdf, para. 101 (WGAD Opinion).

⁵⁰ WGAD Opinion, paras. 103-104.

8. “TARGETED KILLING” PROGRAM – VIOLATIONS OF THE RIGHT TO LIFE (ARTICLE 6)

The USA uses lethal force in countries around the world, including with armed drones, and withholds information regarding the legal and policy standards and criteria applied by US forces to using lethal force. Authorities also fail to provide truth, justice, and reparation for past civilian killings.

Over the past decade, NGOs, UN experts and the media have documented potentially unlawful US drone strikes that have caused significant loss of life, in some cases violating the right to life and amounting to extrajudicial executions.⁵¹ The Biden administration continues to deny well-documented cases of civilian deaths, injuries and other harm, despite strong evidence presented.

While many US drone strikes have taken place as part of actual armed conflicts, the USA asserts the right to target and deliberately kill members of particular groups or those believed to have an association with certain groups, including outside situations of recognized armed conflict. At the same time, the USA has failed to disclose the legal and policy standards and criteria it applies to the use of armed drones.⁵² The USA has also refused to supply sufficient information about the targets and victims of its strikes to allow proper assessment of victims’ status, even when credible claims have been made that a victim was a civilian. This has impeded assessment of the relevant facts and legality of drone strikes and prevented accountability and access to effective remedies for victims and their families.⁵³

Successive US administrations have justified such strikes either as part of a flawed “global war” doctrine, which essentially treats the whole world as a battlefield, or on the basis of a purported right of self-defense to use lethal force across borders against individuals and groups of people who they claim pose a threat.

Recommendations:

The USA should:

- disclose further legal and factual details about US policy and practices for so-called “targeted killings”, “signature strikes”, and “Terrorist Attack Disruption Strikes”;
- recognize the application of international human rights law to all US counter-terrorism;
- end claims that the USA is authorized by international law to carry out intentional killings anywhere in the world under the “global war” theory;
- bring US policies and practices in line with the USA’s international human rights obligations, by ensuring that:
 - any use of lethal force outside of specific recognized zones of armed conflict complies fully with the USA’s obligations under IHRL, including by limiting the use of force in accordance with use of force law and standards in law enforcement;
 - any use of lethal force within specific recognized zones of armed conflict complies fully with the USA’s obligations under international human rights and humanitarian law;
 - independent and impartial investigations are carried out in all cases of alleged extrajudicial executions or other unlawful killings, the rights of family members of those killed are

⁵¹ N. Crawford, Costs of War: Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency, The Watson Institute for International & Public Affairs, Brown University, November 2018, watson.brown.edu/costsofwar/files/cow/jimce/papers/2018/Human%20Costs%2C%20Nov%208%202018%20CoW.pdf; Amnesty International, USA/Somalia: Shroud of secrecy around civilian deaths masks possible war crimes. 20 March 2019, www.amnesty.org/en/latest/news/2019/03/usa-somalia-shroud-of-secrecy-around-civilian-deaths-masks-possible-war-crimes/.

⁵² Amnesty International, Syria: Rhetoric versus Reality: How the ‘most precise air campaign in history’ left Raqqa the most destroyed city in modern times, 2019, raqqa.amnesty.org/ (Rhetoric versus Reality); Amnesty International, Somalia: The US Hidden War in Somalia, Civilian Casualties from Airstrikes in Lower Shabelle, 20 March 2019, AI Index: AFR 52/9952/2019, (The US Hidden War in Somalia).

⁵³ Amnesty International, Somalia: AFRICOM yet to compensate families despite casualty admissions, 28 July 2020, <https://www.amnesty.org/en/latest/news/2020/07/somalia-africom-yet-to-compensate-families-despite-casualty-admissions/>; Amnesty International, The Hidden US War in Somalia, Amnesty International, Rhetoric versus Reality, Amnesty International, USA: Joint Letter on Public Acknowledgement and Investigations of U.S. “Targeted Killings” and Drone Strikes, 13 May 2015, AI Index: AMR 51/1655/2015, www.amnesty.org/en/documents/amr511655/2015/en/.

respected, and effective redress and remedy is provided where killings are found to have been unlawful.

9. FAILURE TO PROTECT THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY (ARTICLES 19 AND 21)

During protests sparked by the 2020 killings of George Floyd and other Black people by police, Amnesty International documented the use of unnecessary and excessive force in jurisdictions across the country.⁵⁴ In many cities, law enforcement in riot gear confronted protesters marching in support of Black Lives, used physical force, chemical irritants, Kinetic Impact Projectiles (KIPs), and arbitrary arrest and detention as a first resort against largely peaceful demonstrations.

