International Convention On The Elimination Of Racial Discrimination: When Will The United States Live Up To Its Obligations?

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Summary

The United States has signed and ratified the International Convention on the Elimination of Racial Discrimination on October 21, 1994, but despite their commitment to uphold its obligations as a member state to the convention; racial discrimination, police brutality, racial profiling, judicial profiling continue within its borders.

The purpose of this thesis is to document the United States’ violation of the International Convention on the Elimination of all Forms of Racial Discrimination, to explore the reasons why the United States is unable to fully comply with the Convention and explore possible measures for the United States’ advancement towards equality for African-Americans within the United States.
# Abbreviations

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<td>ICERD</td>
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1 Introduction

The year 1619, marked the first arrival of African’s to the American colonies, 1994 was the year the United States signed and ratified the International Convention on the Elimination of Racial Discrimination. Although time has elapsed the struggle continues for African-Americans to gain true equality in the United States. It has been less than ten years since the United States agreed to promote the spirit and intent of the convention. Signing on to this convention would create the impression the United States has realized the dangers racial discriminate and hatred will bring.

The United States has not lived up to its obligations under the convention as a ratifying state, member states are required to submit periodic reports on their progress towards eliminating racial discrimination within their states, The United States submitted their first report in 2000, six years after ratifying the treaty. Possibly, you may conclude the reason for the delay in submitting the report was due to the changes being implemented in its (United States) domestic law to address the past and present conditions of racism. Unfortunately, this was not the case. The United States submitted its report, which generated a response from the Committee.

The Committee noted, among other things, that police brutality and deaths as a result of police violence, effected minority groups and foreigners in particular; and “recommended that the U.S. take immediate and effective measures to ensure the appropriate training of the police force.” The Committee went on to note that the United States must “take firm action to guarantee the rights of everyone without distinction.” Some member states have given due consideration to the recommendations of the committee going so far as to amending their domestic
laws, some amending their national constitutions, thus demonstrating their commitment to eliminating racial discrimination and guaranteeing equal rights to all.

The United States has not taken such measures nor have they made any memorable advancements towards eliminating racial discrimination, which is why this thesis is aimed at creating discussions and raising people’s awareness of the fact that the United States has entered a convention in which it has no intention of fulfilling its duties. By virtue of the reservations submitted by the United States they have essentially entered into an illusory agreement as its reservations do not require it to comply with some of the essential articles of the convention.
2 HISTORICAL SUMMARY OF BLACK AMERICA

2.1 The History of the African American in the United States

The history of the African-American in the United States is one of great length, for the purposes of this study I will only highlight the major historical tragedies of the African-American in the United States. In 1619 Africans arrive in the American Colonies along with white indentured servants. Africans were sold into Slavery, separated from their families, deprived of all legal rights, dehumanized and considered only 3/5 of a person.

The foundation of the United States was built on the denial of Human Rights to Blacks. The declaration of Independence of 1776 was created for the Colonists to gain their independence from England. The Declaration of Independence states, “We hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.” The Constitution of the United States specified which persons were to be endowed with “certain unalienable rights.” Article 1 section 2 of the Constitution deems Africans as 3/5 of a person in apportioning state Representatives and taxation. Article 1 Section

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1 The term African-American and Blacks will be synonymous.
2 Alabama Live Civil Rights Site, Civil Rights Timeline  
   <http://www.al.com/civil/timeline.html>
3 United States Constitution http://www.usconstitution.net/const.txt, Article 1 Section 2 of the Constitution  
4 National Archives and Records Administration, Declaration of Independence,  
5 Id at note 57.
allowed for the “Migration and importation” of slaves until 1808. Article IV Section 2 required for escape slaves to be returned to their masters.

The framers of the Constitution made it clear that, “we the people,” for whose protection the Constitution was designed, did not include those whose skins were the wrong color.” The Constitutional intent of the status of Africans was interpreted in the Dred Scott case. The opinion of the court stated, “We the people” was said to be synonymous with “citizens” and “free Negroes and mulattoes were not citizens as was contemplated by the federal or state constitution,” and it is the “duty of the court to interpret the Constitution as framed with the best light the court can obtain on the subject and administer the Constitution as it finds it according to its true intent and meaning when adopted.

No change in the public’s feelings or opinions, in relation to Negroes, should induce a court to give to words of Constitution a more liberal construction in favor of Negroes than such words were intended to bear when instrument was framed and adopted.”

In 1863, The President of the United States, Abraham Lincoln issued the Emancipation Proclamation freeing the slaves in the Confederate states. The Thirteenth Amendment granted freedom to all slaves. Slaves were no longer

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6 The Constitution of the United States was completed on 7 September 1787. Seven states had to ratify the Constitution before it came into effect. In June 1788, New Hampshire, the ninth state ratified the Constitution. National Archives and Records Administration, The Ratification of the Constitution, <http://www.nara.gov/education/teaching/constitution/ratify/html>

7 Justice Marshall dissenting opinion, Regents of University of California v. Bakke, 98 S.Ct. 2733 (1978). Case involved a white male whose application to a state medical school was denied. He brought an action challenging the legality of the school special admissions policy which reserved 16 out of 100 places for disadvantaged minority students. The court held that the special admissions program was illegal, but race may be used as one of a number of factors to be considered in the passing on applications.


9 Id. at 404.

10 Id. at 414.

11 Id. at 405.

12 Id. at 426.

considered property. From 1867 to 1877 during the Reconstruction period, after the Civil War it seemed as though African-Americans would be able to make advances in society. In 1868 the Fourteenth Amendment granted citizenship to African-Americans. In 1870 the Fifteenth Amendment granted African-American men the right to vote. The hopes of advancement were soon dimmed with several Supreme Court rulings, which helped to continue the promotion of racial superiority among Whites. A landmark case, is Plessy v. Ferguson, the Supreme Court upheld a Louisiana law that required “separate but equal” facilities for Whites and African-Americans on railway cars. Despite the existence of the Civil Rights Act of 1875 the court still upheld the discriminatory practices of the railway companies. After the decision of Plessy v. Ferguson the segregation of the races continued to expand, to hospital, parks, waiting rooms, bathrooms, phone booths. In the 1890’s the Black Codes were enacted which disenfranchised the African-Americans from voting by requiring poll taxes, literacy and character tests.

Several Civil Rights organizations surfaced in the early 1900’s, The National Association for the Advancement of Colored People (NAACP), The National Urban League, and the Universal Negro Improvement Organization. The objectives of the organizations among many things were to promote self-respect

14 Justice Marshall dissenting opinion, Regents of University of California v. Bakke, 98 S.Ct. 2733, 390 (1978). The Slaughter House Cases, 16 Wall. 36 (1873), which held that the 13th and 14th Amendments does not apply to rights of citizens of the state and therefore their rights were not impaired. The court held that the Amendments granted rights derived from citizenship of the United States and that the citizen derived his civil rights from state citizenship. The Civil Rights Cases 3 S.Ct. 18 (1883), The Federal Civil Rights Act of 1875 was rendered unconstitutional. The Civil Rights Act of 1875 set out to punish individuals for acts of racial discrimination. The Supreme Court held that it was beyond the powers of the national government to regulate private citizens operating inns, theatres and restaurants and conveyances for engaging in racial discrimination.
15 Plessy v. Ferguson, 16 S.Ct. 1138 (1896).
and pride within African-Americans. Between 1916 and 1920 African-Americans began migrating to the North in greater numbers because of the better economic opportunities. In the 1950’s 1.5 million African-Americans migrated to the north thus “shifting the race problem from a merely southern phenomenon to a national one.” During the Franklin D. Roosevelt Presidency he hired over 100 African-Americans to administrative offices, federal rest rooms and secretarial pools and cafeterias were desegregated. President Roosevelt created the Fair Employment Practice Commission.

Finally, in 1954, the court’s ruling in Plessy v. Ferguson was overturned in Brown v. Board of Education and the desegregation of schools was ordered but the Supreme Court did not put a deadline on when the desegregation needed to take place. It was not until 1969 that the Supreme Court made school desegregation mandatory. In 1956 the Supreme Court declared bus desegregation in Montgomery, Alabama. Civil rights Activists and organizations organized boycotts, protests and marches promoting equality for all races.

In 1957 a Civil Rights Act, which prohibits any interference with the voting rights of United States Citizens was enacted. The 1964 Civil Rights Act, “was created to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in

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18 Alabama Live Civil Rights Site, Civil Rights Timeline
<http://www.al.com/civil/timeline.html>
500,000 African Americans left the rural south for the industrial centers of Chicago New York, Detroit, Cleveland, Philadelphia, St. Louis, Kansas City. The great migration remade the racial landscape of the entire nation.
20 Alabama Live Civil Rights Site, Civil Rights Timeline
<http://www.al.com/civil/timeline.html>
21 Id.
22 Id.
23 Id.
24 Alabama Live Civil Rights Site, Civil Rights Timeline
<http://www.al.com/civil/timeline2.html>
25 Alabama Live Civil Rights Site, Civil Rights Timeline
<http://www.al.com/civil/timeline.html>
public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.\(^2\)

The protections granted by the Civil Rights Act of 1964 and the Voting Rights Act of 1965 has made it more difficult for African-Americans to be discriminated against. But, with the changing of times and society, racism has transformed into different forms, most often a very subtle form. The advancement of equality has seemed to become stagnant. Police brutality and racial profiling is on the rise, Affirmative Action has been attacked by many conservative and liberal Whites as reverse discrimination and is continuously opposed.\(^3\) The following section will discuss the present state of the African-American in the United States detailing the current form of racial discrimination in today’s society.


\(^3\) Former president of Princeton University, William Bowen, and the former president of Harvard University, Derek Bok conducted a study on Affirmative action. Bowen and Bok concluded that although Affirmative Action (racial diversity) programs in College admissions receive a lot of negative reactions, other types of diversity programs exist at universities which do not receive the same negative reactions. Colleges and Universities which regard themselves as national institutions like to attract students from all over the country therefore they utilize the “geographic variety” in the admission process. Attaining geographic variety at a college or university will most likely make it easier for a student from Montana, where there are less admission candidates, to gain admission versus a student from New York, where there are more candidates, with the similar academic credentials. Curtis Stokes, Theresa Melendez, Genice Rhodes-Reed, *Race in the 21st Century America*, p.325 Michigan State University Press (2001).
3 Current Conditions of the African-American and the United States Domestic Violations of ICERD

The United States continually violates international Human rights standards within its own borders. Police brutality, racial profiling and the death penalty all have a disparate impact on people of color, particularly blacks, in the United States. According to the 2000 United States census there are 216,930,226 estimated Whites, 33,921,588 Black/African-Americans, and 34,334,480 Hispanic or Latino in the United States.\textsuperscript{28} Despite the proportion of white and black populations in the United States, African Americans are disproportionately punished in comparison to their white counterparts. In 2000, African-Americans comprised 46.5 percent of the state prisoners and 40 percent of the federal prisoners even though they make up only 12 percent of the population.\textsuperscript{29} These population estimates are important when putting racism into context. Although Racism is still in many ways open and overt as it was in the past,\textsuperscript{30} it has also transformed into more subtle actions and inactions.\textsuperscript{31} Thus thwarting the concept of democracy and equality for all, the objective of the founding document.

