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For a Hearing on:

“H.R. 40: Exploring the Path to Reparative Justice in America”

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On behalf of Human Rights Watch, I thank Chairman Nadler and Ranking Member Jordan of the US House Committee on the Judiciary and Chairman Cohen and Vice Chair Raskin of the Subcommittee on the Constitution, Civil Rights and Civil Liberties, for the opportunity to submit this statement for a hearing to address H.R. 40, the *Commission to Study and Develop Reparation Proposals for African-Americans Act*, and a pathway to exploring federal reparations for the legacy of slavery. My name is Dreisen Heath and I am a researcher and advocate on racial justice issues, with an expertise in reparative justice, within the United States Program at Human Rights Watch.

Human Rights Watch is a non-profit, independent organization that investigates allegations of human rights violations in more than 90 countries around the world, including in the United States, by interviewing victims and witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human rights violations have been found, Human Rights Watch advocates for redress, accountability, and changes to laws, policies, and practices with authorities to better protect human rights, and mobilize public pressure for change. The US Program at Human Rights Watch works on human rights issues within the United States, and has a strong focus on identifying and addressing areas for racial justice reform in the United States.

What Is Reparation and Why Is It Necessary?

Background

The full impact of creating laws and policies that forced hundreds of thousands of Africans to be enslaved in the United States,¹ a gross human rights violation, has never been fully examined, accounted for, or assessed at the national level. This US policy reduced Black people to the status of property, subjecting them to horrific violence and unspeakable cruelty. For enslaved women and girls, the trauma of slavery included grotesque sexual violence and abuses,² which reinforced white male supremacy and gender hierarchy.³ The trauma of this violence and cruelty has been passed down, in a variety of ways, through generations.

In addition to the mental and physical harms, enslavement also rendered severe economic damage, which hindered Black people's ability to obtain and accumulate intergenerational wealth. As law professor Adrienne Davis describes in her essay, *The Case for US Reparations to African Americans*:

“Enslavement denied blacks the economic fruits of their two hundred years of backbreaking labor...Property rights of use, ownership, or management did not follow from their market participation in the labor force, but were systematically denied by the state...For the first 250 years of American economic history, the law

¹ Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>.

² Elizabeth Adetiba, “Sally Hemings, Thomas Jefferson, And The Normalization of Slave Rape Narratives,” *Black Youth Project*, February 23, 2017, <http://blackyouthproject.com/sally-hemings-thomas-jefferson-and-the-normalization-of-slave-rape-narratives/>.

³ Liz Barnes, review of *When Rape Was Legal: The Untold History of Sexual Violence During Slavery* (New York and London: Routledge, 2019), <https://reviews.history.ac.uk/review/2344>.

excluded blacks from the market in a society in which market participation was emerging as vital to personal, political, and social well-being.”⁴

Though enslaved Black people were declared free by the Emancipation Proclamation in 1863, many US cities and states thereafter raced to enforce white supremacy and racial segregation, passing repressive laws to limit Black people’s rights.⁵ Organized racial terror by the Ku Klux Klan, white paramilitary groups,⁶ and deputized white mobs⁷ aimed to maintain racial social order and corrode Black people’s progress towards equality. Incidents of mass racial violence, including race massacres, intensified during Reconstruction through the early 1900s.⁸ Moreover, according to a report by the Equal Justice Initiative (EJI), an estimated 4,300 racial terror lynchings took place from 1877 and 1950.⁹

Jim Crow laws passed by local and state governments in the 20th century entrenched racial discrimination in the North¹⁰ and the South.¹¹ Federal, state, and local policy decisions in the 20th and 21st centuries, such as redlining¹² and urban renewal,¹³ further contributed to structural racism in infrastructure and the creation of present day economic, education, employment, and health inequalities, as well as housing segregation. They also contributed to the creation of discriminatory and abusive policing and criminal legal systems that preserve unequal power structures and that still exist today. The disproportionate toll the Covid-19 pandemic has taken on Black people in the US,¹⁴ among other realizations, is a reminder that at the center of social and economic crisis lies anti-Black structural racism.

⁴ Michael T. Martin and Marilyn Yaquinto, *Redress for Historical Injustices in the United States: On Reparations for Slavery, Jim Crow, and Other Legacies* (Durham & London: Duke University Press, 2007), p. 373.

⁵ Nadra Kareem Nittle, “How the Black Codes Limited African American Progress After the Civil War,” *History.com*, updated January 28, 2021, <https://www.history.com/news/black-codes-reconstruction-slavery>.

⁶ Zinn Education Project, “March 1, 1874: White League Formed,” undated, <https://www.zinnedproject.org/news/tdih/white-league-formed/>.

⁷ Human Rights Watch, *The Case for Reparations in Tulsa Oklahoma: A Human Rights Argument* (New York: Human Rights Watch, 2020), https://www.hrw.org/sites/default/files/media_2020/11/tulsa-reparations0520_web.pdf, p. 7.

⁸ Equal Justice Initiative, “Reconstruction in America: Racial Violence after the Civil War, 1865-1876,” July 2020, <https://eji.org/wp-content/uploads/2020/07/reconstruction-in-america-report.pdf>, p. 43 – 81; Black Past, “Racial Violence in the United States Since 1660,” undated, <https://www.blackpast.org/special-features/racial-violence-united-states-1660/>.

⁹ The Equal Justice Initiative, “Lynching in America: Confronting the Legacy of Racial Terror,” 2017, <https://eji.org/wp-content/uploads/2019/10/lynching-in-america-3d-ed-080219.pdf>, p. 4.

¹⁰ Joe Bubar, “The Jim Crow North,” *New York Times: Upfront*, March 9, 2020, <https://upfront.scholastic.com/issues/2019-20/030920/the-jim-crow-north.html#1300L>.

¹¹ Ferris State University, “What Is Jim Crow,” undated, <https://www.ferris.edu/jimcrow/what.htm>.

¹² Andre M. Perry and David Harshbarger, “America’s formerly redlined neighborhoods have changed, and so must solutions to rectify them,” *Brookings Institute*, October 14, 2019, <https://www.brookings.edu/research/americas-formerly-redlines-areas-changed-so-must-solutions/>.

¹³ Katherine Schwab, “The Racist Roots Of ‘Urban Renewal’ And How It Made Cities Less Equal,” *Fast Company*, January 4, 2018, <https://www.fastcompany.com/90155955/the-racist-roots-of-urban-renewal-and-how-it-made-cities-less-equal>.

¹⁴ “Covid-19 Disparities Reflect Structural Racism, Abuses,” Human Rights Watch testimony to US House of Representatives Ways and Means Committee, June 10, 2020, <https://www.hrw.org/news/2020/06/10/human-rights-watch-testimony-us-house-representatives-ways-and-means-committee>.

