

**Issues for the Human Rights Committee to Consider With Regard to
Continued De Facto Racial Segregation of Public Schools in the United
States and Articles 26 & 27, International Covenant on Civil and
Political Rights**

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I. Continued *de facto* segregation in the United States

In 1954 the United States Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954), ending the legal doctrine of segregation in the public schools in the United States. Today, more than fifty years later, United States public schools are still largely segregated. More alarmingly, segregation in schools across the United States is increasing. Gary Orfield, *Schools More Separate: Consequences of a Decade of Resegregation (2001)* (hereinafter *Gary Orfield*). Since 1968, the lowest percentage of African American students attending a predominately black (90%-100%) school was achieved in 1980 with 33.2%. In the years following, that number has steadily risen. Data from the 1998-1999 school year show that 36.5% of African American students nationwide now attend predominantly black schools. *Id*, Table 9 at 31. The segregation of Latino students, never the subject of as much media attention or legislative action as African American segregation, has risen steadily over the past 30 years, and now 36.5% of Latino students attend predominantly Latino schools. *Id*

A. Causes of Segregation: population movement and school organization

The *de facto* segregation of schools in the United States has its roots in both population movements, “white flight” for example, and in the manner that school districts are created, funded, and regulated. School segregation has a strong adverse effect on the local communities, school systems, and students for which the U.S. legal system offers no remedy. This situation violates U.S. obligations under both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

The causes of the racial segregation seen in the United States today are twofold. First, increasingly large numbers of economically advantaged, middle class citizens have moved from large cities to suburban areas. As those suburban areas start to fill, and reflect the “problems” of city life, the middle class population moves to ever more distant communities. Since suburban residential land values tend to be higher than those in urban centers, and this value increases commensurate with the desirability of the area, residential areas in the United States are clearly striated by wealth. Furthermore, statistics show that the most affluent population in the United States is the white population and, as logically follows, the population in the most expensive suburban regions tends also to be largely white.

The United States school system divides schools into districts, political subdivisions within each state that have power over the schools within their area of influence. Land use and division are among the powers traditionally reserved for the individual state, and state governments typically delegate the power to define school districts to the local municipal governments. District size and composition vary state to state but districts generally encompass a city or town. Creation of new suburban municipalities leads directly to the creation of new school districts and district enrollment reflects the demographics of the community. Therefore, the movement of affluent whites away from urban centers creates school districts not only striated by economic status but also by race.

The National Center for Educational Statistics (NCES) is a division of the U.S. Department of Education charged with the collection and publication of data concerning primary and secondary public education in the United States. In its most recent report, the NCES found that the national average of students attending school in a large or mid-sized city was 31.5% during the 2002-2003 school year. *NCES Public Elementary and Secondary Students, Staffs, Schools and School Districts; School Year 2002-03 Table c-50, at 51* The report concluded that, on average, 62.4% of students attending schools in such cities are minority students. The report also indicates that these same minority students compose only 28% of the total enrollment in United States schools. *Id Table c-6 at 51.*

The enrollment statistics vary widely state by state, both with respect to the number of students attending school in large or mid-sized cities, and the ethnic composition of those school bodies. New York, for example has 26.2% of its students enrolled in large or mid-sized cities, and 80% of students attending school in those cities are minority students. Conversely, Nebraska reported 32% of its students as enrolled in large or mid-sized cities, with a 31.1% minority enrollment in those city schools. Minority students, on a national average, are present in either a disproportionately high or disproportionately low numbers. Kentucky, for example, reported 55.7% of its enrollment as “small town or rural” and minority students represented only 4.7% of enrollment in those schools.

