



# UNITED STATES OF AMERICA

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION

107<sup>TH</sup> SESSION, 8-30 AUGUST 2022

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# 1. INTRODUCTION

Amnesty International submits this briefing with regard to consideration by the UN Committee on the Elimination of Racial Discrimination (CERD) of the United States of America's (USA) combined tenth to twelfth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The USA's report was submitted in June 2021 and is due to be considered at the 107<sup>th</sup> session of CERD in August 2022. It is nearly eight years since the Committee issued its concluding observations on the USA's combined seventh to ninth periodic reports, in September 2014.

This briefing does not seek to address exhaustively the full range of areas in the USA in which enjoyment of rights under the Convention continue to be negatively impacted by discrimination on the prohibited grounds of race, colour, ethnicity or nationality, many of which are also addressed by other organizations. Amnesty International has taken note of the May 2016 follow-up by the CERD on certain key themes addressed in the USA's response to the CERD's 2014 concluding observations.

In this briefing the organization outlines its concerns regarding aspects of a number of these themes, including racial disparities in: law enforcement policies and practices, particularly in relation to use of force and policing of assemblies; the death penalty; enjoyment of the right to health in the context of sexual reproductive rights and maternal health issues; the prevalence of gun violence; immigration enforcement; the government's failure to protect indigenous women from sexual violence; and access to justice for foreign nationals held at the US naval base at Guantánamo Bay in Cuba.

The US government – at the federal, state and local level – is utterly failing in its commitment to meet its obligations under ICERD across all of these issue areas. In some areas the USA is even backsliding on previous areas of progress – such as the execution of 13 individuals in the waning days of the Trump administration – ending a 17-year moratorium of federal executions - and severely limiting access to abortion services at the state level. Inaction at the federal and state level has allowed gun violence to run rampant, severely impacting Black and brown communities, while police increasingly shoot and kill people of colour, largely with impunity. When people take to the streets to protest this police violence and lack of accountability, they are met with even more police violence – especially in Black and brown communities. Indigenous women face astronomical levels of sexual violence and a literal maze of injustice in attempting to hold their perpetrators accountable. Policies implemented during the previous Obama and Trump administrations, and now maintained by the Biden administration, severely impact the ability of Black, brown and Indigenous people seeking protection at the US-Mexico border, exposing them to increased violence, abuse and trauma. The quagmire of the detention facility at the US Naval base continues, now in its 20th year with no progress towards its closure. As rights are increasingly rolled back across the country, the US government – in all aspects, executive, legislative and judiciary – must be brought to task by the CERD regarding its lack of progress in the 8 years since it last appeared for review, despite the somewhat optimistic description of progress provided in the US government's report.

## 2. PEOPLE ON THE MOVE

During the reporting period, Amnesty International documented routine discrimination against asylum seekers in US policy and the practices of officials of the US Department of Homeland Security (DHS) – including by the DHS agencies Customs and Border Protection (CBP) at ports of entry into the USA, and Immigration and Customs Enforcement (ICE) in US immigration detention facilities administered by ICE.

Xenophobic and racist attitudes and practices were particularly visible in the CBP practice of widespread pushbacks of hundreds of thousands of asylum seekers to Mexico and/or countries of origin, based on discriminatory attitudes toward those seeking international protection. This is despite the obligations of US

authorities (including at the CBP agency) under international law to consider the claims of all asylum-seekers, without discrimination, contrary to those pushback practices.<sup>1</sup>

Due to the fact that US border officials routinely turned asylum seekers away without recording the interactions, there are no comprehensive statistics on the extent of the practice of pushbacks – including on the discriminatory basis of race, ethnicity, or other grounds – which Amnesty International primarily documented through interviews with asylum seekers and their legal representatives on both sides of the border.

During the sudden arrival of many Haitian asylum seekers at the US-Mexico border in 2017, Amnesty International found US immigration and border authorities to have collaborated with their Mexican counterparts in establishing a “ticketing” system that resulted in the discriminatory screening of asylum seekers by country of origin, and the turning away of Mexican and Central American asylum seekers in particular, on the basis of their nationality.<sup>2</sup>

In 2017 and 2018, Amnesty International documented that US authorities in particular frequently turned away Mexican asylum-seekers at the US-Mexico border – including through force and coercion – in violation of US and international legal requirements that all persons seeking protection from persecution be afforded an individualized assessment of their asylum claims.<sup>3</sup>

From 2018 to 2021, Amnesty International documented the widespread US practice of returning the vast majority of asylum-seeking unaccompanied Mexican children to their country of origin (Mexico) within just hours or days – without adequately assessing their protection needs or risks if returned, even in cases when the children overtly requested asylum protection at the border. That widespread practice of *refoulement* on the basis of the children’s nationality was unique to Mexicans, due to CBP’s systematic and deliberate misuse of a provision in anti-trafficking legislation that provides for “voluntary returns” of unaccompanied children to “contiguous countries” (meaning only Mexico and Canada, which was almost exclusively applied to Mexican children). The administrations of all three US presidents during the reporting period continued this unlawful policy and practice.<sup>4</sup>

Propagating discriminatory and xenophobic portrayals of asylum seekers as “criminals” and “illegal aliens,” the Trump administration adopted policy measures from 2017 to 2020 to standardize the aforementioned unlawful pushbacks,<sup>5</sup> as well as to raise the burden of proof for asylum claims, and to require the routine detention of asylum seekers, among other measures of deterrence in violation of international standards under refugee law.<sup>6</sup>

Throughout its term in office, the Trump administration presented a negative and false narrative of overwhelming numbers of asylum-seekers in order to justify its illegal pushbacks and other efforts to undermine refugee protections. President Donald Trump himself pushed this narrative through demonizing

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1 UNHCR, “Protection of Asylum-Seekers in Situations of Large-Scale Influx” No. 22 (XXXII) 1981: <https://www.unhcr.org/uk/excom/exconc/3ae68c6e10/protection-asylum-seekers-situations-large-scale-influx.html>.

2 For detailed information on these practices, see the Amnesty International report, “Facing Walls: USA’s and Mexico’s Violations of the Rights of Asylum Seekers” (June 2017), available at: <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>.

3 Amnesty International report, “‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-seekers by the United States” (October 2018), at pp. 15-16, available at: <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>.

4 Amnesty International report, *Pushed into Harm’s Way: Forced Returns of Unaccompanied Migrant Children to Danger by the USA and Mexico* (June 2021): <https://www.amnesty.org/en/documents/amr51/4200/2021/en/>.

5 Amnesty International submission to the UN Special Rapporteur on the Human Rights of Migrants, “Americas: Pushback Practices and their Impact on the Human Rights of Migrants and Refugees” (February 2021): <https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR0136582021ENGLISH.pdf>.

6 White House statement, “President Donald J. Trump’s Letter to House and Senate Leaders & Immigration Principles and Policies” (October 8, 2017), available at: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/>.

and discriminatory rhetoric, decrying asylum-seekers as dangerous “criminals”<sup>7</sup> and “animals,”<sup>8</sup> who are seeking to “infest”<sup>9</sup> and “invade”<sup>10</sup> the United States.

In a letter to the Attorney General and DHS Secretary, the US Commission on Civil Rights expressed serious concern over the Trump administration’s violations of legal due process.<sup>11</sup> The Commission further criticized the apparently discriminatory motivation of the Trump administration’s notorious and unlawful family separations policy in 2018, based on “animus directed at Mexican and Central American immigrants by the Administration, giving rise to questions of unwarranted discrimination on the basis of national origin.” It concluded that the Trump administration’s policy of punishing families who are “seeking asylum, fully within the parameters of our nation’s immigration laws [...] is inhumane and against the best interests of the children,” and “subverts the fair administration of justice and appears to discriminate against families on the basis of their national origin.”<sup>12</sup>

From 2017 to 2022, Amnesty International has also documented credible and consistent claims of discriminatory treatment by US immigration detention officials toward African and Caribbean asylum-seekers, which they said they faced on the basis of their race and nationality, during violent forced pushbacks at the border and protracted immigration detention in the USA. Compounded by reportedly inadequate physical conditions, food and water, as well as substandard medical care, Amnesty International found their experiences of discrimination and prolonged and indefinite detention likely to constitute ill-treatment, which is prohibited absolutely in international law.<sup>13</sup> As thousands of Haitians sought international protection at the US–Mexico border, CBP officials shocked the world in videos of physical violence toward Haitian asylum seekers, most of whom were then summarily returned to Haiti in a fashion that some US officials even decried as constituting unlawful *refoulement*.<sup>14</sup>

Such a display of excessive use of force by CBP officials is a continuation of such practices identified by the CERD in its preceding Concluding Observations on the USA in 2014 (Concluding Observations, “Excessive use of force by law enforcement officials”, at. para. 17).

