ADDRESSING SYSTEMIC RACISM THROUGH MUNICIPAL ACTION

In every locality across the United States, race is a defining social construct that has major impacts on the life of every resident, including those who make up the incredibly diverse LGBTQ community. The precise form this impact takes is defined by one's actual or perceived race along with other intersecting identities. The actual or perceived race and intersectional identity of some opens the door to opportunity and advantage, while that of others engender discrimination, disadvantage, and disparities in virtually every area of life. This has been true since the founding of this country and unfortunately remains true today.

Historical Foundations of Systemic Racism in the United States

Systemic racism, also known as structural racism, refers to an overarching system of racial bias across institutions, culture, and society.[1] Systemic racism does not necessarily mean that institutions are overtly racist or have patently racist policies. It also refers to systems, institutions, and policies that create or allow disparate negative impacts for individuals who are Black, Indigenous, and People of Color (**BIPOC**). The origins of modern systemic racism in this country is embedded in its very founding, and the rampant **racial disparities**—used herein to refer to the stark overrepresentation of BIPOC communities in negative outcomes based on their proportional representation in the general population—that persist today are grim manifestations of the enduring, destructive effects of systemic racism.

As early as 1526, enslaved Africans were brought to Spanish Florida.[2] After 1619, when a Dutch ship brought approximately twenty enslaved Africans to the first British colony of Jamestown,

Virginia, slavery spread rapidly through the American colonies.[3] During this first part of the 1600s, enslaved Africans were just one source of labor alongside European indentured servants and enslaved Indigenous People.[4] Moreover, enslavement was not always a permanent lifelong status nor did this status automatically pass down to the children of enslaved peoples.[5]

As the demand for forced labor increased in the late 1600s, white settlers turned to enslaved Africans as their primary labor source over less profitable indentured servants.[6] In 1662, Virginia enacted a law that automatically applied the legal status of "slave" to the children of enslaved persons.[7] In 1667, another Virginia law removed the religious conditions that sometimes limited a person's servitude by making it legal to keep enslaved people even if they converted to Christianity.[8] This marked a turning point in which the justification of the enslavement of African peoples shifted from a religious one to justifications based on race.[9] By the mid-1700s, new laws and societal

norms linked Africans to perpetual labor and the colonies began making formal distinctions among people based on race. The colonies also began legally restricting the interactions between whites and Blacks, creating a legal racial hierarchy positioning Black people at the bottom and white people at the top.[10]

The end of chattel slavery in America did not bring about the end of systemic racism.[11] Instead, racial bias across institutions, culture, and society merely adapted and evolved with every major advancement toward racial equality. After the Civil War, the 13th Amendment was passed formally abolishing slavery, but it enshrined in our Constitution a glaring loophole that still contributes to the overrepresentation and exploitation of BIPOC communities in the criminal justice system. It allowed slavery and involuntary servitude "as a punishment for crime whereof the party shall have been duly convicted."[12] This led to a new type of slavery, known as convict leasing, in which Black people were

arrest and convicted under racist Black Codes[13] then forced to work for local planters and industrialists.[14] Countless other efforts to preserve the social order of white supremacy emerged over the ensuing decades, including Jim Crow segregation laws, efforts to prevent Black people from voting including poll taxes and literacy tests,[15] and the so-called "war on drugs" that targets BIPOC communities.[16]

Systemic Racism in Policing

Modern American policing provides one of the most prominent examples of enduring systemic racism, an issue thrown into the national spotlight this year by widespread protests against police killings of Black people. While this issue received unprecedented national attention this year, the problem of police killings disproportionately affecting Black people has been present throughout our history. In fact, one early form of policing that first emerged in the Carolina colonies in 1704 was known as "slave patrols," which consisted of groups of men tasked with catching and punishing runaway enslaved people as well as preventing revolts by enslaved people.[17] After the Civil War and during Reconstruction, many southern sheriffs carried on the agenda of maintaining white supremacy by enforcing segregation and preventing freed enslaved people from voting.[18]

Enduring system racism in policing is evinced by data clearly showing that police kill Black people at disproportionate rates. In the United States, Black people are three times more likely to be killed by police.[19] One study found that Black Chicagoans are over 650% more likely to be killed by police than white Chicagoans.[20] Even when unarmed, Black people are still more likely to be killed by police.[21]

What's more, racial disparities exist throughout police interactions. A recent study found that Black people are 20% more likely to be pulled over, twice as likely to be searched, and less likely to be carrying illegal contraband compared to their white peers.[22] Stark racial disparities do not end with police interactions, but hold true throughout the broader criminal justice system.[23]

Fortunately, municipalities can take decisive action to begin addressing systemic racism in policing. Cities, towns, and counties should expeditiously implement the following reforms in their law enforcement agencies.

