

The US Criminal Justice System: Interference with Economic Rights and the Right to a Family

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The Ella Baker Center for Human Rights advances racial and economic justice to ensure dignity and opportunity for low-income people and people of color. We believe that every person has the right to safety, to dignity, to equality, and to self-determination. Our work aims to defend and advance these rights in the United States. For over 17 years, we have formed unlikely coalitions and won positive change that breaks the cycle of disinvestment and incarceration in communities of color. Our work contributed to closing 5 of 8 abusive youth prisons in California and reduced prison populations by 80%. We have also built California's first statewide network for families of incarcerated youth to advocate for change.

Forward Together is a multi-racial organization that works with community leaders and organizations to transform culture and policy to catalyze social change. Our mission is to ensure that women, youth and families have the power and resources they need to reach their full potential. By developing strong leaders, building networks across communities, and implementing innovative campaigns, we are making our mission a reality. Forward Together staffs and leads Strong Families--a network of individuals and organizations working to ensure that every family has the rights, recognition and resources the need to thrive. We are engaging hundreds of organizations and thousands of individuals in our work to get there.

Research Action Design (RAD) uses community-led research, transformative media organizing, technology development, and collaborative design to build the power of grassroots social movements. We are a worker-owned collective. Our projects are grounded in the needs and leadership of communities in the struggle for justice and liberation.

Endorsed by:

Dignity and Power Now (Los Angeles, California), Resource Information Help for the Disadvantaged (Richmond, Virginia), The Ohio Organizing Collaborative (Youngstown, Ohio), Direct Action for Rights and Equality (Providence, Rhode Island), DC Jobs With Justice (Washington DC), Workers Center for Racial Justice (Chicago, Illinois).

I. SUMMARY

1. In administering its criminal justice system, the United States falls short of fulfilling its obligations under international human rights law. According to the US Department of Justice there are nearly 7 million people under the supervision of the United States' adult correctional system.ⁱ There are roughly 65 million American adults with criminal records.ⁱⁱ People of color are grossly overrepresented in all aspects of the criminal justice system. For many of these people, their contact with the criminal justice system has resulted in extreme interference and often-permanent deprivation of the *right to family*. The consequences of a criminal conviction also follow a person long after they have been released from prison. Specifically, formerly incarcerated people are routinely deprived of their *economic rights* when they are denied employment opportunities solely due to their prior criminal conviction. These violations affect not only the individual who was convicted of a crime, but has also had disastrous consequences for their families and communities.
2. The Ella Baker Center for Human Rights, Forward Together and Research Action Design have partnered with 20 community-based organizations on a participatory research project to document the effects of incarceration on the family and community. The organizations that we are partnering with work directly with formerly incarcerated people and their families on a variety of issues including gender justice, criminal justice reform, economic justice, workers rights, and racial justice. Our research consists of focus groups and surveys with formerly incarcerated people and families of currently and formerly incarcerated people. The information contained in this report is first hand information that was shared with us during the focus groups. In 2014, roughly 30 focus groups were conducted in 15 states.
3. We recommend that the United States government act with urgency to implement the following reforms:
 - Require the well being of the family to be considered and prioritized and the rights of the family be respected in juvenile and criminal justice proceedings.
 - Remove barriers to employment, housing, civic engagement, and education for formerly incarcerated people and commit resources to create opportunities for formerly incarcerated people.
 - Implement reforms that eliminate racial disparities and excessive sentencing by cutting sentences by at least half for all non-violent, non-serious, non-sexual offenses.
 - Create alternative ways to protect and promote public safety without sending people to prisons or jails.
 - Invest in programs and services to rebuild the communities that have been most damaged by incarceration.

II. LEGAL FRAMEWORK

Right to Family:

5. The United States legal framework recognizes and protects the right to family as a fundamental right in the First and Fourteenth Amendments of the Constitution.
6. The right to family is protected under international human rights law under the following agreements: The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).