## 2.1 RECOMMENDATIONS

- Refrain from placing asylum seekers in “expedited removal” or detaining immigrants and asylum seekers, and instead employ steps to process asylum seekers at ports of entry and quickly release them using proven community-based case support programs for those that need them.
- End discriminatory mistreatment of Haitian asylum seekers and migrants, investigate abuses and bring those responsible to justice.
- Ensure consistently enforced rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials, forbidding racial profiling, and ensure robust systems of monitoring and access to effective remedy for victims.

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<sup>7</sup> Statement on Twitter of President Trump (18 June 2018): “Children are being used by some of the worst criminals on earth as a means to enter our country. Has anyone been looking at the Crime taking place south of the border. It is historic, with some countries the most dangerous places in the world. Not going to happen in the US” Available at: <https://twitter.com/realdonaldtrump/status/1008708576628625408?lang=en>.

<sup>8</sup> President Trump made the remark on 16 May 2018: “You wouldn’t believe how bad these people are. These aren’t people, these are animals, and we’re taking them out of the country at a level and at a rate that’s never happened before.” Video available at: <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

<sup>9</sup> Statement on Twitter by President Trump (19 Jun 2018): “Democrats are the problem. They don’t care about crime and want illegal immigrants, no matter how bad they may be, to pour into and infest our Country, like MS-13.” Available at: <https://twitter.com/realDonaldTrump/status/1009071403918864385>.

<sup>10</sup> Statement on Twitter by President Trump (June 21): “We cannot allow all of these people to invade our Country.” Available at: <https://twitter.com/realdonaldtrump/status/1010900865602019329?lang=en>.

<sup>11</sup> See, US Commission on Civil Rights, letter to Attorney General Sessions and DHS Secretary Nielsen (15 June 2018): <https://www.usccr.gov/press/2018/06-15-18-letter.pdf>.

<sup>12</sup> Ibid.

<sup>13</sup> Amnesty International report, “‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-seekers by the United States” (October 2018), Chapter 4.3 at pp. 61 *et seq.*, available at: <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>.

<sup>14</sup> Amnesty International and others, “Stop US Deportations and Abuse against Haitians on the Move” (15 December 2021): <https://www.amnesty.org/en/wp-content/uploads/2021/12/AMR3651012021ENGLISH.pdf>.

- Take steps to address racist and xenophobic attitudes and behaviour towards non-citizens, or stigmatization based on race, colour, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.

### 3. INDIGENOUS PEOPLES

American Indian and Alaska Native (AI/AN) women face highly disproportionate rates of sexual violence. Data remains limited and infrequent, but available data suggests that roughly 56.1 percent 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.<sup>15</sup> Alaska Native women are 2.8 times more likely to experience sexual violence than non-Indigenous women;<sup>16</sup> in South Dakota, American Indian women are 3.6 times more likely to be victims of rape than non-Indigenous women.<sup>17</sup>

Sexual violence against Indigenous women is most often committed by non-Indigenous perpetrators. Among the AI/AN women who have experienced sexual violence in their lifetime, 96 percent have experienced sexual violence by at least one non-Native perpetrator.<sup>18</sup> Separately, 21 percent 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.

Amnesty International's 2007 report, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*,<sup>19</sup> detailed how AI/AN women suffer disproportionately high levels of rape and sexual violence and face barriers to accessing justice. This is due to the complex maze of Tribal, state and federal jurisdictions created by the US Government, which allow perpetrators (most of whom are non-Native men) to escape justice; underfunding by the government of key services; and failure at both the state and federal levels to pursue cases or take them seriously. An update to this research by Amnesty International in 2022 found that since 2007, the US government has undertaken only limited and inadequate measures to protect AI/AN women from sexual violence, and rates of sexual violence against AI/AN women have remained almost unchanged.<sup>20</sup>

In 2010, the Tribal Law and Order Act (TLOA) was signed into law with the intent to improve criminal justice in Indian country. TLOA placed several mandates on the Department of Justice (DOJ) in the areas of legal assistance, investigative training, and data collection to enhance law enforcement within Indian country; however, training on TLOA remains limited and poorly implemented, policing and response to sexual violence remains uncoordinated, and crime data used by the US government remains unreliable and

<sup>15</sup> 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, available at <https://www.ojp.gov/pdffiles1/nij/249736.pdf>

<sup>16</sup> 2017 data shows Alaska Natives as 15% of the state population but make up 42% of victims of sexual violence incidents. See: State of Alaska Rape Prevention Education Program, *Sexual Violence in Alaska Data Resources*, January 2019, available at <https://www.mcdowellgroup.net/wp-content/uploads/2019/05/sexual-violence-data.pdf>. See also Alaska Department of Labor & Workforce Development, *Alaska Population Overview 2017 Estimates*, November 2018, available at <https://live.laborstats.alaska.gov/pop/estimates/pub/17popover.pdf>

<sup>17</sup> 2019 data shows Native Americans (American Indians) as 9% of the state population, but 32.5% of rape victims. See South Dakota Department of Health, *Sexual Violence in South Dakota 2019 Data Report*, March 2021, available at [https://doh.sd.gov/documents/Prevention/2019\\_SD\\_SexualViolenceReport.pdf](https://doh.sd.gov/documents/Prevention/2019_SD_SexualViolenceReport.pdf)

<sup>18</sup> 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, available at <https://www.ojp.gov/pdffiles1/nij/249736.pdf>

<sup>19</sup> Amnesty International, *Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA*, available at <http://www.amnestyusa.org/pdfs/MazeOfInjustice.pdf>.

<sup>20</sup> Amnesty International, *The Never-Ending Maze: Continued failure to protect Indigenous women from sexual violence in the USA*, available at [https://www.amnestyusa.org/wp-content/uploads/2022/05/AmnestyMazeReportv\\_digital.pdf](https://www.amnestyusa.org/wp-content/uploads/2022/05/AmnestyMazeReportv_digital.pdf).

incomplete.<sup>21</sup> Additionally, despite the promise to prioritize crime within Indian country, DOJ funding and resources dedicated to Indian country have decreased since TLOA's implementation.<sup>22</sup>

In 2015, the Violence Against Women Act Reauthorization of 2013<sup>23</sup> was signed into law, which included provisions that affirmed the inherent sovereign authority of tribal courts to exercise "special" jurisdiction over cases involving non-Indigenous perpetrators who commit acts of domestic violence or dating violence within Indian country; however, major barriers such as the immense cost of implementation mean that as of February of 2021, only 27 of the 574 federally recognized tribes had implemented this special jurisdiction.<sup>24</sup> Additionally, this special jurisdiction does not apply to other crimes of violence against women, including sexual assault by a stranger or acquaintance, stalking, or sex trafficking, meaning that perpetrators of sexual violence against AI/AN women often enjoy impunity for their crimes.

AI/AN victims of sexual violence also face barriers in accessing post-rape care, including access to a forensic exam (necessary if a criminal case is to be brought against the perpetrator). The Indian Health Service (IHS), which is the primary provider of health services for AI/AN peoples, has adopted sexual assault response protocols pursuant to a TLOA mandate, including provisions around providing post-rape care, but these protocols have not been fully implemented. What little government data is available is dated and shows large gaps in the availability of rape kits for AI/AN survivors. AI/AN survivors of sexual violence have reported being turned away from the IHS and tribal facilities because a rape kit wasn't available, there wasn't an available staff member trained to administer the rape kit, or the assault took place "after hours" when the medical center was closed. Additionally, IHS health facilities that provide a forensic exam are often too far away. Of the 650 census-designated Native American lands analyzed in 2014, only 30.7 percent of the land was within a 60-minute driving distance of a facility offering sexual assault examination services.<sup>25</sup> Additionally, there is a chronic lack of funding for IHS facilities, along with poor pay and incentives for employees, which has led to major staffing shortages.

Research and data collection efforts by government agencies charged with documenting violence against AI/AN women continue to be uncoordinated and infrequent. Additionally, the US government does not collect data specifically on Native Hawaiians; neither do US authorities recognize their tribal status, or that of a number of other tribes in the United States and its territories, which means women from these tribes are excluded from data collection on Indigenous women in the United States. This exclusion makes it difficult to extract accurate data on programs focused on addressing violence against Indigenous women and girls. Without accurate and consistently updated data, it is impossible to understand the full extent to which Indigenous women have been impacted by violence.

### 3.1 RECOMMENDATIONS

- The US government should fully fund and implement the Tribal Law & Order Act and the reauthorization of the Violence Against Women Act.
- Congress should ensure full restoration of Tribal court jurisdiction over crimes committed in Indian country.
- The US government should ensure the vigorous prosecution of cases, increased funding for Indian health and forensic services for sexual assault victims, recognition of Tribal jurisdiction over all offenders who commit crimes on Tribal lands, and increased funding for police forces in Indian country.
- The federal government should hold Indian Health Services accountable and ensure that all Indigenous women are able to access health care without discrimination, including emergency contraceptives.