DEMILITARIZE THE POLICE

Public confidence in law enforcement declines with the presence of militarized units.[24] The transfer of military weapons to police departments increases officer-induced fatalities among civilians.[25] While there is a troubling lack of public data on police militarization, a review of police militarization in Maryland shows that SWAT teams are more likely to be deployed to Black neighborhoods regardless of crime levels, consistent with anecdotal evidence across the country.[26] While much of the process of militarization occurs as a result of transactions between the federal government and state law enforcement departments, local governments should take a firm stance against militarization by explicitly prohibiting the purchase of military equipment by their local law enforcement agencies through law, policy, or budgetary decisions.

REDIRECT FUNDS

Research shows that investing directly in communities, including vital social services, reduces crime.[27] Local

In every locality across the United States, **race is a defining social construct that has major impacts on the life of every resident,** including those who make up the incredibly diverse LGBTQ community.

governments can reduce incidents of crime by redirecting funds to critical assistance programs as well as housing programs, mental health services, substance abuse treatment, and early intervention programs. (See discussion on intersectionality and equity below for important frameworks that should guide funding decisions.)

CREATE STANDARDS FOR ACCEPTABLE USE OF FORCE

Municipalities should create acceptable use of force standards for police departments. At a minimum, it should permit use of force only when necessary and as a last resort when all reasonable options have been exhausted. It should also expressly prohibit maneuvers and restraints that restrict the flow of blood or oxygen to the brain, including neck holds and chokeholds. Moreover, this policy should ban the use of force as a punitive or retaliatory measure and require law enforcement to use de-escalation tactics instead. Police officers must also act when they observe misconduct by fellow officers. When witnessing a colleague using excessive force or engaging in wrongdoing, police officers should have a duty to intervene and accurately report the incident to supervisors, making it clear to the community and to other officers that law enforcement's primary responsibility is to protect and serve the public.

TRANSPARENCY AND ACCOUNTABILITY

Police departments must aim to become more transparent by making trainings and departmental procedures accessible to the public. Departments must collect robust data on types of police stops, instances of use of force, and the treatment of vulnerable populations, including immigrant, LGBTQ, and Black and Brown communities. Local police departments should also be transparent with records regarding officers charged with or disciplined for misconduct. Additionally, body cameras have the potential to increase transparency and provide an additional perspective to police-community encounters. Coupled with a consistent standard of use, body cameras can be used to promote both civilian and officer safety. An appropriate standard should emphasize public availability and regular footage review.

END RACIAL PROFILING

Profiling and discrimination in policing must be strictly and explicitly prohibited. These policies must prohibit law enforcement from targeting a person based on actual or perceived race, ethnicity, national origin, religion, disability, gender, gender identity, or sexual orientation. Anti-racial profiling policies should also require law enforcement to take affirmative measures to eliminate profiling,

including implementing data collection and analysis to accurately assess the extent of the problem, regular mandatory training on issues of profiling, and clear procedures for receiving, investigating, and responding to complaints of alleged profiling.

PROHIBIT NO-KNOCK WARRANTS

No-knock warrants authorize police to enter a premises without announcing their presence or their purpose. Intended to prevent the destruction of evidence or ensure police safety, no-knock warrants have instead led to the killing and injury of innocent people. An analysis of no-knock warrant raids conducted by the New York Police Department found that 10 percent were wrong-door raids.[28] Local governments must prohibit the use of no-knock warrants to ensure the safety of the people.
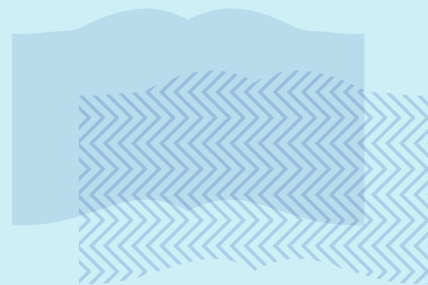
While the **pervasiveness of systemic racism** and the severity of the racial disparities it creates may seem daunting, **municipal officials have many tools at their disposal** to begin addressing these issues in their communities.

Employment, Housing, Education, and Beyond

While policing presents a highly visible illustration of the presence and effects of systematic racism, systemic racism affects the municipal institutions with which residents interact in virtually every area of life.

