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The US Human Rights Network is a national network of organizations and individuals working to strengthen a human rights movement and culture within the United States led by the people most directly impacted by human rights violations. We work to secure dignity and justice for all.

The Students and Education Working Group allows human rights defenders to work collectively by sharing information, working on joint projects, and pooling resources and information to robustly engage in a process to protect students and education human rights in the United States.

U.S. Children’s Right to Educational Equity

I. SUMMARY

1. In the U.S. public education system, school funding is based primarily (45%) on local taxes¹. This funding formula creates a system where wealthier neighborhoods have wealthier schools, while lower-income neighborhoods have poorer schools; it denies marginalized, low-socioeconomic status (SES) students equal access to an equal education. Through this systemic inequality in access to education, the U.S. is discriminating against low-income communities, which largely intersect with communities of color².
2. For an example of the disparities between regions, Lucerne Valley Union School District in California allocates about \$3,388 per student, while Desert Center Unified School District also in California spends roughly \$42,772 per student because of disparities in local property taxes³. These disparities in funding translate to disparities in academic achievement, including test scores, retention rates, opportunities for higher education, future income⁴, and disciplinary referrals – which lead to the disproportionate incarceration of young people of color from low-SES neighborhoods⁵.
3. Every child in the U.S. has the human right, as stated in the Universal Declaration of Human Rights (UDHR), to education⁶ and to equal protection under the law. However, the *San Antonio Independent School District v. Rodriguez* case decision stated that the Constitution does not guarantee a right to equal school funding nor does the Fourteenth Amendment apply to wealth-based discrimination in education.
4. The U.S. government owes its children a national investment in equitable public schools. The federal government should take primary financial and legal responsibility for addressing the systemic issue of school funding by increasing federal funding for public schools, taking steps to include the right to equal access to education in the Constitution, and taking steps to reverse the *San Antonio Independent School District v. Rodriguez*⁷ case decision.

¹ McFarland, J., Hussar, B., Wang, X., Zhang, J., Wang, K., Rathbun, A., Barmer, A., Forrest Cataldi, E., and Bullock Mann, F. (2018). The condition of education 2018. National Center for Education Statistics. Retrieved from <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2018144>

² U.S. Census Bureau. (2017). www2.census.gov. Retrieved from <https://www2.census.gov/programs-surveys/demo/tables/p60/259/tableA1.xls>

³ Turner, C., Khrais, R., Lloyd, T., Olgin, A., Isensee, L., Vevea, B., & Carsen, D. (2016, April 18). Why America's Schools Have A Money Problem. Retrieved from <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem>

⁴ American Psychological Association (2018). Retrieved from <https://www.apa.org/pi/ses/resources/publications/education>

⁵ American Civil Liberties Union (2019) Retrieved from <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic>

⁶ UN General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris. Article 26 & 7.

⁷ Powell, L. F. & Supreme Court Of The United States. (1972) *U.S. Reports: San Antonio School District v. Rodriguez*, 411 U.S. 1. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep411001/>.

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II. LEGAL FRAMEWORK

1. Article 26 of the Universal Declaration of Human Rights (UDHR) states, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”⁶
2. Article 7 of the UNDHR states, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”⁶
3. Article 26 of the International Covenant on Civil and Political Rights states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸
4. The Fourteenth Amendment to the U.S. Constitution, as cited in the landmark *Brown v. Board of Education* case to prohibit racial segregation in schools, provides equal protection of its governing laws to all citizens⁹. In the supreme court case, Chief Justice Earl Warren wrote: "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."¹⁰
5. In the 1973 case, *San Antonio Independent School District v. Rodriguez*, the Supreme Court ruled that San Antonio Independent School District's financing system, which was based on local property taxes, was not an unconstitutional violation of the Fourteenth Amendment’s equal protection clause.
6. The majority opinion, reversing the District Court, stated that the appellees did not sufficiently prove a textual basis, within the U.S. Constitution, supporting the principle

⁶ UN General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris.

⁶ UN General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris.

⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

⁹ U.S. Const. amend. XIV.

¹⁰ *Brown v. Board of Education*, 347 U.S. 483 (1954).