These data only represent state and national averages. Enrollment -- both total enrollment and minority enrollment -- varies greatly from one district to the next within each state. A 2004 study by Chungmei Lee of the Harvard Civil Rights Project considered the case of Boston and its surrounding suburbs for the 2001-2002 school year. The study, using NCES data for the city, found that 76% of the total students enrolled in the Boston metropolitan area are white, and that 8% of all area students are enrolled in schools within the city of Boston. Within the city of Boston, 85% of enrolled students are minority students. In contrast, the outermost suburbs account for 59% of total enrollment in the Boston metro area and 91% of students enrolled in those schools are white. *Lee at 7.* Similarly, the Chicago Public School District, an urban school district, reported only an 8.8% white enrollment for 2004. *Chicago Public Schools.* As of the 1998-99 school year the 26 largest school districts nationwide enrolled about 10% of the nation’s students. Of these districts, Albuquerque and Tucson were the most racially integrated, with 42% and 44.4% white enrollment, respectively. The Detroit and Washington D.C. districts were the least integrated with only 4.3% white enrollment in each city. *Gary Orfield at 25.*

The Situation in Minnesota

The Minneapolis-St. Paul (Twin Cities) metropolitan region has one of the nation’s lowest poverty rates, that is, 6.7% in 2000. As with other urban centers, poverty is borne disproportionately by the central cities of Minneapolis and St. Paul, with 16.4 % of the residents living below the poverty line versus 4% in the suburbs. School segregation, while expected to mirror this divide, is even more disparate than would be

predicted with two-thirds (67%) of students in Minneapolis Public Schools qualifying for the free and reduced-price lunches. The Richard B. Russell National School Lunch Act provides for free and reduced cost meals for children from families that meet the income eligibility requirements, as such, the number of students in a particular district who qualify for the program is a direct measure of the income level of families served by the district. *Food and Nutrition Service, USDA, Child Nutrition Programs Income Eligibility Guidelines, Federal Register, Vol. 70, Num. 52, March 18, 2005*

Myron Orfield, author of *American Metropolitics: The New Suburban Reality*, has reported that during the 1960s, the Minneapolis School District made racially discriminatory decisions that caused and contributed to racially segregated schools. These decisions violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Among the many discriminatory actions found unconstitutional was how attendance zones were drawn to create racially identifiable schools. The resulting 1972 federal school desegregation case brought by the NAACP against the Minneapolis Public School District produced a desegregation remedy that lasted only a few years and affected only schools within the city boundaries. At the time, Minneapolis schools were 14% nonwhite.

During the 1980s and 1990s, the Twin Cities region sprawled into one of the sparsest and most costly growth development patterns seen in the nation. The manner of growth led to school closings in older districts while areas on the edge of the region strained to build enough schools to accommodate the rapid influx of students. During those decades, the region, especially its central cities, became more racially and ethnically diverse. Through immigration and migration, the Minneapolis school district gained higher shares of minority and poverty enrollments with the latter increasing from 43% to 66% between 1990 and 2000. By 2003, nearly half of Minneapolis schools were very much segregated with enrollments at 81-100% nonwhite. Sixty-eight percent of Minneapolis students currently qualify for free and reduced lunches. Even though the region experiences low rates of poverty, the concentration of poor children who are enrolled in Minneapolis schools is extreme in comparison to other, similarly sized, school districts.

In addition to white population movement and the resulting growth of new school districts in suburban regions, the leading cause of racial segregation in United States schools is the method by which districts are regulated and funded. School districts are largely funded through property tax revenues generated within their affiliated communities. As a result of the inequities this system of funding creates between districts, more affluent districts tend to be more exclusive and bar students who live outside the district from enrolling. Because the funding inequalities correspond to the racial inequalities, when the wealthier districts exclude students from outside the area, they essentially exclude minority students.