Racial disparities run deep in employment. The U.S. economy was built on the exploitation and occupational segregation of BIPOC.[29] By some estimates, slaveholders extracted more than $14 trillion in labor costs (in today's dollars) from enslaved people.[30] The legacies of slavery, Black Codes, Jim Crow, racist aspects of the New Deal, and limited funding and reach of government anti-discrimination bodies helped keep BIPOC individuals concentrated in undervalued occupations and promoted employment discrimination as well as wage and benefits disparities based on race.[31] A recent study by the Harvard Business Review found that since 1990, white applicants received 36% more callbacks on average than Black applicants and 24% more callbacks than Latinx applicants with identical resumes.[32] As of August 2020, the Black unemployment rate is twice as high as the white unemployment rate. [33] Moreover, as we've seen in many areas, the COVID-19 pandemic amplifies existing disparities. A recent Human Rights Campaign report found that BIPOC LGBTQ people are 70% more likely than the general population to have lost their jobs since states initiated reopening policies due to COVID-19.[34]

Federal New Deal housing policies played a central role in the creation and persistence of segregated Black neighborhoods during a significant part of the 1900s.[35] The federal Home Owners' Loan Corporation, created to refinance home mortgages in default to prevent foreclosure, institutionalized

"redlining," or the practice of denying mortgages based on the racial and ethnic makeup of neighborhoods.[36] Communities with large BIPOC populations were assigned the lowest investment rating and deemed too risky for government-backed mortgages.[37] The Public Works Administration, which built the first civilian public housing in the U.S., primarily benefited white middle- and lower-middle class families and built explicitly segregated housing for Black families.[38] What's more, the Federal Housing Administration subsidized the building of entire suburbs with explicit requirements of restrictive covenants—provisions in deeds prohibiting resale to Black Americans—while subsiding white families to move out of urban areas into all-white suburbs.[39] Housing discrimination and inequality persists today. A 2012 study by the Department of Housing and Urban Development and the Urban Institute found that real estate agents and rental housing providers recommend and show fewer available homes and apartments to racial minorities than equally qualified whites.[40] Additionally, the Census Bureau reported that Black households had the lowest homeownership rate at 44%, nearly 30 percentage points behind white households.[41]

Systemic racism also begins disadvantaging Black students from the moment they enter the educational system. For example, a 2014 Department of Education study found that although Black students make up only 18% of all preschoolers, they represent 50% of all preschool suspensions.[42] White children, on the other hand, make up 40% of all preschool enrollment but represent 26% of those receiving suspensions.[43] Black students in K-12 are suspended at three times the rate

of white students who commit similar infractions.[44] 2015-16 data from the Department of Education found that while Black students make up 15% of the total student population in public schools, 31% of students who were arrested or referred to law enforcement were Black.[45] Furthermore, research shows that majority-Black schools are chronically underfunded.[46]

The economic disparities engendered by enduring systemic racism in all of these areas of life are striking. The income gap between Black and white people in the U.S. has persistently grown over time. The difference in median household incomes between white and Black Americans has grown from about $23,800 in 1970 to roughly $33,000 in 2018.[47] Poverty is particularly high for those who live at the intersection of racial minority and LGBTQ status. BIPOC LGBTQ people have statistically significant higher poverty rates than their same-race non-LGBTQ counterparts.[48] For example, 30.8% of Black LGBTQ people live in poverty, whereas 25.3% of Black non-LGBTQ people live in poverty.[49]

The scourge of systemic racism extends to many other areas of life, including health care and public services. This reality combined with transphobia and sexism contributes to the tragic, escalating epidemic of fatal violence against Black and Brown transgender women.

While the pervasiveness of systemic racism and the severity of the racial disparities it creates may seem daunting, municipal officials have many tools at their disposal to begin addressing these issues in their communities.

Crafting Solutions

Understanding and operationalizing the core concepts of intersectionality and equity are central to developing and implementing effective local laws, policies, and services to begin addressing the disparities engendered by systemic racism.

INTERSECTIONALITY

Intersectionality refers to the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, homophobia, transphobia, ableism, and classism) combine, overlap, or intersect, especially in the experiences of marginalized individuals or groups.[50] A person who identifies as Black, transgender, and female, and who is living with a disability, lives at the intersection of all of these marginalized identities. Their life and daily experiences are unfortunately shaped by a complex, compounded mix of prejudices and discrimination on account of their actual or perceived identities as Black, transgender, female, and a person living with a disability. This term was born out of Black feminism, coined by lawyer, scholar, and professor Kimberlé Crenshaw in a 1989 paper published in the University of Chicago Legal Forum entitled "Demarginalizing the Intersection of Race and Sex."[51]

EQUITY

Equity is an important concept that is distinct from the concept of equality. Equity means providing tools and resources according to need such that historically disadvantaged communities truly have the same access to opportunities intended to be equally available to everyone. This takes into account the unequal footing traditionally marginalized groups, including LGBTQ people and Black and Brown communities, start off on because of the effects of historical and extant systemic marginalization and discrimination. Equality, on the other hand, refers to treating everyone the same and offering everyone the same opportunities. In essence, equality is the foundation that makes the ultimate goal of equity possible. Equity is important because even if opportunities are equally available to everyone, those who are oppressed by systemic barriers (like systemic racism) face unique difficulties in accessing those equal opportunities, often resulting in continued inequality.