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<sup>21</sup> US Department of Justice, *Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*, December 2017, available at <https://oig.justice.gov/reports/2017/e1801.pdf>.

<sup>22</sup> US Department of Justice, *Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*, December 2017, available at <https://oig.justice.gov/reports/2017/e1801.pdf>.

<sup>23</sup> Violence Against Women Reauthorization Act of 2013 ('VAWA 2013'), Pub. L. 113-4 (2013).

<sup>24</sup> See National Congress of American Indians, "Currently Implementing Tribes", February 2021, available at <https://www.ncai.org/tribal-vawa/get-started/currently-implementing-tribes>.

<sup>25</sup> Ashley "AJ" Juraska, et al., "Sexual Assault Services Coverage on Native American Land," *Journal of Forensic Nursing*, April/June 2014, Volume 10, Issue 2, at pp. 92-97, available at [https://journals.lww.com/forensicnursing/Fulltext/2014/04000/Sexual\\_Assault\\_Services\\_Coverage\\_on\\_Native.6.aspx](https://journals.lww.com/forensicnursing/Fulltext/2014/04000/Sexual_Assault_Services_Coverage_on_Native.6.aspx).



- Congress should fund and ensure regular data collection, analysis, and research by Indigenous organizations and tribal communities on violence against Indigenous women. Collection efforts should also include working with Native Hawaiian organisations to collect data in order to fully understand violence against all Indigenous women and girls in the United States.

## 4. RIGHT TO HEALTH

Increasingly frequent restrictions on access to legal abortions in the United States continue to 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 women and girls from racial minorities and compound racial disparities in maternal and reproductive health services.

Minority women are more likely to live in states that implement the harshest abortion restrictions,<sup>26</sup> and they are more likely to seek abortion than white women as they are much less likely to have access to comprehensive healthcare or contraceptives to prevent unintended pregnancy. In 2014, it was found that Black women had the highest abortion rate (27 for every 1,000 women of reproductive age), followed by Hispanic women (18 for every 1,000 women of reproductive age), and white women reported the lowest rates (10 for every 1,000 women of reproductive age).<sup>27</sup> Women and girls from racial minorities are more frequently seeking abortions and are more severely impacted when abortion restrictions are implemented.

Abortion restrictions are also directly associated with higher maternal death rates,<sup>28</sup> which disproportionately impact minority women.<sup>29</sup> In 2019, the maternal mortality rate for non-Hispanic Black women in the United States was 44.0 deaths per 100,000 live births, versus 17.9 deaths for non-Hispanic white women (making the rate of maternal mortality for Black women 2.5 times higher than for non-Hispanic white women).<sup>30</sup>

In recent years, abortion restrictions have become increasingly severe in the United States. Between the beginning of 2017 and the end of 2020, a total of 35 states implemented 227 new laws that restrict abortion services.<sup>31</sup> In 2021, the State of Texas drew international attention upon the passage of Senate Bill 8, which allows private citizens to sue anyone in the state they think provided an abortion for a pregnant person after “cardiac activity” in the fetus was detected, around the six-week mark, much earlier than most people realize they are pregnant.<sup>32</sup> This ban has also been described as having a “bounty hunter system”, as people who report possible providers can be awarded \$10,000 in damages to be paid by the providers for each abortion. The Supreme Court has allowed legal challenges to the Texas abortion law, but it has not stopped the law from going into effect while it is being challenged, preventing women in Texas from accessing abortion services despite questions about the law’s constitutionality. The law remains in effect at time of writing.

<sup>26</sup> Jamila Taylor, “Women of Color Will Lose the Most if *Roe v. Wade* is Overturned”, *Center for American Progress*, 23 August 2018, available at <https://www.americanprogress.org/article/women-color-will-lose-roe-v-wade-overturned/>.

<sup>27</sup> Guttmacher Institute, “Abortion Is a Common Experience for US Women, Despite Dramatic Declines in Rates”, 19 October 2017, available at <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates>.

<sup>28</sup> An analysis of data collected between 2015 and 2018 shows that states with more restrictive abortion policies had a 7% total increase in total maternal mortality in comparison with states with less restrictive policies. In states with licensed physician requirements for abortion provision there was a 51% higher total maternal mortality. Additionally, there was a 29% higher total maternal mortality in states that restrict Medicaid funding for abortion. See Dovile Vilda, et al., “State Abortion Policies and Maternal Death in the United States, 2015-2018”, 12 May 2021, available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306396>.

<sup>29</sup> Amanda Jean 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, available at <https://read.dukeupress.edu/demography/article/58/6/2019/265968/The-Pregnancy-Related-Mortality-Impact-of-a-Total>.

<sup>30</sup> National Center for Health Statistics, *Maternal Mortality Rates in the United States, 2019*, April 2021, available at <https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/E-Stat-Maternal-Mortality-Rates-H.pdf>.

<sup>31</sup> Eoin B. Gaj and others, “State Legislation Related to Abortion Services, January 2017 to November 2020”, 22 February 2021, available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2776278>.

<sup>32</sup> Ashley Lopez, “Federal appeals court temporarily reinstates Texas’ 6-week abortion ban”, NPR, 8 October 2021, available at <https://www.npr.org/2021/10/08/1044512475/texas-abortion-ban-reinstated>.

The US has also imposed multiple restrictions provide funding for abortion that disproportionately impact minority women. The federal Hyde Amendment has blocked Medicaid funding for abortion services for decades,<sup>33</sup> placing an unnecessary financial burden on pregnant people who are seeking abortion, particularly racial minorities and low-income people. For example, blocking funding for abortion has had a disproportionate impact on Indigenous communities in the United States. Indigenous women are at high risk of sexual victimization and may become pregnant following an assault, and the Indian Health Service (IHS) is often the only reproductive service provider for many Indigenous communities. The IHS codified Hyde Amendment abortion funding regulations in 1996, severely limiting Indigenous women's ability to access an abortion. This action essentially denies Indigenous women in the United States access to abortion services.<sup>34</sup>

In June of 2022, the US Supreme overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, ending federal protections to the right to abortion. As of 5 July 2022, 11 states had implemented total or near-total abortion bans, impacting millions of people of reproductive age. More states are following with now-permitted abortion bans and with legislation seeking to criminalize 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.

## 4.1 RECOMMENDATIONS

- The United States 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 health care for all, especially sexual and reproductive health care 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.
- Clinics providing abortion services must receive sufficient and consistent funding from the government and be protected from the constantly changing agendas of political administrations.

## 5. POLICE USE OF FORCE

In 2020, the racially discriminatory police killings of George Floyd, Breonna Taylor and others spurred a national reckoning regarding the police use of lethal force and its disproportionate impact on Black people in the United States. The US government does not document how many people die as a result of police use of force, so the exact number is unknown. Yet the dramatically disproportionate scale of the use of force against people of colour in the USA remains at crisis levels, and intimately tied to broader patterns of racial profiling by law enforcement authorities.

In response to the failure of government agencies to collect reliable and complete data, media and non-governmental organizations have filled the void by documenting the known numbers of police killings. Those estimates suggest that approximately 1,000 people are shot and killed by police each year, and hundreds more are killed using other forms of force. For instance, according to *The Washington Post's* Fatal Force database, 4,931 people were killed between 2015 and 2019 as a result of police use of firearms alone. *The Washington Post's* data also shows that Black people are disproportionately impacted by this use of lethal force. Although they account for less than 13% of the US population, Black people comprised approximately

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<sup>33</sup> Planned Parenthood, "Hyde Amendment", undated, available at <https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion/hyde-amendment>.

<sup>34</sup> Shaye Beverly Arnold, "Reproductive Rights Denied: The Hyde Amendment and Access to Abortion for Native American Women Using the Indian Health Service Facilities", October 2014, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4167108/>.

a quarter of deaths (24.2%) from police use of firearms and were killed by police at more than twice the rate of white people during this five-year period.<sup>35</sup>

Similar databases which include deaths resulting from law enforcement use of other forms of force in addition to firearms show that annual numbers of police killings are likely much higher – and that the racial disparities persist – when those other uses of force are included in the data.<sup>36</sup>

In 2014, Congress passed the Death in Custody Reporting Act (DiCRA).<sup>37</sup> This requires states that receive federal criminal justice funding to gather and report data to the US Attorney General on how many individuals die each year while in police custody or during arrest. However, nearly seven years following DiCRA's enactment into law, the US Government has failed to implement and enforce this data collection program, violating its obligation to document and provide this data.