Some states have attempted to impose multi-district integration plans, but the Supreme Court, in *Milliken v. Bradley*, 418 U.S. 717 (1974), held that such measures were an improper remedy to a segregated district, unless the outlying districts had intentionally committed acts to foster segregation, or that the district lines had been drawn intentionally to segregate. Indeed the court found that “[The] Constitutional right of [minority] children residing in Detroit public school district was only to attend unitary school system in that district, and unless officials drew district lines in discriminatory fashion or arranged for white students residing in district to attend schools in neighboring districts, they were under no constitutional duty to make provisions for [Minority] students to attend such schools.” *Milliken at 747*. Additionally the *Milliken* Court found that “It is not true that, whatever racial make-up of school district population may be and however neutrally district lines have been drawn and administered, schools are never “desegregated” as long as [minority] students are in majority.” *Id.* Both in requiring intent, and in rejecting disproportionate enrollment of minority students *despite* the racial makeup of the district residents, *Milliken* sets a standard that is effectively too high to force any newly created district to integrate with minority students from a segregated inner city school, or to allow any of those inner city districts to force suburban schools to accept their students.

B. Harms associated with school segregation

As the U.S. Government acknowledged in its report to the Committee on the Elimination of Racial Discrimination in 2000:

Largely because of the persistence of residential segregation and the so-called ‘white flight’ from the public school systems in many larger urban areas, minorities often attend comparatively under-funded (and thus lower-quality) primary and secondary schools.

Continued United States racial segregation in schools harms minority students, predominantly minority school districts, and communities. Because the property values in inner cities tend to be lower than those in affluent suburbs, the inner city districts generate less revenue from property tax. Since school districts rely on property tax revenues for their funding, inner city, minority school districts are poorer funded in comparison to their affluent suburban, white, counterparts. Lower funding means fewer teachers, leading to larger class sizes; fewer materials, books, reference materials, or computers for example; lower salary for teachers, leading to less experienced or credentialed teachers, and shorter teacher employment terms, and fewer extra-curricular programs being offered. *C. Lee, Segregation and Educational Outcomes in Metropolitan Boston 5*

The effect on school districts is largely self-reinforcing. One of the key factors that United States homebuyers take into account when shopping for a home is the reputation of district schools. The poorer the reputation of the district the less likely homebuyers are to move there. Additionally as a district’s reputation declines existing homeowners tend to leave, continuing the population movement trend that leads to the situation. Additionally, the loss of population leads to lower property values within

district borders, and fewer homeowners to tax, ending with an even further reduction in school funding for those districts. Conversely, districts into which people are moving experience a growth of taxable homeowner residents, and generally an increase in property value, leading to a growth in property tax revenue, and more school funding. Myron Orfield, *American Metropolitcs: The New Suburban Reality* (2002).

The harm to minority community members is more direct. The lower funded schools, with the ensuing reduced access to resources, leads directly to a lower rate of high school completion. One recent study concluded that under-funded minority schools in Boston have only a 45% graduation rate, compared to 76% in the majority white suburban school districts. *Lee at 9*. This is not an anomaly limited to Boston. The top 47 most densely populated urban school districts each had a dropout rate nearly double the national average. *Id at 4*. A higher dropout rate in a district leads to fewer students from that district pursuing higher education. Nearly all high paying jobs in the United States and many “mid-level” jobs require some degree of higher education, while many more at least require high school completion. Minority students attending racially segregated schools therefore have lower access to lucrative jobs than students attending an affluent suburban school. Additionally, lower income schools are unable to provide the “advanced placement” classes and college preparation aid that many higher income districts provide. This further reduces the chance that a student attending school in such a district will be able to enroll in a college or university and severely limits access to the more prestigious educational institutions with higher admission standards. As most of the highest paying jobs in the United States require a college education, and many employers favor alumni from prestigious institutes, students who successfully complete high school may still be unable to compete for such jobs. Similarly, law schools, and other professional schools in the United States base their admissions standards largely on college grades. A disproportionate amount of high school graduates from a district leads to a similar proportion of college students, which limits severely the amount of professional students coming from a district. This then leads to a reduction of that district’s alumni in the fields of law, medicine, business, and other “professional” fields. Since minority students are far more likely to attend schools in lower funded, racially segregated school districts, the aggregate of this effect is that there are far fewer minority lawyers, doctors, accountants, etc., than there are white members of the same field. In addition to limiting access to the higher paying jobs, lower funding in minority attended racially segregated school districts, also limits political access for members of those communities. United States politicians, for example, are often law school graduates, or have at least completed college. Inhibited access to those institutions for minority students leads directly to political under-representation for minority communities.