\textsuperscript{28} U.S. Census Bureau, Census 2000, <http://factfinder.census.gov/home/en/c2ss.html>
\textsuperscript{30} A lawsuit was filed by Georgia Power workers, for racial discrimination. African-American workers were denied promotions, given lower pay than to similarly qualified whites and managers were “indifferent to the overt harassment of African-Americans.” An internal investigation was conducted by the company and 13 ropes tied as nooses were found in eight of the Georgia Power facilities some of which were hanging for several years. Blackmon, Douglas, Black Utility Workers Sue Over Discrimination---And Nooses, The North County Times (2001), <http://www.nctimes.net/news/2001/20010408/1.html>
\textsuperscript{31} Id.. The president of Georgia Power Stated that he did not think of nooses in a “racial context” prior to the lawsuit. Nothing was done to stop the racial harassment caused by the nooses.
The Supreme Court’s role in the attainment of equality for all, is evidenced in the Slaughter house Cases, Civil Rights Cases, and Plessy v. Ferguson. When Plessy v. Ferguson was overturned in 1954 the Supreme Court did not make desegregation mandatory until 1969. Today the Supreme Court continues to halt the progress of equality. In 1995 the Supreme Court narrowed the federal Affirmative Action programs by requiring that such programs pass the strict scrutiny test. The strict scrutiny test required that Affirmative Action programs must be narrowly tailored to meet a compelling governmental interest.

### 3.1 Racial Profiling

The problems of African-Americans in the United States are multifaceted. One of which is Racial Profiling. The most notorious group utilizing Racial profiling on a daily basis is the police. Whether unconsciously or consciously these government...
actors use Racial Profiling to viciously murder, harass, arrest, and frame countless numbers of African-Americans. Most Recent cases have been Amadou Diallo, an African immigrant, shot at 41 times, hit 19 times while standing in the vestibule of his apartment, his wallet mistaken for a gun.

Racial Profiling has been defined as, a characterization or social stereotype linked to the race of the individual. Examples of Racial Profiling include, the use of race as a determinate when stopping drivers for minor traffic violations and whether to search drivers or pedestrians for drugs. There are critics that argue Racial Profiling is a myth and if we recognize it, it will take away from all the advancements made in lowering the rate of crime across the United States. Evidence to the contrary of Racial Profiling being a myth is, New Jersey Governor Christine Todd Whitman firing the State Police Superintendent, Carl Williams, in February 1999 after he reportedly justified the use of Racial Profiling and linked minorities to committing crimes. But, even if Racial Profiling is a myth, its mere perception is just as destructive. The mere belief of Racial Profiling itself is a substantial barrier to the full enjoyment of freedom and civil rights.

The practice of Racial Profiling has created resentment and distrust of the police within the minority community. Which promotes the reluctance of minorities in reporting crimes, serving on juries or being a witness. Racial Profiling targets

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36 Comparitive Racialization:Racial Profiling and the Case of Wen Ho Lee, 42 UCLA L.Rev. 1689; 2000.
39 Fridell, Lorie, Lunney, Robert, Diamond, Drew, Kubu, Bruce, Racially Biased Policing: A Principled Response, chapter 1, p.2 http://www.policeforum.org/racial.html#1

A Gallop Poll taken between September and November of 1999 of 2,006 people across the United States, found 72% of men between the age of 18-34 and 60% of men between the age of 35-49 and 32% of those 50+ believed that were stopped because of their race. <http://www.gallop.com/poll/releases/pr991209.asp>
minorities, and within that group of minorities everyone is susceptible, men, women, the young, middle-aged, elderly, poor, middle class, and the wealthy.\(^1\)

“Today skin color makes you a suspect in America. It makes you more likely to be stopped, more likely to be searched, and more likely to be arrested and imprisoned.”\(^2\) In 1995 and 1996 an analysis of the police searches on I-95 in Maryland was conducted, by Dr. John Lamberth, utilizing records from the Maryland State Police.\(^3\) The analysis found that 74.7 percent of the drivers on I-95 were white and 17.5 percent were black; but blacks were 79.2 percent of the people searched.\(^4\) Dr. Lamberth also did a similar analysis of drivers on the New Jersey Turnpike.\(^5\) His analysis determined that Blacks made up 13.5 percent of the New Jersey Turnpike population and 15 percent of the drivers speeding; but Blacks represented 35 percent of those stopped and 73.2 percent arrested.\(^6\)

The office of New York Attorney General Eliot Spitzer, during a 15 month period which ended on March 1999, conducted an analysis of 175,000 incidents in which citizens were stopped by police and it was found that Blacks were stopped 6 times more than Whites.\(^7\) Although Blacks only make up 25 percent of the population they were 50 percent of the people stopped. The data continues from State to State, Racial Profiling is not a problem of one or several states it is a problem of the United States.

\(^1\) Id. at 39 (p.3). A black judge is stopped and handcuffed and forced to lay face down on the pavement while the police search her car; A Hispanic Deputy police chief is continually stopped in neighboring jurisdiction on the basis of “suspicion.”


\(^3\) Id. at 14. Dr. John Lamberth a professor of psychology at Temple University conducted the analysis. The records were made public due to their use in Wilson v. Maryland State Police.

\(^4\) Id at 15.

\(^5\) The data used in this analysis was compiled from 1988 to 1991.

\(^6\) The Superior Court of New Jersey agreed with Lamberth’s conclusion that race was relied on in making traffic stops on the turnpike. The Court relied on Lamberth’s analysis to suppress evidence seized by New Jersey trooper in 19 criminal cases.

\(^7\) Id. at note 66. This investigation focused on police “stop and frisk.”
There are countless stories of Racial Profiling occurring to African-Americans and people of African decent, but these seem to be the most obnoxious. New York: February 1999, Amadou Diallo, 22 year old West African immigrant outside of his home, after midnight, was shot at 41 times and hit 19 times while standing in the vestibule of his apartment building. The officers mistook his wallet for a gun. Diallo’s crime, a black man, outside after midnight in a black neighborhood.  

The four officers of the New York City Police Department in the Street Crime Unit were later acquitted, by an Albany, New York jury, for the murder of Amadou Diallo.

New York: Haitian born, security guard, Patrick Dorismond was working as a bouncer outside a cocktail lounge when a undercover narcotics officer approached him requesting to buy drugs. This infuriated Mr. Dorismond, and an altercation ensued which ended with Dorismond being shot by another undercover officer. Four months later the officers were cleared of any wrongdoing. The New York City Mayor, Rudolph Guiliani, made public the juvenile record of Desmond in an effort to lessen the scrutiny of the police officers.

Maryland: “1997, Charles and Etta Carter, an elderly African-American couple from Pennsylvania, were stopped by Maryland State Police on their 40th wedding anniversary. The troopers searched their car and brought in drug-sniffing dogs. During the course of the search, their daughter’s wedding dress was tossed onto one of the police cars and, as trucks passed on I-95, it was blown to the ground. Ms. Carter was not allowed to use the restroom during the search because police officers feared that she would flee. Their belongings were strewn

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along the highway, trampled and urinated on by the dogs. No drugs were found and the state trooper issued no ticket. The Carter's eventually reached a settlement with the Maryland State Police.” Charles and Etta Carter’s crime, “Driving while Black”\textsuperscript{51}. Law enforcement agencies of Prince Georges County in Maryland paid out more than $6.1 million in use of force settlements for year 2000 alone.\textsuperscript{52} These are only three examples of racial profiling which affects all age groups, everywhere.

3.2 Police Brutality

Racial Profiling, in many instances is the precursor to police brutality.\textsuperscript{53} Many incidents of police brutality occurred during traffic stops, vehicle pursuits or during street patrols, many have also occurred at the police station, thus exceeding police brutality and entering the realm of torture and degrading treatment.\textsuperscript{54} One such case of police brutality turned torture and degrading treatment is the Abner Louima Case.\textsuperscript{55} On August 9, 1997, Mr. Louima, while handcuffed, was beaten and sexually assaulted with a broomstick by a New York City Police Officer.\textsuperscript{56} This story shocked the conscience of many, receiving national headlines across the United States. Therefore it is mind boggling that the same type of incident occurred almost three years later in July 2000, this time in Chicago, Illinois. A 31 year old, African-American male nurse assistant was arrested after an argument with his landlord. At the police station he was handcuffed by the elbows and

\textsuperscript{51} Amnesty International, USA Campaign – Rights for All, <http://www.rightsforall-usa.org/info/report/t03.htm> “Driving while Black,” expression created to describe the practice of race based police profiling.


\textsuperscript{53} Brutality and Misconduct will be synonymous for the purposes of this study.

\textsuperscript{54} Amnesty International Report 2001: United States of America, <http://web.amnesty.org/web/ar2001.nsf/…UNITED+STATES+OF+AMERICA?OpenDocumen>\textsuperscript{55} See supplement A for the statement of the facts made by court in the sentencing of Officer Volpe. Volpe is the officer which pleaded guilty to the vicious attack on Abner Louima. The descriptions are very explicit. It was important for me to attach them to show an example of the Gravity of the crimes committed by police officers. Officers that are required to protect us, not scar us for life.
taken to an interrogation room where he was pinned to the wall. An officer then sprayed blue cleaning liquid on a baton before ramming it up into the victim’s rectum.\(^57\)

In Chicago, in June of 1999, an automobile is pulled over by the police after a short pursuit. The African-American passenger, La Tanya Haggerty, of the car was shot and killed by the officers when they mistook her cell phone for a gun.\(^58\)

The next day, Chicago Police shot and killed another African-American, Robert Russ, a former college football player, when he refused to get out of his car after a pursuit. The officer smashed the car window, pointed the gun into the car and Robert Russ was shot to death.\(^59\)

May 1999, New York City, officers from the street crime unit that murdered Amadou Diallo, shot and critically injured, unarmed 16-year old Dante Johnson after he ran away from three police officers who had stopped to question him and a friend while they were standing in the street.\(^60\)

Human Rights Watch investigated 14 city police departments in the United States and documented its findings in their 1998 report. The report concluded, “Race continues to play a central role in police brutality in the United States. Indeed, despite gains in many areas since the civil rights movement of the 1950s and 1960s, one area that has been stubbornly resistant to change has been the treatment afforded racial minorities by police. In the cities we have examined where such data are available, minorities have alleged human rights violations by


\(^{59}\) Id.

police more frequently than white residents and far out of proportion to their representation in those cities.\textsuperscript{61}

Police Officers are frequently not prosecuted or found guilty in brutality cases. The standard in a criminal case is proof beyond a reasonable doubt, versus the burden of proof in a civil case, which is the preponderance of the evidence standard, a less stringent standard. When a case involves a violation of a person’s civil rights there must be proof that the person acted with intent to violate the civil rights of the other. This is a hard standard to prove when it is the victim’s word against that of the Police Officers, in many instances the victim of brutality has also been charged with a crime.\textsuperscript{62} Due to the “code of silence” within the Police force, seldom do you have other officers coming forward as witnesses to brutality cases involving their fellow officers.\textsuperscript{63}

Almost 100 Police Officers were interviewed during the investigation of the Abner Louima case; only two officers provided information to investigators.\textsuperscript{64}

Prosecutors, who often rely on the testimony of Police Officers in the prosecution of suspects, are reluctant to “pursue cases against them [police officer’s]

\textsuperscript{61}Human Rights Watch, Shielded from Justice: Police Brutality and Accountability in the United States, (1998).<http://www.hrw.org/reports98/police/uspo06.htm> The cities examined were: Atlanta, Boston, Chicago, Detroit, Indianapolis, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Portland, Providence, San Francisco, and Washington D.C. \textsuperscript{62} See Amnesty International’s 1996 Report of the New York City Police Department. Police Brutality and Excessive Force in the New York City Police Department, <http://www.amnesty-usa.org/rightsforall/police/nypd/nypd-03.html> Amnesty International was informed that many officers cover up brutality with charging the victim with crimes, such as resisting arrest to justify the use of force or overcharges (extra offences) the victim to cover up for misconduct. The victim would then be induced to plea bargain to reduce the charges and therefore not persist with the misconduct complaint. \textsuperscript{63} Amnesty International, USA Campaign- Rights For All, Reports, briefings and focus, p.16 (19 ). Mollen Commission of Inquiry in 1994 found many officers faced hostility, ostracism and reprisals from colleagues if they tried to report or investigate Police Officer’s misconduct. <http://www.rightsforall-usa.org/info/report/tr03.htm> \textsuperscript{64} All officers were granted immunity from prosecution in exchange for giving information.
vigorously.\textsuperscript{65} Therefore, it is the victim’s word against that of the police officers, therefore leading to unsubstantiated claims.