Economic Rights:

7. The United States legal framework ensures the right to equal protection under the Fourteenth Amendment to the United States Constitution.
8. The international human rights legal framework protects economic rights in the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights (ICESCR),

Recommendations from 2011 UPR:

9. With regard to the criminal justice system, the United States accepted the following recommendations which would improve the human rights violations faced by families who must deal with incarceration: improve living conditions in its prison and jail systems, take measures to prevent racial bias, review the mandatory minimum policies to assess disproportionate impact on racial and ethnic minorities, review alternative ways to handle petty crime and to ensure full enjoyment of human rights by persons deprived of their liberty. (Recommendations 70, 96, 97, 177, 179)
10. With regard to economic rights, the United States accepted the following recommendations which would improve the human rights violations faced by formerly incarcerated people with regard to employment, housing and other activities: promote equal socio-economic as well as educational opportunities for all both in law and fact, review federal and state laws to ensure compliance with the protection of the right to nondiscrimination in the areas of employment, housing, and take measures to end racial discrimination in housing, health, education and labor. (Recommendations 62, 67, 100, 109, 113, 197)

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Violations of the Right to Family

12. Our research and interviews with formerly incarcerated people have uncovered gross violations of the right to family due to contact with the criminal justice system. American courts and correctional facilities are not required to consider how the imprisonment of an individual will affect that person's family and community. As a result, millions of families who have experienced incarceration have experienced some form of denial of the right to family including permanent termination of parental rights, loss of custody, interference with reproductive rights, and denial of the right the health and protection of the family.
13. When pregnant women and mothers are arrested and incarcerated the well being of their children and families is not considered. Children in the United States are routinely traumatized when police forcibly and violently arrest their parents in the child's presence. After the initial arrest many parents have their parental rights permanently terminated. A family member in a focus group conducted in Portland, Oregon reflected on her nephew's loss of parental rights to the state following his incarceration,
14. *"Because he's been incarcerated he lost his parental rights to one of his sons and he was very involved in his son's life before he went to jail. The judge said my nephew abandoned his son when he was incarcerated so his son was put up for adoption and my nephew permanently lost his parental rights. My nephew tried to file the paperwork to keep his son but the paperwork didn't get delivered to the right people on time because he sent it from jail."*
15. Another family member in a focus group in Chicago, Illinois, reflected on her cousin's experience of giving birth in jail and losing custody of her child, *"My cousin was pregnant when she went to jail and gave birth to her baby in jail. The father of the baby came and got the child from the jail after the birth. If my cousin had been released that year, she would have been able to regain custody of her child, but they made her stay in jail for three years and when she was released she no longer had custody. That hurt the family because they stopped bringing the child around her after so long and she is unable to keep the child on the weekends. She can see the child like once a week or once a month. That's a challenge."*
16. A mother in our Akron, Ohio focus group also spoke about losing her children when she was incarcerated and the lack of concern for her children and family, *"My children were forced out of my home into somebody else's and then they had to go and stay with my mother until I got out of jail. So they've been thrown around in the system and nobody thinks about the children or the families or nothing."*
17. In addition to loss of custody and termination of parental rights, the criminal justice system often interferes with the reproductive rights of people in prison and their families. A man who participated in our focus group in Oakland, California was incarcerated for

nearly two decades and shared his story of being denied the right to protect the health of his daughter while he was in prison. He said,

18. *“When you're in prison, you can work a job and they pay you nickels per hour and over a period of time you can have a fair amount of money to send home to help take care of people especially when you're doing a life sentence you know you do 15, 16 years you can have a little chunk of money to send home to help them out. When our 11 year old daughter needed surgery to save her reproductive organs, my wife didn't have the money to pay for the surgery. I had the money from working in prison and I tried to send it to her but the prison system took so long with sending out my letter and check that my daughter ended up having to have her ovaries removed instead of repaired. Now she won't ever be able to have children of her own, just because the prison delayed sending the money I had for her.”*
19. Families also face profound economic struggles as a result of a family member being incarcerated. Since many prisons do not provide adequate food, clothing, or hygiene products, the costs for these items falls on the families of the incarcerated person. Families also bear the cost of staying connected and maintaining family relationships during the period of incarceration. Many families reported spending \$300-\$500 a month on food and supplies for their incarcerated loved ones as well as the cost of phone calls and visits. One woman who participated in a focus group in Detroit, Michigan reflected on her family's economic and emotional hardships,
20. *“I would say that ever since I came to this country in 2001, my lights had never been shut off. The first time was last month because instead of paying for my light, I'm going to see my son in jail. I'm going to put money in there for my son. Because it changes the way you see things. Your priorities changes when you have a child in jail and in my case, I know my son is innocent. So I try as much as I can to support him because I've seen—and I'm sorry to say this, I saw this woman crying because her son committed suicide and my son is very forgiving. Very. He wants to come out and continue with his life but the fact that his life was cut short makes me feel like I have to support him all the way through, and by supporting him I don't want him to lack money for whatever he's using in there and so I'd rather go without light in the house than not give him—So I think things have changed.”*
21. This mother's difficult decision between keeping the lights on in her home and visiting her child in jail is not uncommon. Families across the country are routinely forced to choose between basic necessities such as food, clothing and home expenses and supporting or staying connected to their families in prison or jail. These decisions carry heavy consequences and damage the stability and well being of families. The same mother from Detroit, Michigan shares how her son's incarceration affected the entire family's health and wellbeing,
22. *“I'm not the same, not the way I used to be, I used to be a go-getter. All my life I was trying to do exams, exams after exams...I think I stopped doing everything. I was working on my GRE to get a PhD. I stopped that and I don't see any hope if my son has to go down, so it has affected me, it has affected my husband. My husband*