The use of lethal force against racialised groups and especially Black people in the US should be seen in the context of systemic racism in law enforcement, including unjustified stops and searches, racial profiling and unjust criminalization.<sup>38</sup> For example, according to the DOJ's Bureau of Justice Statistics, despite comprising approximately just 13% of the population, Black people were more likely to be stopped by police, both in traffic stops and street stops, than white or Hispanic people in 2015, the most recent year for which national data from the government is available.<sup>39</sup> Black and Hispanic people were also more likely to have multiple contacts with police than white people, especially in the contexts of traffic and street stops. More than one in six Black people who were pulled over in a traffic stop or stopped on the street had similar interactions with police multiple times over the course of the year. State and local data demonstrate similar trends.<sup>40</sup> Amnesty International has previously raised concerns about racial profiling, including the continuous failure of Congress to pass the End Racial Profiling Act, which would prohibit any law enforcement agent or agency from engaging in racial profiling.<sup>41</sup>

Amnesty International has analysed state statutes on the use of lethal force and found that they are far too permissive and do not meet international standards, violating the right to life, the right to security of the person, the right to freedom from discrimination, and the right to equal protection of the law.

Specifically, Amnesty International's analysis of US laws<sup>42</sup> on the use of lethal force found that:

- All 50 states and Washington, DC, fail to comply with international law and standards on the use of lethal force by law enforcement personnel.

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<sup>35</sup> The Washington Post, Fatal Force Database, [www.washingtonpost.com/graphics/investigations/police-shootingsdatabase/](http://www.washingtonpost.com/graphics/investigations/police-shootingsdatabase/)

<sup>36</sup> Mapping Police Violence, <https://mappingpoliceviolence.org/>; Fatal Encounters, <https://fatalencounters.org/>

<sup>37</sup> Death in Custody Reporting Act of 2013, Public Law No: 113-242, 128 Stat. 2860 (2013)

<sup>38</sup> "The concept of systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism." Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, Report of the United Nations High Commissioner for Human Rights A/HRC/47/53

<sup>39</sup> US Department of Justice, Office of Justice Programs, Contacts Between Police and the Public, 2015, Bureau of Justice Statistics Special Report, [www.bjs.gov/content/pub/pdf/cpp15.pdf](http://www.bjs.gov/content/pub/pdf/cpp15.pdf). Appendix Table 4: Number and percent of US residents age 16 or older with police-initiated contact, by type of contact and demographic characteristics, 2015. (Percentage of whites arrested .03%; percentage of Blacks arrested .09%.)

<sup>40</sup> Emma Pierson et al., A large-scale analysis of racial disparities in police stops across the United States, Nature Research, October 2018, [5harad.com/papers/100M-stops.pdf](http://5harad.com/papers/100M-stops.pdf); see also A.J. Willingham, Researchers studied nearly 100 million traffic stops and found black motorists are more likely to be pulled over, CNN, 21 March 2019, [www.cnn.com/2019/03/21/us/police-stops-race-stanford-study-trnd/index.html](http://www.cnn.com/2019/03/21/us/police-stops-race-stanford-study-trnd/index.html).

<sup>41</sup> For Amnesty International's previous work on racial profiling see, Rights For All (October 1998, AI Index AMR 51/35/98); Race, Rights and Police Brutality (September 1999, AI Index AMR 51/147/99); Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States, September 2004, [www.amnestyusa.org/pdfs/rp\\_report.pdf](http://www.amnestyusa.org/pdfs/rp_report.pdf); In Hostile Terrain: human rights violations in immigration enforcement in the US Southwest, 2012, AMR 51/018/2012, [www.amnestyusa.org/sites/default/files/ai\\_inhostileterrain\\_final031412.pdf](http://www.amnestyusa.org/sites/default/files/ai_inhostileterrain_final031412.pdf).

<sup>42</sup> Amnesty International, *USA: The World is Watching: Mass violations by US police of Black Lives Matter protesters' rights*, 2020, [www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf](http://www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf).

- None of the state statutes require that the use of lethal force be used only as a last resort and that non-violent and less harmful means be tried first.
- Six states have no laws on use of lethal force by law enforcement officers: Michigan, Ohio, South Carolina, West Virginia, Wisconsin, and Wyoming.
- Eleven states have laws that do not comply even with the standards set by US constitutional law on the use of lethal force by law enforcement officers<sup>43</sup>, which are less stringent than international law and standards: Alabama, Delaware, Florida, Mississippi, Montana, New Jersey, New York, Oregon, Rhode Island, South Dakota, and Vermont.

At the federal level, there is no federal statute governing the use of lethal force in the USA for federal law enforcement officers. To help address this issue, the Police Exercising Absolute Care with Everyone (PEACE) Act,<sup>44</sup> was introduced in Congress during the 2018-2019 Congressional session, and was included in a bill passed by the House in 2020 and 2021, the George Floyd Justice in Policing Act<sup>45</sup>; but neither has been enacted. If enacted, the PEACE Act 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 had been exhausted. This language is more stringent than that of any state statute on police use of lethal force, and of the current federal standard under US Supreme Court precedent.<sup>46</sup> At the time of this submission, the PEACE Act, as a standalone bill, had not been reintroduced in the US House of Representatives during the current Congressional session. It was passed by the House as part of the George Floyd Justice in Policing Act of 2021, but the US Senate has not brought the bill up for a vote.<sup>47</sup>

At the state level, in April 2021, the Maryland state legislature passed and overrode the governor's veto of a use-of-force statute, leaving just six states without such statutes to regulate the police use of force. Previously, other states, such as California, Missouri and Washington passed legislation to revise its existing legislation to restrict how and when law enforcement uses lethal force. However, no state laws governing the use of lethal force by police – where such laws exist – complied with international law and standards.

## 5.1 RECOMMENDATIONS<sup>48</sup>

- Federal, state and local authorities must urgently address systemic racism and systemic misuse of force in the US policing and criminal justice systems, including by launching thorough, timely, independent investigations and ensuring full accountability in all cases of alleged unlawful use of force by police. Law enforcement officials found guilty of a criminal offence should receive penalties commensurate with the seriousness of their offence. Particularly in cases in which the unlawful use of force represents an act of serious misconduct, this must also have an influence on the disciplinary and administrative proceedings, which must duly consider the option for the law enforcement official to be dismissed from service.
- All state legislatures should introduce or amend statutes that authorize the use of lethal force to ensure that they are in line with international law and standards, including the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Relevant statutes must limit the use of lethal force by law enforcement officials to situations of an imminent threat to life or of serious injury.

<sup>43</sup> *Tennessee v. Garner*, 471 US1 (1985), which held that it is not permissible for the police to use deadly force to prevent the escape of an unarmed suspected felon who does not present a threat to the officer; deadly force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officers or others.

<sup>44</sup> HR 4359, 116th Congress, [www.congress.gov/bill/116th-congress/house-bill/4359](http://www.congress.gov/bill/116th-congress/house-bill/4359).

<sup>45</sup> HR 1280, 117th Congress, [www.congress.gov/bill/117th-congress/house-bill/1280](http://www.congress.gov/bill/117th-congress/house-bill/1280).

<sup>46</sup> *Tennessee v. Garner*, 471 US1 (1985). The PEACE Act would also require consideration of the actions of the individual and officer leading up to a use-of-force encounter, and that even less-than-lethal force only be used when necessary and proportionate after reasonable alternatives were exhausted and a warning had been given, where feasible. Lastly, states that receive federal funding from the DOJ under the Edward Byrne Memorial Justice Assistance Grant Program would be required to enact a state use-of-force law consistent with the standards outlined in this legislation in order to continue receiving those funds, at the discretion of the US Attorney General.

<sup>47</sup> HR 1280, 117th Congress.

<sup>48</sup> For additional recommendations in relation to these findings, please see the following reports: Amnesty International, *USA: Deadly Force: Police use of lethal force in the United States*, 2015, [www.amnestyusa.org/wp-content/uploads/2015/06/aiusa\\_deadlyforcereportjune2015-1.pdf](http://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf); and Amnesty International, *USA: The World is Watching: Mass violations by US police of Black Lives Matter protesters' rights*, 2020, [www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf](http://www.amnestyusa.org/wp-content/uploads/2020/07/WorldisWatchingFullReport080220.pdf).

- The US Congress should pass the George Floyd Justice in Policing Act of 2021 (HR 1280), including the Police Exercising Absolute Care with Everyone (“PEACE Act”), the Police Reporting Information, Data, and Evidence Act (“PRIDE Act”) and the End Racial and Religious Profiling Act.
- The Department of Justice must ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994) and the Death in Custody Act (2014). The data collected should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identity and indigenous status.
- Law enforcement agencies at Federal level and in all states and municipalities should adopt an approach that considers the use of any force as a last resort and prioritizes communication, de-escalation and mediation in all law enforcement interventions.

