



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

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**Committee on the Elimination of Racial Discrimination**

**Reports submitted by States parties under  
article 9 of the Convention**

**Seventh to ninth periodic reports of States parties  
due in 2011**

**United States of America\* \*\***

[13 June 2013]

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\* This document contains the seventh, eighth and ninth periodic reports of United States of America due on 20 November 2011, submitted in one document. For the fourth to sixth periodic reports and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/USA/6 and CERD/C/SR.1853, 1854 and 1870.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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## List of acronyms

ABA	American Bar Association
ACA	Patient Protection and Affordable Care Act
ACHP	Advisory Council on Historic Preservation
AFFH	Affirmatively Furthering Fair Housing Program (a program of HUD)
AI/AN	American Indian and Alaska Native
ATD	Alternatives to Immigration Detention (a program of ICE, in DHS)
ATJ	Access to Justice Initiative (an initiative of DOJ)
BHMP	Baltimore Housing Mobility Program
BIA	Bureau of Indian Affairs (in DOI)
BJS	Bureau of Justice Statistics (in DOJ)
CBP	U.S. Customs and Border Protection (in DHS)
CDC	Centers for Disease Control and Prevention (in HHS)
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
COPS	Office of Community Oriented Policing Services (in DOJ)
CRIPA	Civil Rights of Institutionalized Persons Act of 1980
CRCL	Office for Civil Rights and Civil Liberties (in DHS)
CRS	Community Relations Service (in DOJ)
CRT	Civil Rights Division (in DOJ)
DDPA	Durban Declaration and Programme of Action
DHAP	Disaster Housing Assistance Program (a program of HUD)
DHS	U.S. Department of Homeland Security
DHS/CRCL	Office for Civil Rights and Civil Liberties (in DHS)
DHS/FEMA	Federal Emergency Management Agency (in DHS)
DOI	U.S. Department of Interior
DOJ	U.S. Department of Justice
DOJ/CRS	Community Relations Service (in DOJ)
DOJ/CRT	Civil Rights Division (in DOJ)
DOJ/CRT/OSC	Office of Special Counsel for Immigration Related Unfair Employment Practices (in DOJ)
DOJ/OVC	Office for Victims of Crime (in DOJ)
DOL	U.S. Department of Labour
DOL/OFCCP	Office of Federal Contract Compliance (in DOL)
DOS	U.S. Department of State
DOS/DRL	Bureau of Democracy, Human Rights and Labour (in DOS)
ED	U.S. Department of Education
ED/OCR	Office for Civil Rights (in ED)
EEOA	Equal Education Opportunities Act of 1974
EEOC	Equal Employment Opportunity Commission
EJIWG	Federal Working Group on Environmental Justice

ELL	English Language Learner
EPA	U.S. Environmental Protection Agency
ESEA	Elementary and Secondary Education Act
FBI	Federal Bureau of Investigation (in DOJ)
FDNY	New York City Fire Department
FEPA	Fair Employment Practice Agency
FHA	Fair Housing Act
FHAP	Fair Housing Assistance Program (a program of HUD)
FLETC	Federal Law Enforcement Training Center (in DHS)
FY	Fiscal Year (October 1 of one year to September 30 of the next)
HAVA	Help American Vote Act
HHS	U.S. Department of Health and Human Services
HHS/OCR	Office for Civil Rights (in HHS)
HRSA	Health Resources Services Administration (in HHS)
HUD	U.S. Department of Housing and Urban Development HUD/FHEO Office of Fair Housing and Equal Opportunity (in HUD)
IACP	International Association of Chiefs of Police
ICCPR	International Covenant on Civil and Political Rights
ICE	U.S. Immigration and Customs Enforcement (in DHS)
ICE/ODPP	Office of Detention Policy and Planning (in ICE)
IHS	Indian Health Service (in HHS)
IMAGE	Mutual Agreement between Government and Employees Program (a program of ICE)
INA	Immigration and Nationality Act
IOLTA	Interest on Lawyer's Trust Accounts
JLWOP	Juvenile Life without Parole sentences
KDHAP	Katrina Disaster Housing Assistance Program (a program of HUD)
LEA	Local educational agency
LEP	Limited English Proficient
LSC	Legal Services Corporation
MIECHV	Tribal Maternal, Infant, and Early Childhood Home Visiting Grant Program
MOU	Memorandum of Understanding
MOVE Act	Military and Overseas Voter Empowerment Act of 2009
NAGPRA	Native American Graves Protection and Repatriation Act
NDHR	National Healthcare Disparities Report (a publication of HHS)
NDRF	National Disaster Recovery Framework
NGO	Non-governmental organization
NPA	National Partnership for Action to End Health Disparities
NSEERS	National Security Entry-Exit Registration System
NVRA	National Voter Registration Act of 1993
OMH	Office of Minority Health (in HHS)