Understanding and operationalizing the core concepts of **intersectionality** and **equity** are **central to developing and implementing effective local laws, policies, and services** to begin addressing the disparities engendered by systemic racism.

CHECKLIST

☐ **BUILD A STRONG FOUNDATION OF NON-DISCRIMINATION**
As noted above, true equity cannot be achieved without the baseline of robust enforceable non-discrimination laws and policies. Municipal officials must ensure that every city department has an enumerated non-discrimination policy that expressly prohibits discrimination against BIPOC individuals, including BIPOC LGBTQ people. These policies should cover municipal employment (Part II of the MEI Scorecard) as well as city services, programs, and facilities. Local legislators should enact robust citywide non-discrimination protections that explicitly includes race and ethnicity as well as sexual orientation and gender identity (among other protected characteristics) in all areas of life including employment, housing, and public spaces (Part I of the MEI Scorecard).

☐ **CREATE AND EMPOWER LOCAL HUMAN RIGHTS COMMISSIONS**
As local bodies specifically designed to take on the issues of prejudice and discrimination, human rights commissions (Part III of the MEI Scorecard) are well-situated to begin addressing system racism in local communities with a focus on intersectionality and equity. They can be created by executive action or ordinances and should be adequately funded and empowered to enforce citywide non-discrimination laws. These entities should also be given the authority to review municipal laws and policies for unintended racial disparities and propose revisions or other potential solutions. Local commissions should be composed of diverse community members—including BIPOC residents, LGBTQ residents, and those with intersecting marginalized identities—who possess thorough understandings of systemic racism, intersectionality, and equity. Human rights commissioners should regularly consult with local advocates representing BIPOC communities and those with multiple marginalized identities. Moreover, local human rights commissions should make it part of their mission to end the epidemic of violence against transgender and gender non-conforming individuals, which disproportionately affects Black and Brown transgender women.

☐ **RESTRUCTURE BUDGET PRIORITIES**
Municipalities should make addressing systemic racism a budgetary priority by (as discussed earlier) divesting from police budgets and investing directly in BIPOC and other marginalized communities. Local officials must increase funding for social services, direct assistance programs, health care (including mental health care), housing and food security programs, education, and employment programs while making sure that services are equitably accessible to the multiply marginalized. City budgets should also adequately fund anti-discrimination bodies like local human rights commissions.

☐ **INNOVATE**
Addressing issues as pervasive and complex as systemic racism, the racial disparities it creates, and the compounding effects of multiple intersecting identities requires thorough study and innovative thinking. One innovative approach cities can take is creating an Equity Task Force that brings together members of the local human rights commission, city council, the mayor's office, the city manager's office, and municipal agencies to study and identify racial disparities, review municipal policies and services for effectiveness in reducing disparities, identify unmet community needs, and formulate services and policies that further equity and wellbeing for BIPOC residents, including BIPOC LGBTQ residents.

☐ **ADVOCATE FOR REFORM BEYOND CITY LIMITS**
The voices of local officials, the closest representatives of the people, carry significant clout. Mayors, city council members, police chiefs, human rights commissioners, and other local officials should voice their support for policy reforms to address systemic racism not only within their own spheres of authority, but also in local school boards, state government, and the federal government. Local officials can make their voices heard in many ways including through official statements, social media channels, proclamations, and resolutions.

Conclusion

Systemic racism is a grave and pervasive problem deeply rooted in our nation's history. The legacies of slavery, Black Codes, Jim Crow, the New Deal, and many other racially biased governmental laws and policies still affect the institutions and systems that shape every aspect of American life. Together, these create the conditions where racialized police violence endures with impunity and where Black Americans continue to suffer the worst racial disparities in virtually every area of life. These racial disparities are often drastically compounded for BIPOC individuals who live at the intersection of multiple marginalized identities, like BIPOC transgender and gender non-conforming people. Though the issue of systemic racism may seem dauntingly colossal, local officials have many tools at their disposal to begin addressing this issue head on, including reshaping city budgets and creating local task forces to promote genuine equity for BIPOC communities. As leaders entrusted with the most important task of ensuring the health, safety, and well-being of all residents, municipal officials must immediately begin to address the blight of systemic racism in their communities and beyond.

Join HRC's pledge for local elected leaders to end violence against Black and Brown transgender women.

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