## 6. FREEDOM OF PEACEFUL ASSEMBLY

Law enforcement agencies at all levels of government (federal, state, county, and municipal) are required under both US law and international law to facilitate and protect people’s freedoms of peaceful assembly and expression, without discrimination of any kind.

The extrajudicial and racist killing of George Floyd by Minneapolis Police Department officers in May 2020 sparked many thousands of predominantly peaceful protests across the USA and the world, and a long-overdue conversation about systemic racism in policing.

Nonetheless – in a brutal reflection of how deeply entrenched racism and excessive use of force are in the policing of Black and brown communities in the USA – law enforcement agencies responded to those overwhelmingly peaceful assemblies across the USA with excessive use of force that was motivated by racism.<sup>49</sup>

Police not only attacked, detained, and otherwise violated protesters’ rights to freedom of peaceful assembly and expression as they called for accountability for discriminatory policing; they also arbitrarily targeted journalists, street medics, legal observers and other human rights defenders with less lethal weapons and other forms of excessive use of force, simply for bearing witness to the discriminatory violence and protecting protesters’ rights.<sup>50</sup>

Additionally, as anti-racist and counter protesters clashed for months prior to the November 2020 general elections, Amnesty International documented how law enforcement authorities failed to facilitate peaceful protests and protect protesters of the Black Lives Matter movement from violence by counter-protestors across the USA.<sup>51</sup>

Protestors in assemblies documented by Amnesty International alleged that the failure of police forces to protect anti-racism protesters from violence was discriminatory as it was motivated by the perceived race or ethnicity of demonstrators, or their perceived political opinions.

Those recent events have revitalized long-standing concerns about the wide range of human rights violated by discriminatory policing, including the rights to life, security of person, equal protection under the law, freedom of peaceful assembly, freedom of expression, and freedom from discrimination.

The failure of public officials – particularly President Trump and his administration – to condemn “white supremacy” ideology and attitudes and other forms of racial discrimination exacerbated the aforementioned

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<sup>49</sup> Amnesty International interactive presentation, "Black Lives Matter protests: Mapping police violence across the USA" (June 2020): <https://www.amnesty.org/en/latest/news/2020/06/usa-unlawful-use-of-force-by-police-at-black-lives-matter-protests/>.

<sup>50</sup> Amnesty International USA report, *USA: The World Is Watching: Mass Violations by US Police of Black Lives Matter Protesters’ Rights* (August 2020): <https://www.amnesty.org/en/documents/amr51/2807/2020/en/>.

<sup>51</sup> Amnesty International report and interactive map, *Losing the Peace: US Police Failures to Protect Protesters from Violence* (October 2020): <https://www.amnestyusa.org/losing-the-peace/>.

grave threats to human rights and public safety in the context of public assemblies. The former president incited discriminatory violence by State and non-State actors in his electoral campaigns in 2016 and 2020, and in myriad ways throughout his administration (including toward migrants and asylum seekers; Asian people following the outbreak of the Covid-19 pandemic; and Black and brown people following the murder of George Floyd).

Following the former president's 2020 electoral loss, his frequent race-baiting and incitement to violence led to a series of white supremacist and pro-Trump protests against the electoral outcome in November and December 2020 in Washington, DC, and elsewhere in the country – and ultimately culminated in the insurrection at the US Capitol on 6 January 2021.<sup>52</sup> Those white supremacist demonstrations – often armed – were frequently characterized by under-policing.

US authorities' routine under-policing of white supremacist protests was despite the fact that the US Federal Bureau of Investigation (FBI) had already identified as a major threat potential political violence at public assemblies across the country by violent armed groups with ties to white supremacism. In its annual threat assessment, the US Department of Homeland Security warned in October 2020 that “domestic violent extremists” – particularly white supremacist armed groups – could target elections-related protests and mass gatherings with political violence.

In their facilitation of peaceful assemblies, police must never be discriminatory on the basis of race or ethnicity of protestors or those whose rights are being promoted or protected – or by failing to protect protesters from violence from counter protesters on the basis of their race or ethnicity, among other grounds. The track record of US law enforcement personnel is marked by frequent discriminatory and excessive use of force against demonstrators and revealing the unequal treatment and discriminatory policing of anti-racism protests in contrast with the treatment of white supremacist protests in 2020 and 2021.

## 6.1 RECOMMENDATIONS

- Government officials should condemn rhetoric that incites violence, and discrimination. Any speech that incites others to commit a crime, provided that there is a clear intent to incite to commit it and a reasonable likelihood that they commit it, should be duly investigated and prosecuted;
- Police must facilitate the exercise of the right to freedom of peaceful assembly without any discrimination based on the perceived race or ethnicity, political opinion, or other protected characteristics of participants or the messages they are seeking to express;
- The failure to protect anti-racist protesters by police should be subject to an independent enquiry that thoroughly and timely investigates the role played by systemic racism within law enforcement, including when policing public assemblies.

## 7. GUN VIOLENCE

Gun violence in the United States is a human rights crisis.<sup>53</sup> The US 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.

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<sup>52</sup> Amnesty International USA letter to Attorney General Garland calling for an investigation into the Capitol insurrection (March 2021): <https://amnestyusa.org/our-work/government-relations/advocacy/amnesty-letter-ag-investigation-capitol-insurrection/>.

<sup>53</sup> 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](http://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*, 2019, [www.amnestyusa.org/wp-content/uploads/2019/07/Scars-of-survival.pdf](http://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, <https://heroes.amnestyusa.org/wp-content/uploads/2021/06/Amnesty-EGVReport-V5.pdf>.

While the percentage of the US population owning firearms has decreased in recent years, the number of privately owned firearms in the US has exploded. The US has an estimated 20% more guns than citizens. Americans own nearly 46% of the world's privately-owned guns but comprise only 4.3% of its population. A staggering number of people are killed or injured by gun violence every year. According to the US Centers for Disease Control and Prevention (CDC), in 2019 nearly 40,000 people died as a result of gun violence, including in over 400 mass shootings. Gun violence, which kills on average 109 people each day, is the leading cause of death among US youth ages 0-18.<sup>54</sup>

Gun violence in the USA also disproportionately affects racial minorities nationwide, particularly Black and brown communities. According to the CDC, there were 39,707 gun-related deaths in 2019, and the Gun Violence Archive recently published data in May 2021, indicating that the number of gun-related deaths for 2020 had risen to 43,553. More than half of all gun homicide victims in the USA in 2019 were Black men. Despite making up approximately just 13% of the US population, Black Americans represented almost 60% of all gun homicide victims that year. Black men in the United States are thus much more likely to be the victims of gun homicides than white men. 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.<sup>55</sup>

Discriminatory patterns of firearm violence in the USA result not only in wildly disproportionate homicides of Black and Hispanic Americans, but they also cause comparably disproportionate serious injuries and disabilities, as well as mental health problems in the short and long term, including anxiety, depression, and PTSD. The violence also results in life-changing physical injuries that can have a devastating impact on individuals and their families and careers for years or decades.<sup>56</sup> It has fostered a general climate of fear that interferes with the enjoyment of human rights even of those not killed or physically maimed by gun violence. Persistent firearm violence also has a strongly disparate impact on all aspects of life in Black and brown communities and marginalized groups. Fear of firearm violence in surrounding communities can leave people too scared to access local clinics or hospitals for critical health care and other services; leave children without safe spaces for play or even safe routes to school; and leave local businesses unable to thrive, resulting in economic marginalization.<sup>57</sup>

The disparate impact of gun violence on minority communities raises serious concerns about the protection of the human right to freedom from discrimination and to equal protection under the law. The UN Working Group of Experts on People of African Descent has specifically expressed concern over the lack of regulation of firearms in the USA and its impact on Black communities in the United States.<sup>58</sup> The UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination both highlighted the issue of gun violence in their most recent reports on US human rights compliance with its obligations.<sup>59</sup> They remain concerned at the increasing numbers of gun-related deaths and injuries in the USA and the highly disparate impact on racial and ethnic minorities. Both committees noted that the US government's failure to curb gun violence constitutes a violation of the rights to life and to nondiscrimination under international law.

In 2022, the US Supreme Court ruled on whether New York state's permit carry law, one of the most restrictive in the country, violated the Second Amendment of the US Constitution. The court found that the law's discretionary element was unconstitutional. As a result, the eight states and District of Columbia with similar "may issue" permitting schemes will likely be overturned and states will largely be unable to enact sensible firearm restrictions or to prevent this human rights crisis from continuing.

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

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<sup>54</sup> Sadat, L.N. & Madaline M. George, Gun Violence and Human Rights, 60 Washington University Journal of Law & Policy, 2019, at 1.

<sup>55</sup> CDC, Gun Violence Archive Past Tolls 2020 Summary, accessible at [www.gunviolencearchive.org/past-tolls](http://www.gunviolencearchive.org/past-tolls).