The use of tear gas was documented in dozens of incidents across the country.⁵⁵ In many cases, these irritants were used unnecessarily and disproportionately against people protesting peacefully as there were no instances of widespread violence or a perceived threat; instead, these measures were used as a first resort to disperse a peacefully assembled crowd or in response to non-compliance with hastily rolled out curfews. Many journalists sustained serious injuries resulting from KIPs and/or were arbitrarily detained, often without proper access to medical care.⁵⁶ Legal observers and street medics were similarly targeted.⁵⁷

Since 2017, many states and the Federal government have introduced more than 250 anti-protest bills, with 46 bills becoming law in 23 states.⁵⁸ Oftentimes, these laws criminalize specific forms of protest, such as blocking thoroughfares or highways, or expanding the definitions and increasing the penalties for crimes that already exist, such as engaging in a “riot”. Many of these laws are overly broad and vague and could be applied to peaceful protesters, chilling individuals’ rights to freedom of peaceful assembly. Georgia authorities have charged 61 protesters with violating the state’s Racketeer Influenced and Corrupt Organizations act for their protests against the construction of a law enforcement and fire department training facility on the edge of Atlanta. Many face additional charges under a vague and broad domestic terrorism law.⁵⁹

Recommendation:

- Federal, state and local officials must enact systemic reform that guarantee the rights to freedom of expression and peaceful assembly through the development of national guidelines on respecting and facilitating the right to peaceful protest, the repeal of recently enacted state laws that restrict these rights and for all law enforcement agencies to review their policies on the use of force and the equipment used in the policing of demonstrations.

⁵⁴ Amnesty International, *USA: The World is Watching. Mass Violations by U.S. Police of Black Lives Matter Protesters’ Rights* (Index: AMR 51/2807/2020), 4 August 2020, <https://www.amnesty.org/en/documents/amr51/2807/2020/en/>, p. 21 (The World is Watching).

⁵⁵ The World is Watching, p. 21.

⁵⁶ The World is Watching, p. 6.

⁵⁷ The World is Watching, pp. 6, 49-57.

⁵⁸ International Center for Not-For-Profit Law, “US Protest Law Tracker”, <https://www.icnl.org/usprotestlawtracker/>.

⁵⁹ J. Papp, *More than 60 Atlanta training center activists named in RICO Indictment*, The Atlanta Journal-Constitution, 5 September 2023, <https://www.ajc.com/blog/mark-bradley/news/crime/breaking-more-than-60-training-center-activists-named-in-rico-indictment/DQ6B6GHTAJARH4SLGIIBAMXR4/>

10. DISCRIMINATION AND VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION (ARTICLES 2 AND 9)

Individuals in the USA experience excessive violence based on their actual or perceived sexual orientation or gender identity, especially transgender people from racialized groups. Lesbian, gay, bisexual and transgender (LGBT) people in the USA are nine times more likely than non-LGBT people to be victims of violent hate crimes.⁶⁰ Only 54% of LGBT adults live in states that have hate crimes laws covering sexual orientation and gender identity and expression.⁶¹

There is lack of standardized non-discrimination protections based on sexual orientation, and gender identity and expression, and the passage of anti-LGBT laws at the state level continues to increase annually. In 2022, states passed 29 anti-LGBT laws and over 490 bills were introduced in 49 states in 2023.⁶² Notably, in 2022, Florida enacted a law prohibiting any instruction or discussion of sexual orientation or gender identity in grades where students are predominately under 10 years old. Further, there is a growing number of laws being enacted throughout the country under the claim of religious freedom that curtail or effectively eliminate the rights of LGBT individuals.

LGBT people continue to face discrimination across multiple aspects of their lives, including in healthcare,⁶³ and LGBT people, particularly youth, are at higher risk for substance use, sexually transmitted infections, cancers, cardiovascular diseases, obesity, bullying, isolation, rejection, anxiety, depression, and suicide as compared to the general population.⁶⁴ Multiple states have banned gender-affirming care for minors, including penalties that allow the state to remove the child from their parents if a transgender child has received such care.⁶⁵ In 2022, Arizona passed a bill that prohibits gender-affirming surgery before the age of 18. The Texas Supreme Court allowed the state to investigate gender-affirming care for trans youth as child abuse.⁶⁶ Such laws have also curtailed gender-affirming care for adult transgender individuals.⁶⁷

Nearly half of LGBT workers have reported experiencing workplace discrimination, causing a negative impact on their lives.⁶⁸ In 2020, the US Supreme Court ruled that Title VII of the federal Civil Rights Act of 1964 protects gay and transgender workers from discrimination.⁶⁹ The Respect for Marriage Act was enacted in December 2022, providing some federal protections for same-sex marriages.⁷⁰

Recommendations:

⁶⁰ Williams Institute, UCLA, "LGBT people nine times more likely than non-LGBT people to be victims of violent hate crimes", 21 December 2022, <https://williamsinstitute.law.ucla.edu/press/lgbt-hate-crimes-press-release/>.