In addition to loss of access to higher paying jobs and the political system, racial segregation in United States schools has a more pronounced harm on minority students. Lacking employment opportunities, some African Americans are ensnared by the criminal justice system. African-American inmates make up 44% of the population while African Americans are only 12% of the United States population. *Human Rights Watch, Incarcerated America* (April 2003). The rates of incarceration, weighted as they are against poor African Americans, have contributed to decline of community in urban centers. Changes occur in the family structure when a father is in prison, children of incarcerated parents are cared for by relatives or in the child welfare system and people

with criminal records are less able to find adequate employment to support their family so the struggle continues even after their release.

Furthermore, one recent report from the National Institute of Child Health and Human Development, a subdivision of the United States Department of Health and Human services, found that teenagers are more likely to choose friends of the same race in even moderately segregated school levels and the likelihood of an interracial friendship decreases the more the school is segregated, leading ultimately to the development of an “Us v. Them,” mentality in schools composed nearly entirely of one race. *NIH, Teen Friendships More Racially Segregated at Moderately Diverse Schools Integrated Friendships More Likely at Highly Diverse Schools (2002)*. Increasingly the workforce in the United States is interracial, and a lack of exposure to members of other races harms the formation of work relationships later in life. The “Us v. Them” social dynamic also harms students attending racially segregated schools by furthering the creation of interracial animus, and perpetuating ethnic stereotypes. Additionally, the same effects of racial segregation that the Court in *Brown v. Board of Education* noticed still apply today. Specifically the Court noted that such segregation infuses the segregated (minority) members with a sense of inferiority. Further, there is evidence that school violence is more prevalent in under-funded school districts. Young women enrolled at segregated, under-funded schools are also more likely than those attending more affluent schools to become pregnant before graduating high school. *Myron Orfield American Metropolitcs: The New Suburban Reality.(2002)* In its recent *Grutter v. Bollinger* decision, the Supreme Court noted several benefits that integration and multicultural enrollment offered both students in such environments and the community at large. Specifically the Court noted that students with a higher rate of exposure to members of other races were much more capable in the workforce later in life, as they were more comfortable working with a broad range of people. 539 U.S. 306, 321 (2003).

II. United States civil rights jurisprudence

The legal situation in America does little to remedy the problem of segregated schools. After *Milliken*, states cannot enforce integration plans across district lines. Similarly, the intent requirement used by the Court in *Milliken* is the predominate feature of U.S. civil rights jurisprudence. *Washington v. Davis*, for example, requires proof of intent in order to bring a challenge against racially discriminatory hiring practices. 426 U.S. 229 (1976). Economic status is not considered in U.S. civil rights law, and poverty is not a “protected class.” This has the effect of allowing for economic segregation in school districts, which leads directly to racial segregation, as racial minority members tend to be less affluent than whites. Some federal statutes do address the problem of housing segregation. The Fair Housing Act, for example, makes no mention of intent with respect to housing discrimination. Different courts have interpreted the requirements of the Act differently, but none have yet reached the high threshold set in *Milliken*. However, the Act does nothing to directly alleviate the problem of racial disparity in housing and community resources or the resultant school segregation.

The recent affirmative action cases do offer some hope for integration at the higher education level. The Court in *Grutter* upheld the University of Michigan’s affirmative action program at the law school, noting the school’s interest in protecting the

educational benefits that come from diversity for its students. In a similar case, the Court struck down University of Michigan admissions policies that made race “the decisive factor” in student admission. *Gratz v. Bollinger*, 539 U.S. 244 (2003). Affirmative action programs in higher education do not address the problems of segregation in primary schools however, and while colleges may take race into account when accepting applicants, they will still look at other criteria. Since heavily segregated under-funded public schools do not offer the same level of college preparatory classes or material as better funded, white-majority schools, students from those schools will still face difficulties in competing for openings at many higher education institutions.