<sup>56</sup> Amnesty International USA, *Scars of Survival: Gun Violence and Barriers to Reparations in the USA*, July 2019, [www.amnestyusa.org/wp-content/uploads/2019/07/Scars-of-survival.pdf](http://www.amnestyusa.org/wp-content/uploads/2019/07/Scars-of-survival.pdf).

<sup>57</sup> Reese, C., et al., Screening for traumatic stress among survivors of urban trauma, *Journal on Trauma Acute Care Surgery* Vol. 73, No. 462, 2012; Sarah R. Lowe & Sandro Galea, *The Mental Health Consequences of Mass Shootings*, 18 *Trauma, Violence & Abuse*, Vol. 18, No. 62, 2017; James M. Shultz et al., *Multiple Vantage Points on the Mental Health Effects of Mass Shootings*, *Current Psychiatry Reports*, Vol. 16, No. 469, 2014.

<sup>58</sup> Statement to the Media by the United Nations' Working Group of Experts on People of African Descent, on the conclusion of its official visit to the USA, 19-29 Jan. 2016, [www.ohchr.org/en/newsevents](http://www.ohchr.org/en/newsevents).

<sup>59</sup> Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America* 5-6, UN. Doc. CCPR/C/USA/CO/4, Apr. 23, 2014; *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States*, Committee on the Elimination of Racial Discrimination, UN. Doc. CERD/C/USA/CO/7-9, Sept. 25, 2014.

checks; closes the “boyfriend loophole” for dating violence misdemeanors; makes gun trafficking a federal crime; clarifies who needs to register as a gun dealer and conduct background checks before selling weapons; invests in anti-violence programs for communities most at risk for gun crimes; provides funding to address the youth mental health crisis created by gun violence trauma.<sup>60</sup>

In order for the US to meet its human rights obligations, it must take all reasonable measures to ensure that gun violence does not significantly and disproportionately affect minority communities among many other measures, including more broadly the obligation to protect life and to prevent violations of the right to life by both state and private individuals.

## 7.1 RECOMMENDATIONS

- The US Congress should create a commission to investigate, analyze and develop policy recommendations to address the disparate impact of gun violence on communities facing racial discrimination.
- The US Congress should pass legislation which supports the implementation and funding of evidence-based violence prevention programs, including the Break the Cycle of Violence Bill which would allocate \$5 billion over the next eight years to community gun violence prevention and intervention programs that have proven effective in decreasing gun violence in communities where there are persistently high levels of firearm violence. This funding should include funding for competitive grant programs to cities that develop effective, prevention-oriented violence reduction initiatives focused on young people at highest risk for violence and funding for grants that support the creation or expansion of hospital-based violence reduction initiatives with a focus on young people at highest risk for violence.
- The US Congress should safeguard and pass the Biden Administration’s proposed \$5 billion funding, as part of the American Jobs Bill. The funding will support evidence-based violence intervention programs that treat gun violence as a public health issue and focus on holistic approaches to healing communities most impacted by economic insecurity, chronic trauma, structural inequities and those disproportionately impacted by gun homicides.
- The US Administration should establish a comprehensive strategy aimed at reducing gun violence, particularly in Black and brown communities.

## 8. DEATH PENALTY

As the flaws of and human rights violations associated with the death penalty have become ever more evident, several US states have abolished this punishment in recent years. In 2021, Virginia became the 23<sup>rd</sup> abolitionist state and the first in the US region of the South to take such action. However, no such progress has been seen in numerous other states and on the federal level. The culmination of this federal policy failure came in the final months of Donald Trump’s presidency – when his administration oversaw 13 federal executions in six months - after the USA had gone 17 years with none.

Hours before this resumption of federal executions, US Supreme Court Justices Stephen Breyer and Ruth Bader Ginsburg rightly noted that the cases being lined up by the Trump administration for execution promised to provide further examples of how the death penalty was arguably unconstitutional and rendered that question “yet more pressing”.<sup>61</sup> Five years earlier these Justices had, among other things, pointed to studies showing that factors “such as race, gender, or geography” frequently affect application of the death penalty in the USA.<sup>62</sup> Outside those states which have abolished the death penalty altogether, the federal and state governments have largely failed to address such biases in capital justice.

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<sup>60</sup> The Bipartisan Safer Communities Act of 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/06/Bipartisan-Safer-Communities-Act-SAP-1.pdf>.

<sup>61</sup> US Supreme Court, Barr v. Lee, 14 July 2020, Justices Breyer, joined by Justice Ginsburg, dissenting.

<sup>62</sup> US Supreme Court, Glossip v. Gross, 29 June 2015, Justices Breyer, joined by Justice Ginsburg, dissenting.



Six of the 13 federal executions in 2020/1 were of white individuals, five men and one woman, all convicted of the murder of white victims. One was of a Native American man convicted of two Native American people. The other six executions were of Black men, four convicted of murders involving Black victims, and two involving white victims.

These federal executions went ahead at a time of national debate about the role of racism in criminal justice, law enforcement and wider society in the USA. As Amnesty International has pointed out in a recent report on the federal government's failure to offer the sort of principled human rights leadership necessary to guide the USA away from judicial killing, the administration was willing to exploit the fact that the first execution was of a man who had once been involved in a white supremacy group, but at the same time it singularly failed to address compelling allegations of racial discrimination in the cases of Black prisoners lined up for federal execution.<sup>63</sup>

In the case of two Black federal defendants jointly convicted of the murder of two white people committed when the defendants were 18 and 19 years old, in 2020 lawyers urged a federal judge to recognize the role of the now discredited "superpredator" myth on the decision of the Clinton administration to seek the death penalty against the two youths. As the Amnesty International report outlines, rather than seek to recognize the racial element of the superpredator theory, the administration merely accused the lawyers of "accusing the prosecution of racism". This defensive response goes to the heart of the failure of the federal government to recognise the role of unconscious as well as overt racial bias in capital justice.

In 2008, the then most senior justice on the US Supreme Court stated that the Court had allowed race "to continue to play an unacceptable role in capital cases."<sup>64</sup> A principal culprit is the Court's now 35-year-old *McCleskey v. Kemp* decision. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in his report of his mission to the USA in 1997, noted that the 1987 *McCleskey* ruling, under which a successful claim of racial discrimination would have to prove discriminatory intent by the decision-makers, "has had the effect of allowing the courts to tolerate racial bias because of the great difficulties defendants face in proving individual acts of discrimination in their cases." The Rapporteur questioned the compatibility of the ruling "with obligations undertaken under the International Convention on the Elimination of All Forms of Racial Discrimination, which requires States parties to take appropriate steps to eliminate both direct and indirect discrimination."<sup>65</sup> Discrimination under the Convention "includes purposive or intentional discrimination *and discrimination in effect*" [emphasis added].<sup>66</sup>

Among the 13 federal executions under President Trump was that of Orlando Cordia Hall. Orlando Hall, a Black man, was tried before an all-white federal jury in Texas. One of the prosecutors would later be named in two major judicial rulings overturning death sentences because of the prosecution's racist jury selection techniques. As the execution approached, Hall's lawyers learned of new statistical analysis showing that in the relevant time period, federal prosecutors in Texas had been six times more likely to request authorization to seek the death penalty against Black defendants, that such authorization was eight times more likely to be granted in cases of Black defendants, and that the death penalty was some 16 times more likely to be the outcome in cases with Black defendants. The government simply turned to *McCleskey v. Kemp*: "the Supreme Court has rejected such claims predicated on these types of statistics and has instead explained that a defendant who tries to demonstrate this kind of constitutional violation 'must prove that the decisionmakers in *his* case acted with discriminatory purpose.'"<sup>67</sup> The government was given the green light by the courts and Orlando Hall was executed on 19 November 2020.

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<sup>63</sup> USA: The power of example: Whither the Biden death penalty promise? 27 June 2022, <https://www.amnestyusa.org/wp-content/uploads/2022/06/The-Power-of-Example-Whither-the-Biden-Death-Penalty-Promise-.pdf>

<sup>64</sup> *Baze v. Rees*, 16 April 2008, Justice Stevens concurring in the judgment.

<sup>65</sup> Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, January 1998, UN Doc. E/CN.4/1998/68/Add.3, (previously cited), paras 64-65.

<sup>66</sup> CERD, General Recommendation 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, 24 September 2009, UN Doc. CERD/C/GC/32, para. 7.

<sup>67</sup> US District Court for the Southern District of Indiana, *Hall v. Watson*. Response to Hall's 28 USC §2241 petition and response in opposition to Hall's motion for stay, 16 November 2020.