⁶¹ Movement Advancement Project, "Hate Crime Laws", https://www.lgbtmap.org/equality-maps/hate_crime_laws.

⁶² Human Rights Campaign, "State Equality Index 2022", <https://www.hrc.org/resources/state-equality-index>.

⁶³ Center for American Progress, "Discrimination Prevents LGBTQ People From Accessing Health Care", 18 January 2018, <https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care/>.

⁶⁴ H. Hafeez et al., *Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review*, National Library of Medicine, National Center for Biotechnology Information, 20 April 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5478215/>.

⁶⁵ Amnesty International, *Amnesty International Report 2022/23: The State of the World's Human Rights - United States of America*, 2023, <https://www.amnesty.org/en/wp-content/uploads/2023/04/WEBPOL1056702023ENGLISH-2.pdf>, p. 388. (The State of the World's Human Rights – USA).

⁶⁶ The State of the World's Human Rights - USA, p. 388.

⁶⁷ Human Rights Campaign, "Map: Attacks on Gender Affirming Care by State", 2023, <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

⁶⁸ NBC News, "Half of LGBTQ workers have faced job discrimination, report finds", 8 September 2021, <https://www.nbcnews.com/nbc-out/out-news/half-lgbtq-workers-faced-job-discrimination-report-finds-rcna1935>; Center for American Progress, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways", 2 May 2017, <https://www.americanprogress.org/article/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

⁶⁹ NPR, "Supreme Court Delivers Major Victory To LGBTQ Employees", 15 June 2020, <https://www.npr.org/2020/06/15/863498848/supreme-court-delivers-major-victory-to-lgbtq-employees>.

⁷⁰ The State of the World's Human Rights - USA, p. 388.

- The US government must adopt measures to protect the rights of LGBT individuals, including by ensuring non-discriminatory access to basic services, including in the context of employment and healthcare.
- State legislatures must repeal measures that limit the rights of LGBT individuals, including bans on gender-affirming care, and protect people from homophobic and transphobic violence, including by establishing effective systems to record and report hate-motivated acts of violence, ensuring effective investigation and prosecution of perpetrators and including sexual orientation and gender identity and expression as protected characteristics in hate crime laws.

11. FAILURE TO PROTECT INDIGENOUS WOMEN FROM GENDER-BASED VIOLENCE (ARTICLES 2 AND 26)

American Indian and Alaska Native (AI/AN) women face highly disproportionate rates of sexual violence.⁷¹ Approximately 56.1% of AI/AN women have experienced sexual violence –over twice the national average rate of sexual assault– and that 84.3% of AI/AN women have experienced some type of violence over the course of their lives.⁷² Alaska Native women are 2.8 times more likely to experience sexual violence than non-Indigenous women.⁷³ In South Dakota, American Indian women are 3.6 times more likely to be victims of rape than non-Indigenous women.⁷⁴

Sexual violence against Indigenous women is most often committed by non-Indigenous perpetrators.⁷⁵ Among the AI/AN women who have experienced sexual violence in their lifetime, 96% have experienced sexual violence by at least one non-Indigenous perpetrator.⁷⁶ Separately, 21% of AI/AN women who have experienced sexual violence have experienced it at least once by an Indigenous perpetrator, reflecting that some AI/AN women who have experienced sexual violence have been assaulted by several perpetrators during their lifetime.⁷⁷

AI/AN survivors also face barriers in accessing post-rape care, including access to a forensic examination, which is necessary if a criminal case is to be brought against the perpetrator.⁷⁸ What little government data is available is dated and shows large gaps in the availability of rape kits for AI/AN survivors.⁷⁹ AI/AN survivors of sexual violence have reported being turned away from IHS and tribal facilities because a rape kit was unavailable, a trained staff member to administer the rape kit was unavailable, or the assault took place when the medical center was closed.⁸⁰ Additionally, IHS health facilities that provide forensic examinations are often too far away. Of the 650 census-designated Native American lands analyzed in 2014, only 30.7% of the land was within a 60-minute driving distance of a facility offering sexual assault examination services.⁸¹ There is also a chronic lack of funding for IHS facilities, along with poor remuneration and incentives for employees, which has led to major staffing shortages.

