

**Submission to the 36th Session of the Universal Periodic Review  
on the Human Rights Situation in the United States  
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Established in 1989, the Atlantic Human Rights Research Centre (AHRC) is based at St. Thomas University in Fredericton, New Brunswick. The Centre promotes and develops multidisciplinary teaching and research in the area of human rights at the regional, national, and international levels. The AHRC stimulates informed thinking about human rights and their implication for law and society through excellence in analysis and research.

Our mission is to:

- i) Undertake, encourage and facilitate research in the field of human rights;
- ii) Coordinate and develop undergraduate courses in the field of human rights;
- iii) Conduct specialized human rights courses of a continuing education nature for various professional groups;
- iv) Promote and stimulate informed thinking about human rights by organizing conferences and workshops and by disseminating information about human rights; and
- v) Collaborate and cooperate with other organizations, groups and individuals working in the field of human rights at the national, regional and international levels.

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## Introduction

The situation of human rights in the United States of America is dire, with the Trump administration rolling back human rights advances made under previous administrations and refusing to cooperate with international bodies, the Human Rights Council and the International Criminal Court.<sup>1</sup> This demonstrates a lack of accountability and political will to realize the human rights of its citizens. To address, this lack of accountability, this submission to the Universal Periodic Review focuses on issues that have evaded domestic accountability.

## Situation of Migrants

### Background

According to the United Nations Migration Report 2017, the United States has the largest number of migrants in the world.<sup>2</sup> Yet, migrants are increasingly becoming criminalized, as domestic law criminalizes unauthorized entry, with increased penalties for each additional offence.<sup>3</sup> As many prison facilities are privately owned, there is an incentive to increasingly criminalize migrants in order to keep facilities at capacity to make a profit.<sup>4</sup> Despite research finding that an effective way to solve the migrant crisis is not to further securitize the border, but to address the issues in the country of migrant's origins that are causing them to flee, Trump largely campaigned on a promise to build a border wall to stop the Mexican rapists from entering.<sup>5</sup> Throughout his presidency, one of his main priorities is to deter people, notably Muslims and Latin Americans, from entering the country.<sup>6</sup> In 2018 alone, more than 2,500 families were separated at the border.<sup>7</sup> Families often wait months before being reunited.<sup>8</sup> The Trump administration has argued that detained children do not require basic hygiene products.<sup>9</sup> During a peaceful migrant march in November 2018, US border agents released tear gas, including targeting children.<sup>10</sup> Tear gas was also released the following month at the Mexico/U.S. border.<sup>11</sup>

### Legal Source of Obligations

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<sup>1</sup> Human Rights Watch, "United States Events of 2018," <https://www.hrw.org/world-report/2019/country-chapters/united-states#>.

<sup>2</sup> United Nations, *International Migration Report 2017*, (New York, USA: United Nations, 2017), 6.

<sup>3</sup> International Justice Resource Center, "Ten human rights standards implicated by U.S. immigration policy changes," <https://ijrcenter.org/2018/06/27/ten-human-rights-standards-implicated-by-u-s-immigration-policy/>.

<sup>4</sup> Ibid.

<sup>5</sup> Inter-American Commission on Human Rights, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*, (Washington, USA: OAS, 2015), 10; Blaz Vrecko, "Racism and the Crises of Political Representation in the American Republic- from its Constitution to the Trump Phenomenon," *Teorija in Praksa* 54, no. 1 (2017): 32, <https://search-proquest-com.proxy.hil.unb.ca/docview/1902029424?OpenUrlRefId=info:xri/sid:wcdiscovery&accountid=14611>.

<sup>6</sup> Katie Reilly, "Here Are All the Times Donald Trump Insulted Mexico," *Time*, August 31, 2016, <http://time.com/4473972/donald-trump-mexico-meeting-insult/>.

<sup>7</sup> Human Rights Watch, "United States 2018".

<sup>8</sup> Ibid.

<sup>9</sup> Guardian staff and agencies, "Detained migrant children must have access to soap and other basic needs, court rules," *The Guardian*, August 16, 2019, <https://www.theguardian.com/us-news/2019/aug/15/immigrant-children-soap-beds-trump-court>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