III. School segregation under international law

Because of its continued *de facto* school segregation, the United States fails to meet many of its obligations under both the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, and the International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

The International Covenant on Civil and Political rights, article 26 assures to all people equal protection under the law without discrimination. It further requires the law of all party states extend protection from discrimination to all persons. Article 26 prohibits discrimination, regardless of discriminatory intent. By requiring intent in its Equal Protection Clause analysis, the Supreme Court deviates from the Article 26 standard. The segregated school system in the United States discriminates against minority students. Those students are unable to attend better funded schools outside of their segregated districts. This disadvantage further hinders minority students, both in their professional careers and with respect to their social lives and physical wellbeing. School districts, as subdivisions of the individual states’ political entities and with respect to federal government programs and funding, are within the range of “the law” referred to in Article 26, and the continued outright segregation of those districts is not consistent with the belief that “All persons are equal before the law.” G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 17.

The high threshold “intent” based requirement set out in *Milliken*, combined with property tax-reliant funding basis for public schools and the broad power of states to create districts, effectively leaves no legal remedy. This situation comes directly into conflict with Article 2, subsection (3)(a) of the Covenant. While some states do interpret the Fair Housing Act as not requiring intent and thereby being a possible remedy to one of the factual causes of school segregation, the students and their families already in a segregated district are not able to take advantage of the Act to integrate, nor can the state force any integration plans without proving intent on the part of the district to exclude minorities. Nor are the affirmative action programs in place at many institutes of higher learning enough to provide an effective remedy. Some may be unconstitutional in nature, and thereby voided by the Court, but even those that survive do not mitigate the harms caused by segregation in primary schools. Nor are these programs nationwide, again limiting access to them.

Article 24 of the Covenant requires that states extend to all minors and their families the protection that is due them. One aspect of that protection is education. Children who receive a substandard (as a result of under-funded schools) public education have been harmed, both economically and developmentally. Segregation of schools, as already shown, has a noticeable effect on the social development of children and the economic opportunities available to minority students later in life. In a similar vein, Article 25 dictates that “Every citizen has both the right and opportunity... [subsection (b)]... to be elected at genuine periodic elections.” Segregation in U.S. schools does not deny minority school graduates the right to be elected at such general elections; it does however severely limit their opportunity to be elected, at least to higher level political positions. The party system in America requires that a candidate receive some backing from their chosen party and parties are far less likely to back a candidate who did not complete any form of higher education. Thus, statistically, minority students have, less of an opportunity to be elected to higher level state and federal level government posts later in life than do students attending school in an affluent white community.

The General Comments on the Covenant (U.N. Doc. HRI/GEN/1/Rev.1 at 2) reminds state parties that the Covenant applies not only to the recognition of civil rights, but to their enjoyment as well. While there can be little doubt after *Brown v. Board of Education* that America recognizes the right to equal opportunity schools, the current factual situation in U.S. public schools indicates that the right has yet to be fully enjoyed under the Covenant. (HRI/GEN/1/Rev.1 at 4) Additionally, General Comment 17 (U.N. Doc. HRI/GEN/1/Rev.1 at 23) recognizes that state parties should pay particular attention to children. That comment reminds the state parties that children should be protected against all forms of discrimination on the grounds of *inter alia* race, ethnicity or property. The economic effect of school segregation and the basis of funding for public schools discriminates against children living in under-funded minority school districts, hindering their access to higher education and inhibiting their full range of social development.