The failure to account for the historic racial and gendered injustices of slavery and its legacy has compounded the harm and fueled the persistence of racial inequality today. Enduring racist and classist structures remain in place¹⁵ and accumulated racial discrimination has gone unaddressed.¹⁶ Despite a shift in racial attitudes, civil rights era legislation from the 1960s did not adequately address the core of systemic racism and resulting racial equity gaps.¹⁷ A holistic inquiry into these injustices and the ways subsequent policy has created and reinforced structures and systems that have prevented Black people from advancing is urgently needed, as is a plan to provide reparation and healing for these harms. If this committee, and then Congress, were to pass H.R. 40 it would be the first meaningful step toward this reparation, which is essential if we are to seriously address racial inequality in the United States.

The Right to Remedy and Reparation Under International Human Rights Law

The right to remedy and reparation is a longstanding legal standard applicable to the United States. Under international human rights law, governments have an obligation to provide effective remedies for violations of human rights; and victims, people who individually or collectively suffered harm, should receive full and effective reparations that are proportional to the gravity of the violation and the cumulative harm suffered.¹⁸

The United States is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Both core international human rights treaties guarantee the right to an effective remedy for human rights violations, including acts of racial discrimination.¹⁹ This right requires that governments ensure access to justice, truthful information about the violation, and reparation.²⁰

¹⁵ Frank W. Munger and Caroll Seron, “Race, Law, and Inequality, 50 Years After the Civil Rights Era,” *Annual Review of Law and Social Science*, vol. 13 (2017): 331 – 350, <https://www.annualreviews.org/doi/full/10.1146/annurev-lawsocsci-110316-113452>.

¹⁶ Fred Drews, “Why Does Racial Inequality Persist Long after Jim Crow?,” *Brookings Institute*, October 9, 2014, <https://www.brookings.edu/blog/brookings-now/2014/10/09/why-does-racial-inequality-persist-long-after-jim-crow/>.

¹⁷ Candis Watts Smith, “After the civil rights era, white Americans failed to support systemic change to end racism. Will they now?,” *The Conversation*, August 13, 2020, <https://theconversation.com/after-the-civil-rights-era-white-americans-failed-to-support-systemic-change-to-end-racism-will-they-now-141954>; Ibram Kendi, “The Civil Rights Act was a victory against racism. But racists also won.,” *Washington Post*, July 2, 2017, <https://www.washingtonpost.com/news/made-by-history/wp/2017/07/02/the-civil-rights-act-was-a-victory-against-racism-but-racists-also-won/>.

¹⁸ “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” UN General Assembly Resolution 60/147 of 16 December 2005, <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>, (hereinafter “Basic Principles”), para. 18.

¹⁹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976, ratified by the United States September 8, 1992, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, 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 January 4, 1969, ratified by the United States November 20, 1994, art. 6. UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation on States Parties to the Covenant (Eightieth session, 2004), U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

²⁰ UN Human Rights Committee, General Comment No. 31, paras 15 et seq; Basic Principles, para. 11.

Reparation, as defined by international human rights standards, includes the following forms:

- *Restitution*: measures to restore the situation that existed before the wrongful act(s) were committed, such as restoration of liberty, employment and return to the place of residence and return of property.²¹
- *Compensation*: monetary payment for “economically assessable damage” arising from the violation, including physical or mental harm, material losses, and lost opportunities.²²
- *Rehabilitation*: provision of “medical and psychological care as well as legal and social services.”²³
- *Satisfaction*: includes a range of measures involving truth-telling, statements aimed at ending ongoing abuses, commemorations or tributes to the victims, preservation of historical memory, and expressions of regret or formal apology for wrongdoing.²⁴
- *Guarantees of non-repetition*: includes institutional and legal reform as well as reforms to government practices to end the abuse.²⁵

The Urgency of Now, Slavery’s Present-Day Impacts

Reparations should be based not just on past harms but on contemporary ones as well. Today, the effects of slavery can be seen throughout US society, as part of its law, culture, and institutions. An H.R. 40 commission should develop concrete proposals that seek to eliminate the racial wealth gap and compensate for material and moral losses. Additionally, proposals need to rectify ongoing harms resulting from violations by the government to the human right to freedom from discrimination, including with respect to housing, health, education, life, security of person, water and sanitation, and a healthy environment.

Racial Wealth Gap

The US economy still creates wealth from forced labor of enslaved Black people, including slave-built infrastructure such as railways, physical roads, government buildings, and ports.²⁶ Despite such critical contributions to profit-generating aspects of society, the 2019 Survey of Consumer Finances (SCF) revealed that the median wealth for Black families is \$24,100 compared to that of \$188,200 for white families.²⁷ Moreover, about 19 percent of Black

²¹ Basic Principles, para. 19.

²² Basic Principles, para. 20.

²³ Basic Principles, para. 21.

²⁴ Basic Principles, para. 22.

²⁵ Basic Principles, para. 23.

²⁶ Joshua F.J. Inwood and Anna Livia Brand, “Slave-built infrastructure still creates wealth in US, suggesting reparations should cover past harms and current value of slavery,” *The Conversation*, February 5, 2021, <https://theconversation.com/slave-built-infrastructure-still-creates-wealth-in-us-suggesting-reparations-should-cover-past-harms-and-current-value-of-slavery-153969>.

²⁷ Neil Bhutta, Andrew C. Chang, Lisa J. Detting, and Joanne W. Hsu, “Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,” *Federal Reserve*, September 2020, <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

people live under the poverty line, compared with about 7 percent of white people, respectively.²⁸

As the SCF survey notes, “Among other factors, inter-generational transfers, homeownership opportunities, access to tax-sheltered savings plans, and individuals' savings and investment decisions contribute to wealth accumulation and families' financial security.”²⁹ Further, Black individuals also continue to face systemic obstacles to accessing capital³⁰ and to be disproportionately targeted by abusive lending practices³¹ that can lead to eviction or loss of employment. Economic reparation measures to address this are essential to eliminating the racial wealth gap.

Land Ownership

Reparations designed to address land dispossession should also be a priority of the H.R. 40 commission. Following the issuance of Special Field Order No. 15 by Gen. William Tecumseh Sherman on January 16, 1865, President Abraham Lincoln established “The Freedman’s Bureau.”³² This body authorized legal titles for 40 acres of land to freedmen and “white Southern Unionists.”³³ While approximately 40,000 Black people received land settlements, when President Andrew Jackson took office, he took back most of the land and transferred it to the Confederate planters who had previously owned it.³⁴

On May 20, 1862, President Lincoln signed the Homestead Act, which by 1934 when the Act ended, had granted more than 270 million acres of land in the western part of the country to people, 90 percent of whom were white, virtually for free.³⁵ Keri Leigh Merritt, historian and independent scholar, notes:

With the advent of emancipation, therefore, blacks became the only race in the US ever to start out, as an entire people, with close to zero capital. Having nothing else upon which to build or generate wealth, the majority of freedmen had little real

²⁸ Statista Research Department, “Poverty rate in the United States in 2019, by ethnic group,” January 20, 2021, <https://www.statista.com/statistics/200476/us-poverty-rate-by-ethnic-group/>.

²⁹ Neil Bhutta, et. al., “Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,” September 2020.