Internal investigations as well as independent investigation bodies of the Police departments have a decrease in the number of disciplinary actions brought against police officers for brutality against civilians. In New York City, disciplinary proceedings regarding police officers must take place within one year and six months of the incident of brutality.\textsuperscript{66} Due to a case backlog and investigation delays, the Civilian Complaint Review Board has had cases reach the time limit before any disciplinary actions could be taken.\textsuperscript{67} Los Angeles Police department had a similar situation with a one-year time limit.\textsuperscript{68} Only a small amount of claims of brutality are substantiated, and even then there is no guarantee that the officer will be disciplined appropriately.\textsuperscript{69} Many times higher command officers do not act, or are very slow to act when an officer has a sustained complaint of excessive force against him.\textsuperscript{70} Some higher command officers don’t want to deal with officers with numerous complaints therefore they transfer or sometimes promote them.\textsuperscript{71} During the investigation process the “code of silence” is also a big culprit in the lack of disciplinary actions brought against Police officers.

In the end, it is the City that is held responsible for Police misconduct, rather then the Police Officers being held accountable for their own actions. In August of 1997, the City of Los Angeles paid $200,000 to a family whose son was shot

\textsuperscript{65} Amnesty International, USA Campaign-Rights For All, Reports, briefings and focus, p.15 (19\textsuperscript{9}). <http://www.rightsforall-usa.org/info/report/r03.htm>
\textsuperscript{66} Id. at 16.
\textsuperscript{67} Id. at 18. New York City Civilian Complaint Review Board was created in place of the police majority review board. Initially it received less funding and staff than the former board but it was increased after several high profile police brutality cases.
\textsuperscript{68} Id. at 16.
\textsuperscript{69} Human Rights Watch, Shielded from Justice: Police Brutality and Accountability in the United States, (1998).<http://www.hrw.org/reports98/police/uspo34.htm> Out of 11,721 complaints received, by the Civil Rights Division for of the Justice Department, only 2,619 were investigated and only 22 cases were filed as official misconduct.
\textsuperscript{71} Id.
nine times by a LAPD officer during a “family disturbance;” the City of Philadelphia paid twenty million dollars between July 1993 and November 1995, in Detroit the City paid over 100 million in a 11 year period to settle civil suits, and the list goes on.  

3.3 Judicial System in the United States

Police profiling, Police brutality are only a portion of the problems facing African-Americans in the United States, the judicial system is also a big problem. “Overincarceration,” disproportionate sentencing, the death penalty are catastrophes facing African-Americans in the United States. In the recent Human Rights Watch report on the United States, African-Americans made up almost half of the State prisoners, 46.5% and 40% of the federal prisons. Nationally the conviction rate for black men was beyond their population proportion. Back men were eight times more likely to be in Prison than white men, 3,408 out of every 100,000 black men versus 417 out of every 100,000 white men.

In eleven states the rate of incarceration for black men were 12 to 26 times greater than those of white men. In 1999, the rate of incarceration for young black men in their late twenties was almost 10%. In comparison to white men of the same age group the rate of incarceration is only 1%. Black men, in relation to the population, were incarcerated at a rate of 13.4 times that of white men, for

74 Id.
75 Id. Due to disenfranchisement laws many Black men are unable to vote; 1.4 million (13%) of Black men were unable to vote. According to Human Rights Watch one in three Black men in two states were unable to vote. When this is considered in light of the electoral process in the United States, a large number of Black men have no say in the political process of the United States.
76 Id. This is based on the year 1999.
77 Id.
Having “no prior admissions” did not alter the disproportionate rate of punishment against black youths. “Black youths with no prior admissions” were 48 times more likely to be admitted to public correctional facilities for drug offences in comparison to white youths. Disproportionate incarceration rates are also evidenced with black women who are eight times more likely to be in prison than white women.

Although we are currently living in the 21st century the lasting effects of racial discrimination have transformed into a different application but with the same effect. In the 18th century many states enacted race-dependent capital punishment crimes. African Americans were sentenced to the death penalty for attempted murder, attempted rape (of a white woman), aggravated assault (if the victim was white). African Americans were hanged “far out of proportion of their percentage of the population.”

In a Study by the United States Justice Department, the race of the victim as well as the race of the defendant was found to play a part in the recommendation of the death penalty. Between 1995 and 2000, the U.S. attorney submitted 684 cases for review for the recommendation of the Death Penalty, 324 were for

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78 Id at 432
79 Id.
80 Id. at 431
81 Banner, Stuart, The Death Penalty: An American History, Harvard University Press, Cambridge, Mass 2002. In 1740 South Carolina capitalized the burning or destroying of any grain, commodities or manufactured goods, or for enticing other slaves to run away or on slaves for maiming or bruising whites. Many offenses were capitalized based on fear that there would be a revolt of slaves or an uprising of free blacks since they comprised half or nearly half of the population in some southern states.
82 Id. at 141. In an 1856 Treatise by George Stroud, that summarized the southern slave laws, Virginia had sixty-six capital crimes for slaves and one, which was for the crime of murder, for whites. Mississippi, had thirty eight crimes capital crimes for slaves but not for whites.
83 Id. at 215. “In the first half of the century the southern states punished many crimes with death only if committed by blacks; in the second half of the century they accomplished the same result by delegating to all white juries the discretion to choose capital or noncapital punishment.
black defendants and 134 for white defendants. This must be looked at in relation to the percentage of African-Americans in the United States; African-Americans make up only 12% of the population. The study evidenced that, “80 percent of federal defendants who faced capital charges and 74% of convicted defendants for whom prosecutors recommended the death penalty, were minorities.

The effects of discrimination curtail many other rights that Blacks need in order to gain equality in the United States. Due to disenfranchisement laws many black men are unable to vote; 1.4 million (13%) of black men were unable to vote. According to Human Right Watch one in three black men in two states were unable to vote. When you consider this in light of the electoral process in the United States this is very serious.


4 THE CONSTITUTION OF THE UNITED STATES

The Constitution of the United States is marveled by many to be a work of brevity and clarity.\textsuperscript{86} The Constitution has twenty-seven amendments, which grant additional protections to the rights guaranteed in the constitution. The Constitution set the framework for the operation of the government of the United States including the making of international agreements. Below is a brief overview of the process of making international agreements. This process is important in order to understand why the United States has claimed their ability to implement the ICERD is limited by the constitution and laws of the United States.

4.1 Constitution and The Making of International Agreements

The status an international agreement will be given in the United States depends upon whether the U.S. recognizes that agreement as a Treaty or an Executive Agreement. The United States defines the term Treaty as, “an agreement that is made by and with the Advice and Consent of the Senate.”\textsuperscript{87} Under international law, Article 2(1)(a) of the Vienna Convention on the Law of Treaties defines a treaty as, “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever it’s particular designation.”\textsuperscript{88} In the United States, when an International agreement is not submitted to the Senate for Approval for ratification is required by a two-thirds vote of the Senate.

\textsuperscript{86} US Constitution Online, The Constitution Explained, \texttt{<http://www.usconstitution.net/constquick.html>}.
\textsuperscript{87} Congressional Research Service, Treaties and other International Agreements: The Role of the United States Senate, p.1 (January 2001).
\texttt{<http://www.law.nyu.edu/library/foreign_intl/treaties.html>}
their advice and consent it is called an Executive Agreement. Under international law these agreements are still recognized as binding Treaties.

There are three main categories of Executive agreements: (1) Congressional-executive agreements, where Congress gives its explicit or implicit authorization for the executive agreement; (2) Executive agreements pursuant to Treaties, where Executive agreements are authorized by a Treaty or reasonably inferred from a prior Treaty; or (3) Presidential or sole executive agreements; where executive agreements are concluded based upon the President’s constitutional authority. The status of Executive agreements in domestic law is still not clear, it appears that an Executive agreement may supersede inconsistent state law but judicial authority appears to not allow an Executive order to supersede a prior act of Congress. On the contrary the status of a Treaty in domestic law is clearer, which will be discussed in the following section.

4.1.1 Advice and Consent of the Senate

Article II Section 2 of the Constitution of the United States gives the President the power “with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.” The President has the authority to negotiate or conclude a treaty, which is exercised in his name by the Secretary of State but a treaty will not enter into force until the Senate has given its advice and consent. Although the constitution recognizes Treaties as the “supreme law

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89 Id. at 1
90 Id.
91 Id. President’s of the United States have claimed authority to enter in executive agreements based upon the Constitution of the United States, see Article 2 sec.1; Article 2 sec 2 clause 1; Article 2 sec 2 clause 2 and Article 2 sec 3.
92 Id. at 4
93 United States Constitution <http://www.usconstitution.net/const.txt>
95 Id. 175.

Once the President submits the Treaty to the Senate for ‘advice and consent’, the Senate refers the Treaty to the Foreign Relations Committee. The Treaty is placed on their calendar and it usually stays there long enough to receive a study and comments from the public.
of the land.”  

Treaties are still subject to the “constitutional prohibitions in the first eight amendments safeguarding individual rights.”  

Domestically, Treaties in which the United States is a party, is the “equivalent in status” to Federal Legislation. A Treaty provision or rule of international law, which is inconsistent with the United States Constitution, will not be given legal effect in the United States regardless if the Treaty is in force for the United States.

The Senate has a central role in the approval of Treaties. The Senate may refuse to approve a Treaty or submit its approval with “reservations, conditions or understandings.” The function of the Senate’s role was to protect States rights and make sure that the President does not take excessive or undesirable actions through Treaties.

The President’s role is representing the national interests in the Treaty making process. Formally the Senate took part in the negotiation of the Treaty, now the President submits the completed Treaty to the Senate, and the Senate then gives its “advice and consent” if the completed Treaty should be ratified by the United States. Once the Senate approves the Treaty it is returned to the President for ratification. If the Senate rejects the Treaty it will fail or the Senate can choose to

The Committee then recommends if the Treaty should be ratified with or without conditions. The Conditions are usually grouped as: Amendments to the text of the treaty, Reservations, Understandings, which clarify or elaborate provisions, Declarations, Provisos, which relate to the law or procedure of the U.S. but will not be included in the instruments of ratification. Congressional Research Service, Treaties and other International Agreements: The Role of the United States Senate, p.7-11 (January 2001).

96 Article VI of the Constitution states, “This constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby…”


98 Id. at 63 and 175.


100 Id. at 2.
reconsider it later. If the president agrees with the advice and consent of the Senate, he will sign the instrument of ratification. If the President disagrees with the “advice and consent” of the Senate, the Treaty can be resubmitted to the Senate for further consideration, or the President can try to renegotiate with the other Parties, or the President can refuse to sign the instrument of ratification. If the President signs the instrument of ratification, the Secretary of State is required to take the necessary steps for the Treaty to enter into force, whether it is the exchange of instruments of ratification or depositing the instrument of ratification. Once the ratification process is completed the President issues a Proclamation that the Treaty is now in force.

The executive branch has the primary responsibility of implementing the treaty but the Senate and Congress continue to have a role in the Treaty process. After a Treaty has entered into force, if it requires the implementation of legislation to fulfill the obligations of the treaty, it still must go through the House and Senate and the President for approval on the implementation legislation. As the executive branch must implement the treaty, interpretation of the treaty is part of their duty and the courts of the United States may also interpret treaty law when dealing with cases. The interpretation of the treaty by the executive branch and U.S. courts must be “in accordance with the common understanding of the treaty shared by the President and the Senate at the time the Senate gave its advice and consent.” The United States is unable to agree to a different “common understanding” without the advice and consent of the Senate or an enactment of a

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101 Id. at 2.
102 Id. at 3. Since 1920 the Senate has formally rejected three Treaties.
103 Id. at 12
104 Bilateral treaties require an exchange of the instruments for the treaties to be in force. Multilateral Treaties require a certain amount of ratifications, in accordance with the amount stated in the treaty, before it enters into force.
105 Proclamation is a legal notice that publicizes the text, domestically.
107 Id.