De facto segregation in U.S. schools also conflicts with several obligations under the International Convention on the Elimination of All Forms of Racial Discrimination , G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

The preamble of the Convention holds that all state parties are resolved to “adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations.” The United States, while clearly addressing the legal problem of racial segregation in schools more than 50 years ago has yet to adopt any necessary measure for eliminating the continuing *de facto* segregation in those schools. The definition of “racial discrimination,” into which this segregation clearly fits, is present in Article 1 of the Convention, and specifically includes any “distinction, exclusion, restriction or preference based on race... which has the *purpose or effect* of nullifying or impairing... enjoyment or exercise, on an equal footing, of ... fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Education fits well within the bounds of fundamental freedoms on both the economic and social level. That definition also specifically adopts a standard that takes into account the effect of a distinction based on race, not just its intended purpose. The intent based standard of *Milliken* does not

conform to that definition as it fails to take into account the actual discriminatory effects of school districting.

Article 2, subsection 1(b), binds state parties to withhold sponsorship from any party or individual that commits acts of racial discrimination. School districts and the state governments which authorize their existence do receive federal funding and are thereby directly “sponsored” by the United States government. Additionally, subsection 1(c) requires governmental review of its national and local laws and policies that have the effect of either creating or allowing the perpetuation of racial discrimination anywhere in the country. The existing school districting method allows the creation of new segregated districts and the continued existence of those already in place. Article 2(1)(c) therefore requires governmental review of school districts, both the laws governing them and their individual policies.

Article 5 of the Convention calls for the elimination of discriminatory barriers to the enjoyment of a variety of rights. Specifically, Article 5(e)(v) requires equal access for all citizens to “the right to education and training.” While legally all citizens have the right to education, the continued segregation in U.S. public schools is a barrier to the enjoyment of that right. Article 6 requires that state parties offer effective “protection and remedies” to all citizens against all acts which violate the rights enumerated in the Convention. As mentioned above, the *Milliken* standard creates a high threshold to enforce integration measures and exempts entirely districts that had no “discriminatory intent” from those measures. While some districts may still be forced to desegregate even taking into consideration that high threshold, it does not provide effective relief to a majority of students in segregated schools or any significant amount of protection against the creation of new segregated districts.

Article 7 of the Convention notes the importance of the field of education. It signals a recognition that prejudices arising in the area of education are a significant barrier to interracial understanding and friendship. The importance that the Convention places on education indicates that violations in that area are especially egregious, as they can lead from misunderstandings and animus to other forms of violations later in life. Education in this context should be understood not only to include the actual curricula of public schools but also the opportunity to learn about different cultures from exposure to members of other racial groups. Segregation utterly destroys chances for significant classroom exposure to other racial groups.

The Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), likewise places great importance on education. Article 26 of the Declaration notes that everyone has a right to education and dictates that primary education should be free. It further dictates that higher education be made available on the basis of merit. Under-funded segregated schools do not prepare students for college as ably as their well-funded suburban counterparts. Thus, while minority students merit higher education the same rate as white students, their access to that education is impaired by the poorer preparation that under-funded segregated schools often provide. Subsection (2) of that article indicates that education be directed at the full range of human development as well as at the promotion of *inter alia* racial tolerance and understanding. Segregated schools do not address these concerns. Segregated schools limit interracial exposure in the classroom and limiting exposure limits understanding, and may lead to racial animus. Article 26, subsection (3) of the Declaration notes that

parents have the right to choose the kind of education that their children receive. School districts have the power to refuse students from other districts and district-sponsored integration plans have a judicially imposed high “discriminatory intent” threshold, making better funded, majority-white, schools largely inaccessible to families living in minority, segregated, school districts. While this provision does not strictly dictate the right to choose individual schools, the *kind of education* language certainly encompasses quality of education.

Article 29 of the Declaration sets a broad prohibition on barriers to the exercise or enjoyment of rights. The continued segregation in U.S. schools creates such a barrier and does not qualify as a permitted barrier enumerated in Article 29.