The federal executions showed, among other things, a majority on the US Supreme Court hostile to last-minute but compelling legal arguments in capital cases and prepared to cement unresolved constitutional claims into permanence by allowing executions to proceed. The example set by the administration and the US Supreme Court's hostility towards "last-minute intervention" by federal courts, including but not limited to challenges to execution protocols, would have been noted by the diminishing number of states which are the main drivers of the USA's attachment to judicial killing. They include Alabama, where Matthew Reeves, a Black man who was executed on 27 January 2022 for a murder committed when he was 18 years old. In 2020, the US Court of Appeals for the 11th Circuit had ruled that his trial lawyers' failure to present evidence of his intellectual disability had been "deficient" and that the absence of this "powerful" mitigating evidence was "sufficient to undermine confidence in the outcome." In 2021, the US Supreme Court overturned this without providing Reeves an opportunity to submit legal briefs on the matter or provide oral argument. Three justices dissented; two of them noted that the decision "continues a troubling trend in which this Court strains to reverse summarily any grants of relief to those facing execution", citing what had happened during the federal execution spree, among other things.<sup>68</sup>

This judicial hands-off approach on the highest court renders yet more urgent the need for the political branches of government to be urged to do the right thing and to stop executions and abolish the death penalty – as CERD has long since recommended – not least because of the history and persistence to this day of racial and other discrimination in its application.

Today, over half a century after the US signed the ICERD, and more than 25 years after ratifying it, for the first time the USA has a President who came to office on a promise to work for abolition of the federal death penalty and to support that outcome at the state level too. In March 2021, some 20 UN experts urged President Biden to act without delay on his promise.<sup>69</sup> They urged him in particular to act with urgency on his pledge to address executions at the state level. However, the federal government has continued to defend federal death sentences, failed to intervene against state executions, and legislation in the US House of Representatives and US Senate to abolish the federal death penalty has languished without a vote since re-introduced in 2021.

There have been 15 executions at state level since President Biden took office (to July 2022), with the racial statistics of those executions somewhat mirroring those of the 16 executions that have now taken place at federal level since 2001. Of the 15 executions at state level, 14 were for crimes involving white victims. At federal level, 10 of the 16 executions were of crimes involving white victims. Research has consistently shown that race of victim is a factor in who receives the death penalty in the USA. This can be compounded by race of defendant effect. Twenty-one white people have been executed in the USA since 1972 for crimes involving solely Black victims. By the end of June 2022, 14 times as many Black people (300) had been executed for crimes involving solely white victims.

The threat of more federal executions, at least for now, was lifted on 1 July 2021, when the US Attorney General announced a temporary moratorium pending "a review of the Justice Department's policies and procedures".<sup>70</sup> However, the moratorium itself was narrowly defined and the Attorney General expressly left to legislatures the systemic problems of capital justice: "Serious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disparate

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<sup>68</sup> *Dunn v. Reeves*, Justices Sotomayor and Kagan dissenting (citing *US v. Higgs* among others): "In essence, the Court turns 'deference' [to state court decisions] into a rule that federal habeas relief is never available to those facing execution." That the federal government itself allowed the execution of two men who had strong intellectual disability claims to go forward during the federal execution spree was presumably also not lost on the states. See Amnesty International Urgent Action, 13 January 2022, [www.amnesty.org/en/documents/amr51/5147/2022/en/](http://www.amnesty.org/en/documents/amr51/5147/2022/en/)

<sup>69</sup> UN experts call for President Biden to end death penalty, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26876](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26876)

<sup>70</sup> Attorney General Merrick B. Garland imposes a moratorium on federal executions, US Department of Justice, 1 July 2021, [www.justice.gov/opa/pr/attorney-general-merrick-b-garland-imposes-moratorium-federal-executions-orders-review](http://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-imposes-moratorium-federal-executions-orders-review)

impact on people of colour, and the troubling number of exonerations in capital justice and other serious cases. Those weighty concerns deserve careful study and evaluation by lawmakers”.<sup>71</sup>

The time for study is surely over. The evidence is in. Fifty years after *Furman v. Georgia* temporarily halted the death penalty because of the arbitrary way it was being meted out, and 35 years after *McCleskey v. Kemp* blocked judicial remedy for racism in capital justice, and legislature after legislature has failed to counter the latter with legislation for racial justice in capital cases, the death penalty in the USA is still riddled with arbitrariness, discrimination, and error, not to mention its inherent cruelty (regardless of the method chosen to end the life of the prisoner). In an increasingly abolitionist world, the USA's resort to the death penalty calls into question its commitment to human rights, including the prohibition of discrimination. The UN Human Rights Committee has made clear in its General Comment 36 that under Article 6 of the ICCPR, “States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty, de facto and de jure, in the foreseeable future.”

Pursuit of the federal death penalty should be deauthorized in all cases, all federal death sentences immediately commuted, and efforts redoubled for abolition of the federal death penalty in law. The Biden administration must live up to the abolitionist promises it has made and join with Congress to put an end to federal judicial killings and utilize its leverage over state legislatures to encourage the introduction and passage of legislation to abolish the practice in the remaining executing states, and for executive moratoriums pending this.

## 8.1 RECOMMENDATIONS:

- The US President should immediately commute all existing federal death sentences as serious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application and disparate impact on people of colour.
- The US administration and Congress must work together to enact legislation to abolish all provisions that allow for the imposition of the death penalty at the federal level and under the Military Commissions Act.
- The Department of Justice must maintain the moratorium on executions until full abolition of the federal death penalty is signed into law and all existing death sentences are commuted; Pending this, all US Attorneys should be instructed that the federal government will no longer authorize pursuit of death sentences, and motions should be filed in all pending cases aimed at rescinding active Notices of Intent to Seek the Death Penalty.
- The federal administration must actively oppose the death penalty, in any litigation in any case at state or federal level that touches directly or indirectly on this punishment and make clear that it is committed to abolition.
- Cease any action which could assist a state in the USA, or a country outside the USA, in imposing or implementing a death sentence.
- The federal government should work tirelessly with states to encourage legislation to abolish the death penalty in all retentionist states, and to urge moratorium on executions pending this outcome.

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<sup>71</sup> Memorandum for the Deputy Attorney General et al, From the Attorney General, Re: Moratorium on federal executions pending review of policies and procedures, 1 July 2021, [www.justice.gov/opa/page/file/1408636/download](https://www.justice.gov/opa/page/file/1408636/download)

# 9. ACCESS TO JUSTICE

## 9.1 MUSLIM FOREIGN DETAINEES UNLAWFULLY HELD IN GUANTÁNAMO BAY

More than 20 years after the detention center received its first detainee in the so-called “war on terror”, 37 foreign nationals who are all Muslim remain unlawfully detained at the US naval base at Guantánamo Bay in Cuba, the majority without charge. None has been given a fair trial. Some have been so held for more than 20 years. Despite different grounds for their unlawful detention – for interrogation, eventual trial, and/or warehousing in long-term indefinite detention –, all Guantanamo detainees are foreign nationals and Muslim. Their unlawful detention is a violation of their right to non-discrimination based on race, ethnicity religion and nationality. No US national – or non-Muslim foreign national -- similarly suspected of whatever activities these men were suspected would be held in the base and subjected to its conditions and its uncertainties. Unlawful discrimination on the basis of national origin, race and/or religion and nationality is just one more aspect of the continuing human rights scandal of Guantánamo.

## 9.2 HABEAS CORPUS AND INDEFINITE DETENTION

The USA has reported to the Committee that “All Guantanamo detainees have the ability to challenge the lawfulness of their detentions in US federal court through petitions for a writ of habeas corpus.”<sup>72</sup> While the detainees had this right under international law from the outset of the detentions in January 2002, they were denied it until 2008. The essence of *habeas corpus* proceedings has for centuries been that government authorities are required to bring an individual physically before the court and demonstrate that a clear legal basis exists for their detention. Normally, if the government is unable to do so promptly, the court is to order the individual released.<sup>73</sup> A court’s power to obtain the immediate release of an unlawfully held individual must be real and effective and not merely formal, advisory, or declaratory. This is the bedrock guarantee against arbitrary detention.

Today, 19 detainees cleared by US authorities for release from the detention center, including one whose detention has been determined unlawful by a US federal court, remain stuck there.

Guantánamo was chosen as a location for detentions in order to bypass the right to habeas corpus, and other guarantees of due process provided by the US Constitution. By the time that the US Supreme Court ruled in 2008 in *Boumediene v. Bush*<sup>74</sup> that the Guantánamo detainees had the constitutional right to challenge the lawfulness of their detention in *habeas corpus* petitions filed in federal court, detainees had been held there, not for a few days, but for *six and a half years*. Fourteen years since the *Boumediene* ruling, the notion that the detainees can obtain the “prompt” habeas corpus hearing ordered by the Supreme Court has long since evaporated. Even now, it can be years before a Guantánamo detainee can get a habeas corpus hearing. In addition, the “global war on terror” paradigm largely accepted by the federal judiciary has imposed substantial obstacles which in practice has resulted in few orders declaring that the detentions were unlawful. And even favorable rulings have not resulted in the immediate release of detainees. Again, US nationals or non-Muslim foreign nationals are not subject to this regime when suspected of terrorism-related offences under US law.