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statute.\textsuperscript{108} If there are any disputes between parties to the treaty on the interpretation or application of the treaty, the executive branch usually conducts negotiations to resolve the differences of interpretation.\textsuperscript{109}

\section*{4.2 Treaties as Self-Executing}

In the United States, self-Executing Treaties become effective as domestic law automatically, they do not require any legislation to become effective. When the Treaty is not self-executing, legislation is required. It and when legislation is enacted it is not the Treaty that is part of the domestic law it is the actual legislation enacted.\textsuperscript{110} A Treaty becomes part of the domestic law when the Treaty is incorporated into the legislation. When a self-executing Treaty is in conflict with a federal law, the last in time rule applies.\textsuperscript{111} Whichever law was made last in time will prevail.

\textsuperscript{108}\textsuperscript{108} Id. at 13. The Common understanding is determined by the “text of the treaty, the provisions of the resolution of ratification and the authoritative representations provided by the executive branch to the Senate during its consideration.”

\textsuperscript{109}\textsuperscript{109} Id.

\textsuperscript{110}\textsuperscript{110} Congressional Research Service, Treaties and other International Agreements: The Role of the United States Senate, p.4 (January 2001).

\textsuperscript{111}\textsuperscript{111} Id.
5 INTERNATIONAL INSTRUMENTS

The human rights provisions of the United Nations Charter is said to have “internationalized human rights,” human rights were no longer within the exclusive domestic jurisdiction. 112 It is generally recognized that a UN Member State “which engages in practices amounting to a ‘consistent pattern of gross violations’ of internationally guaranteed human rights is not in compliance with its obligation to ‘promote …universal respect for, and observance of …’ these rights and that, consequently, it violates the UN Charter.”

International human rights instruments come into play when the member state’s domestic laws are not adequate to provide a remedy for persons whose rights have been violated. 113 Domestic remedies should be exhausted before resorting to international instruments, therefore international instruments require the domestic constitutional system of states to provide remedies for those whose rights have been violated. 114 International instruments therefore “operate to reinforce domestic protection of human rights and to provide redress when the domestic system fails or is found wanting.” 115

5.1 International Convention on the Elimination of all Forms of Racial Discrimination

The treatments of African-Americans discussed in this study thus far indicates violations of the UN Charter and other conventions in which the United States is a party to, such as the International Covenant on Civil and Political Rights and the

113 Id. at 1.
114 Id. at 1.
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, but for the purpose of this study, the focus will only be on the United States’ obligations and duties under the International Convention on the Elimination of All Forms of Racial Discrimination.

The Charter of the United Nations is based on the essential rights of Dignity and Equality for all people. As a member state of the United Nations the United States has an obligation to cooperate with the organization in the promotion of human rights and fundamental freedoms. Even though the United Nations Charter contains certain prohibitions against discrimination based on race, sex, language and religion, the term human rights was never defined. But, through the United Nations effort to promote human rights and fundamental freedoms the International Bill of Human Rights among other instruments was adopted. Within these instruments greater effort was made to define and codify human rights. Therefore Member States underlying obligations based on the United Nations Charter are also reflected in the subsequent instruments, the ICERD is one of these instruments.

The ICERD is an extension of the essential rights guaranteed in the UN Charter and the Universal Declaration of Human Rights. The Preamble of the ICERD makes specific references to the UN Charter which is “based on the principles of dignity and equality inherent in all human beings” and the proclamation in the Universal Declaration of Human Rights, “that all human beings are born free and equal in dignity and rights that everyone is entitled to all the rights and

115 Id. at 1.
116 Id. at 26.

The International Bill of Rights is comprised of The Universal Declaration of Human Rights and The International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (International Covenants) and the Optional Protocol to the Covenant on Civil and Political Rights.
freedoms…without distinction of any kind, in particular as to race…” 119 Although the Preamble of the Convention does not bestow any obligations on the State Parties it is used as a source of interpretation for the articles of the Convention. 120 The Articles of the ICERD detail further the promotion of the principles and freedoms already guaranteed in these precedent documents. 121

5.2 Overview of Convention

The ICERD Convention stemmed from several Resolutions promoting the prevention of discrimination, which were adopted after outburst of anti-Semitic incidents in several parts of the world. Initially the General Assembly of the United Nations adopted the Resolution, which condemned “all manifestations and practices of racial, religious and national hatred in the political, economic, social, educational and cultural spheres of the life of society, as violations of the Charter of the United Nations and the Universal Declaration of Human Rights.” 122 The Economic and Social Council then submitted another draft resolution that addressed the “continued existence and manifestations of racial prejudice and national and religious intolerance in different parts of the world…” 123 The General Assembly referred the declaration to its Third Committee, after several amendments the text was adopted unanimously.

After the adoption of the Draft Resolution several countries submitted a draft resolution, to the Third Committee, on the preparation of a convention only focusing on the elimination of all forms of racial discrimination. 124 The Third

119 International Convention on the Elimination of all Forms of Racial Discrimination, 21 December 1965
121 References to the Universal Declaration of Human Rights and the UN Charter will be made when discussing the Articles of the ICERD
123 Id. at 1.
124 Id. at 2.
Committee held 43 meetings to create the Convention.\textsuperscript{125} On 21 December 1965 the Convention was presented to the General Assembly.\textsuperscript{126} It was adopted by 106 to 0 votes; Mexico abstained but later voted in favor of the Convention.\textsuperscript{127} The Convention entered into force on the 4 January 1969.

The United States signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination, on October 21, 1994, which states that there is no justification for racial discrimination, in theory or in practice anywhere.\textsuperscript{128} Racial discrimination is condemned and States parties are to take measures without delay to eliminate racial discrimination in all its forms.\textsuperscript{129} States are to prevent, prohibit and eradicate all forms of racial discrimination within their territories. Racial discrimination is defined in the Convention “as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms...”\textsuperscript{130} The ICERD Convention is divided into three parts. Part I, gives the definition of racial discrimination and sets out, which rights are guaranteed by the convention and which are discriminatory (Substantive rules). Part II deals with the duties of the monitoring Committee, which will oversee the implementation measures taken by State Parties to fulfill their obligations of the

\begin{itemize}
\item \textsuperscript{125} Id. at 6
\item \textsuperscript{126} Id. at 6
\item \textsuperscript{127} Id. at 6
\item \textsuperscript{128} Racial discrimination is defined in Article 1 of the Convention on Elimination of All Forms of Racial discrimination as ”...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
\item \textsuperscript{129} International convention on Elimination of All Forms of Racial Discrimination, 4 January 1969
\item \textsuperscript{130} International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969.
\end{itemize}
ICERD Convention. Part III is the particulars of the convention, such as ratification of the convention, when it will enter into force, etc.

5.3 Substantive Rules of the ICERD

The substantive articles (1-7) of the ICERD are of central importance to this study. These articles are the basis of the reservations included with the United States ratification of the convention. Therefore, each of the articles is summarized below.

5.3.1 Article 1

Article 1 of the Convention defines term racial discrimination as belonging to four categories of actions, (1) distinction, (2) exclusion, (3) restriction, and (4) preference; which are based on (a) race, (b) color, (c) descent, or (d) national or ethnic origin and the actions have the “purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Both purpose and effect need not be present to conclude that there was racial discrimination.

Paragraph 4 of Article I allows State Parties to take special measures, “for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals...” Limitations on the special measures prevent member states from the continued “maintenance of separate rights for different racial groups after the objectives have been achieved.”

132 Id. at 9. The representative for the United States stated that the Convention went beyond any previous instrument of the United Nations in dealing with the issue of implementation.
5.3.2 Article 2

Article 2 of the Convention condemns racial discrimination and requires State Parties to undertake by appropriate means and without delay to eliminate racial discrimination in all its forms and promote understanding among all races. Subparagraphs (a) to (e) list the duties State Parties should undertake. Subparagraph (a) requires state parties to not engage in any “act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and institutions, national and local,” act in accordance with this obligation.133 Subparagraph (b) Relates to private acts, the State is “not to sponsor, defend, or support racial discrimination by any persons or organizations.” Subparagraph (c) States “must take effective measures to review governmental, national and local policies and rescind or nullify any laws or regulations” that have a discriminatory nature. Subparagraph (d) States shall take all necessary actions including implementing legislation to prohibit racial discrimination by any persons, group or organization. Subparagraph (e) States are to “undertake to encourage” organizations and movements that will aim at breaking down racial barriers and “discouraging anything which will strengthen racial division.” Paragraph 2 of Article 2 calls for states to take “special and concrete measures” in social, economic, cultural and other fields, to “ensure adequate development” versus “securing adequate advancement” as required in Article 1. The measures taken are only to last until the objective has been achieved.134

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133 The Convention does not apply to the institution per se but rather its members. If the members of an institution are discriminated against because of their race, color, descent or national or ethnic origin, the institute can invoke the provisions of ICERD for protection.

134 See Article 2 of the Universal Declaration of Human Rights, Article 2 of the ICERD extends on the Article.
5.3.3 Article 3

Article 3 of the Convention is the condemnation of racial segregation and apartheid. State Parties “undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction.” Article 3 specifically mentions Apartheid but it also applies to racial segregation within the borders of all State members. Article 3, requires state parties to regulate private actions.

5.3.4 Article 4

Article 4 requires state parties of the Convention to condemn all propaganda and all organizations based on ideas or theories of racial superiority or which attempt to justify or promote racial hatred and discrimination in any form. Article 4 conflicted with the Constitutions of several member states. Some of the delegates viewed Article 4 (four) as an infringement on the freedom of speech, expression, and association.

Subparagraph (a) of Article 4 requires States to declare “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as

135 Natan, Lerner, The U.N. Convention on the Elimination of all Forms of Racial Discrimination, p. 41 Sijthoff & Noordhoff, 1980. “Apartheid was defined in the Afrikaans Dictionary in 1950 as a political tendency or trend in South Africa, based on the general principles (a) of a differentiation corresponding to differences of race and/or level of civilization, as opposed to assimilation; (b) of the maintenance and perpetuation of the individuality (identity) of the different colour groups of which the population is composed, and of the separate development of these groups in accordance with their individual nature, traditions and capabilities as opposed to integration.”

136 Article 4 goes further than its predecessor, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination by condemning propaganda and organizations that attempt to justify or promote racial discrimination and hatred.

137 Natan, Lerner, The U.N. Convention on the Elimination of all Forms of Racial Discrimination, p. 47 Sijthoff & Noordhoff International Publishers BV, (1980). Article 4 also states that “due regard” for the principles set forth in the Universal Declaration of Human rights should be taken when measures are being taken to eradicate “all incitement to, or acts of discrimination.” This was implemented so States would not feel as though they were being forced to implement measures that were inconsistent with their constitutional
well as all acts of violence or incitement to such acts...including assistance to racist activities, including the financing thereof;” punishable by law. Subsection (b) declares illegal organizations and other organized and other propaganda activities that are aimed toward racial discrimination. Participation in these organizations and/or activities would also be illegal. Subparagraph (c) State parties “shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

5.3.5 Article 5

Article 5 of the Convention details the rights guaranteed by the convention and requires States Parties to undertake to prohibit and eliminate racial discrimination: subparagraph (a) guarantees “the right to equal treatment before the tribunals and all other organs administering justice.” Subparagraph (b) guarantees “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” Subparagraph (c) refers to political rights, the right to vote and take part in the government. Subparagraph (d) refers to the Civil Rights protected; “the right to freedom of movement and residence within the border of the State; and the right to freedom of peaceful assembly and association.”