³⁰ Angela Hanks, Danyelle Solomon, and Christian E. Weller, “Systemic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap,” *Center for American Progress*, February 21, 2018, <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>.

³¹ Statement of Lisa Rice, National Fair Housing Alliance for the US Commission on Civil Rights Briefing, March 20, 2009, <https://nationalfairhousing.org/wp-content/uploads/2017/04/US-Commission-on-Civil-Rights-Statement-of-LR-on-Predatory-Lending-Final...-1.pdf>.

³² National Archives, “African American Records: Freedmen's Bureau,” undated, <https://www.archives.gov/research/african-americans/freedmens-bureau>.

³³ Brandon Myers, “Sherman's Field Order No. 15,” *Georgia Encyclopedia*, September 25, 2005, <https://www.georgiaencyclopedia.org/articles/history-archaeology/shermans-field-order-no-15>.

³⁴ *Ibid.* Same as above.

³⁵ Kari Leigh Merritt, “Land and the roots of African-American poverty,” *AEON*, March 11, 2016, <https://aeon.co/ideas/land-and-the-roots-of-african-american-poverty>.

chance of breaking the cycles of poverty created by slavery, and perpetuated by federal policy.³⁶

Despite this, following emancipation, some Black people were able to acquire land. At the start of the 20th century, formerly enslaved Black people and their descendants managed to own 14 million acres.³⁷ However, through agencies and programs created by the federal New Deal and the US Department of Agriculture,³⁸ white people acquired much of this land, often through coercive, though legally sanctioned, and occasionally violent means. Some have called this legalized land theft.³⁹ Discriminatory private practices compounded those injuries, impacting Black families over time.⁴⁰ Today Black agricultural landowners have been dispossessed of at least 90 percent of their land. Currently, white people own 98 percent of all rural land.⁴¹

Home Ownership

Homeownership is also crucial to wealth building in the US, and where someone lives is tied to many other structural inequities.⁴² President Franklin D. Roosevelt's New Deal, a series of federal policies and programs aimed at rehabilitating the economy at the end of the Great Depression from 1933 to 1939, was championed as a defining moment in US history.⁴³ Some Black people benefitted from such policies, but some of those policies also helped cement racial segregation.

³⁶ Ibid. Same as above.

³⁷ A Moore, "8 Heartbreaking Cases Where Land Was Stolen From Black American Through Racism, Violence and Murder," *Atlanta Black Star*, <https://atlantablackstar.com/2014/10/09/8-heartbreaking-cases-where-land-was-stolen-from-black-americans-through-racism-violence-and-murder/>; Brian Barth, "How Did African-American Farmers Lose 90 Percent of Their Land?," *Modern Farmer*, August 19, 2019, <https://modernfarmer.com/2019/08/how-did-african-american-farmers-lose-90-percent-of-their-land/>.

³⁸ Equal Justice Initiative, "One Million Black Families in the South Have Lost Their Farms," October 11, 2019, <https://eji.org/news/one-million-black-families-have-lost-their-farms/>; Waymon R. Hinson and Edward Robinson, "We Didn't Get Nothing:" The Plight of Black Farmers, *Journal of African American Studies*, (2008): 283 – 302, <https://link.springer.com/article/10.1007/s12111-008-9046-5>.

³⁹ Vann R. Newkirk II, "The Great Land Robbery," *The Atlantic*, September 2019, <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our-land/594742/>

⁴⁰ Angela Hanks, et. al., "Systemic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap," *Center for American Progress*.

⁴¹ Tom Philpott, "White People Own 98 Percent of Rural Land. Young Black Farmers Want to Reclaim Their Share," *Mother Jones*, June 27, 2020, <https://www.motherjones.com/food/2020/06/black-farmers-soul-fire-farm-reparations-african-legacy-agriculture/>.

⁴² Kelly Brooks, "Research Shows Food Deserts More Abundant in Minority Neighborhoods," *Johns Hopkins Magazine*, Spring 2014, <https://hub.jhu.edu/magazine/2014/spring/racial-food-deserts/>; Rasheed Malik, et. al., "America's Child Care Deserts in 2018," *Center for American Progress*, December 6, 2018, <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/>; Dennis Thompson, "Many Black Americans Live in Trauma Care 'Deserts'," *U.S. News & World Report*, March 8, 2019, <https://www.usnews.com/news/health-news/articles/2019-03-08/many-black-americans-live-in-trauma-care-deserts>; Mark Kramer, "How the neighborhood you grow up in affects your future," *Public Source*, undated, <https://projects.publicsource.org/pittsburgh-neighborhood-success/>; Jessica Owens-Young, "When it comes to your health, where you live matters," *The Conversation*, January 23, 2018, <https://theconversation.com/when-it-comes-to-your-health-where-you-live-matters-89352>.

⁴³ Kimberly Amadeo, "New Deal Summary, Programs, Policies, and Its Success," *The Balance*, July 31, 2020, <https://www.thebalance.com/fdr-and-the-new-deal-programs-timeline-did-it-work-3305598>.

As a part of the New Deal, the Home Owners' Loan Corporation (HOLC)⁴⁴ was formed to help people refinance home mortgages and expand buying opportunities. The HOLC helped thousands of people buy or stay in their homes but it engaged in the discriminatory practice of "redlining,"⁴⁵ whereby it characterized certain neighborhoods in at least 239 cities high or low risk for lenders depending upon the desirability of living there. Neighborhoods the HOLC designated green or "A" on maps were considered low risk for lenders, while those designated red or "D" were considered high risk or "hazardous."⁴⁶ Neighborhoods that were predominately Black, but also some where Catholics, Jewish people, or other immigrant communities lived, were considered high risk or undesirable. This made it nearly impossible for many Black people to access mortgage loans and helped to further exacerbate the wealth gap.⁴⁷

Redlining took place over 50 years ago and was outlawed by the Fair Chance at Housing Act of 1968, but its effects are still felt today.⁴⁸ In 2020, Redfin concluded that Black homeowners are five times more likely to own in a formerly redlined neighborhood than in a "greenlined" one.⁴⁹ The H.R. 40 commission should investigate and provide appropriate redress not just for harms created by federal housing policies and regulations in the past, but also examine ways current housing or lending policy could reverse segregating trends.

In addition, an H.R. 40 commission should examine the policies and practices of the Federal Housing Administration (FHA).⁵⁰ Between 1934 and 1962, 98 percent of the FHA loans administered went to white people, effectively excluding Black families from homebuying.⁵¹

⁴⁴ Home Owners' Loan Act of 1933, H.R. 5240, Pub. L. No. 73-43, 48 Stat. 128, electronically available at: https://fraser.stlouisfed.org/title/850?start_page=3.

⁴⁵To investigate real estate conditions and assess desirability of neighborhoods, the HOLC hired private mortgage lenders, real estate developers, and real estate appraisers and worked closely with them to grade neighborhoods with one of four categories from green ("the best") to red ("hazardous"). University of Richmond's Digital Scholarship Lab, "Mapping Inequality: Redlining in New Deal America," undated, <https://dsl.richmond.edu/panorama/redlining/#loc=15/36.165/-95.995&maps=0&city=tulsa-ok&text=intro>.