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that education is a fundamental right. Urging that the school financing system led to wealth-based discrimination, the plaintiffs had argued that the fundamental right to education should be applied to the States, through the Fourteenth Amendment. The Court found that there was no such fundamental right and that the unequal school financing system was not subject to strict scrutiny.⁸⁷

7. Justices [Brennan](#), [Douglas](#), [White](#), and [Marshall](#) dissented. In his dissent, Justice Marshall argued that in cases involving unenumerated rights, the Court's "task...should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution," and "[a]s the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly."¹¹

III. BACKGROUND

A. Introduction

⁷ Powell, L. F. & Supreme Court Of The United States. (1972) *U.S. Reports: San Antonio School District v. Rodriguez*, 411 U.S. 1. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep411001/>.

¹¹ Thurgood Marshall (1973) Dissenting Opinion by Thurgood Marshall in *San Antonio Independent School District v. Rodriguez*. Retrieved from <http://documents.routledge-interactive.s3.amazonaws.com/9780415506434/document10.pdf>

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1. Children in U.S. public schools are being discriminated against on the basis of income. Marginalized students do not have equal access to education. Low-income, often immigrant, primarily communities of color do not have the same access to the same standard of education as wealthier communities. Higher education and employment opportunities are severely limited for these marginalized communities, which allows for a cycle of poverty and poor education that diminishes the opportunity for social and economic mobility⁹⁴. The issue comes down to discriminatory funding for public schools based on local taxes, and it made it to the Supreme Court in the 1973 case, *San Antonio Independent School District v. Rodriguez*. Since then, plaintiffs have challenged school finance decisions in 45 of 50 states, with 12 currently facing lawsuits¹²¹³.
2. In the Supreme Court case, The Rodriguez plaintiffs considered their lawsuit a natural extension of *Brown v. Board of Education*: disparities in school funding prevent U.S. students from getting that opportunity of an education on "equal terms." The nation's schools had become more racially integrated after *Brown v. Board of Education* but were still profoundly segregated: low-income students clustered in largely poor schools, while high-income students clustered in largely wealthy schools.
3. In a split 5-4 decision, the Supreme Court ruled against Rodriguez, saying there is no right to equal funding in education under the U.S. Constitution. Not that the system is fair or balanced — just that the federal government has no obligation to make it so. In his forceful [dissent](#), Justice Thurgood Marshall wrote, "I cannot accept such an emasculation of the Equal Protection Clause in the context of this case."
4. As of May 2018, twelve states—Arizona, Arkansas, Delaware, Florida, Iowa, Kansas, New Mexico, New York, North Carolina, Pennsylvania, Tennessee and Washington—face lawsuits on the adequacy or equity of their school funding¹³.
5. While the U.S. government assured the Human Rights Council in the Universal Periodic Review (UPR) that it has “numerous laws allowing individuals to sue schools, school districts, or institutions of higher education to remedy individual cases of discrimination, beyond the systemic remedies pursued by the federal government¹⁴,” the federal government refuses to recognize the issue of inadequate school funding as systemic, and

⁴ American Psychological Association (2018). Retrieved from <https://www.apa.org/pi/ses/resources/publications/education>

¹² The Center for Educational Equity at Teachers College. (2017, September 29). School Funding Court Decisions. Retrieved from <http://schoolfunding.info/school-funding-court-decisions/>

¹³ Sanders, C. (2018, May 16). These 12 States Are Being Sued for Not Funding Schools Equitably. Retrieved from <https://educationpost.org/these-12-states-are-being-sued-for-not-funding-schools-equitably/>

¹³ Sanders, C. (2018, May 16). These 12 States Are Being Sued for Not Funding Schools Equitably. Retrieved from <https://educationpost.org/these-12-states-are-being-sued-for-not-funding-schools-equitably/>

¹⁴ United States of America. “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21.” *United Nations Human Rights Council*, <https://daccess-ods.un.org/TMP/1488843.26219559.html>.

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thus, a federal responsibility. The government refuses to acknowledge its discrimination against low-income students, primarily students of color.

B. UPR Second Cycle Twenty Second Session Recommendations to the U.S. Government¹⁵

Theme: E51 Right to education – General

1. 176.319 Continue to promote the right to education, including ensuring equal access to education for vulnerable groups (Armenia).
2. 176.327 Continue its efforts for the implementation of its reform plan of June 2014 concerning the education of American Indian students and make use of education grant available to better meet the needs of American Indian and Alaskan native students (Albania).

Theme: A41 Constitutional and legislative framework

1. 176.320 Take concrete steps to include the right to education in the Constitution (Maldives).