5.3.6 Article 6

Article 6 requires State Parties to “assure to everyone within their jurisdiction effective protection and remedies.” The remedies are for “any acts of racial discrimination,” this could be against public or private actors. Victims of racial discrimination should also have the right to seek from the tribunals, “just and guarantees. Article 19 of the Universal Declaration allows for freedom of expression and opinion and Article 20 allows for freedom of assembly and association.

138 See ICERD for a complete list of the rights guaranteed by Article 5.
adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

5.3.7 Article 7

Articles 7, States are to undertake to adopt immediate and effective measures to combat discrimination. The fields of teaching, education, culture and information, were specifically mentioned to combat prejudices, which lead to racial discrimination, and to “promote understanding, tolerance and friendship among nations and racial or ethical groups.” State Parties are to also undertake to publicize the “purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, and this Convention.”

5.3.8 Article 14

Article 14, section 1, allows for individual as well as groups of individuals who claim to be victims of violations by a State Party to file complaints with the Committee. This is optional for State Parties and they can assert their acceptance at any time by submitting a declaration that acknowledges such. Section 2 of Article 14 allows for States which have submitted a declaration pursuant to section 1, “to establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of the violations of any of the rights set forth in this Convention and who have exhausted all other available local remedies.”
5.3.9 Article 20

Article 20 Paragraph 1; gives the guidelines for submitting a reservation. The Secretary General of the United Nations will receive and circulate all the reservations to the other States. Any States that object will have 90 days to notify the Secretary General of the objection. Paragraph 2; states what reservations will not be permitted; those that are incompatible with the object and purpose of the Convention. Paragraph 3; allows for reservations to be withdrawn at any time with proper notification addressed to the Secretary General. Reservations will be discussed in more detail under the section titled, “Reservations.”

5.3.10 Article 22

Article 22; discusses the settlement of disputes “between two or more States Parties with respect to the interpretation or application of this Convention…” The dispute can be referred to the International Court of Justice for a decision at the request of any of the parties. The consent of the parties is to be given at the time of ratification.139

5.4 UNITED STATES RESERVATIONS TO ICERD

The United States’ refusal to fulfill their obligations under the ICERD is based on the assertion that certain obligations conflict with the Constitution of the United States. The Constitution of the United States gives a vast number of freedoms to all individuals in the United States, such as freedom of speech, expression and association. According to the United States, its reservations to the ICERD are based upon the belief that an infringement on individual’s rights will be the consequence of the United States fulfilling their obligations of the treaty. Therefore, the United States submitted reservations to the ICERD accepting no

obligations under the treaty that would infringe upon the rights of the individual.\footnote{140} Although the United States has submitted reservations to the ICERD these reservations do not shield the United States from their obligations under the ICERD for the conduct of public officials (Police) and the effects of the judicial system (i.e.: death penalty rates for African-Americans), which is the focus of this section. The United States has a duty to eradicate “all forms of racism” within its borders. An analysis of the United States reservations in relation to the current state of the African-American in the United States will follow along with a background on the law of reservations.

\footnote{140} See text of reservation on following pages.
6 THE DEVELOPMENT OF THE LAW APPLICABLE TO RESERVATIONS

The current law on reservations has evolved from two previous rules, the Unanimity Rule and the Pan American Rule; which then evolved into the criteria set out by the ICJ in the Genocide Convention. The Vienna Convention later codified the rules in the Genocide convention.

6.1 The Unanimity Rule

The Unanimity Rule, which was universally recognized, required all parties to the treaty to accept all reservations unanimously in order for the reserving state party to become a member to the treaty. Due to the unanimous approval required by this rule, the original text of the treaty was preserved thus protecting the integrity of the treaty. Reservations that were accepted could be considered a counter offer and therefore require a modification to the treaty, which would be binding on all parties. The required consent of all parties when accepting reservations under the unanimity rule restricted its universal application in International law, thus limiting the participation of states in International law and treaty power.

6.2 The Pan-American Rule

The Pan-American Union and its successor, the Organization of American States initiated the Pan-American Rule, which allowed for a more Universal participation

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142 Piper, Catherine, Reservations to Multilateral Treaties: The Goal of Universality, correct citation
in international law and treaty power. Maximum participation was the aim of the Pan-American rule. States with reservations could become parties to the treaty.\textsuperscript{144} The treaty would only be binding between the reserving and accepting states\textsuperscript{145} thus creating many bilateral agreements within one treaty; the treaty would only be in effect between the reserving and the accepting states.

6.3 The Genocide Convention

The text of the Genocide Convention was adopted unanimously by the United Nations General Assembly in 1948.\textsuperscript{146} Article XIII of the treaty required twenty ratifications or accessions before it could enter into force. Reservations were included in the initial twenty instruments, and several states objected to the reservations.\textsuperscript{147} There was no provision in the treaty relating to reservations; therefore the Secretary General sought advice from the General Assembly.\textsuperscript{148} After discussions in the General Assembly the dispute concerning the reservations were to be handled by having the International Court of Justice give an advisory opinion and the International Law Commission was invited to “study the matter of reservations in its works on the law of treaties.”\textsuperscript{149} In the advisory opinion of the Genocide convention, reservation law was given a frame in which to work in. Although the court stated that its opinion is limited to the Genocide Convention,\textsuperscript{150}

\begin{flushleft}
\textsuperscript{145} Id. at 16.
\textsuperscript{146} GA Res. 206A(III), dd.9 December 1948.
\textsuperscript{148} Id. at 17.
\textsuperscript{149} This study would later become the Vienna Convention on the Law of Treaties.
\end{flushleft}
the advisory opinion had a great impact on the law of treaties and the drafting of the Vienna Convention.151

The advisory opinion in the Genocide Convention set forth the criteria to determine whether a reservation was compatible with the treaty. The court determined:152

1. if a party to the convention objects to a reservation which it considers to be incompatible with the object and purpose of the convention, it can in fact consider that the reserving State is not a party to the Convention.

2. if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the convention.

The compatibility theory seems to be a combination of both the Unanimity rule and the Pan-American rule. Reservations were allowed if they were compatible with the object and purpose of the treaty but if not, then the reservation was not allowed. This approach seemed to create more flexibility for a greater number of states to become parties to treaties, moving towards the Universal approach of the Vienna Convention.

6.4 Vienna Convention on the Law of Treaties

The International Law Commission was established by the United Nations in 1947, and consists of thirty-four international lawyers elected by the United Nations General Assembly for a five-year term.153 The ILC carried out the

151 Id. at 28.
152 Id. at 22.
preparatory work for the Vienna Convention, in 1966 the ILC adopted 75 draft articles which formed the basis of the Vienna Convention. \(^{154}\) During the Vienna Conference of 1968 and 1969, the Vienna Convention on the Law of Treaties was created; it entered into force on January 27, 1980.\(^{155}\) The Vienna Convention was created with the codification and the progressive development of the law of treaties as its main purpose.\(^{156}\) The United States declined to accede to the Vienna Convention on the law of Treaties, but stated, ‘although the convention is not yet in force it is already generally recognized as the authoritative guide to current treaty law and practice’. \(^{157}\) The United States adopted many of the Vienna Convention articles as an international authority in its Foreign Relations Law.\(^{158}\) Like the Vienna Convention, the Foreign Relations Law of the United States also wants to promote universality.\(^{159}\)

### 6.5 Reservations

Article 2(d) of the Vienna Convention defines a reservation as, “a unilateral statement, however phrased or named by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”\(^{160}\) Reservations are somewhat of an incentive for States to become parties to a convention. By allowing Reservations States may become a party to

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\(^{154}\) Id. at 61. The ILC was established under Article 13, 1(a) of the United Nations Charter. It consists of a body of legal experts whom were chosen to “reflect the positions of the major legal systems of the world.”


the Convention without agreeing to every provision of the Convention.\textsuperscript{161}

Although reservations are allowed to “encourage the broadest possible participation,” not all reservations are permitted.\textsuperscript{162} Article 19 of the Vienna Convention States:

A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

In effect a legal reservation modifies the convention between the state making the reservation, and the other parties to the agreement.\textsuperscript{163} The overall effect in practice of a reservation is that a multilateral treaty becomes segmented into “a series of related bilateral treaties.”\textsuperscript{164} Within the agreement several separate agreements (between states) may evolve, allowing different States to have different obligations to each other.

### 6.6 Reservations to the ICERD

According to Article 20 of the ICERD Convention\textsuperscript{165} a reservation is prohibited if it is incompatible with the object and purpose of the Convention or if the


\textsuperscript{162} Id. at 48.

\textsuperscript{163} Id. at 50

\textsuperscript{164} Id. at 50

\textsuperscript{165} Article 20 of the ICERD: (1) The Secretary General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made
reservation inhibits “the operation of any of the bodies established by the Convention.” Reservations are determined to be incompatible or inhibitive if two-thirds of the States Parties to the Convention object to it. Objections are often regarded as unfriendly acts and therefore State’s may not be so willing to make them. Therefore, if the objections do not meet the two-thirds threshold, incompatible or inhibitive reservations will still be accepted.

The purpose of the ICERD is obviously the elimination of racial discrimination but there is no criterion for State Parties to determine which articles represent the object and purpose of the Convention. It is left up to the State Parties to interpret the notion of the object and purpose of the Convention. Member States become the determinants of whether a reservation is incompatible with the object and purpose of the Convention. Therefore an alternative body is needed to oversee the reservations to treaties and determine if they are in accordance with the object and purpose of the convention. With State’s as the determinants of compatibility of reservations, incompatible reservations; (i.e.: reservations submitted by the United States) are accepted thus putting Article 19 (c) and Article 20.4 of the Vienna Convention in a contradictory position since

by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it. (2) A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by the Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it. (3) Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

167 Id. at 136.
168 Full text of Article 19 in section titled Reservations. Article 20.4 states, (a) if a party accepts a reservation entered by another state, the treaty is binding between those two states if or when the treaty enters into force. (b) an objection by a contracting state to a reservation does not prohibit the entry into force of the treaty between the objecting and reserving States, unless the states expressly states otherwise. (c) a reserving State which has consented to be bound by the treaty is effective when at least one other contracting state has accepted the reservation.
reservations incompatible with the Treaties object and purpose will inevitably be allowed.

As it stands, the Committee on the Elimination of Racial Discrimination (Committee) receives complaints about States “not giving effect to the provisions of the convention” and the Committee receives reports submitted by the State Parties documenting measures taken to fulfill their obligations under the treaty. In response to the United States first report submitted to the Committee on their implementation of the ICERD\textsuperscript{169} the United Nations Committee on Elimination of Racial Discrimination recently issued concluding recommendations to the United States in regards to their reports at the 59th session.\textsuperscript{170} The committee’s recommendations and concerns included the “implication of the State party’s (United States) reservation on the implementation of Article 4 of the convention.”\textsuperscript{171} The committee notes that application of Article 4 by all state parties is of increased importance (since the adoption of the convention) to fulfilling the convention.\textsuperscript{172} The provisions of article 4 are of “mandatory character.”\textsuperscript{173}

The committee noted police brutality and deaths as a result of police violence, which affected minority groups and foreigners in particular; and “recommended that the U.S. take immediate and effective measures to ensure the appropriate

\textsuperscript{169} The United States submitted its initial report to the ICERD committee on September 21, 2000.
\textsuperscript{170} Committee on Elimination of Racial Discrimination, Issues Concluding Recommendations on Reports of Italy, China, Trinidad and Tobago, Cyprus, United States, Sri Lanka, Viet Nam, Ukraine, Egypt, 17 August 17, 2001 <http://www.un.org/Depts/dhl/resguide/press2.htm>
\textsuperscript{171} The United States consent to the CERD convention was subject to reservations partly based on Article 4 and Article 7. U.S. felt that its constitution and laws were extensive enough to protect the individual freedom of speech, expression and association. And they did not want to adopt any measures under Art. 4 and 7 that would “restrict those rights to the extent that they are protected by the constitution of the United States.”
\textsuperscript{172} Office of the High Commissioner for Human Rights, Organized violence based on ethnic origin (Art.4); 19/03/93. CERD General Recommendation 15 <http://www.unchr.ch/tbs/doc.nsf/(symbol)/CERD+General+recom.+15.En?OpenDocument>
\textsuperscript{173} Id.
training of the police force.”\(^\text{174}\) The committee also noted the disproportionate numbers of inmates (ethnic and national minorities) in State, Federal and local prisons; the incarceration rate is high for African-Americans and Hispanics.\(^\text{175}\) Also that the imposition of the death penalty is related to the race of the victim as well as the defendant.\(^\text{176}\) The committee recommended that “the state party take firm action to guarantee the rights of everyone without distinction” as to race.\(^\text{177}\)

### 6.7 Discussion

The United States fails to show their commitment to eliminating all forms of racial discrimination within their borders. The United States submitted reservations to provisions of the ICERD, that it deemed to conflict with the current laws of the United States; or with provisions of the ICERD that would require them to implement more laws.