⁴⁶ Amy E. Hiller, "Residential Security Maps and Neighborhood Appraisals. The Homeowners' Loan Corporation and the Case of Philadelphia," Departmental Papers (City and Regional Planning) (2005), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1004&context=cplan_papers, p. 207, 214, n. 4; Tracy Jan, "Redlining was banned 50 years ago. It's still hurting minorities today.," *Washington Post*, March 28, 2018, <https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/>.

⁴⁷ Tracy Jan, "Redlining was banned 50 years ago. It's still hurting minorities today.," *Washington Post*.

⁴⁸ A 2018 study shows that most neighborhoods redlined between 1935 and 1939 are low-income and minority neighborhoods today: Bruce Mitchell and Juan Franco, "HOLC 'Redlining' Maps: The persistent structure of segregation and economic inequality," *National Community Reinvestment Coalition*, February 2019, https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf; Michele Lerner, "One home, a lifetime of impact," *Washington Post*, July 23, 2020, <https://www.washingtonpost.com/business/2020/07/23/black-homeownership-gap/?arc404=true>

⁴⁹ Ibid.

⁵⁰ The FHA was created in part by the National Housing Act of 1934 to provide mortgage insurances on loans made by FHA-approved private lenders: The Department of Housing and Urban Development, "The Federal Housing Administration (FHA)," undated, https://www.hud.gov/program_offices/housing/fhahistory#:~:text=Congress%20created%20the%20Federal%20Housing,workers%20had%20lost%20their%20jobs.

⁵¹ George Lipsitz, *The Possessive Investment in Whiteness* (Philadelphia, Temple University of Press: 1998), p. 107.

The FHA's "Underwriting Manual" guided their work and contained racial restrictive covenants. Historian Richard Rothstein described the FHA's explicit use of segregationist practices in his book, *The Color of Law*:

The FHA favored mortgages in areas where boulevards or highways served to separate African American families from whites, stating "[n]atural or artificially established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences, ... includ[ing] prevention of the infiltration of... lower class occupancy, and inharmonious racial groups."⁵²

Another set of federal policies, "urban renewal,"⁵³ intensified racial segregation. Urban renewal aimed to rehabilitate areas considered blighted by such methods as condemning property and paying occupants to move or using eminent domain, and then redeveloping the land.⁵⁴ The author James Baldwin famously referred to urban renewal as "Negro Removal."⁵⁵ The scope of harm has not been fully investigated or rectified by the federal government.⁵⁶

Federally financed highway construction projects, which sought to "redeem" urban areas, disproportionately low-income and Black, were often part of the urban renewal projects.⁵⁷ The creation of highway systems had the effect of destroying Black neighborhoods, but also dividing

⁵² Ibid.

⁵³ Urban renewal was established by the Housing Act of 1949.

⁵⁴ Andrew Small, "The Wastelands of Urban Renewal," *CityLab*, February 13, 2017, <https://www.citylab.com/equity/2017/02/urban-renewal-wastelands/516378/>; "Acquisition of Redevelopment Property by Eminent Domaine," *Duke Law Journal*, vol. 13 (1964): 123 – 125, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1897&context=dlj>. Katherine Schwab, "The Racist Roots Of 'Urban Renewal' And How It Made Cities Less Equal," *Fast Company*. Michael R. Diamond, "De-concentrating Poverty: De-constructing a Theory and the Failure of Hope," *Georgetown University Law Center*, 2012, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2120&context=facpub>, p. 3, 6-8, 16, 19; see also, Amber Wagoner, "Downtown Revitalized, Community Organized: a Comparative Analysis of Tulsa, Oklahoma and Portland, Oregon," *Portland State University, University of Honors Thesis*, 2016, <https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1264&context=honorstheses>, p. 26-28, and maps at xxiii. While poor people and people of color bore the brunt of the negative consequences of displacement from their communities, increased segregation, and heightened inequality, scholars have also noted that the policy brought shopping centers, office buildings, and entertainment centers cities across the United States.

⁵⁵ Michael R. Diamond, "De-concentrating Poverty: De-constructing a Theory and the Failure of Hope," *Georgetown University Law Center*, p. 19.

⁵⁶ A 2017 study found that that urban renewal programs between 1955 and 1966 displaced more than 300,000 people, creating a net loss of housing. Displacement fell disproportionately on people of color: University of Richmond's Digital Scholarship Lab, "Renewing Inequality: Urban Renewal, Family Displacement, and Race 1955-1966," <https://dsl.richmond.edu/panorama/renewal/#view=0/0/1&viz=scatterplot>; Greg Miller, "Maps Show How Tearing Down City Slums Displaced Thousands," *National Geographic*, December 15, 2017, <https://www.nationalgeographic.com/news/2017/12/urban-renewal-projects-maps-united-states/#close>.

⁵⁷ Alana Semuels, "The Role of Highways in American Poverty," *The Atlantic*, March 18, 2016, <https://www.theatlantic.com/business/archive/2016/03/role-of-highways-in-american-poverty/474282/>; Joseph Stromberg, "Highways gutted American cities. So why did they build them?" *Vox*, May 11, 2016, <https://www.vox.com/2015/5/14/8605917/highways-interstate-cities-history>.

neighborhoods along racial lines, between Black and white sections of major cities.⁵⁸ Highway systems have also contributed to air quality deterioration.⁵⁹

In 2017, the Black homeownership rate was 41.8 percent, the lowest of all racial and ethnic groups, according to the Urban Institute, with white homeownership rates being 71.9 percent.⁶⁰ This 30.1 percent gap between white and Black home ownership rates is the widest it has been in 50 years and is wider than it was when race-based discrimination against home buyers was legal.⁶¹ While the overall mortgage denial rate is 6.15 percent, Black homebuyers are denied mortgages at two times that rate.⁶²

Access to Health Care

The denial of access to health care is a living vestige of slavery and Jim Crow segregation.⁶³ The current life expectancy gap in the US between Black people and white people is 3.6 years.⁶⁴ Black people remain significantly more likely to die of Covid-19, HIV, cancer, asthma, stroke, heart disease, diabetes, obesity and maternal mortality than white people.⁶⁵ Some communities of color lack access to safe and affordable water and sanitation,⁶⁶ which some researchers have found can be tied to “discriminatory practices embedded in some past water infrastructure development initiatives.”⁶⁷ Black people live in poorer neighborhoods,⁶⁸ attend lower-quality schools, receive health care at lower-quality hospitals, and are less likely to have health

⁵⁸ Alan Pyke, “Top infrastructure official explains how American used highways to destroy black neighborhoods,” *Think Progress*, March 31, 2016, <https://thinkprogress.org/top-infrastructure-official-explains-how-america-used-highways-to-destroy-black-neighborhoods-96c1460d1962/>.

⁵⁹ Daniel Cusick, “Past Racist “Redlining” Practices Increased Climate Burden on Minority Neighborhoods,” *Scientific American*, January 21, 2020, <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/>.