Recommendations:

- The USA should ensure the vigorous prosecution of cases, increased funding for Indian health and forensic services for sexual assault victims, fully recognize Tribal jurisdiction over all

⁷¹ The Never-ending Maze

⁷² US Department of Justice, National Institute of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey, May 2016, <https://www.ojp.gov/pdffiles1/nij/249736.pdf> (DOJ Report - 2010 Findings).

⁷³ State of Alaska Rape Prevention Education Program, Sexual Violence in Alaska Data Resources, January 2019, Alaska Department of Labor & Workforce Development, Alaska Population Overview 2017 Estimates, November 2018, <https://live.laborstats.alaska.gov/pop/estimates/pub/17popover.pdf>.

⁷⁴ South Dakota Department of Health, Sexual Violence in South Dakota 2019 Data Report, March 2021, https://doh.sd.gov/documents/Prevention/2019_SD_SexualViolenceReport.pdf.

⁷⁵ The Never-ending Maze.

⁷⁶ DOJ Report – 2010 Findings.

⁷⁷ DOJ Report – 2010 Findings.

⁷⁸ The Never-ending Maze, pp. 10-11, 66-67.

⁷⁹ The Never-ending Maze, pp. 10-11, 62-64.

⁸⁰ The Never-ending Maze, pp. 62-64.

⁸¹ A. Juraska, et al., *Sexual Assault Services Coverage on Native American Land*, Journal of Forensic Nursing, April/June 2014, Volume 10, Issue 2, https://journals.lww.com/forensicnursing/Fulltext/2014/04000/Sexual_Assault_Services_Coverage_on_Native.6.aspx, pp. 92-97.

offenders who commit crimes on Tribal lands, fully fund police forces in Indian country and, fully and implement the Tribal Law & Order Act and the reauthorization of the Violence Against Women Act.

- The federal government should hold IHS accountable and ensure that all Indigenous women are able to access healthcare without discrimination, including rape kits and emergency contraceptives.
- Congress should fund and ensure regular data collection, analysis, and research by Indigenous organizations and tribal communities, including Native Hawaiian organizations, on violence against Indigenous women girls.

12. UNLAWFUL PUSHBACKS, ARBITRARY DETENTION, AND ILL-TREATMENT AGAINST ASYLUM-SEEKERS BY US BORDER AND IMMIGRATION AUTHORITIES (ARTICLES 2, 6, 7, 9, 23 AND 24)

The USA continues to implement increasingly draconian immigration policies to limit access to asylum procedures, resulting in irreparable harm to thousands of asylum-seekers.

Following the termination of the CDC's Order "Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists", known as Title 42, on 11 May 2023, the USA implemented new punitive migration measures along the US-Mexico border, including an asylum ban – which means that asylum-seekers will be presumed to be ineligible to seek asylum in the USA unless they are able to meet one of three exceptions – as well as the mandatory use of the CBP One mobile application (CBP One) to schedule appointments at participating ports of entry in order to present their asylum claims.⁸² Under these measures, asylum-seekers continue to be turned away from ports of entry, stranding them in dangerous places where they are targets of violence while living in squalid conditions without access to basic services; asylum-seekers are struggling to secure limited CBP One appointments; Haitian and Black people seeking asylum are targets of anti-Black discrimination and violence; and families continue to be separated.⁸³ Further, the mandatory use of CBP One as the exclusive manner of entry into the USA to seek international protection violates international human rights law.⁸⁴

Amnesty International documented credible and consistent claims of discriminatory treatment of African and Caribbean asylum-seekers. US immigration authorities subjected Haitian asylum-seekers to arbitrary detention and discriminatory and humiliating ill-treatment that amounted to race-based torture, rooted in systemic anti-Black discrimination.⁸⁵ As well as being denied access to sufficient food, healthcare, information, interpreters, and lawyers – cumulatively amounting to ill-treatment, Haitians interviewed said they were flown to Haiti in handcuffs and shackles – treatment that caused them severe psychological pain and suffering due to its association with slavery and criminality.⁸⁶

Additionally, the USA continues a system of arbitrary, mass immigration detention. In 2022, authorities had funding to detain 34,000 people daily and surveillance-based alternatives to detention, such as electronic monitoring, were utilized on nearly 285,000 families and individuals.⁸⁷

⁸² Haitian Bridge Alliance, Amnesty International et al, *USA: Lives at risk: Barriers and harms as Biden asylum ban takes effect* (Index: AMR 51/6808/2023), 19 May 2023, <https://www.amnesty.org/en/documents/amr51/6808/2023/en/> (Lives at Risk); Amnesty International, *USA: Mandatory use of CBP One application violates the right to seek asylum* (Index: AMR 51/6754/2023), 7 May 2023, <https://www.amnesty.org/en/documents/amr51/6754/2023/en/> (CBP One Report).