The 1951 *Convention Relating to the Status of Refugees* (Refugee Convention) and the 1967 *Protocol relating to the Status of Refugees* protects refugees from returning to a country where they are at risk of serious threats to their life or freedom.<sup>12</sup> There are three main principles of the Refugee Convention: non-discrimination (Article 3), non-refoulement (Article 33) and non-penalization (Article 31).<sup>13</sup> International human rights bodies have recognized that although immigration law and its regulation is administered by sovereign States, there are some guidelines that must be followed, such as irregular immigration should be processed under the civil law system, rather than the criminal justice system.<sup>14</sup> Consequently, the incentive for the United States to detain immigrants due to the prison-industrial complex results in numerous violations, as adult migrants should only be detained in limited circumstances.<sup>15</sup> Similarly, international human rights law does not warrant detention for either deterrence or private profit.<sup>16</sup>

It is recommended that the United States of America:

- Enact new federal legislation that specifies that immigration detention should only be used as a matter of last resort and that it cannot be justified as a means of deterring potential immigrants or for private profit;
- Ensure that the three main principles of the 1951 Refugee Convention are enshrined in domestic legislation and upheld in domestic policy-making;
- Prohibit the use of excessive force against migrants in federal legislation, such as employing tear gas, to deter people from entering the country, and recognize that this use of excessive force, constitutes torture or cruel, inhuman, or degrading treatment that is prohibited under Article 7 of the *International Covenant on Civil and Political Rights* and Article 1 and 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; and
- Engage in foreign policy efforts that address the root causes of migration, rather than embarking on a xenophobic and racist fear-mongering campaign towards immigrants in domestic matters and abroad.

## **Abortion Rights**

### **Background**

In the first quarter of 2018 alone, there were more than 300 measures introduced to restrict abortion access.<sup>17</sup> This pattern has continued in 2019, specifically in regards to early abortion bans, as of June 2019, nine states had passed early abortion bans.<sup>18</sup> States have used the

<sup>12</sup> Edwards, "The Right 'To Enjoy' Asylum," 321; UN Refugee Agency, "1951 Convention Relating to the Status of Refugees," <https://www.unhcr.org/3b66c2aa10>, Art. 33.

<sup>13</sup> UN Refugee Agency, "1951 Refugee Convention," Art. 3, 31, 33.

<sup>14</sup> Committee on the Elimination of Racial Discrimination, "Concluding observations on the combined seventh to ninth periodic reports of the United States of America\*," Geneva, September 25, 2014, CERD/C/USA/CO/7-9, [https://digital.library.un.org/record/786227/files/CERD\\_C\\_USA\\_CO\\_7-9-EN.pdf](https://digital.library.un.org/record/786227/files/CERD_C_USA_CO_7-9-EN.pdf).

<sup>15</sup> IJRC, "Human rights implicated by U.S. immigration policy"; Working Group on Arbitrary Detention, "Report of the Working Group on Arbitrary Detention on its visit to the United States of America\*," Geneva, July 17, 2017, A/HRC/36/ 37/Add.2, <https://www.refworld.org/docid/59bfaef4.html>.

<sup>16</sup> Ibid.

<sup>17</sup> Guttmacher Institute, "Policy Trends in the States: First Quarter 2018," <https://www.guttmacher.org/article/2018/04/policy-trends-states-first-quarter-2018>.

<sup>18</sup> Mara Gordon and Alyson Hurt, "Early Abortion Bans: Which States Have Passed Them?," NPR, June 5, 2019, <https://www.npr.org/sections/health-shots/2019/06/05/729753903/early-abortion-bans-which-states-have-passed-them>.

*Affordable Care Act* to restrict abortion access, as its governing legislation provides for states the ability to restrict abortion coverage in privatized health care plans. The latest data indicates that 50% of states have done so.<sup>19</sup> The effects of restrictive abortion legislation are exacerbated when examining where abortions are available. Many women seeking an abortion must travel as abortion services are not available in 90% of US counties.<sup>20</sup> In practice, this allows women who are financially stable, are able to take time off work, fund the travel, and may have more comprehensive health insurance to more easily access an abortion. Not only that, not having access, or being denied access to abortion, can lead to future economic challenges.<sup>21</sup> Compounding the economic barriers to abortion are geographic barriers, as the states with the most restrictive laws tend to be in the Southern and Midwestern region.<sup>22</sup> In 2011 alone, there was more than four times the number of performed abortions in New York than in South Dakota.<sup>23</sup>

### Legal Source of Obligations

Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) obliges States Parties to provide for the highest attainable standard of health, including reproductive and sexual health.<sup>24</sup> This right is interdependent and indivisible with other rights, including the right to life, security of the person, and equality.<sup>25</sup> The ultimate goal of the right to health is for each individual to have the ability to take care of their own health.<sup>26</sup> Abortion services must be available, accessible, acceptable and of good quality.<sup>27</sup> The current state of abortion access in the United States described above demonstrates that these requirements are not being fulfilled.