⁶⁰ Alanna McCargo, Jung Hyun Choi, and Edward Golding, “Building Black Homeownership Bridges: A Five-Point Framework for Reducing the Racial Homeownership Gap,” *Urban Institute*, May 2019, https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

⁶¹ Jung Hyun Choi, “Breaking Down the Black-White Homeownership Gap,” *Urban Institute*, February 21, 2020 <https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap> (accessed February 10, 2021).

⁶² Tendayi Kapfudz, “LendingTree Study: Black Homebuyers More Likely to Be Denied Mortgages Than Other Homebuyers,” *Lending Tree*, July 7, 2020, <https://www.lendingtree.com/home/mortgage/lendingtree-study-black-homebuyers-more-likely-to-be-denied-mortgages-than-other-homebuyers/>.

⁶³ Kerri L. Hunkele, “Segregation in United States Healthcare: From reconstruction to Deluxe Jim Crow,” *University of New Hampshire, Honors Theses and Capstones*, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>, p. 4.

⁶⁴ Max Roberts, Eric N. Reither, Sojung Lim, “Contributors to the black-white life expectancy gap in Washington D.C.,” *Nature*, August 27, 2020, <https://www.nature.com/articles/s41598-020-70046-6>.

⁶⁵ “Covid-19 Disparities Reflect Structural Racism, Abuses,” Human Rights Watch testimony to US House of Representatives Ways and Means Committee.

⁶⁶ Amanda Klasing, “US Structural Racism Shapes Access to Water During Covid-19,” Human Rights Watch dispatch, July 15, 2020, <https://www.hrw.org/news/2020/07/15/us-structural-racism-shapes-access-water-during-covid-19>.

⁶⁷ US Water Alliance, “Closing the Water Gap in the United States: A National Action Plan,” 2019, http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf, p. 24.

⁶⁸ Andrew F. Beck, et. al., “The color of health: how racism, segregation, and inequality affect the health and well-being of preterm infants and their families,” *Pediatric Research*, <https://www.nature.com/articles/s41390-019-0513-6>.

insurance.⁶⁹ These outcomes are driven in part by government policies,⁷⁰ including segregationist policies and a historic underinvestment in health in Black communities, as well as limited access to healthy foods⁷¹ and quality health care,⁷² including maternal health care.⁷³

Black women in the US face multiple forms of discrimination and oppression that result in alarming racial disparities in health and poor health outcomes. During enslavement in the South, nearly 50 percent of infants born on slave plantations were stillborn or dead within the first year of life.⁷⁴ When assessing the Black-white infant mortality gap today, Black infants are more than twice as likely to die as white infants.⁷⁵ Low-income women and women of color face higher cervical cancer mortality rates due to lack of consistent healthcare coverage and access to services and information to prevent and treat the disease, as well as bias and discrimination in the health system.⁷⁶ Black women die at disproportionately high rates of cervical cancer, a highly preventable and treatable disease from which no one should die.⁷⁷

⁶⁹ Heeju Sohn, “Racial and Ethnic Disparities in Health Insurance Coverage: Dynamics of Gaining and Losing Coverage over the Life-Course,” *Population Research and Policy Review*, October 15, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5370590/>.

⁷⁰ Sofia Carratala and Connor Maxwell, “Health Disparities by Race and Ethnicity,” *Center for American Progress*, May 7, 2020, <https://www.americanprogress.org/issues/race/reports/2020/05/07/484742/health-disparities-race-ethnicity/>.

⁷¹ Punam Ohri-Vachaspati, et. al, “Healthy Food Access in Low-Income High-Minority Communities: A Longitudinal Assessment – 2009-2017,” *International Journal of Environmental Research and Public Health*, vol. 16, (2019) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6650883/>; Elsadig Elsheikh and Nadia Barhoum, “Structural Racialization and Food Insecurity in the United States,” *Haas Institute for A Fair And Inclusive Society*, September 2013, <https://belonging.berkeley.edu/sites/default/files/Structural%20Racialization%20%20%26%20Food%20Insecurity%20in%20the%20US-%28Final%29.pdf>, p. 3, 5, 7. Anna Brones, “Food apartheid: the root of the problem with America’s groceries,” *The Guardian*, May 15, 2018, <https://www.theguardian.com/society/2018/may/15/food-apartheid-food-deserts-racism-inequality-america-karen-washington-interview>.

⁷² Edward R. Berchick, Jessica C. Barnett, and Rachel D. Upton, “Health Insurance Coverage in the United States: 2018,” *U.S. Census Bureau*, November 2019, <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>; Human Rights Watch, ‘*It Should Not Happen*’: *Alabama’s Failure to Prevent Cervical Cancer Death in the Black Belt*, (New York: Human Rights Watch, 2018), <https://www.hrw.org/news/2018/11/29/us-cervical-cancer-deaths-black-women>.

⁷³ Black Mamas Matter Alliance, “Advancing Holistic Maternal Care for Black Women Through Policy,” December 2018, <https://blackmamasmatter.org/wp-content/uploads/2018/12/BMMA-PolicyAgenda-Digital.pdf>.

⁷⁴ Deidre Cooper Owens and Sharla M Fett, “Black Maternal and Infant Health: Historical Legacies of Slavery,” *American Journal of Public Health*, vol. 109, (2019): 1342 – 1345, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6727302/#bib9>.

⁷⁵ Jacqueline Howard, “US infant mortality rates decline, CDC study says, but Black infants still twice as likely to die,” *CNN*, June 25, 2020, <https://www.cnn.com/2020/06/25/health/age-women-birth-rising-wellness/index.html>.

⁷⁶ Human Rights Watch, press release, “US: Cervical Cancer Deaths Up for Black Women,” November 29, 2018, <https://www.hrw.org/news/2018/11/29/us-cervical-cancer-deaths-black-women>.

⁷⁷ *Ibid.*

Systemic racism leaves Black people with symptoms of post-traumatic stress disorder,⁷⁸ harm to their immune systems,⁷⁹ and premature aging.⁸⁰

And, even dying costs more for Black people. Under Medicare, end-of-life care is \$7,100 more expensive for Black individuals compared to their white counterparts.⁸¹

Increasing racial disparities in health will lead to more suffering and death, as well as massive loss of wealth given the varying costs of health care. The H.R. 40 commission should examine these life-threatening consequences and create health care-specific⁸² reparation proposals.

Stark disparities in outcomes between Black and Indigenous women and white women lie at the heart of the maternal and perinatal health crisis in the United States. The US cannot address its increasing rates of premature birth nationally⁸³ and unacceptably high rates of maternal mortality without digging into systemic racism and injustices at its core, including through a reparations process. We strongly recommend the commission center reproductive justice for Black women in its work.

Access to Education

During the international slave trade, Black people were denied virtually all forms of education.⁸⁴ Before the Civil War every Southern state enacted laws that prohibited Black people from seeking education.⁸⁵

⁷⁸ Dara Winley, "Racial Trauma Is A Public Health Emergency," *Psychology Today*, June 1, 2020, <https://www.psychologytoday.com/us/blog/take-care-black-women/202006/racial-trauma-is-public-health-emergency>.