⁸³ Lives at Risk.

⁸⁴ CBP One Report.

⁸⁵ Amnesty International, USA: 'They did not treat us like people': Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA (Index: AMR 36/5973/2022), 22 September 2022, <https://www.amnesty.org/en/documents/amr36/5973/2022/en/> (They Did Not Treat Us Like People).

⁸⁶ They Did Not Treat Us Like People.

⁸⁷ Amnesty International, United States of America 2022, <https://www.amnesty.org/en/location/americas/north-america/united-states-of-america/report-united-states-of-america/>.

Recommendations:

- Restore access to asylum and other forms of international protection at the US-Mexico border, including by rescinding the asylum ban, maximizing asylum capacity at ports of entry, ensuring that people without appointments can seek asylum, and refraining from penalizing or barring people seeking asylum due to irregular entry or transit routes.
- End the reliance on mass immigration detention and instead default to a presumption of liberty in all immigration custody decisions and invest in community-based alternatives to detention outside the purview of the Department of Homeland Security.
- Establish a right to counsel for people in immigration proceedings and ensure people are guaranteed legal counsel and translation services in all immigration court proceedings.

13. REPARATIONS FOR THE LEGACY OF CHATTEL SLAVERY AND COLONIALISM (ARTICLES 1 AND 2)

Systemic racial discrimination and inequality in the USA is a legacy of chattel slavery and colonialism. In the 1860 slave census, there were nearly 4 million enslaved African Americans (“AA”).⁸⁸ Indigenous Peoples in the USA lost nearly 99% of land since colonization and 42.1% of tribes presently lack a federally recognized land base.⁸⁹ The descendants of enslaved AA and Indigenous Peoples live with intergenerational trauma as well as the economic and material impacts from this colonial legacy. In their day-to-day lives, they experience violations of the full range of their rights, including the right to life and freedom from discrimination and political and financial disenfranchisement. The debt for slavery, colonialism, and its legacies are long overdue. The time is now for reparations.

The USA has attempted to guarantee civil and political rights for all, irrespective of race, only since the 1960s. However, the rights and protections of racialized communities continue to be challenged in courts. For example, in 2013, a section of the Voting Rights Act of 1965 that required states with a history of racial discrimination in voting to undergo federal pre-clearance prior to making any electoral changes was ruled outdated by the Supreme Court and removed.⁹⁰ Since then, 29 states have passed 94 voter restrictive laws which disparately impact Black voters.⁹¹ Affirmative Action was a concerted effort through the Civil Rights Act of 1964 to ensure that equitable access to education and later employment was race conscious.⁹² However, the US Supreme Court ruled in 2023 that universities cannot factor race in the university admission process despite centuries of race being utilized to block Black and AI/AN people from pursuing education.⁹³

Violently separating families for profit was rampant throughout the institution of chattel slavery and for their direct descendants this deeply impacted their collective self-determination.⁹⁴ AI/AN have only had the protected right to keep their families together for 45 years after centuries of genocide and forced family separation, including boarding schools where a recent investigation identified approximately 53

⁸⁸ Library of Congress, “Slavery, United States”, https://www.loc.gov/rr/geogmap/placesinhistory/archive/2011/20110318_slavery.html.

⁸⁹ J. Farrell et al., *Effects of land dispossession and forced migration on Indigenous peoples in North America*, Science.org, 29 October 2021, vol. 374, Issue 6567, www.science.org/doi/10.1126/science.abe4943?adobe_mc=MCORGID%3D242B6472541199F70A4C98A6%2540AdobeOrg%7CTS%3D1688513881 (Effects of Land Dispossession).

⁹⁰ *Shelby County v. Holder*, 570 U.S. 529 (2013). See also, *Brnovich v. Democratic National Committee*, 594 U.S. ____ (2021)

⁹¹ J. Singh & S. Carter, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, The Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights>.

⁹² US Department of Education Office for Civil Rights, *Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education*, [Archived], <https://www2.ed.gov/about/offices/list/ocr/docs/guidance-pse-201111.html>.

⁹³ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, Opinion of U.S. Supreme Court Docket 20-1199, 29 June 2023, https://www.supremecourt.gov/opinions/22pdf/20-1199_l6gn.pdf.