Detainees were denied any fair legal process. Prior to being transferred to Guantánamo, some detainees were subjected to the crimes under international law of torture and/or enforced disappearance, for which there has been no accountability or redress. Some 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

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<sup>72</sup> Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, June 2, 2021, page 28, para 122.

<sup>73</sup> General Comment no 8, para 2 (1982) (... “delays must not exceed a few days”).

<sup>74</sup> *Boumediene v. Bush*, 553 US 723 (2008).

on hunger-strike, some have been subjected to force feeding. The cruelty of the indefinite nature of this detention regime on detainees and their families is clear.<sup>75</sup> Again, all are foreign nationals. All are Muslim.

Meanwhile, the USA continues to ask other countries to resettle former Guantanamo detainees that cannot immediately be repatriated, while denying entry to detainees into the US territory, including for attending trial or accessing medical treatment.

The US government has claimed it needs the cooperation of other countries in order to transfer them out of Guantanamo. In addition, the US government has failed to create a high-ranking post in the Department of State to take charge of negotiating transfers of Guantanamo detainees cleared for release to other states, as President Barack Obama did in 2013. (That Special Envoy position was eliminated by President Donald Trump.) The Biden administration's failure to create a Special Envoy for Guantanamo closure demonstrates a lack of commitment on the part of the US government to take seriously its human rights obligations to end arbitrary and indefinite detention.

## 9.3 MILITARY COMMISSION TRIALS

Trials by military commission were conceived in order to circumvent the ordinary principles of criminal justice employed in the US federal court system, which provides those charged with crimes the right to a fair trial. The US government has consistently denied any requirement to provide the due process rights granted by the US Constitution to detainees at Guantanamo. Contrary to international guarantees of equality before the courts and to equal protection of the law, the use of military commission system is blatantly discriminatory: US nationals accused of similar terrorism-related offences continue to receive the protections of the ordinary US criminal justice system while non-nationals held at Guantanamo are deprived of those protections.<sup>76</sup>

The military commission system is now in its third version since President George W. Bush first established it by executive order signed on 13 November 2001.<sup>77</sup> However, because of its military rather than civilian nature, it still fails to meet international fair trial standards. Central to such standards is the requirement for criminal trials to be conducted before independent and impartial tribunals. Among other flaws, the commissions lack independence, in both substance and appearance, from the political branches of government that have authorized, condoned, and blocked accountability and remedy for, human rights violations committed against the very category of detainees that will appear before them.

The use of military commissions discriminates against detainees on grounds of race, religion and nationality and violate USA's human rights obligations. If any Guantánamo detainee charged with a criminal offence and waiting for prosecution was a US national, they would not be tried by these military commissions. Under US law, a US detainee has the right to a civilian jury trial in an ordinary federal court. They may not be tried before a panel of US military officers operating under rules and procedures that do not meet fair trial standards.

Eight detainees have been convicted by military commission since detentions began at Guantánamo in January 2002. Six of these eight men were convicted under pre-trial plea bargains.<sup>78</sup> The government has expressed its intention to seek the death penalty for six of the ten detainees currently charged in the military commissions. The Human Rights Committee has emphasized that fair trial guarantees are particularly important in cases leading to death sentences, and that any trial not meeting international fair trial standards that results in a death sentence would constitute a violation of the right to life under the ICCPR. Military commissions do not provide detainees with these standards.

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<sup>75</sup> See, for example, USA: 'I have no reason to believe that I will ever leave this prison alive', 3 May 2013, <http://www.amnesty.org/en/library/info/AMR51/022/2013/en>

<sup>76</sup> While the USA's "understandings" stated at the time of ratification of the International Covenant on Civil and Political Rights noted its view that not all "distinctions" necessarily constitute "discrimination" if they are "at minimum, rationally related to a legitimate governmental objective", and the Human Rights Committee has noted that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant" (General Comments 18 (1989) on Non-discrimination, and 32 on Right to equality before courts and tribunals and to a fair trial (2007), the distinctions and differentiation in this instance fall well outside any such reasoning.

<sup>77</sup> See: USA: Trials in error. Third go at misconceived military commission experiment, July 2009, <http://www.amnesty.org/en/library/info/AMR51/083/2009/en>.

<sup>78</sup> See USA: 12 years of Guantánamo detentions, 12 years of double standards, AI Index: AMR 51/001/2014, 9 January 2014, <http://www.amnesty.org/en/library/info/AMR51/001/2014/en>

The US Supreme Court *Hamdan v. Rumsfeld*<sup>79</sup> ruling in 2006 overturning President Bush's system of military commissions was seen by the administration as a threat to the CIA's secret detention program – in which foreign nationals were being subjected to enforced disappearance, torture or other ill-treatment – and the wall of impunity built around it. The administration moved Khalid Sheikh Mohammed and 13 other CIA detainees to Guantánamo and relied on their cases to obtain passage of the MCA of 2006. Congress passed the Act, authorizing military commissions that were very similar to the ones blocked by the *Hamdan* ruling a few months earlier.

Nearly 16 years later, Khalid Sheikh Mohammed and four other detainees – Walid bin Attash, Ramzi bin al-Shibh, 'Ali 'Abd al-'Aziz and Mustafa al Hawsawi – whom the USA has charged with involvement in the 9/11 conspiracy have still not been brought to trial. (They have been awaiting trial for nearly a decade).

The US government has itself admitted that the federal courts would be an entirely legal, appropriate, and available forum in which to conduct the trials of these detainees. In November 2009, the Department of Justice announced that the five men would be brought to trial “as soon as possible” in ordinary civilian federal court in New York. In April 2011, citing congressional blocking, the Attorney General announced a U-turn.<sup>80</sup> The five men would be tried under essentially untested procedures before a military commission under a post-9/11 law.

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 UN Human Rights Committee has held that trials of civilians by military or special tribunals must be strictly limited to exceptional cases where the government can show that resorting to such trials is “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”. That is not the case here. The ordinary courts were open, available and experienced in dealing with prosecutions in terrorism cases.

Moreover, military commissions are discriminatory – as has been the detention regime more broadly. The CIA programme of torture and enforced disappearance was reserved for foreign nationals, as is detention at Guantánamo, as are the military commission trials there. A US citizen, even if charged with precisely the same offences, could not be prosecuted in these tribunals. While not all differential treatment between citizens and non-citizens violates international law, it does if it comes, as here, at the expense of rights reflected in the Universal Declaration of Human Rights and enshrined in the International Covenant on Civil and Political Rights and other binding international instruments.

Amnesty International believes that Guantanamo detainees charged with terrorism-related offences should be tried by federal courts as resorting to Military Commissions is not justified by any objective and serious reasons, is discriminatory and a violation of international fair trial standards.

## 9.4 RECOMMENDATIONS

- The USA must cease to invoke, and should publicly disavow, the “global war on terror” doctrine, and fully recognize and affirm the applicability of international human rights obligations to all counter-terrorism related laws, policies and measures;
- 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 recognisable criminal offences then to do so through fair judicial resolution before a federal court without recourse to the death penalty.
- Lift current restrictions on transferring detainees from Guantánamo to the United States or to third countries where their rights will be protected.

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<sup>79</sup> *Hamdan v. Rumsfeld*, 548 US 557 (2006).

<sup>80</sup> Charlie Savage, ‘In a Reversal, Military Trials for 9/11 Cases’, *The New York Times*, 4 April 2011, available at <http://www.nytimes.com/2011/04/05/us/05gitmo.html?adxnnl=1&ref=opinion&adxnnlx=1406566910-ChEVNG8SKfvJzGtVuBCetQ>.

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# UNITED STATES OF AMERICA

## SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

107<sup>TH</sup> SESSION, 8-30 AUGUST 2022

Amnesty International submits this briefing with regard to consideration by the UN Committee on the Elimination of Racial Discrimination (CERD) of the United States of America's (USA) combined tenth to twelfth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

In this briefing the organization outlines its concerns regarding aspects of a number of these themes, including racial disparities in: law enforcement policies and practices, particularly in relation to use of force and policing of assemblies; the death penalty; enjoyment of the right to health in the context of sexual reproductive rights and maternal health issues; the prevalence of gun violence; immigration enforcement; the government's failure to protect indigenous women from sexual violence; and access to justice for foreign nationals held at the US naval base at Guantánamo Bay in Cuba.

This briefing does not seek to address exhaustively the full range of areas in the USA in which enjoyment of rights under the Convention continue to be negatively impacted by discrimination on the prohibited grounds of race, colour, ethnicity or nationality, many of which are also addressed by other organizations