⁷⁹ Ronald L. Simons, et. al., "Racial Discrimination, Inflammation, and Chronic Illness Among African American Women at Midlife: Support for the Weathering Perspective," *Journal of Racial and Ethnic Health Disparities*, (2020), <https://link.springer.com/article/10.1007/s40615-020-00786-8>.

⁸⁰ Steven Reinberg, "Racism Link to Faster Aging among Blacks," *Web MD*, January 23, 2020, <https://www.webmd.com/healthy-aging/news/20200123/racism-linked-to-faster-aging-among-blacks>.

⁸¹ Elena Byhoff, et. al., "Racial and Ethnic Differences in End-of-Life Medicare Expenditures," *Journal of the American Geriatrics Society*, vol. 64 (2016): 1789 - 1797, <https://agsjournals.onlinelibrary.wiley.com/doi/abs/10.1111/jgs.14263>.

⁸² Mary T. Bassett and Sandro Galea, "Reparations as a Public Health Priority — A Strategy for Ending Black–White Health Disparities," *The New England Journal of Medicine*, vol. 383 (2020): 2101 - 2103, <https://www.nejm.org/doi/full/10.1056/NEJMp2026170>.

⁸³ Joyce A. Martin, et. al., "Births in the United States, 2018," *National Center of Health Statistics, Center for Disease Control and Prevention*, July 2019, <https://www.cdc.gov/nchs/products/databriefs/db346.htm>.

⁸⁴ Dale J. Cohen, Sheida White, Steffaney B. Cohen, "Mind the Gap: The Black-White Literacy Gap in the National Assessment of Adult Literacy and Its Implications," undated, *Journal of Literacy Research*, vol. 44 (2012): 123 – 148; 124, <https://journals.sagepub.com/doi/pdf/10.1177/1086296X12439998>.

⁸⁵ Ibid. Same as above.

According to the Literacy Center, “Low literacy becomes intergenerational.”⁸⁶ A 2015 report by the National Assessment of Educational Progress found that only 17 percent of Black 12th graders were proficient at reading, compared to nearly 50 percent of white 12th graders.⁸⁷

When neighborhoods are segregated by race and class, segregation affects the quality of education and location of schools, lending an imbalance of funding and resources to schools in areas that are less wealthy.⁸⁸ School districts that serve higher populations of Black and brown students receive \$23 billion less in funding compared to mostly white school districts, even though they serve the same number of children.⁸⁹

Education programming such as sexual health programming lack adequate funding and critical resources, for example in schools in Alabama. Limitations on property taxes in Alabama are rooted in discrimination and inequality, hindering the ability of many rural school districts to raise revenue for their schools, particularly for programs that are not required, such as sexual health education. Alabama’s 1901 constitution placed a cap on state and local property tax rates, which have been used to maintain white supremacy and systems of inequality in the state. As an Alabama federal district court stated in 2004, it is “a vestige of discrimination inasmuch as the [state] constitutional provisions governing the taxation of property are traceable to, rooted in, and have their antecedents in an original segregative, discriminatory policy.”⁹⁰

When pursuing higher education, Black students borrow more money for education loans, as they have lower levels of family income and wealth (as described above).⁹¹

There are significant racial and class disparities in school discipline rates, including detention and suspension.⁹² Black students are suspended from school at a rate 4 times greater than white students.⁹³ Dropout rates are also higher and vary by race and household income.⁹⁴

⁸⁶ The Crisis Magazine, “With Covid-19, The African American Literacy Crisis Will Get Much Worse,” April 26, 2020, <https://www.thecrisismagazine.com/single-post/2020/04/26/with-covid-19-the-african-american-literacy-crisis-will-get-much-worse>.

⁸⁷ Ibid.

⁸⁸ Human Rights Watch, “*Get on the Ground!*”: Policing, Poverty, and Racial Inequality in Tulsa, Oklahoma: A Case Study of US Law Enforcement, (New York: Human Rights Watch, 2019), p. 42 – 44.

⁸⁹ “\$23 Billion,” Ed Build, February 2019, <https://edbuild.org/content/23-billion/full-report.pdf>.

⁹⁰ Human Rights Watch, “*It Wasn’t Really Safety, It Was Shame*,” (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/07/08/it-wasnt-really-safety-it-was-shame/young-people-sexual-health-education-and-hpv>, p. 29.

⁹¹ Adam Looney, David Wessel, and Kadija Yilla, “Who owes all that student debt? And who’d benefit if it were forgiven?,” *Brookings Institute*, January 28, 2020, <https://www.brookings.edu/policy2020/votervital/who-owes-all-that-student-debt-and-whod-benefit-if-it-were-forgiven/>.

⁹² Moriah Balingit, “Racial disparities in school discipline are growing, federal data show,” *Washington Post*, https://www.washingtonpost.com/local/education/racial-disparities-in-school-discipline-are-growing-federal-data-shows/2018/04/24/67b5d2b8-47e4-11e8-827e-190efaf1f1ee_story.html.

⁹³ Reuters Staff, “Black Students more likely to be suspended: U.S. Education Department,” June 7, 2016, <https://www.reuters.com/article/us-usa-education-suspensions/black-students-more-likely-to-be-suspended-u-s-education-department-idUSKCN0YT1ZO>.

⁹⁴ Ibid. Same as above.

H.R. 40's mandate should explore reparations to help address educational inequities.

Criminal Legal System

Although the US Constitution's 13th amendment technically abolished the institution of slavery, it provided an exception that allowed for the continuation of slavery "as punishment for a crime."⁹⁵ This exception has allowed people incarcerated, disproportionately Black and brown, to be exploited through forced labor for decades.⁹⁶

According to the Sentencing Project, 1 in every 10 Black men in his thirties is in prison or jail, any given day.⁹⁷ The imprisonment rate for Black women is nearly twice that of white women,⁹⁸ and Black girls are the fastest growing portion of the juvenile justice system.⁹⁹

Law enforcement in the United States disproportionately targets Black,¹⁰⁰ Indigenous, and Latinx communities, resulting in high levels of arrest and conviction in those communities¹⁰¹ and frequent interactions that can result in violence. Other laws, policies and practices keep those with criminal records from accessing jobs, housing, education, public assistance,¹⁰² and the right to vote.¹⁰³

The enforcement of drug laws produces extraordinarily high and disproportionate rates of incarceration for Black people, particularly Black men.¹⁰⁴ Human Rights Watch's research

⁹⁵ US Senator Jeff Merkley, press release, "Merkley, Clay Propose Constitutional Amendment to Close Slavery Loophole in 13th Amendment," December 2, 2020, <https://www.merkley.senate.gov/news/press-releases/merkley-clay-propose-constitutional-amendment-to-close-slavery-loophole-in-13th-amendment-2020>.