⁹⁴ See National African American History Museum, “Chapter 3: Domestic Slave Trade”, <https://www.searchablemuseum.com/torn-apart#section-start>.

marked or unmarked graves of children.⁹⁵ Presently, Black and AI/AN children are “more likely to be removed from their homes and to experience a termination of parental rights.”⁹⁶

Generational wealth is critical for self-determination. For AI/AN and Black Americans, this has been stunted by discriminatory policies that surround assets. AI/AN lands currently comprise only an average of 2.6% of their historical lands.⁹⁷ One study estimates that Black farmers lost at least \$326 billion in acreage between 1900-1997 due to racially discriminatory policies and laws, resulting in 98% land loss.⁹⁸ In 2016, research showed that white families’ net worth is nearly 10 times more than Black families.⁹⁹ AI/AN and Black Americans comprise the highest poverty rates at 24.3% and 19.5% respectively.¹⁰⁰

Further, the legacy of chattel slavery has also adversely impacted Black communities who are not direct descendants of enslaved AA through systemic anti-Black racism in housing, education, law enforcement, healthcare, employment, and other areas. Systemic racism in the USA more broadly is a legacy of colonialism and the history of chattel slavery that impacts other people of African descent and racialized groups. Thus, any reparation, should also include measures to address contemporary forms of racism.

While there are undoubtedly differences between Black Americans and AI/AN, wherein lies the glaring similarity is the need for reparatory justice after centuries of systemic and institutional human rights violations upon which the USA was founded. It is impossible to fully repair these harms and generational trauma, but there are systemic transformations that can be made to uphold and protect the full range of their rights, particularly the right to life for their descendants as well as all Black and racialized people in the USA.

Recommendations:

- Congress should consult with racialized and Indigenous communities and organizations regarding the development of reparation measures and policies to ensure self-determination.
- Congress should pass H.Res.414—Recognizing that the United States has a moral and legal obligation to provide reparations for the enslavement of Africans and its lasting harm on the lives of millions of Black people in the United States;¹⁰¹ H.Con.Res 44—Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation,¹⁰² and H.R. 40/S.40—Commission to Study and Develop Reparations Proposals for African-Americans.¹⁰³

⁹⁵ Pub. Law. 95-608, 95th Congress, *Indian Child Welfare Act 1978*, <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3069.pdf>; US Dept. of Interior, *Federal Indian Boarding School Initiative*, <https://www.doi.gov/priorities/strengthening-indian-country/federal-indian-boarding-school-initiative>.

⁹⁶ Children’s Bureau, *Child Welfare Practice to Address Racial Disproportionality and Disparity*, April 2021, https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf.

⁹⁷ Effects of Land Dispossession.

⁹⁸ L. Douglas, “U.S. Black farmers lost \$326 bln worth of land in 20th century -study”, Reuters, 2 May 2022, <https://www.reuters.com/world/us/us-black-farmers-lost-326-bln-worth-land-20th-century-study-2022-05-02/>; Congressional Research Service Report, *Racial Equity in U.S. Farming*, 19 November 2021, <https://sgp.fas.org/crs/misc/R46969.pdf>.

⁹⁹ K. McIntosh, et al, *Examining the Black-white wealth gap*, The Brookings Institute, 27 February 2020, <https://www.brookings.edu/articles/examining-the-black-white-wealth-gap/>.

¹⁰⁰ J. Creamer, et al, *Poverty in the United States 2021*, US Census Bureau, <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf>.

¹⁰¹ H.Res.414, <https://www.congress.gov/bill/118th-congress/house-resolution/414/cosponsors>.

¹⁰² H.Con.Res. 44, <https://www.congress.gov/bill/118th-congress/house-concurrent-resolution/44?s=1&r=86>

¹⁰³ H.R.40, <https://www.congress.gov/bill/117th-congress/house-bill/40/text>; S.40, <https://www.congress.gov/bill/118th-congress/senate-bill/40>.

14. PETROCHEMICAL POLLUTION DISPROPORTIONATELY HARMS LOW-INCOME AND BLACK AND BROWN COMMUNITIES' INHERENT RIGHT TO LIFE (ARTICLES 1 AND 2)

The inherent right to life of communities living on the frontlines of petrochemical facilities are threatened daily by toxic and harmful emissions. While the USA is supplying the world with plastics manufactured from fossil fuels, frontline communities bear the brunt of the fossil fuel industry's "plan B" to the global energy transition.¹⁰⁴ Many of the communities impacted are disproportionately Black and brown and low-income and some have limited English proficiency.¹⁰⁵ The ICCPR obligates the USA to take steps to address environmental conditions and to protect and ensure all rights without distinction of any kind, including based upon race, color, language or national origin.¹⁰⁶