The Committees concluding recommendations was issued after a representative for United States appeared before the committee to respond to questions in relation to its submitted report. The United States’ response to why it has not implemented legislation or other measures to eradicate racial discrimination in the United States was that the Convention and its reservations do not require any implementation in its domestic legislation.\(^\text{178}\) The representative responded “In the United States, we have chosen to implement our international treaty obligations by passing implementing legislation when necessary. As we have indicated in our report, at the time of ratification it was determined that U.S. law was in compliance with our obligations under the Convention. Accordingly, no

\(^{174}\) Id.  
\(^{175}\) Id.  
\(^{176}\) Id.  
\(^{177}\) Id. at 175  
implementing legislation was necessary.” The Representative also stated that “the U.S. September 2000 report drafted by the previous Administration makes clear that current U.S. laws and policies comply with the obligations of the United States under the Convention, and this Administration has had no occasion to question that conclusion.”

It seems as though the United States is only doing the bare minimum in terms of complying with its obligations under the ICERD. The Vienna Convention on the law of treaties states in Article 26 of the Vienna Convention is titled “Pacta Sunt Servanda” which translates to “agreements must be kept”. States parties have a duty to fulfill its obligations under the treaty in good faith. Is the United States acting in good faith when racial profiling, police brutality and “over incarcera,” and disproportionate sentencing of African-Americans to the death penalty continue to occur.

6.8 The United States Reservation to the ICERD:

Upon Signature:

“The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America”

Upon ratification:

“I. The Senate’s advice and consent is subject to the following reservations:

(1) The constitution and the laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any
obligation under this convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent to which they are protected by the Constitution and laws of the United States.

(2) That the Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in Article 1 to fields of "public life" reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and to spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of Article 2, subparagraphs (1) (c) and (d) of Article 2, Article 3 and Article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.

(3) That with reference to article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

II. The Senate’s advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention:

That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.

III. The Senate’s advice and consent is subject to the following declaration:

That the United States declares that the provisions of the Convention are not self-executing.

6.9 Discussion

The United States submitted the above reservation which creates an obstacle to individuals of the United States seeking protections under the ICERD. The U.S. included a declaration along with the reservation which states that the convention is not Self-executing. As explained earlier, this means that the Convention is not automatically implemented into domestic law and requires the passing of legislation to become effective.182

In the initial report submitted by the United States to the Committee on the Elimination of Discrimination (Committee); the United States claimed that the declaration has “frequently been misconstrued and misinterpreted.” The U.S. claims that having a “non-self-executing clause does not lessen the obligation of the United States to comply with the provisions as a matter of international law.” It does lessen the obligation of the United States because it does not force them to implement any new laws that will fill the gaps or create greater protections than the current laws in effect, the treaty has no status as domestic law in the United States.

A non self-executing treaty that lacks the force of domestic law, cannot be enforced in court “against those whom the treaty purports to impose a duty, by those for whose benefit the treaty imposes the duty.”183 Therefore, if it is non-self executing, it is not enforceable in court and individuals cannot invoke its privileges, which are contrary to the language in the Constitution, which states that treaties

182 See section, “Treaties as self-executing”
are to be the Supreme law of the land. Therefore this assertion of the treaty being non self-executing is inconsistent with the “express language of the Constitution.” The United States continues to be its own biased judge, creating laws only when it would be beneficial to them or when public outcry is so horrendous that they are forced to take some sort of action.  

Article 14 of the ICERD allows states to recognize “the competence of the committee to receive and consider communications from individuals as well as groups.” During the United States reply to questions of the Committee, the representative was asked if the U.S. was ready to assent to Article 14, the reply, “the United States has no intention at this time of making a declaration under Article 14 of the Convention.” Black people of the U.S. still have no alternate means of seeking remedies except under domestic laws which are not sufficient as evidenced by the current situation for blacks in the U.S. The National Association for the Advancement of Colored People (NAACP) has even encouraged minorities to seek justice outside of the United States when it stated, “it is foolish for the oppressed minority to ignore potential allies abroad and rely solely on those within the borders of this nation.” Based upon domestic laws of the United States and its reservations to ICERD it is not possible for African-Americans to seek international relief under ICERD.

184 Halberstam, Malvina, INTERNATIONAL HUMAN RIGHTS AND DOMESTIC LAW FOCUSING ON U.S. LAW, WITH SOME REFERENCE TO ISRAELI LAW, 8 Cardozo J. Intl' & Comp. L. 225, 235 (2000).
185 Di Lorenzo, Vincent, LEGISLATIVE CHAOS: AN EXPLORATORY STUDY, 12 Yale L. & Pol'y Rev. 425 (1994). (Discussing that legislative decision making is a process of change driven by interest group pressure.)
6.10 ANALYSIS

The United States main argument for not implementing new legislation in accordance with its obligations under the ICERD, is the belief that the laws of the United States and the Constitution provide protections in accordance with the Convention. This portion of the study will explore the substantive articles of the Convention, in the realm of government actors and the Criminal Justice system focusing on racial profiling, police brutality, death penalty, disproportionate sentencing and “over incarceration”; along with the current U.S. laws which are applicable to the articles of the convention; then an analysis of whether the protections provided under the current U.S. laws and policies protect African-Americans in the United States.

6.10.1 Article 2(1)(a)

Under the U.S. law the fifth and the fourteenth amendments grant protections to individuals against discrimination by the state and federal government. The Fifth Amendment, which applies to the federal government, states that no person “shall be deprived of life, liberty or property, without due process of law.” The Fourteenth Amendment which applies to each individual state, provides that no “state shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Although the Fifth Amendment does not contain an equal protection clause the Supreme Court has interpreted the Amendment as including one. The Supreme court has classified all laws that are based on race to be constitutionally

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188 USConstitution.net, United States Constitution, <http://www.usconstitution.net/const.txt>
189 Id.
190 Buckley v. Valeo, 96 S.Ct. 612 (1976). Equal protection analysis under the Fifth and Fourteenth amendment is the same.
suspect and that the laws are analyzed under the Fifth and Fourteenth amendments equal protection clause which requires analysis under the strict scrutiny standard.\textsuperscript{191} When the racial motivation of a law is overt, there is a burden on the state or federal government to prove that the “law is precisely tailored to achieving a specific objective and there must not be any less obtrusive or restrictive method to effectuate the governmental goal.”\textsuperscript{192} The law will only be upheld if there is a “compelling government objective and the regulatory means are necessary to achieve the particular objective.”\textsuperscript{193} If the law is facially neutral with respect to racial classification then as a prerequisite there must be a showing that the law was motivated by a racial purpose or object, or there is no other explanation for the law rather than race.\textsuperscript{194}

This standard is faulty because it does not take into consideration laws that are partially based on race. Some laws may have a discriminatory effect or impact but not have a blatant purpose or object of racial discrimination. Two examples are, the increased sentencing requirements for possession of rock cocaine versus cocaine powder; and the case of the rezoning of predominately minority voting districts in North Carolina.\textsuperscript{195} This standard requires all or nothing. Either from the wording of the law it is apparent that it is based on race, or after investigations to determine the motivation behind the purpose or object it is found that such racially motivated purpose or object existed.\textsuperscript{196} This is precisely the point of modern day discrimination it is often times subtle.\textsuperscript{197} A law is created for a specific purpose

\textsuperscript{191} See Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999); Strict Scrutiny standard requires law to be narrowly tailored to achieve a compelling governmental interest.
\textsuperscript{193} Id.
\textsuperscript{194} Id.
\textsuperscript{195} These cases will be discussed in more detail when discussing section (d) of article 2.
\textsuperscript{196} The court in, Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999), stated that “the task of assessing the jurisdictions motivation is an inherently complex endeavor, one requiring the trial court to perform a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”
but also has several other blanket purposes that are also credible for proving a non-discriminatory purpose. This precursor for the strict scrutiny standard allows for subtle discrimination to continue. Because if purpose or object is not proven then the strict standard will not be applied. Although, the United States claim that their laws have adequate protections, you must jump a legal hurdle in order to assert those protections.

6.10.2 Article 2(1)(b)

States are required not to sponsor, defend or support racial discrimination by any persons or organizations. There are numerous domestic laws of the United States prohibiting discrimination, to name a few, Civil Rights Act of 1964, Title II prohibits discrimination in the use of public accommodations, Title VI prohibits racial discrimination by institutions receiving federal aid. Title VII which prohibits racial discrimination in employment, and Title VIII which is the Fair Housing Act of 1968. These laws prohibit discrimination by state and local governments and private entities. Although these laws are in place, in particular, notes that “the forms of racial discriminatory practices have changed and adapted over time…and for many the true extent of contemporary racism remains clouded by ignorance as well as differences of perception.”

198 Id. at 17. Subtle discrimination is in the form of, “the persistence of attitudes, policies and practices reflecting a legacy of segregation, ignorance, stereotyping, discrimination and disparities in opportunities and achievement.”

199 The court in, Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999), stated “A law that is facially neutral with respect to race classification warrants strict scrutiny under the equal protection clause only if it can be proved that the law was motivated by a racial purpose or object, or if it is unexplainable on grounds other than race.”

200 42 USCA § 2000a, (a) Equal access: ”All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.”


the Fair housing Act, segregation and discrimination in housing still exist as documented in the United States report to the committee.204

6.10.3 Article 2(1)(c)

“State parties are to take effective measures to review governmental, national and local policies, and amend rescind, or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination wherever it exists.” The United States claims that through the nations legislative and administrative process as well as through judicial challenges (by governmental and private litigants) the policy review obligation is satisfied.205

Justice Scalia a Justice of the United States Supreme Court comments, that no law based upon racial preference should be upheld under the strict scrutiny standard. Scalia states, “In my view, government can never have a ‘compelling interest’ in discriminating on the basis of race in order to ‘make up’ for past racial discrimination in the opposite direction.” As Justice Scalia puts it, “We are just one race in the eyes of government.” Discrimination for many is one of perception;206 Scalia definitely does not perceive any racial differences under the laws of the United States despite the fact the Constitution of the United States was created acknowledging that Blacks were 3/5 of a person and not citizens of the United States. This type of conservative mindset is what shapes the decisions of the Supreme Court. The Supreme Court is known for interpreting laws so


206 Stokes, Melendez, Rhodes-Reed, Race in the 21st Century America, Michigan State University Press (2001). In a 1995 nationwide poll conducted by the Washington Post, the Kaiser Family Foundation and Harvard University, it was determined that “Whites perceived Blacks as a group to be threatening to their way of life. Even though in the 1990’s Blacks were highly represented in the low wage service sector. Half of all whites believed that
narrowly as to make their application contrary to their intent and actions by Congress, to reverse such rulings, are often slow if at all.  