⁹⁶ Whitney Bennis, "American Slavery, Reinvented," *The Atlantic*, September 21, 2015, <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/>; Human Rights Watch, *The Human Rights Watch Global Report On Prisons* (New York: Human Rights Watch, 1993): ("...prison labor can...be a means of exploitation and punishment of the prisoner, virtually enslaving him to the state.")

⁹⁷ Sentencing Project, "Shadow Report to the United Nations on Racial Disparities in the United States Criminal Justice System," August 31, 2013, <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>.

⁹⁸ Sentencing Project, "Incarcerated Women and Girls," November 24, 2020, <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

⁹⁹ Erin Killeen, "The Increased Criminalization of African American Girls," *Georgetown Journal on Poverty Law & Policy*, April 17, 2019, <https://www.law.georgetown.edu/poverty-journal/blog/the-increased-criminalization-of-african-american-girls>.

¹⁰⁰ "Roadmap for Re-imagining Public Safety in the US," Human Rights Watch, August 12, 2020, https://www.hrw.org/sites/default/files/media_2020/08/A%20Roadmap%20for%20Reimagining%20Public%20Safety%20in%20the%20United%20States.pdf

¹⁰¹ Wendy Sawyer, "Visualizing the racial disparities in mass incarceration," *Prison Policy Initiative*, July 27, 2020, <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>.

¹⁰² U.S. Commission on Civil Rights, "Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects of Communities," June 13, 2019, <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

¹⁰³ Jean Chung, "Felony Disenfranchisement: A Primer," *Sentencing Project*, June 27, 2019, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

¹⁰⁴ Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States*, (New York: Human Rights Watch, 2008), https://www.hrw.org/sites/default/files/reports/us0508_1.pdf

shows that while white people use drugs at the same rates as Black people, the latter are two-and-a-half times as likely to be arrested for drug possession for personal use.¹⁰⁵

Reparative justice is desperately needed to address the long-term impacts of structural racism in the criminal justice system. This includes interrogating carceral policies, establishing alternatives to incarceration (such as more investments in community-based programming and social services) and accounting for the separation of Black families.¹⁰⁶

Abusive and Discriminatory Policing

Historically and presently, policing in the United States has served to maintain the country's racial hierarchy.¹⁰⁷ These racist origins and continued police involvement in racial oppression during Jim Crow and afterward, including through expanded surveillance, paved the way for systemic racial profiling¹⁰⁸ in Black neighborhoods.

Human Rights Watch and others' research shows that police violence is inextricably linked to deep and persisting racial inequities and economic class divisions, perpetuated and exacerbated by laws and policies that prioritize policing and criminalization as the primary state response to a range of societal problems.¹⁰⁹

Though police killings draw more public visibility and reaction, police departments across the country deploy abusive and discriminatory policing tactics on an everyday basis targeting Black communities. This aggressive deployment of police has accompanied disinvestment¹¹⁰ in vital services and support for these communities that might more effectively reduce crime.

An H.R. 40 commission should examine the historic connection between slavery and current abusive policing systems and consider ways to redress and account for past and ongoing harm.

¹⁰⁵ Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, (New York: Human Rights Watch, 2016) https://www.hrw.org/sites/default/files/report_pdf/usdrug1016_web_0.pdf.

¹⁰⁶ Jasmine Sankofa, "Family Separation Beyond the US Border," Human Rights Watch dispatch, June 27, 2018, <https://www.hrw.org/news/2018/06/27/family-separation-beyond-us-border>.

¹⁰⁷ Chelsea Hansen, "Slave Patrols: An Early Form of American Policing," *National Law Enforcement Museum*, June 10, 2019, <https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>.

¹⁰⁸ Radley Balko, "There's overwhelming evidence that the criminal justice system is racist. Here's the proof." *Washington Post*, June 10, 2020, <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>.

¹⁰⁹ Human Rights Watch, "*Get on the Ground!*"; "A Roadmap for Re-imagining Public Safety in the United States," Human Rights Watch, August 12, 2020; Danyelle Solomon, "The Intersection of Policing and Race," *Center for American Progress*, Sept. 1, 2016,

<https://www.americanprogress.org/issues/race/reports/2016/09/01/143357/theintersection-of-policing-and-race/>; Anthony D. Romero, "Reimagining the Role of Police," *American Civil*

Liberties Union, June 5, 2020, <https://www.aclu.org/news/criminal-law-reform/reimagining-the-role-of-police/>; Alexi Jones and Wendy Sawyer, "Arrest, Release, Repeat: How police and jails are misused to respond to social problems," *Prison Policy Initiative*, August 2019, <https://www.prisonpolicy.org/reports/repeatarrests.html>; Marc Mauer and Nazgol Ghandnoosh, "Incorporating Racial Equity into Criminal Justice Reform," *The Sentencing Project*,

<https://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/incorporating-racial-equity-into-criminal-justice-reform.pdf>.

¹¹⁰ Human Rights Watch, "*Get on the Ground!*"

Tulsa, Oklahoma Is a Microcosm of the US

The 1921 Tulsa Race Massacre, one of the worst incidents of racial violence in the US, occurred in a broader context of racist violence and oppression stemming from slavery, which continues to impact Black people today.¹¹¹ In hours, decades of Black prosperity and millions of dollars in hard-earned wealth were wiped out by a violent white mob.¹¹² The organized destruction left hundreds of people dead, most of them Black, and more than 1,200 Black-owned houses, scores of businesses, a school, a hospital, a public library, and a dozen black churches burned to ashes in Tulsa’s Greenwood neighborhood, then known as “Black Wall Street.”¹¹³

No one was ever held accountable and no reparations have been paid to Black survivors of the massacre and descendants of victims.¹¹⁴

In a May 2020 report entitled *The Case for Reparations in Tulsa, Oklahoma: A Human Rights Argument*, Human Rights Watch detailed the massacre, its aftermath, attempts to rebuild, and subsequent discriminatory policies (i.e., redlining, urban renewal, highway construction) that prevented Greenwood and the broader North Tulsa community from thriving.¹¹⁵ These policies, and the government’s response to the massacre, have contributed to the deep racial disparities—rooted in the US history of slavery and ongoing structural racism—in Tulsa today.¹¹⁶ Human Rights Watch conducted extensive research by analyzing state-issued reports, numerous books on the massacre and its aftermath, news articles, law review articles, academic research papers, court records, city planning documents, and conducting interviews with affected community members, including descendants of the massacre’s victims and survivors.¹¹⁷

The report calls on the Tulsa and Oklahoma governments to provide immediate reparations, including direct payments to the few surviving massacre victims, and the descendants of those killed and those who survived; lift legal barriers to civil legal claims related to the massacre; recover and identify remains that may be in mass graves; and establish a comprehensive reparations plan in close consultation with affected community members.¹¹⁸

What happened in Tulsa is not an anomaly. The people killed in the 1921 Tulsa Race Massacre were only some of the thousands of people killed in racial terror lynchings that took place in the US between the end of Reconstruction in 1877 and 1950. According to a report by the Equal Justice Initiative (EJI), an estimated 4,300 racial terror lynchings took place during that time,¹¹⁹ including those that occurred during the 1921 Tulsa Race Massacre.¹²⁰ In the year 1919 alone,

¹¹¹ Human Rights Watch, *The Case for Reparations in Tulsa, Oklahoma*.

