

## I. Summary

Human Rights Watch would like to express our appreciation to the Committee on the Elimination of Racial Discrimination (the “Committee”) for this opportunity to provide it with information on the United States’ compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).<sup>1</sup> We intend for this submission to be part of the record for the Committee’s review of the United States’ compliance with its obligations under ICERD during its 72<sup>nd</sup> session.

At the outset, we would like to acknowledge the much more comprehensive submissions of our colleague NGOs, specifically the joint shadow reports written by a wide cross-section of US NGOs and coordinated by the US Human Rights Network,<sup>2</sup> as well as the detailed report prepared by the American Civil Liberties Union,<sup>3</sup> among others. These NGO submissions address an enormous range of policies and practices of the United States, and raise grave and important concerns about the record of the United States in upholding its obligations under ICERD. Many of these are issues that we have researched and reported on in the past.<sup>4</sup>

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<sup>1</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, adopted by the United States on November 20, 1994.

<sup>2</sup> US Human Rights Network, “International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Shadow Report 2008, Submitted to the 72nd Session Committee on the Elimination of Racial Discrimination, 18th February-7th March 2008,” December 2007, [http://www.ushrnetwork.org/files/ushrn/images/2008\\_shadow\\_report/Shadow\\_Report\\_2008\\_web.pdf](http://www.ushrnetwork.org/files/ushrn/images/2008_shadow_report/Shadow_Report_2008_web.pdf) (accessed December 17, 2007).

<sup>3</sup> American Civil Liberties Union (ACLU), “Race and Ethnicity in America: Turning a Blind Eye to Injustice, US Violations of the Convention on the Elimination of All Forms of Racial Discrimination,” December 2007, <http://www.aclu.org/intlhumanrights/racialjustice/cerd.html> (accessed December 17, 2007).

<sup>4</sup> For example, Human Rights Watch has raised concerns about racial discrimination in the United States in the areas of drug sentencing, felony disenfranchisement, juvenile justice, and many others. See, for example: Human Rights Watch, *Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls*, vol. 18, no. 4(G), September 2006, <http://hrw.org/reports/2006/us0906/>; Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* (New York: Human Rights Watch, 2005), <http://hrw.org/reports/2005/us1005/>; “United States: L.A. Jail Should Lift Chaplain Ban,” Human Rights Watch news release, June 26, 2003, <http://hrw.org/press/2003/06/us062603.htm>; “USA: Children in Maryland’s Jails,” Human Rights Watch news release, October 27, 2000, <http://hrw.org/english/docs/2000/10/27/usdom653.htm>; Human Rights Watch, *No Minor Matter: Children in Maryland’s Jails* (New York: Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/maryland/>; Human Rights Watch/Children’s Rights Project, *High Country Lockup: Children in Confinement in Colorado*, August 1997, <http://www.hrw.org/reports/pdfs/c/crd/us978.pdf>; Human Rights Watch, *United States - No Second Chance: People with Criminal Records Denied Access to Public Housing*, November 2004, <http://hrw.org/reports/2004/usa1104/>; Human Rights Watch, *United States – Punishment and Prejudice: Racial Disparities in the War on Drugs*, vol. 12, no. 2(G), May 2000, <http://www.hrw.org/reports/2000/usa/>; Human Rights Watch and The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, 1998, <http://www.hrw.org/reports98/vote/>; Human Rights Watch/United States, *Race and Drug Law Enforcement in the State of Georgia*, vol. 8, no. 4(G), July 1996,

For example, we believe that racial discrimination in the criminal justice system in the United States, a topic of ongoing concern to Human Rights Watch, is adequately discussed in the other NGO submissions. We therefore do not reiterate these same concerns here. Instead, in this submission we have sought to present the Committee with additional research by Human Rights Watch, some of which was compiled solely for this submission, which provides *new examples, data, or analysis* of failures of the United States to uphold its obligations under ICERD in seven specific areas.

First, we provide specific evidence of the United States government's failure to inform the constituent states about ICERD and its provisions and to seek information from the states, so that it can review their policies and practices in light of the treaty. We believe these failures constitute violations of Article 2.1 of ICERD.

Second, we view the discriminatory treatment of Haitian refugees as a violation of the right to equality before the law as provided in Article 5.

Third, in the context of racial disparities in the sentencing of black and white youth to life without the possibility of parole, in this report Human Rights Watch presents the Committee with new data that challenge the US government's assertion that "disparities are related primarily to differential involvement in crime by the various groups ... rather than to differential handling of persons in the criminal justice system."<sup>5</sup> Our data demonstrate that in at least 10 states black youth arrested for murder are significantly more likely to be sentenced to life without the possibility of parole than white youth arrested for the same crime. We believe these data provide an egregious example of unequal treatment before the courts, in violation of the United States' treaty obligations under Article 5(a).

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<http://hrw.org/reports/1996/Us2.htm>; Human Rights Watch/United States, *Cruel and Usual: Disproportionate Sentences for New York Drug Offenders*, vol. 9, no. 2(B), March 1997, <http://www.hrw.org/reports/1997/usny/>; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998), <http://www.hrw.org/reports98/police/toc.htm>; Human Rights Watch, *No Escape: Male Rape in US Prisons* (New York: Human Rights Watch, 2001), <http://www.hrw.org/reports/2001/prison/report.html>; Human Rights Watch, *United States – Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11*, vol. 17, no. 2(G), June 2005, <http://hrw.org/reports/2005/uso605/>; Human Rights Watch, *United States – Human Rights Watch Presentation to the United States Sentencing Commission*, 2002, <http://www.hrw.org/press/2002/03/ussco314.htm>.

<sup>5</sup> Government of the United States, Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the Convention on the Elimination of All Forms of Racial Discrimination, April 2007, <http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD%20Report%204-07.pdf> (accessed January 28, 2008), para. 165.

Fourth, we show how the use of corporal punishment against youth of color in certain US public schools constitutes a discriminatory failure to protect these students against bodily harm, as required by Article 5(b).

Fifth, we show how the failure to protect the family unity and *nonrefoulement* rights of non-citizens deported after serving their sentences for criminal convictions violates Article 5(c).

Sixth, we demonstrate how, in the context of the HIV and AIDS epidemic, the United States is failing to uphold the right to non-discrimination in the enjoyment of the right to health in Article 5(e).

Finally, we show how the executive branch of the US government has violated its obligations under Article 6 by holding non-citizen “enemy combatants” at Guantánamo Bay, Cuba; by stripping non-citizens of their right to habeas corpus under US law; and by subjecting non-citizens to the unfair, fundamentally flawed system of trial by military commission in order to ascertain criminal responsibility in their cases.

In the sections that follow, for each of these violations we have analyzed in detail the applicable legal standards and recommended a particular course of action for the Committee to consider as it evaluates the conduct of the United States in light of its obligations under ICERD.

We urge the Committee to view this Human Rights Watch submission as a complement to the joint submissions and not as an attempt to catalog all of the instances in which the United States’ policies or practices raise concerns under ICERD. Seen in this light, we hope the Committee will find the following information helpful to its work.