Congress has also come under scrutiny due to the enactment of discriminatory laws, one of which is the sentencing guidelines for possession of crack cocaine versus cocaine powder.  

Congress enacted a statute which required that a person who was convicted of possessing, with the intent to distribute, 50 grams or more of crack cocaine would receive no less than ten years, but this ten year penalty would only be imposed on a person convicted of possessing, with the intent to distribute, cocaine powder if it was 5,000 grams. Blacks are found to possess crack cocaine more than powder cocaine.

This statute was brought under scrutiny in United States v. Clary; the court held that this statute was a violation of the equal protection clause under the Fifth Amendment. The court based its decision in part on the unconscious form of discrimination. The court looked at the history of the African-American and the political and social history of the United States. The court stated, “A current equal protection analysis must therefore take into account the unconscious predispositions of people, including legislators, who may sincerely believe that Blacks had reached equality with Whites in terms of employment. Another 12% thought that Blacks as a group were better than whites.”


United States v. Clary, 846 F.Supp. 768,770 (1994). Crack cocaine and cocaine powder are the same substance. Powder cocaine is cooked with baking soda for about a minute to make crack cocaine.

Taifa, Nkechi, CODIFICATION OR CASTRATION? THE APPLICABILITY OF THE INTERNATIONAL CONVENTION TO ELIMINATE ALL FORMS OF RACIAL DISCRIMINATION TO THE U.S. CRIMINAL JUSTICE SYSTEM, 40 How. L.J. 641 (1997), The United States Sentencing Commission compiled statistics nationwide and found that in 1993 88.3% sentenced federally for crack were black and 0.5% were white; in comparison to powder cocaine, 32% were white and 27.4% were black.

United States v. Clary, 846 F.Supp. 768,770 (1994). The court documented that it is not a new phenomenon for blacks to be punished harsher than whites. A history of differential sentencing for blacks and whites is documented.
they are not making decisions on the basis of race. This predisposition is a pertinent factor in determining the existence of a racially discriminatory motive. Racial influences which unconsciously seeped into the legislative decision making process are no less injurious, reprehensible, or unconstitutional. Although intent \textit{per se} may not have entered Congress' enactment of the crack statute, its failure to account for a foreseeable disparate impact which would effect black Americans in grossly disproportionate numbers would, nonetheless, violate the spirit and letter of equal protection.\textsuperscript{214}

United States v. Clary was reversed by the appeals court which stated that the equal protection rights of the African American defendants were not violated “absent showing that Congress enacted statute and guideline for discriminatory purpose, even though over 90 percent of defendants convicted of possession of crack cocaine were black…” \textsuperscript{215} The court went on to say, “disparate impact alone is insufficient to prove that a statute violates an individuals equal protection rights; the party challenging the statute must also show that Congress acted with discriminatory purpose in enacting the statute.”\textsuperscript{216} This is evidence of the judicial branch’s narrow interpretation of the law and the insurmountable hurdle one must leap to prevail in a discrimination claim under the equal protection clause. The Supreme Court later overruled the District court’s decision in Hunt v. Cromartie, \textsuperscript{217} that the rezoning of the 12 congressional districts in North Carolina was based on race.\textsuperscript{218}

\textsuperscript{214} Id. Rationale for the law: “Congress tells us that the rationale for this sentencing dichotomy which produces harsher punishment for involvement with crack cocaine is because it is so much more dangerous than powder cocaine. As "proof," Congress relied upon endless media accounts of crack’s increased threat to society.”

\textsuperscript{215} United States v. Clary, 34 F.3d 709 (1994).

\textsuperscript{216} Id.

\textsuperscript{217} Hunt v. Cromartie, 119 S.Ct. 1545 (1999). An appellate case in which the appellees argued that the appellants new redistricting plans were based upon a racial motive. The appellants argue that the redistricting plans were based upon creating a strong democratic district.

\textsuperscript{218} The litigation over the rezoning of the 12 districts in North Carolina was before the Supreme Court on two different occasions, prior to this ruling within a six year period. Shaw v. Reno, 113 S.Ct.2816 (1993) and Shaw v. Hunt, 116 S.Ct. 1894 (1996).
The Supreme Court agreed with the district court’s ruling in Shaw v. Reno, “the State which had deliberately segregated voters into districts on the basis of race without compelling justification stated a claim for relief under the Equal Protection Clause of the Fourteenth Amendment.”219 After remand back to the district court, the Supreme Court affirmed the District Court's ruling that North Carolina’s District 12 “classified voters by race and further held that the State's reapportionment scheme was not narrowly tailored to serve a compelling interest.”220

Based upon the Supreme Court decision in Shaw II, the State enacted a new redistricting plan and a suit followed by the North Carolina residents.221 The residents believed that the new “District 12, like the old one, to be the product of an unconstitutional racial gerrymander.”222 The District Court held, "the uncontroverted material facts" showed that District 12 was drawn to collect precincts with high racial identification rather than political identification," that "more heavily Democratic precincts ... were bypassed in the drawing of District 12 and included in the surrounding congressional districts," and that "[t]he legislature disregarded traditional districting criteria." Summary judgment, in favor of the North Carolina residents, was granted.223

The case went to the Supreme Court; the North Carolina residents had the burden “to prove that District 12 was drawn with an impermissible racial motive--in this context, strict scrutiny applies if race was the "predominant factor" motivating the legislature's redistricting decision.” To counter the assertion of racial intent, the state officials provided after-the-fact affidavit testimony of the two members of the General Assembly responsible for developing the State's

222 The majority of district 12 was black and with the rezoning the black population in the district was only 47%. Only 43% was of voting age and 46% registered voters.
223 Cromartie v. Hunt, 34 F.Supp.2d 1029
1997 plan, which stated that the intent of the plan was to make a strong
democratic district.\(^{224}\) An expert testified “that the relevant data supported a
political explanation at least as well as, and somewhat better than, a racial
explanation for the district's lines.”

Based on this evidence the Supreme Court held, that the ruling of the district was
erroneous in ruling judgment for plaintiff as a matter of law. Stating that the
District should have accepted the political explanation presented by the State
officials as true when ruling, taking that explanation into consideration, the North
Carolina residents were not entitled to judgment as a matter of law. The Supreme
Court stated, “a jurisdiction may engage in constitutional political gerrymandering,
even if it so happens that the most loyal Democrats happen to be black
Democrats and even if those responsible for drawing the district are conscious of
that fact.\(^{225}\) Evidence that blacks constitute even a supermajority in one
congressional district while amounting to less than a plurality in a neighboring
district will not, by itself, suffice to prove that a jurisdiction was motivated by race
in drawing its district lines when the evidence also shows a high correlation
between race and party preference.”\(^{226}\)

Rulings and laws such as this show the real tragedy with the government in the
United States. “The motive-centered doctrine of racial discrimination places a
very heavy, and often impossible, burden of persuasion on the wrong side of the
dispute. Improper motives are easy to hide. And because behavior results from
the interaction of a multitude of motives, governmental officials will always be able
to argue that racially neutral considerations prompted their actions.”\(^{227}\) ICERD
provides greater protections than the laws of the United States in the area of
motive-based discrimination. ICERD requires proof of discriminatory effect,

\(^{224}\) Id. at 541.
\(^{225}\) Id. at 551.
\(^{226}\) Id. at 552.
\(^{227}\) Lawrence, Charles R., The Id, the Ego and Equal Protection: Reckoning With
regardless of intent. The United States currently does not allow individual or
group complaints to be submitted in accordance with Article 14 of the ICERD
nor has the United States allowed for jurisdiction of the international court of
justice.\textsuperscript{228} Therefore there is no objective review of the United States government
actions. After the reversal of this case, and the Supreme Court’s refusal of
certiorari the defendants have no other recourse.

\section*{6.10.4 Article 2(1)(d)}

As previously stated the United States government has several statutes that
provide protections for persons discriminated against by a private organization,
entity, institution, but the protections are insufficient. The story of the Denny’s
restaurant is an example of such, six African-American secret service agents being
refused service at a Maryland Denny’s Restaurant in April of 1993.\textsuperscript{229} Two class
action suit was initiated, a total of 294,537 plaintiffs, which included other
African-Americans who were refused service or treated disrespectfully, an out of
court settlement was reached.\textsuperscript{230} Racist ideals and attitudes are so imbedded in
certain individuals that the current protections of laws are inadequate.

\section*{6.10.5 Article 2(1)(e)}

“State Party undertakes to encourage where appropriate, integrationalist
multiracial organizations and movements and other means of eliminating barriers
between races, and to discourage anything which tends to strengthen racial
division.” As one author states, a duty is imposed on the states to use their moral
influence to discourage anything which strengthens racial division.\textsuperscript{231} The United

\textsuperscript{228} See text of the United States reservation. Express consent from the United States is
required before the International Court of Justice can assert jurisdiction.
\textsuperscript{229} Singer, Joseph William, \textit{NO RIGHT TO EXCLUDE: PUBLIC ACCOMMODATIONS
\textsuperscript{230} Id.
\textsuperscript{231} Natan, Lerner, \textit{The U.N. Convention on the Elimination of all Forms of Racial
States government asserts their compliance with this article, stating that the Department of justice, has 30 plus years in conflict prevention for “actual or potential destructive racial conflict;” and the “Equal Employment Opportunity Commission has sought to eliminate racial discrimination through education and prevention, and by publishing policy guidance statements, compliance manuals and other educational materials.”

The problem with all these efforts is that they are fruitless efforts. In the United States report, it lists the ineffective use and dissemination of data on racial issues\textsuperscript{232} as “among the principle causative” factors of racial discrimination. The United States is on the right track with its list of the principle factors,\textsuperscript{233} Distributing data on racial issues will help to turn discrimination from a perceived notion to one of fact. If many peoples perception is that racism does not exist they will be opposed to any laws or policies geared toward the elimination of racial discrimination. Education and information is a vital instrument in eliminating barriers between the races.

### 6.10.6 Article (2)(2)

Paragraph 2 of Article 2 calls on state parties to take measures to “ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” This paragraph can also be read in relation to article 1(4) “which calls for special measures to secure adequate advancement of certain racial or ethnic groups or individuals.” As stated in the section titled Article (1)(a), the level of scrutiny applied to equal protection laws is a very difficult standard to fulfill; therefore, implemented Affirmative Action

\textsuperscript{232} United States of America Report to Committee on Elimination of Racial Discrimination, p. 17, September 2000.  
\textsuperscript{233} Id. at 17.
measures may not benefit those whom it is originally intended to benefit. Challenges of the law made by non-minorities who claim reverse discrimination, would require the government, state, institution, etc. to prove that the law is the least restrictive means to fulfil a compelling governmental purpose. Majority of the time, the law is struck down.

In accordance with the Supreme Courts narrow decision in Adarand, the federal government only uses “race conscious action in federal contracting where there is ‘demonstrable proof’ that the effects of racial discrimination continue to hinder minority owned businesses.” The executive branch of the United States believes “that affirmative action plays an essential role in ensuring that economic and educational benefits are offered equally to all people in the United States…” especially when persistent racial discrimination continues.234 But in this instance the Supreme Court continues to narrow the application of affirmative action.235 The branches of government are not working together; the judicial branch is restricting the legislative branch from ensuring the adequate development of disadvantaged groups.

6.10.7 Article 5

Article 5 should be read in conjunction with Article 2; Article 2 furnishes the State Parties obligations and Article 5 lists the rights to be protected with the State Parties undertaking of its obligations. Although Article 5 contains a list of numerous rights, civil, political and economic, the focus of this section will only be on subsection (a) and subsection (b) and (c) of this article. These sections relate to the current conditions faced by African-American’s in the United States as discussed in earlier sections of this study.