became sick. He can't go to the hospital. He said, "Why should I go to the hospital?" It's like everybody is sad in my house. Everybody."

23. The United States should take the following measures to ensure that the right to family is protected for people who become involved in the criminal justice system:
- Require the well being of the family to be considered and prioritized and the rights of the family be respected in juvenile and criminal justice proceedings. Specifically, children should be protected and kept with family when their parents are arrested. Every effort should be made to avoid separating a parent who is a primary caregiver from their children including alternatives to incarceration and detention. If a parent must be incarcerated, every effort should be made to allow the parent to keep parental rights and make decisions regarding the well being of the child. If a parent must be incarcerated, every effort should be made for the child to stay with other family members that are capable of caring for the child even if the family members have criminal convictions.
 - Implement reforms that eliminate racial disparities and excessive sentencing by cutting sentences by at least half for all non-violent, non-serious, non-sexual offenses. When people do have to be incarcerated, they should not serve excessively long and disproportionate sentences.
 - Invest in programs and services to rebuild the communities that have been most damaged by incarceration. Some communities have suffered the devastating consequences of mass incarceration for multiple generations. These communities that have historically been most targeted by law enforcement and incarcerated at alarming rates need support to rebuild from the damage caused by mass incarceration. Programs like early childhood education, support for new mothers and job training programs can help rebuild communities and increase public safety without violating the fundamental right to family.

Economic Rights

24. For people who are returning home after serving time in prison, the denial of economic rights presents one of the biggest challenges to rebuilding their lives and supporting themselves and their families. Many of the families that we interviewed spoke of having to continue providing for their incarcerated family member even after they were released due to the barriers that formerly incarcerated people face in finding employment, housing and access to education and other services. Roughly 75-80% of people who are paroled from prison remain unemployed up to a year after release from prison.ⁱⁱⁱ Most of the formerly incarcerated people we spoke with identified barriers to employment as something that was among their top reentry concerns.
25. One formerly incarcerated young woman who participated in a focus group in Akron, Ohio shared, *"My family faced heavy emotional and financial tolls due to my*

incarceration, we faced a lot of long term losses. I'm still trying to acquire everything I lost since I was incarcerated. I have a felony assault conviction so everybody looks at me like I'm a criminal so it's hard for me to get a job. I have another baby on the way and it's hard for me to take care of them. There are things that I want to do in life that I can't do anymore. I wanted to be an attorney or judge or a pediatrician and I can't do those things now because I have this felony. I'm only 24 years old and it's like my life just came to a stop because of this conviction."