Theme: A42 Institutions & policies – General

1. 176.75 Create a national human rights institution (Senegal).
2. 176.76 Set up a federal human rights institution (Congo) / Strengthen its institutional framework by establishing an independent human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (Tunisia) / Establish an independent national human rights institution in accordance with the Paris Principles (Paraguay).
3. 176.77 Create a national human rights institution in conformity with the Paris Principles (Bolivarian Republic of Venezuela).
4. 176.78 Establish an independent national human rights institution, in accordance with the Paris Principles (Poland).
5. 176.79 Establish a centralized national human rights institution which is in line with the Paris Principles (Sierra Leone).
6. 176.85 Accelerate the process of establishment of the national human rights institution (Gabon).
7. 176.86 Establish a national human rights institution to provide national coherence to the efforts of promotion and protection of human rights (Morocco).

¹⁵ “UPR of United States of America Second Cycle Twenty Second Session Thematic List of Recommendations.” *United Nations Human Rights Council*, 2015, lib.ohchr.org/HRBodies/UPR/Documents/Session22/US/MatriceOfRecommendationsUSA.docx.

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8. 176.87 Create a human rights institution at the federal level in accordance with the Paris Principles as a national “focal point” for the promotion and protection of human rights (Hungary).
9. 176.89 Work towards the establishment of a national human rights institution in accordance with the Paris Principles (Philippines).
10. 176.90 Establish a national human rights institution in accordance with the Paris Principles and adopt a national action plan to address structural racial discrimination (Chile).

C. U.S. Compliance to Human Rights Obligations

1. The U.S. government noted recommendations 176.75, 176.76, 176.77, 176.78, 176.79, 176.85, 176.86, 176.87, 176.89, 176.90 to establish a national human rights institution. The government also noted recommendation 176.320 to include the right to education in the Constitution.
2. The U.S. government supported recommendations 176.319 to ensure equal access to education for vulnerable groups and 176.327 concerning the education of American Indian and Alaskan native students.
3. In the second cycle UPR U.S. national report to the Human Rights Council (HRC), the government stated, “We seek to ensure equal educational opportunities for all students by enforcing laws that prohibit discrimination in education, including on the basis of race, color, and national origin. The government stated, “All children have the right to equal access to public elementary and secondary education, regardless of their or their parents’ immigration status, and such schools must provide meaningful access to their programs to persons with limited English proficiency, including migrants¹⁴.”
4. The government has not taken any concrete steps to include the right to education in the Constitution or to create a national human rights institution as recommended. Steps have been taken to decrease the disproportionate number of disciplinary actions taken against black, latino/a/x, and native students – but no such steps have addressed the systemic issue of inequitable school funding.

D. Impact of Government Inaction Towards Human Rights Obligations

1. As a result of the government’s inaction to address systemic inequity in education, a strong correlation has been documented by the American Psychological Association (APA) between socioeconomic status and educational achievement, revealing how low-income children are less likely to succeed academically, graduate high school, attend college, graduate college, save for retirement, and live in good neighborhoods compared to their higher income peers⁴.

¹⁴ United States of America. “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21.” *United Nations Human Rights Council*, <https://daccess-ods.un.org/TMP/1488843.26219559.html>.

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2. According to the APA, “children in low-income schools are less likely to have well-qualified teachers, and teacher quality of training and experience is correlated with children’s academic achievement¹⁶. Schools with students from the highest concentrations of poverty have fewer library resources to draw on (fewer staff, libraries are open fewer hours per week, and staff are less well rounded) than those serving middle-income children¹⁷. Students who were randomly assigned to higher quality classroom in grades K-3 earned more, were more likely to attend college, saved more for retirement, and lived in better neighborhoods¹⁸.”
3. Additionally, “children from low-SES families enter high school with average literacy skills five years behind those of high-income students¹⁹”. In 2014, the high school dropout rate among persons 16–24 years old was highest in low-income families (11.6 percent) as compared to high-income families (2.8 percent)²². The success rate of low-income students in science, technology, engineering, and mathematics disciplines is much lower than that of students who do not come from underrepresented backgrounds²⁰. According to a 2018 report, individuals within the top family income quartile are 43 percent more likely to obtain a bachelor’s degree by age 24 as compared to individuals from the lowest family income quartile²¹.”