¹¹² *Ibid.*, p. 5.

¹¹³ *Ibid.*, p. 6.

¹¹⁴ *Ibid.*, p. 8.

¹¹⁵ *Ibid.*, 5 – 16.

¹¹⁶ *Ibid.*, 20-36.

¹¹⁷ *Ibid.*, p. 4.

¹¹⁸ *Ibid.*, 61 – 66.

¹¹⁹ The Equal Justice Initiative, “Lynching in America: Confronting the Legacy of Racial Terror,” p. 4.

¹²⁰ *Ibid.*, p. 46. When counting the number of black people killed during the Tulsa Race Massacre and adding that to the total number of “racial terror lynchings,” during this period, the EJI report uses the number 36. But it notes in its report that “at least 36,” had died and that the number varies greatly among sources from 36 to 300. See “Lynching

more than two dozen different incidents of racially motivated violence took place.¹²¹ The US government has never adequately accounted for these wrongs or the subsequent 20th and 21st century policy decisions (described above) but it has an opportunity to begin to do so through the establishment of an H.R. 40 commission.

The Importance of Government Documentation & Investigative Commissions

Investigative commissions have been used by national and state governments in the US many times before to establish a truthful record of events and circumstances, forming the basis for reparative recommendations.

Some examples include:

- *The Oklahoma Commission to Study the Tulsa “Race Riot” of 1921 (1997)*¹²²
- *The Commission on Wartime Relocation and Internment of Civilians (1980)*¹²³
- *The President’s Commission on the Holocaust (1978)*¹²⁴
- *The Indian Claims Commission (1946)*¹²⁵
- *The Compensated Emancipation Act Commission (1862)*¹²⁶

in America: Oklahoma,” Equal Justice Initiative, <https://lynchinginamerica.eji.org/explore/oklahoma>, and *Ibid.*, p. 46, n. 188.

¹²¹ “A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921,” (hereinafter “Tulsa Race Riot Report”), February 28, 2001, <https://www.okhistory.org/research/forms/freport.pdf>, p. 43; see also Hannibal B. Johnson, *Black Wall Street: From Riot to Renaissance in Tulsa’s Historic Greenwood District* (Fort Worth: Eakin Press, 2007), p. 27-28.

¹²² Oklahoma Senate Bill 788, enacted November 1, 2001 (amending prior laws establishing the “Tulsa Race Riot Commission”), 48th Leg. (2001), <https://bit.ly/2yjJN43>; “Tulsa Race Riot Report,” p. 6; Human Rights Watch, *The Case for Reparations in Tulsa, Oklahoma*, p. 5-13; *Ibid.*, p. 18; *Ibid.*, p. 6; *Ibid.*, p. 7; *Ibid.*, p. 39.

¹²³ Densho Encyclopedia, “Commission on Wartime Relocation and Internment of Civilians,” https://encyclopedia.densho.org/Commission_on_Wartime_Relocation_and_Internment_of_Civilians/#Specific_Findings_and_Recommendations; *Ibid.* Same as above; “Personal Justice Denied Part 2: Recommendations,” The Commission On Wartime Relocation and Internment of Civilians, July 5, 1983, <https://www.archives.gov/files/research/japanese-americans/justice-denied/part-2-recommendations.pdf>, p. 2

¹²⁴ Holocaust Encyclopedia, “Excerpt from the President’s Commission Report,” <https://encyclopedia.ushmm.org/content/en/article/excerpts-from-the-presidents-commission-report>; President’s Commission on the Holocaust, “Report to the President,” September 27, 1979, <https://www.ushmm.org/m/pdfs/20050707-presidents-commission-holocaust.pdf>, p. 13.

¹²⁵ The outcomes of this commission were wholly inadequate in terms of distribution and providing repair proportional to the harms experienced by Native and Indigenous people, including genocide, mass displacement, and land theft. But the establishment of the commission and its subsequent work represents an effort by the federal government to take steps towards righting the worse of its wrongs.

National Archives, “Records of the Indian Claims Commission,” undated, <https://www.archives.gov/research/guided-records/groups/279.html>; Erin Blakemore, “The Thorny History of Reparations in the United States,” *History.com*, August 28, 2019, <https://www.history.com/news/reparations-slavery-native-americans-japanese-internment>; *Ibid.* Same as above.

¹²⁶ To date, the only reparations paid by the federal government for the enslavement of Black people, were not to the victims who outlasted horrid crimes during enslavement, but to their owners. Jessica Parr, “The Compensated Emancipation Act of 1862,” *We’re History*, April 16, 2018, <http://werhistory.org/the-compensated-emancipation-act-of-1862/>.

Reparations Aren't Ordinary Public Policy

Reparations are not ordinary public policy and should not replace it. Peter Dixon, a research scientist in the Conflict Resolution and Coexistence Program at Brandeis University, argues in line with international human rights standards that governments should be intentionally separating the processes:

Reparations measures are intended to be an act of justice that not only addresses harm but also recognizes that recipients' rights were violated. Along with several key differences, this separates reparation from social policies like welfare and from international humanitarian assistance and development aid. Relief, assistance and aid are clearly important in contexts where poverty, inequality and violence are linked...but it's problematic when the two are indistinguishable or when relief replaces reparation.¹²⁷

Conclusion

The US government has never issued its own comprehensive study on the impacts of slavery and subsequent racist federal policies and institutions. This documentation, through the work of an H.R. 40 commission, is a necessary part of the public acknowledgment of the government's violations and how it may seek to rectify them. Though the US House in 2008¹²⁸ and the US Senate¹²⁹ in 2009 passed resolutions apologizing for slavery, they were never signed into law.

The failure to provide full acknowledgment and repair, at the federal level, has compounded past and present harms, worsening injuries in the Black community. Congress should not remain stagnant on the issue of repair while states, city councils, and public and private institutions pass their own reparations measures. Reparative justice demands the "fierce urgency of now."¹³⁰

¹²⁷ Peter Dixon, "U.S. cities and states are discussing reparations for Black Americans. Here's what's key.," *Washington Post*, August 24, 2020, <https://www.washingtonpost.com/politics/2020/08/24/us-cities-states-are-discussing-reparations-black-americans-heres-whats-key/>.

¹²⁸ Apologizing for the enslavement and racial segregation of African-Americans, H.Res.194, 110th Cong. (2008) <https://www.govtrack.us/congress/bills/110/hres194/text>.

¹²⁹ A concurrent resolution apologizing for the enslavement and racial segregation of African Americans., S.Con. Res.26, 11th Cong. (2009) <https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/26/text>.

¹³⁰ Secretary Kathleen Sebelius, "Our 'Fierce Urgency of Now,'" blog, *White House Archives*, August 26, 2013, <https://obamawhitehouse.archives.gov/blog/2013/08/26/our-fierce-urgency-now#:~:text=When%20Dr.,A%20half%20century%20later%2C%20Dr.>