26. Some participants shared experiences of wage discrimination after returning home from prison due to their criminal convictions. Another participant in our focus group in Akron, Ohio said, *"Before I went to prison I was gainfully employed. I was a quality control manager at a steel plant and I was making good wages. The police actually came to my job to get me. I spent 11 and a half months in jail. With no evidence to convict me I was released from jail. I was rehired at the steel plant at a drastically lower wage. Then I had to miss 2-3 days of work for an illness and they didn't believe me. They thought I was doing something crazy so they fired me. Coming home from prison its just that much harder to convince someone that you're not going to re-offend that something's not going to happen and that you just can't get in trouble."*
27. For many formerly incarcerated people, a criminal conviction makes it virtually impossible to find a job because employers ask about arrest and conviction history before making hiring decisions and an arrest or criminal conviction is routinely used as the basis for denying employment opportunities for formerly incarcerated people. Since Black and Latino people are disproportionately targeted for arrest and incarceration, they are also disproportionately affected by the barriers to employment, creating deeper racial and economic inequality. The US Equal Employment Opportunity Commission (EEOC) has recognized that barriers based on criminal records have become a proxy for race and that this is an important civil rights issue, but millions of formerly incarcerated people continue to face employment discrimination.^{iv}
28. A participant in our focus group in Washington DC shared the following story about being refused a job due to his prior conviction, *"I got a job at Washington Dulles International Airport and they hired me and everything and then when I was supposed to be starting, I got a call and they told me they found a felony on my record so I could not work there. I already told them I had a felony when I applied and the person who looked at my application said "That's okay. You'll be alright." They hired me and everything but my criminal record was still holding me back after I did everything I was supposed to do. I finished serving my sentence and finished probation. I did everything I was supposed to do and I couldn't even start work. I had to get a job that I didn't like picking up trash in the neighborhood just so I could have work."*
29. Even applicants who are experienced, qualified and educated have extreme difficulty finding work if they have a criminal conviction. A woman in our focus group in Akron, Ohio shared her story of discrimination due to a first time, non-violent conviction, *"I've*

never been incarcerated before and this is the first time that I got in trouble with the law. I came from a poor family. I was charged with fraud because I was working and I did not report my income to the Akron Housing Authority that I was living in and they went all the way back to 1980 to see how much money I had earned and they came up with a little bit over \$5,000. Anything under \$5,000, you just have to pay it back. Anything over \$5,000 is a felony. So that's only charge that I have and it's really affected my family, I have 3 boys and 1 daughter. I could see myself getting better jobs right now. I do have a college degree and I could see myself getting better employment or what have you if it wasn't for this felony. Lot of jobs did not even consider me because of my record. An employer called me one day and asked me interview questions and then asked me "do I have a record?" When I answered, "yes" the employer said, "Oh. I'm sorry. We're not allowed to talk to anybody with a record."

30. The discrimination and barriers to employment described in the stories above are shared by millions of Americans with criminal records. These violations of economic rights for formerly incarcerated people result in deeper racial and economic inequality and create immeasurable damage to families and communities.
31. The United States should take the following measures to ensure that the economic rights of formerly incarcerated people are respected:
 - Create alternative ways to protect and promote public safety without sending people to prisons or jails. Alternative pathways to incarceration can support public safety without separating families. Approaches like restorative justice, transformative justice, and drug treatment should be used as a first resort, rather than incarceration.
 - Remove barriers to employment, housing, civic engagement, and education for formerly incarcerated people and commit resources to create opportunities for formerly incarcerated people. Create reforms that prevent employers from asking about criminal arrest and conviction history on the initial application. Create incentives for employers to hire formerly incarcerated people such as employment vouchers subsidized by the government and tax breaks. Create training programs for formerly incarcerated people to support the reentry process and prepare them for employment.

III. CONCLUSION

32. In the United States, The research that we have done with people and families that have direct experience with the criminal justice system has shown that people who encounter the criminal justice system and their families often experience violations of their basic human rights. The United States should act with urgency to implement reforms that will result in decreased reliance on prisons and jails in favor of alternatives to incarceration in addition to reforms that will result in less people going to prison for shorter sentences. The United States should also make every effort to protect and respect the rights and

wellbeing of families who are involved with the criminal justice system and to remove barriers for people returning home from prison.

ENDNOTES/FOOTNOTES

1. US Department of Justice <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>
2. The National Employment Law Project, 2011. http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1
3. 47 Devah Pager, Marked: Race, Crime, and Finding Work In an Era of Mass Incarceration 25 (2007).
4. The National Employment Law Project, 2011. http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1

ⁱ US Department of Justice <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>

ⁱⁱ The National Employment Law Project, 2011. http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1

ⁱⁱⁱ 47 Devah Pager, Marked: Race, Crime, and Finding Work In an Era of Mass Incarceration 25 (2007).

^{iv} The National Employment Law Project, 2011. http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1