Case Study: Houston Ship Channel

The 52-mile-long Houston Ship Channel (Channel) is comprised of over 400 petrochemical plants, two of the country's largest refineries¹⁰⁷ and represents 44% of US petrochemical manufacturing.¹⁰⁸ A number of these complexes have violated environmental laws, including laws aimed at minimizing and monitoring carcinogenic and toxic pollutants in the air, land and water.¹⁰⁹

Exposure to pollutants formed and emitted in the production of petrochemicals—such as benzene and formaldehyde—have been linked to several health impacts commonly reported by frontline communities, including high cancer rates, asthma and respiratory issues, headaches, reproductive issues, and irritation of the skin, eyes, nose, and throat.¹¹⁰ Moreover, children of low-income backgrounds were found to be 21% more likely to have asthma than their peers of higher income.¹¹¹ People living within 3-miles of petrochemical clusters earn 28% less than the average US household and are 67% more likely to be Indigenous and racialized communities.¹¹² An analysis of zip codes corresponding to life expectancy demonstrates that those who live in the eastern Houston-metropolitan area near the Channel can have more than 15 years of difference in life expectancy compared to those who live in the more affluent western region.¹¹³

¹⁰⁴ K. Brigham, "How the fossil fuel industry is pushing plastics on the world", CNBC, 22 January 2022, <https://www.cnbc.com/2022/01/29/how-the-fossil-fuel-industry-is-pushing-plastics-on-the-world-.html>. Featured quote from Judith Enck, International Energy Agency, "The Future of Petrochemicals", 2018, <https://www.iea.org/reports/the-future-of-petrochemicals>.

¹⁰⁵ Sustainable Research Systems, *Evaluation of Vulnerability and Stationary Source Pollution in Houston*, 2009, <https://www.nrdc.org/sites/default/files/houston-stationary-source-pollution-202009.pdf>; EPA, *Fact Sheet: Final Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards Overview*, 2010, https://www.epa.gov/sites/default/files/2016-06/documents/2010-0682_factsheet_overview.pdf.

¹⁰⁶ See OHCHR ICCPR, USA UPR Submission, 11 November 2021, para. 9.

¹⁰⁷ S. H. Linder, S. Abramson et al., *A Closer Look at Air Pollution in Houston: Identifying Priority Health Risks*, Report of the Mayor's Task Force of the Health Effects of Air Pollution, 2006 (*A Closer Look at Air Pollution in Houston*); and Greater Houston Partnership, *Houston Facts 2022*, 2022, https://www.houston.org/sites/default/files/2022-09/houston%20facts%202022_Digital_o.pdf (Greater Houston Partnership).

¹⁰⁸ Greater Houston Partnership.

¹⁰⁹ Environmental Integrity Project, *Illegal Air Pollution in Texas in 2020*, 14 October 2021, <https://environmentalintegrity.org/wp-content/uploads/2021/10/Illegal-Air-Pollution-in-Texas-2020.pdf>.

¹¹⁰ American Public Health Association, *Reducing Occupational Exposure to Benzene in Workers and Their Offspring*, 14 December 2005, <https://apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2014/07/09/14/47/Reducing-Occupational-Exposure-to-Benzene-in-Workers-and-Their-Offspring>; One Breath Partnership, *Formaldehyde Air Pollution in Houston*, 1 July 2021, <https://environmentalintegrity.org/news/monitoring-shows-plumes-of-carcinogenic-formaldehyde-in-neighborhoods-along-houstons-ship-channel/>; Center for International Environment Law, *Plastics & Health: The Hidden Costs of a Plastic Planet*, February 2019, <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-Planet-February-2019.pdf>.

¹¹¹ L. Binkovitz, *Research Shines Light on Asthma Rate Disparities in Houston*, Rice University, Kinder Institute for Urban Research, 21 March 2017, <https://kinder.rice.edu/urbanedge/research-shines-light-asthma-rate-disparities-houston>.

¹¹² Beyond Plastics, *The New Coal: Plastics and Climate Change*, October 2021, <https://www.beyondplastics.org/plastics-and-climate>.

¹¹³ UT Southwestern Medical Center and UT Health, "Texas Health Maps", <https://www.texashealthmaps.com/lfex>, (Compared combined demographic Houston metro area zip-code 77007 with 77520).