It is recommended that the United States of America:

- Enact State legislation to remove restrictive regulations regarding abortion access to ensure that the right to an abortion is realized in practice and that accessible and safe abortion services are distributed equally geographically;
- Recognize the role that the availability of abortion has in the exercise of women's self-determination rights to pursue their personal economic development, as the economic

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<sup>19</sup> Linda J. Beckman, "Abortion in the United States: The continuing controversy," *Feminism & Psychology* 27, no. 1 (2016): 104, DOI: 10.1177/0959353516685345.

<sup>20</sup> Alice F. Cartwright et al., "Identifying National Availability of Abortion Care and Distance From Major US Cities: Systematic Online Search," *Journal of Medical Internet Research* 20, no. 5 (2018): 2, DOI: 10.2196/jmir.9717.

<sup>21</sup> Diana Greene Foster et al., "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States," *Am J Public Health* 108, no. 3 (2018): 412, DOI: 10.2105/AJPH.2017.304247.

<sup>22</sup> Beckman, "Abortion in the United States," 108.

<sup>23</sup> Ibid.

<sup>24</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 16 December 1966, Art. 12; Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, (Geneva, CH: Committee on Economic, Social and Cultural Rights, 2000), para. 21.

<sup>25</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 22: on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, (Geneva, CH: Committee on Economic, Social and Cultural Rights, 2016), para. 10.

<sup>26</sup> Hannah Neumeyer and Amanda Klasing, "Menstrual Hygiene Management and Human Rights: What's it all about?!" (draft paper, Menstrual Hygiene Day, 2016), 8.

<sup>27</sup> Office of the High Commissioner for Human Rights, *Information Series on Sexual and Reproductive Health and Rights Abortion*, (Geneva, CH: United Nations Office of the High Commissioner for Human Rights, n.d.), 2.

think tank McKinsey Global Institute found that “the global economy would grow by \$28 trillion by 2025 if women participated in the labour force to the same degree as men”;<sup>28</sup>

- Expand insurance coverage under the Affordable Care Act to ensure all methods of contraception are available;
- To enact legislation that recognizes that late-term abortion may be necessary for the health and well-being of the mother; and
- To refrain from politicizing women’s health and recognize its role in overall women’s health and the right to an adequate standard of living.

## **Puerto Rico, Hurricane Maria and Environmental Racism**

### **Background**

Puerto Rico is an unincorporated U.S. territory. Its 3.5 million inhabitants are U.S. citizens.<sup>29</sup> In August 2017, it was devastated by Hurricane Maria, with nearly 3,000 casualties.<sup>30</sup> Despite advance warnings of how disastrous Maria would be, President Trump did not declare a state of emergency until after the storm. In comparison, with other deadly hurricanes in the same year such as Hurricane Harvey in Texas, President Trump declared a preparatory state of emergency before the hurricane arrived. When FEMA began to send staff after to help with the recovery of the hurricane, FEMA sent 1700 to Puerto Rico, compared to approximately 2600 sent to Texas.<sup>31</sup> In terms of financial support, FEMA’s contribution to housing repair grants in Texas was nearly double the amount for housing repair grants in Puerto Rico. Even more concerning is the fact that the money went to 51,000 fewer people.<sup>32</sup> When individuals did receive housing assistance in Puerto Rico, 66% received less than \$3,000. During the recovery from Hurricane Katrina, FEMA spent \$9.9 billion to assist in infrastructure building. There has been no similar response in Puerto Rico.<sup>33</sup>

The disparate response by FEMA was compounded by Puerto Rico’s pre-existing public debt of over \$73 billion.<sup>34</sup> The United Nations Independent Expert on the effects of foreign debt on human rights has highlighted that the adopted austerity measures to deal with the debt have negatively impacted the realization of economic, social and cultural rights in Puerto Rico.<sup>35</sup> For example, some of the adopted austerity measures have negatively affected “public education, healthcare, and pensions of public employees.”<sup>36</sup> These adverse effects have only been amplified after Hurricane Maria. Due to its large amount of debt, Puerto Rico does not have the means to rebuild crucial infrastructure, such as roads and electricity. Water contamination has led to a lack of clean drinking water and outbreaks of disease.<sup>37</sup> In 2018, some individuals did not have

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<sup>28</sup> McKinsey Global Institute, *The Power of Parity: How Advancing Women’s Equality Can Add \$12 Trillion To Global Growth*, New York, USA: McKinsey Global Institute, 2015), 2.

<sup>29</sup> Immigration and Nationality Act of 1952, 8 U.S.C. 1402 (1952).