E. Examples of the Human Rights Violations

1. In a 2016 NPR article, titled “Why America’s Schools Have a Money Problem” the principal of Livingston Junior High School, a low-income, all black school in Sumter, a rural western Alabama town, describes how “In the girls’ restroom, they may have four or five stalls, but only one works.” He stated, “One room, no longer a classroom, leaks when it rains. Garbage cans catch some of the water, but the buckled floor and smell of mold

¹⁶ Clotfelter, C. T., Ladd, H. F., & Vigdor, J. L. (2006). Teacher-student matching and the assessment of teacher effectiveness. *Journal of Human Resources*, 41, 778-820. doi:10.3368/jhr.XLI.4.778

¹⁷ Pribesh, S., Gavigan, K., & Dickinson, G. (2011). The access gap: Poverty and characteristics of school library media centers. *The Library Quarterly*, 81(2), 143-160.

¹⁸ Chetty, R., Friedman, J. N., Hilger, N., Saez, E., Schanzenbach, D. W., & Yagan, D. (2011). How does your kindergarten classroom affect your earnings? Evidence from Project STAR. *The Quarterly Journal of Economics*, 126, 1593-1660. <https://doi.org/10.1093/qje/qjr041>

¹⁹ Reardon, S. F., Valentino, R. A., Kalogrides, D., Shores, K. A., & Greenberg, E. H. (2013). *Patterns and trends in racial academic achievement gaps among states, 1999-2011*. Retrieved from <https://cepa.stanford.edu/content/patterns-and-trends-racial-academic-achievement-gaps-among-states-1999-2011>

²² National Center for Education Statistics. (2008). Percentage of high school dropouts among persons 16 through 24 years old (status dropout rate), by income level, and percentage distribution of status dropouts, by labor force status and educational attainment: 1970 through 2007. Retrieved from http://nces.ed.gov/programs/digest/d08/tables/dt08_110.asp

²⁰ Doerschuk, P., Bahrim, C., Daniel, J., Kruger, J., Mann, J., & Martin, C. (2016). Closing the gaps and filling the STEM pipeline: A multidisciplinary approach. *Journal of Science Education and Technology*, 25, 682-695. doi:10.1007/s10956-016-9622-8

²¹ “Equity Indicator 1b: High School Graduates College Continuation Rates by Family Income Quartile: 1970 to 2016.” *Indicators of Higher Education Equity in the United States Reports and Data, 2018*, The Pell Institute of Opportunity in Higher Education & Penn Ahead Alliance for Higher Education and Democracy, 2018, pellinstitute.org/indicators/reports_2018_data.shtml.

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suggest they miss plenty. Around the school, there are broken windows, peeling paint and cracked floors²³.”

2. According to a WBHM article, in 2011, plaintiffs from Sumter tried to prove that the state's school funding system wasn't just unfair but was also racially discriminatory. In addition to being mainly low-income, all of Sumter's students are African-American. A federal judge excoriated Alabama's funding system in an 800-page opinion²⁵. Still, he found the plaintiffs were not entitled to relief from the court²⁴. (Please refer to article link for photographs of Livingston Junior High School)

IV. RECOMMENDATIONS

1. The U.S. government needs to include the right to education in the Constitution.
2. The government must apply the Fourteenth Amendment to the issues of inequities in school funding, which foster income-based and racial discrimination.
3. The federal government must ensure children in the U.S. have a right to equal access to education, and that means ensuring low-income and historically marginalized communities, including black, latino/a/x, and native communities, have equal educational opportunities to their wealthier, more privileged counterparts.
4. School funding based primarily on property taxes creates an inequitable discriminatory school system. The ruling from *San Antonio Independent School District v. Rodriguez* denies U.S. people the right to education and to equal protection of the law without discrimination as stated in the UDHR. It is the federal government’s responsibility to take steps to overturn this Supreme Court decision.
5. The government must take primary responsibility for addressing the issue of systemic inequities in school funding back from the state governments.
6. The federal government should take steps to include universal human rights education as part of the curriculum for public schools to help foster civic engagement and democracy.
7. The federal government should allocate more funds to public education to address the systemic issues of inequity in school funding.

²³ Turner, Cory, et al. “Why America’s Schools Have A Money Problem.” *NPR*, NPR, 18 Apr. 2016, www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem.

²⁵ https://www.govinfo.gov/content/pkg/USCOURTS-alnd-5_08-cv-00450/pdf/USCOURTS-alnd-5_08-cv-00450-3.pdf

²⁴ Carsen, Dan. “School Funding In Alabama: A View From Sumter County.” *WBHM 90.3*, WBHM, 2016, wbhm.org/feature/2016/school-funding-alabama-view-sumter-county/.