A lack of zoning restrictions in Houston and some nearby suburban areas means that frontline communities live and go to school alongside petrochemical facilities that pose serious risks to their health.¹¹⁴ In 2019 alone, residents experienced four major petrochemical disasters, including fires, an explosion, and a leak.¹¹⁵ Such incidents often lead to local authorities placing residents under shelter-in-place orders and ordering school closures due to elevated levels of hazardous chemicals.

The Channel's location on the Gulf of Mexico combined with a heavy presence of the industrial facilities makes the region sensitive to climate change and extreme weather disasters exacerbated by global warming. In 2017, Hurricane Harvey devastated the region, resulting in nearly one million pounds of petrochemical pollution leaking in the region as a result of flaring and chemical spills.¹¹⁶ The Environmental Protection Agency's (EPA) Office of Inspector General conducted an investigation after Hurricane Harvey and found that the EPA and Texas Commission on Environmental Quality (TCEQ), the state environmental law enforcement authority, needed to improve their coordination in collecting samples for air monitoring post-hurricane and many community residents were unaware of air quality risks during and after Harvey.¹¹⁷ During a winter freeze that claimed over 200 lives in Texas from 11-20 February 2021,¹¹⁸ the shutdown and startup of industrial facilities emitted an extra 3.5 million pounds of pollution into the air in Texas. One-fifth of this amount was from the Houston-area.¹¹⁹

Finally, one study found that the TCEQ enforced less than 3% of illegal pollution emissions in nine years (more than 500 million pounds of air pollution) and from 2015 to 2017, 57 of 872 incidents of air permit violations resulted in fines totaling \$665,172.¹²⁰ Since facilities are not adequately held accountable, the EPA and TCEQ bear responsibility for harming the inherent right to life of predominantly low-income and Black and racialized frontline communities.

Recommendation:

- The US Government should work towards the phasing out the extraction and production of fossil fuels.
- Congress should pass legislation that strengthens the EPA's administrative authority to enforce permit limits and stringent penalties towards corporations that violate their operating permits. This legislation should require companies and environmental authorities (EPA and state) to coordinate in an efficient and transparent manner to provide communities with adequate real-time multi-lingual notification systems about chemical releases and emergency response protocols.

¹¹⁴ R. D. Bullard, *Environmental Racism and Invisible Communities*, 96 West Virginia Law Review, 1994.

¹¹⁵ Click2Houston, "Investigation underway after fire damages Exxon facility in Baytown", 16 March 2019, <https://www.click2houston.com/news/2019/03/16/investigation-underway-after-fire-damages-exxon-facility-in-baytown/>; CNN, "A huge fire at a Texas chemical plant is out, 4 days after it started", 20 March 2019, <https://edition.cnn.com/2019/03/20/us/deer-park-itc-plant-firednesday/index.html>; Chron, "Houston ship channel remains closed after tanker collision spills gasoline", 11 May 2019, <https://www.chron.com/news/houston-texas/houston/article/Houston-Ship-Channel-remains-closed-after-tanker-13837896.php>; CNN, "66 treated after fire breaks out at ExxonMobil plant in Baytown, Texas", 31 July 2019, <https://edition.cnn.com/2019/07/31/us/exxon-baytown-texas-plantfire/index.html>.

¹¹⁶ Center for Biological Diversity, *Analysis: Nearly 1 Million Pounds of Seven Deadly Air Pollutants Released by Texas Refineries During Harvey Floods*, 1 September 2017, https://www.biologicaldiversity.org/news/press_releases/2017/air-pollution-09-01-2017.php.

¹¹⁷ US EPA Office of Inspector General, *EPA Needs to Improve Its Emergency Planning to Better Address Air Quality Concerns During Future Disasters*, EPA, 16 December 2019, Report No. 20-P-0062, https://www.epa.gov/sites/default/files/2019-12/documents/epa_oig_20191216-20-p-0062.pdf.

¹¹⁸ National Centers for Environmental Information, *The Great Texas Freeze*, 24 February 2023, <https://www.ncei.noaa.gov/news/great-texas-freeze-february-2021>.

¹¹⁹ Environment Texas, *Many Houston-Area Facilities Also Emitted Harmful Chemicals During Hurricane Harvey*, 23 February 2021, available at <https://environmentamerica.org/texas/media-center/millions-of-pounds-of-air-pollution-released-because-of-grid-failure-freeze-in-texas/>.

¹²⁰ A Closer Look at Air Pollution in Houston; Greater Houston Partnership; Environmental Integrity Project, *Rapid Growth of Houston Plastics Industry Increases Air Pollution and Safety Risks*, 5 September 2019, <https://environmentalintegrity.org/news/rapid-growth-of-houston-plastics-industry-increases-air-pollution-and-safety-risks/>.

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