<sup>30</sup> Steve Gorman, “Puerto Rico’s death toll from Hurricane Maria raised to nearly 3,000,” Reuters, August 28, 2018, <https://www.reuters.com/article/us-usa-puertorico-maria/puerto-ricos-death-toll-from-hurricane-maria-raised-to-nearly-3000-idUSKCN1LD2DK>.

<sup>31</sup> Annette M. Martinez Orabona et al., October 26, 2017, in Office of the High Commissioner for Human Rights, [https://www.ohchr.org/Documents/Issues/Poverty/VisitsContributions/USA/PRLDEF\\_AI.pdf](https://www.ohchr.org/Documents/Issues/Poverty/VisitsContributions/USA/PRLDEF_AI.pdf), 8.

<sup>32</sup> Frances Robles and Jugal K. Patel, “On Hurricane Maria Anniversary, Puerto Rico Is Still in Ruins,” The New York Times, September 20, 2018, <https://www.nytimes.com/interactive/2018/09/20/us/puerto-rico-hurricane-maria-housing.html>.

<sup>33</sup> Martinez Orabona, 8.

<sup>34</sup> Ibid., 1.

<sup>35</sup> Ibid., 3.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., 5-6.

running water and waiting for repairs.<sup>38</sup> Approximately 25% of Puerto Ricans daily lives are still affected by the aftermath of Hurricane Maria.<sup>39</sup>

### Legal Source of Obligations

Numerous economic, social and cultural rights were violated in FEMA's response to Hurricane Maria, including the right to life, the right to clean water and sanitation, the right to an adequate standard of living, and the right to non-discrimination. However, both domestically and internationally, the United States has been slow to recognize these rights, as they have neither ratified the ICESCR and nor included economic, social and cultural rights in its Bill of Rights.<sup>40</sup> Despite the lack of ratification, the United States did sign the treaty in 1977.<sup>41</sup> Under Articles 10 and 18 of the *Vienna Convention on the Law of Treaties*, when a State signs a treaty, it is obligated to comply with the provisions in good faith and not to engage in acts that are contrary to the treaty.<sup>42</sup> Trump and FEMA's response to Hurricane Maria constitute acts that have resulted in human rights violations that are contrary to the object and purpose of the ICESCR. Additionally, Trump's response to Puerto Rico violates the principle of non-discrimination found in Article 2(2) of the ICESCR and Article 2 of the *Universal Declaration of Human Rights* (UDHR).<sup>43</sup>

It is recommended that the United States of America:

- The President of the United States should instruct FEMA to use its mandate to financially assist in infrastructure rebuilding, akin to its efforts in New Orleans after Hurricane Katrina; and to specifically use some of this funding to address the persistent water contamination on the island;
- Realize the principle of non-discrimination in the realization of economic, cultural, and social rights for all Americans, regardless if they live in the continental U.S. or Puerto Rico;
- Adopt policy measures that will address Puerto Rico's growing debt without having negative effects on human rights, unlike the current austerity measures that affect the realization of the right to education, the right to health and the right to social security; and
- Adopt policies that recognize the growing threat of climate change and climate change as a threat multiplier, as climate change was an aggravating factor in the level of Hurricane Maria's destruction.<sup>44</sup>

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<sup>38</sup> Robles and Patel, "On Hurricane Maria Anniversary, Puerto Rico Is Still in Ruins".

<sup>39</sup> Samantha Schmidt and Arelis R. Hernandez, "Puerto Rico After Maria A Year of Disruption," Washington Post, September 12, 2018, [https://www.washingtonpost.com/graphics/2018/national/a-year-after-hurricane-maria-a-puerto-rican-town-is-still-in-upheaval/?utm\\_term=.82bb8d6984fc](https://www.washingtonpost.com/graphics/2018/national/a-year-after-hurricane-maria-a-puerto-rican-town-is-still-in-upheaval/?utm_term=.82bb8d6984fc).

<sup>40</sup> UNOHCHR, "Status of Ratification"; U.S. Const. amend. I- X.

<sup>41</sup> UNOHCHR, "Status of Ratification."

<sup>42</sup> Dag Hammarskjöld Library, "What is the difference between signing, ratification and accession of UN treaties?," <http://ask.un.org/faq/14594>.

<sup>43</sup> UNGA, "ICESCR," Art. 2(2); Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, (Geneva, CH: Committee on Economic, Social and Cultural Rights, 2009), para. 5.

<sup>44</sup> Oliver Milman, "Climate change is making hurricanes even more destructive, research finds," The Guardian, November 14, 2018, <https://www.theguardian.com/environment/2018/nov/14/climate-change-hurricanes-study-global-warming>.