On behalf of the Leadership Conference on Civil Rights (LCCR), the nation’s oldest, largest, and most diverse civil and human rights coalition, I am pleased to submit the following statement to the Inter-American Commission on Human Rights regarding the civil rights implications of drug sentencing practices in the United States.

In the half century since LCCR was founded, the nation has made great strides in combating racial discrimination. In the criminal justice field, however, racial inequality is rising, not receding. Law enforcement disparities continue to threaten fifty years of hard-fought civil rights progress.

- Almost one in three young black males is under some form of criminal supervision—either in prison or jail, or on probation or parole.
- A Hispanic male born in 1991 has a one in six chance of spending time in prison.
- There are more young black men under criminal supervision than there are in college; for every one black male who graduates from college, 100 are arrested.
- The Civil Rights Act of 1964 bans employment discrimination. Yet today, three out of every ten black males born in the US will serve time in prison, severelylimiting their prospects for legitimate employment.
- The Voting Rights Act of 1965 guarantees the franchise. But today, 31 percent of black men in Alabama and Florida, and 1.4 million black men nationally, have lost the right to vote as a result of criminal convictions.
- Our civil rights statutes abolished Jim Crow laws and gave minority citizens the right to travel and use public accommodations freely. But today, racial profiling and police brutality make such travel hazardous to the dignity and health of law-abiding black and Hispanic citizens.

These disparities violate basic human dignity and fundamental fairness. The vast majority of blacks and Hispanics are law-abiding citizens; enforcement tactics that assume otherwise are unjust and intolerable. The decision to sentence a convicted criminal to prison has traditionally been entrusted to impartial judges. But in recent years sentencing has become mechanistic, a decision effectively controlled by legislators, prosecutors, and sentencing commissioners. This change in the culture of sentencing has had disastrous consequences for minorities.

Mandatory sentencing laws enacted in the 1980’s have led to racial injustice. These laws deprive judges of the discretion to tailor a sentence based on the culpability of the defendant and the gravity of the crime. Mandatory minimum sentencing laws are not truly mandatory because prosecutors may grant exceptions. Prosecutors can choose to charge some defendants with offenses that do not carry mandatory penalties or they can accept a plea in which charges carrying mandatory penalties will be dismissed. These laws transfer sentencing authority from experienced, impartial judges to young adversarial prosecutors.

Some civil rights supporters originally favored mandatory minimums. But the evidence is clear that minorities fare worse under mandatory sentencing laws than they did under a system of judicial discretion. By depriving judges of the responsibility to impose fair sentences, mandatory sentencing laws represent injustice on auto-pilot.

The effect of current sentencing policies has been dramatic. Since 1972, the populations of federal and state prisons have increased 500 percent to 1.2 million. Including jail populations, America now incarcerates about 2 million people. An increasingly large percentage of those in prison are charged with drug crimes. Between 1980 and 1995, the number of those serving time for drug offenses increased more than 1000 percent. Currently, nearly a half million federal and state inmates are serving time or awaiting trial for drug offenses.

These statistics describe a national strategy to address the public health problem of drug abuse with massive incarceration. A drug control strategy that depends so heavily on prison building is unwise for many reasons, including the racial disparities it creates. These racial disparities in drug sentencing do not occur because minorities use drugs at a higher rate than whites. According to federal health statistics, drug use rates per capita among minority and white Americans are similar.
Yet, while blacks constitute about 12 percent of the population, they constitute approximately 38 percent of those arrested for drugs, 59 percent of those convicted of drug offenses and 74 percent of those sentenced to prison for a drug offense.

Much of this discrepancy can be traced to discriminatory practices such as racial profiling. The assumption that minorities are more likely to commit drug crimes and that most minorities commit such crimes prompts more minority arrests. Whites commit drug crimes too, but police enforcement tactics do not focus on them; drug arrests are easier to accomplish in inner-city neighborhoods than in middle-class, white neighborhoods.

In 2002, blacks constituted more than 80% of the people sentenced under the harsh federal crack cocaine laws and served substantially more time in prison for drug offenses than whites, despite the fact that more than two-thirds of crack cocaine users in the United States were not black. At the federal level, differences in the laws governing crack and powder cocaine cases cause disparity. By way of comparison, 5 grams of crack triggers the same mandatory sentence as 500 grams of powder cocaine. In fiscal year 2000, 93.7% of defendants convicted of federal crack distribution offenses were black or Hispanic and only 5.6% were white. This unfair situation is part of a pattern of inequity that threatens the credibility of the justice system in minority communities.

Under current law, draconian statutory and guideline penalties are triggered by possession or sale of a small amount of crack cocaine—one hundred times less crack cocaine than the amount of powder cocaine that triggers the same penalties. In 1994, 1997, and again in 2002, the Sentencing Commission concluded that there was no empirical basis for the 100 to 1 ratio. Moreover, in 2004 the United States Sentencing Commission said, “[r]evising the crack cocaine thresholds would [do more to] reduce the [sentencing] gap than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system,” yet Congress refuses to act to amend this blatantly racist statute.

The result is continued enforcement of a law that everyone agrees is irrational at best and racist at worst. Few policies contribute more to minority cynicism about law enforcement than the crack/powder cocaine disparity. If anti-drug efforts are to have credibility in minority communities, these penalties must be equalized as the Commission initially proposed.

Mandatory sentencing drug laws are engines of racial injustice. They have filled America’s prisons to the rafters with thousands of non-violent minority offenders. Repeal of these laws would be a significant step toward restoring racial fairness in the criminal justice system.