234 Id. at 5
6.10.8 Article 5 (a)

Article 5 (a) guarantees everyone “the right to equal treatment before the tribunals and all other organs administering justice.” As stated previously African-Americans make up 46.5% of the State prisoners and 40% of federal prisons. Due in part, to the harsh sentencing on drug related crimes, primarily for crack cocaine, and the principle focus of the war on drugs in minority communities but also related to the unequal treatment by the courts, blacks are disproportionately represented in the prison system. Blacks have a 29% chance of serving time during their lifetime versus 4% of white males.

6.10.9 Article 5 (b)

Article 5 (b) grants everyone “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” From the information presented in the racial profiling and Police Brutality sections, the United States is in violation of this obligation under the ICERD. Amadou Diallo, La Tanya Haggerty, Robert Russ, and countless other individuals that have not received media attention, die at the hands of the police. This is due in part to Officer’s lack of discretion and their administration of “curbside justice.” on Blacks.

236 See, Taifa, Nkechi, CODIFICATION OR CASTRATION? THE APPLICABILITY OF THE INTERNATIONAL CONVENTION TO ELIMINATE ALL FORMS OF RACIAL DISCRIMINATION TO THE U.S. CRIMINAL JUSTICE SYSTEM, 40 How. L.J. 641 (1997), Taken from Marc Mauer & Tracy Huling, Young Black Americans And The Criminal Justice System: Five Years Later 1 (1995) In 1990 a report was released which stated that 23% of black men were under some type of criminal supervision; five years later 32.2% were under criminal supervision.
239 Taifa, Nkechi, CODIFICATION OR CASTRATION? THE APPLICABILITY OF THE INTERNATIONAL CONVENTION TO ELIMINATE ALL FORMS OF RACIAL DISCRIMINATION TO THE U.S. CRIMINAL JUSTICE SYSTEM, p.674 40 How. L.J. 641 (1997) Curbside Justice- actions taken by police officers against the so called “deserving wrong doer” with the belief that justice will not be served in the courts; quoting
The lack of disciplinary actions against Officer’s continue to perpetuate the problem along with unwritten common practices and policies of police forces. In the Houston Police Department officers covering up unjustified shootings often used a “throw down” policy. Officers stated that in training at the police academy an inference was made that the officers should always have a “throw down” weapon to cover themselves.

Police officers most often have no accountability for their actions, why else would a Chicago man be subjected to the same form of brutal sexual assault as Abner Louima, three years later; or why officers turn their backs on drug deals and accept bribes from drug dealers or perform drug raids and split the proceeds. The Officers have no fear, no fear of being held accountable for their actions. Fear must be placed within these Officer’s and accountability for their actions must be demanded.

6.10.10 Article 5 (c)

Article 5 (c) calls on State parties to guarantee the right to everyone to participate in elections, to vote among other rights. The current disenfranchisement laws of the United States do not allow persons with a felony conviction to vote. 1.4 Million Black men are disenfranchised, they do not have any impact on who gets elected and the representation they receive, they take no part in elections. States do not allow inmates with felony convictions to vote, 28 states do not

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240 Id. at 677. Throw down weapon was used to cover up an unjustified shooting, officers placing it at the suspects side.
241 Id.
242 Senkel, Tara, Civilians Often Need Protection From The Police; Let’s Handcuff Police Brutality, 15 N.Y.L. Sch. J. Hum Rs. 385 (1999).
allow inmates on probation to vote, 32 do not allow persons on parole to vote and 13 do not allow ex-felons to vote.\textsuperscript{245} In seven states 1 in 4 Black men are denied the right to vote permanently.\textsuperscript{246} The impact that these laws have on a particular group is, appalling, worst yet is the reasons for continuing the application of this law.

In the United States the right to vote is a fundamental constitutional right. Deprivation of the right to vote on the basis or race, color or previous conditions of servitude is prohibited.\textsuperscript{247} The right to vote is protected under the equal protection clause therefore the level of scrutiny should be strict scrutiny. The United States should be required to identify a compelling state interest to continue disenfranchisement laws and the interest must be necessary to achieve a particular aim. The state interests in maintaining the disenfranchisement laws have been, “the preservation of the integrity of the electoral process by removing from the process those persons with proven anti-social behavior who can be said to be destructive to society’s aims.”\textsuperscript{248} This seems to be contrary to the principle of rehabilitation implying that the rehabilitation of a convicted felon is inconceivable.\textsuperscript{249}

\textsuperscript{245} Id.
\textsuperscript{247} USConstitution.net, <http://www.usconstitution.net/const.txt>
\textsuperscript{249} The judicial, legislative and executive branches of government can also corrupt the purity of the ballot box. \textit{Bush v. Gore}, 121 S.Ct.525 (2000) Supreme Court intervened in the Florida Supreme Court ruling for a recount on ballots that machines that failed to detect vote for president. The Supreme court identified a "legal vote," as "one in which there is a 'clear indication of the intent of the voter.' See: Zeleny Jeff, \textit{Region With Highest Number Of Spoiled Ballots Left Unexplained}, Nov. 12, 2001 <http://orlandosentinel.com/news/nationworld/sns-ballots-jax.story > Ballot instructed people to vote on each page. See: dissenting opinion of Justice Stevens in Bush v. Gore stating that the intervention of the Supreme court was beyond their authority. CBS News.com, June 8, 2001 <http://www.cbsnews.com/now/story/0,1597,295656-412,00.shtml> Floridians, especially black voters, were deprived of their votes by outdated equipment, improper purging of voter rolls and inadequate access to voting booths. And also read, Hertzberg, Hendrik, \textit{RECOUNTED OUT}, 12/20/2001, http://www.newyorker.com/THE_TALK_OF_THE_TOWN/CONTENT/?011224ta_talk_hertz
6.10.11

6.10.12  **Article 6**

Article 6 grants everyone within the jurisdiction of the State Party the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination. The United States does allow for private suits in which the plaintiff can be awarded monetary damages or injunctive relief.\(^{250}\) As stated previously, police officers are seldom held accountable for their actions, which is partly due to the “code of silence.” When there is evidence of the officer’s misconduct, most often their superiors don’t want to deal with it and either transfer or promote the officers. Because police officers are recognized as policy makers and bureaucrats who are responsible for making enforcement policy;\(^ {251}\) and they have broad discretion to determine the amount and quality of benefits and sanctions to administer to the public\(^ {252}\) they need be held accountable for their actions.

6.10.13  **Article 7**

Article 7 calls on states parties to take “immediate and effective measures to combat prejudices that lead to racial discrimination. The fields of teaching, education, culture and information are specifically mentioned. In the United States report they list numerous measures implemented, such as “The Presidents Initiative on Race” which educates Americans on the history of race in the United States which includes the “One America Dialogue Guide” which is aimed at cross


The measures mentioned above have insufficient public promotion. If the elimination of race is to be tackled effectively a greater promotion of these “initiatives” must be taken, after all there are 280,562,489 people in the United States. Public service announcements informing people of these programs and how to take advantage of them would be a starting point. The programs should be advertised in all states and not just states with a high African-American population. This bare minimum approach by the United States is not at the starting line to even begin to tackle the race problem in the United States.

252 Id.
254 As a Black woman living in a urban community I have never heard of these “initiatives” nor have I seen any pamphlets promoting these “initiatives.” I have questioned many friends and relatives regarding their awareness of these initiatives and they were not familiar with any of these initiatives.
255 Central Intelligence Agency, World Fact Book 2002,
7 RECOMMENDATIONS

Police officers are recognized as policy makers, bureaucrats, responsible for making enforcement policy. Police officers have broad discretion to determine the amount and quality of benefits and sanctions to administer to the public. Therefore, police officers are agents. Agents for the municipalities, who are in turn, are agents for the state in which it is a part of, and each individual state is then an agent for the Federal government.

The Police officer, Municipality and the States are responsible for making sure the people of the United States act in accordance with the basic federal laws and then each state is allowed to implement laws which grant further protections than those granted by the federal government. Essentially, the foundations of the State’s laws are built upon the United States Federal laws.

The current laws of the United States make it very difficult, if at all possible for citizens of the United States to sue a State or the Federal government without the express consent of congress. On the Municipality level, a citizen may sue a municipality in tort (personal injury, etc.) but there are limits placed on the amounts that can be recovered.

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257 Id.
258 States are immune from suits under federal laws unless the state has expressed its consent to suit and such consent must be explicit. Even if a state consent’s to suit in their own courts that does not mean they have consented to suits in the federal courts. See: http://caselaw.lp.findlaw.com/data/constitution/amendment11/03.html#2.
259 “No action lies against the United States unless Congress has authorized it.” Hercules v. United States, 516 U.S. 417,422 (1996), United States v. Testan, 424 U.S. 392, 399 (1976). “The immunity if the United States from suit is all embracing, and obtains without regard to the character of the proceedings or the source of the right sought to be enforced.”
260 Under the Massachusetts Torts Claims Act the maximum recovery is $150,000.
The United States must hold themselves accountable for the actions of their agents. Police officers are required to protect and serve based upon the laws of the United States and therefore they are acting on behalf of the United States. As in contract law, when an agent is acting on behalf of his principal and that agent violates the contract, the principal as well as the agent can be held liable. In this instance, Police officers are not working for an undisclosed principal thus the United States should not be able to avoid liability. If the United States knew it could be held liable for a breach by its agent; more effective training and operation of the police force will occur.\(^{261}\) Citizen’s travel from state to state and discrimination in one state will affect an individual’s choice to travel to that state which creates an interstate commerce issue. When a State unduly burdens interstate commerce the United State’s Congress could intervene. The problem? Congress determines what constitutes a burden on interstate commerce thus Congress must take the initiative to recognize how serious racial discrimination in the United States is, and begin to work towards eliminating it.

The above agency theory also applies to the judicial system. Judges, who impose sentences and prosecutors who recommend sentences are also agents for the Federal government. Thus, the United States must take the responsibility of investigating these claims, set up a federal investigation, unit in each state, to oversee police conduct and policies of each state and review yearly the sentencing statistics for the court systems of each state. National institutions promoting the prevention and eradication of racial discrimination should be implemented. Public announcements and anti-discrimination information should be distributed through those institutions.

\(^{261}\) The United States threatened to take away funding from many states who were found to have discriminated against African-Americans, the same thing should be done by the international community. To sue on behalf of the United States citizen’s under a contract theory.
The United States has the capacity and the duty to legislate, enforce, uphold the rule of law, and to eradicate discrimination through the areas of teaching, education, culture and information. The United States has a vital role to play in combating racial discrimination and promoting racial equality.\textsuperscript{262} In order for the United States to meet their obligations they must be “vigorous, effective, well-equipped, and accountable to national constituencies and the international community.”\textsuperscript{263}

\textsuperscript{263} Id. At 122
8 CONCLUSION

United States is not in compliance with its obligations of the ICERD, unless the international community puts actual pressure on the United States to conform to the standards required by the ICERD these violations will continue to exist; and If the international community is to put pressure on the United States to take action in guaranteeing the equal rights of all, they must also make sure their own backyards are clean before they caste the first stone. Many member states are still struggling with ensuring equality for all within its States. 264

As discussed in earlier, the United States will not alter its domestic laws to comply with the ICERD. Although the Constitution of the United States recognized Treaties as the supreme law of the land the ICERD is not recognized as such.

Police brutality, racial profiling, and discrimination in the judicial system are on the rise and State and Federal courts are becoming increasingly resistant to affirmative action programs. African-Americans tolerance to the constant brutality and discrimination is becoming thin. Riots in retaliation to Police misconduct are on the rise. Instead of moving towards a state of racial equality we are moving closer to divisibility.

The United Nations committee for the ICERD warned the United States of the seriousness of its violations but warnings are not enough, it has been more than two years since the United States have submitted their report to the Committee and nothing has improved. A combination effort between national and international organizations with the aim of promoting equality need to put pressure

on the United States, sending letters, organizing protests, demanding compliance with the ICERD even if some sort of punishment needs to be administered. The United States should not be allowed avoid fulfilling their obligations.
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