The comments on country reports from the Human Rights Committee often reflect concerns over education. For example, the 1995 report on Paraguay, U.N. Doc. A/50/40, paras. 192-223, notes that the combination of poverty and the lack of education limits their ability to enjoy civil and political rights. As segregated schools are often under-funded in impoverished districts, poverty is a chief concern in segregated districts. Since under-funded schools do not provide the same level of college preparation as more well-funded schools, they limit the access to such education. The two concerns noted in the Paraguay Report are therefore present in the current situation in United States public schools. Similarly, the 1999 report on Mongolia, U.N. Doc. CCPR/C/79/Add.120, indicated that efforts to extend access to education, which is readily available in urban areas, to rural areas needed continuation. While all areas of the United States have schools, the funding that they receive varies greatly from district to district, leading to disparities between segregated urban schools and (largely) white attended suburban schools.

In its 67th session, the Human Rights Committee heard a report on school funding in Canada. The issue was whether a country could fund Roman Catholic schools while denying funding to other religious schools. The Committee decided that if a state is providing funding to one type of religious school it should also provide such funding to schools of other religions. *Grant Tadman et al (represented by Mr. Brian Forbes from Forbes Singer Smith Shouldice, a law firm in Ottawa, Ontario) v. Canada, Communication No. 816/1998, U.N. Doc. CCPR/C/67/D/816/1998 (4 November 1999)*. The United States federal government provides some funding to public schools for particular programs. Individual state governments provide funding to public schools but much of the funding for such schools comes from local property tax revenues, creating discrepancies between schools in impoverished areas and those in affluent districts. Tying school funding to property taxes therefore favors wealthy school districts, which are predominantly white. The Convention on the Elimination of all Forms of Racial Discrimination indicates that “*property*” and race, like religion, are protected categories, especially with respect to children. Therefore, while the United States does provide some funding across the board, it does directly favor children living in wealthier districts, a situation that closely mirrors the *Tadman* situation in Canada.

In its combined Second and Third Periodic Report of the United States of America to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, October 21, 2005, the United States did little to address to the problem of continued school segregation,

In paragraph 28 of its combined Second and Third Periodic Report to Committee on Human Rights, the United States commented on its Equal Protection protections. The language in that paragraph, concerning “government treatment,” indicates continued emphasis on government intent as the standard under the Equal Protection Clause, not the disparate effects that governmental action might have. Neither the Convention on the Elimination of all Forms of Racial Discrimination (G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969) nor the International Covenant on Civil and Political Rights (G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.) mentions intent, and the Convention specifically notes that discriminatory acts are defined either by the intention behind them or their discriminatory effects.

Paragraph 33 of the U.S. Report notes the continued interest in affirmative action programs in the United States. The Report notes that governmental agencies can address discriminatory acts where the effects of those acts might be extended by government policies. Segregation in schools is discrimination, and it certainly might be extended by government policies. Therefore, according to the Report, the federal government does have the authority to regulate school segregation.

Paragraphs 46 and 47 of the U.S. Report indicate that the Equal Protection Clause extends to individual schools and that the Department of Justice investigates possible civil rights violations in schools. They do not however indicate whether those same protections are extended at the district level. Since school segregation occurs at the district level as well as the individual school level, equal protections and federal investigations at that level are necessary to combat the situation. Similarly, paragraph 49 notes that the Department of Education monitors civil rights violations in institutions receiving federal funding. The Department of Education does not, however, investigate such claims on the district or state level with respect to funding discrepancies or racial segregation. Segregation occurs first at the district level and in order for the Department of Education to take any corrective action it must investigate at that level. Taking into account these paragraphs, as well as the report of civil rights monitoring programs in paragraph 367, it is apparent that the focus of the United States is on the individual school or college level. The United States laudably considers these specific violations but it still largely ignores violations on the wider, district, level.

The Report, in paragraph 48, addresses federal programs that extend access, for all students, to a variety of opportunities. In particular it mentions “magnet” schools and financial assistance to school districts for the benefit of Native American, Hawaiian and Native Alaskan students. These programs do not address the inherent discrepancies between segregated districts however, nor do they extend such financial assistance to segregated districts. Equal extension of financial aid for higher education to minority students, while commendable, does not address the problems of disparate funding in primary education, and the adverse impact that poorer funding for minority districts has on minority student access to college education. The “No Child Left Behind” Act of 2001 (20 U.S.C. 6301 et seq.), while attempting to address the discrepancies between school districts with respect to educational quality, does not address school segregation, or its non-academic impacts on students. Additionally, the mechanisms employed by the Act may exacerbate the very problems that the Act addresses. States are required to set

individual advancement standards for school districts and individual schools. By not requiring equal standards for all schools within a state, the Act allows the continued discrepancies between districts, regardless of “advancement” in academic areas. The main enforcement mechanism in the Act is the receipt of federal funds. A state that fails to provide adequate standards under the Act is at risk of losing federal funding for its schools. Since federal funding is one of the equitable sources of funding for all schools, there is a risk that loss of funding would simply widen the gap between wealthy and impoverished (segregated) schools. The final part of the Act mentioned in the U.S. Report authorizes federal corrective action if a school or district fails to meet its standards under the Act. Since the Act does not mention segregation, or any other civil rights violations, it is ineffective at addressing these concerns.

In short, there exists *de facto* school segregation in the United States, both on the district and on the individual school levels. Those segregated schools and districts attended by minority students are generally under-funded when compared to their white counterparts. The segregation of schools has a variety of negative effects on minority students, communities and school districts. There is no legal remedy readily available for students, districts, or communities affected by the continued segregation, nor are individual states currently able to enforce integration policies. The continued practice of school segregation, and the lack of remedies available to those affected by it, implicate United States obligation under The International Covenant on Civil and Political Rights, and the Convention on the Elimination of all Forms of Racial Discrimination. Following is a list of suggested questions for the Human Rights Committee to ask the United States representative at the upcoming state report concerning the causes, effects, and implications of continued school segregation in the United States.

Questions to the United States Concerning Continued School Segregation Within
its Jurisdiction

1. To what extent are schools in the United States segregated by race?

Specifically, what is the discrepancy between the racial make up of large urban districts (Chicago, Boston, Los Angeles, New York City, and Detroit, for example) and their surrounding suburbs? What about rural communities?

2. In those areas showing racial segregation in public schools, is there a funding discrepancy between segregated districts?

3. What, if any, effect does school funding have on the quality of education provided by schools, such as access to higher education and preparedness for eventual entrance into the workforce?

4. What non-educational effects does racial segregation in public schools have on minority students? What effects does racial segregation in public schools have on minority communities?

5. What are the legal remedies available to students, families and school districts affected by racial segregation? Specifically, to what extent have Equal Protection Clause challenges to *de facto* school segregation been effective? To what extent has the United States implemented provisions of the Civil and Political Covenant forbidding *de facto* as well as intentional discrimination?

6. What federal assistance is available to minority students to mitigate the harm caused by school segregation?

7. What actions can an individual state take to desegregate school districts within its boundaries?

8. What effect does the federal “No Child Left Behind” Act have on school segregation? To what extent does that Act narrow the funding gap between segregated districts? How does it allow the individual states to reduce this gap? What effect would cutting federal funding to under-funded schools which did not meet the criteria set out in the “No Child Left Behind” Act have on those schools?

9. To what extent are U.S. school districts segregated by economic status?

10. What effect does the existence of segregated school districts have on other forms of discrimination, such as housing segregation?

11. To what extent does the persistence of de facto segregated schools in the United States violate the obligations of the United States under the International Covenant on Civil and Political Rights?

12. What effect would the establishment of metropolitan area school systems in the United States have upon the achievement of racial desegregation in both schools and residential neighborhoods?

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