OSC	Office of Special Counsel for Immigration-Related Unfair Employment Practices (in DOJ)
OVW	Office of Violence Against Women (in DOJ)
PBND	Performance-Based National Detention Standards
RFRA	Religious Freedom Restoration Act
RLUIPA	Religious Land Use and Institutionalized Persons Act
RTT	Race to the Top Program (a program of ED)
SBA	Small Business Administration
STD	Sexually transmitted disease
TSA	Transportation Security Administration (in DHS)
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act of 1986
UPR	Universal Periodic Review
USCIS	U.S. Citizenship and Immigration Services (in DHS)
USDA	U.S. Department of Agriculture
VA	U.S. Veterans Administration
VAP	Victim Assistance Program (a program of ICE, in DHS)
VAWA	Violence Against Women Act
VPI	Voluntary Principles on Security and Human Rights Initiative
VRA	Voting Rights Act of 1965
WIA	Workforce Investment Act

## I. Introduction

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Elimination of Racial Discrimination (“Committee”) on measures giving effect to the undertakings of the United States under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), pursuant to article 9 thereof, and on related measures to address racial discrimination in the United States. This document, accompanied by the common core document and annex submitted on 30 December 2011, responds to the Committee’s request for the seventh, eighth, and ninth periodic reports of the United States.

2. The United States has always been a multi-racial and multi-ethnic society, and its pluralism is increasing. We have made great strides over the years in overcoming the legacies of slavery, racism, ethnic intolerance, and destructive laws, policies, and practices relating to members of racial and ethnic minorities. Indeed, fifty years ago, the idea of having a Black/African American President of the United States would not have seemed possible; today, it is a reality. We recognize, however, that the path toward racial equality has been uneven, racial and ethnic discrimination still persists, and much work remains to meet our goal of ensuring equality for all. Our nation’s Founders, who enshrined in our Constitution their ambition “to form a more perfect Union,” bequeathed to us not a static condition, but a perpetual aspiration and mission. This report shares our progress in implementing our undertakings under the CERD and on related measures to address racial discrimination.

3. This report and the accompanying common core document and Annex that the United States submitted in 2011 were prepared by the U.S. Department of State (DOS) with extensive input and assistance from numerous departments and agencies of the federal government. In preparing the report, we also solicited input from state, local, tribal and territorial jurisdictions and representatives of non-governmental organizations and public interest groups. Additionally, where possible throughout this report we have endeavoured to highlight and address examples of concerns raised by civil society regarding CERD implementation and initiatives that respond to those concerns. Our external consultation has taken many forms, including consultations related to United States participation in the universal periodic review and other outreach efforts. Both as a result of external consultation as well as our own internal reviews, we recognize that more can and should be done in many areas to implement our CERD obligations and related commitments more effectively.

4. Collaboration among federal government departments and agencies on the drafting of U.S. treaty reports has also resulted in the recognition that more can be done to support better coordination throughout the United States on strengthening understanding and respect for human rights. To this end, numerous federal government departments and agencies are participating in a newly established mechanism known as the Equality Working Group. The Group was launched in March 2012 by the Civil Rights Division of the Department of Justice (DOJ/CRT) in partnership with the Department of State’s Bureau of Democracy, Human Rights, and Labour (DOS/DRL) to enhance the government’s domestic implementation of our international human rights obligations and commitments relating to non-discrimination and equal opportunity, with an initial focus on those commitments that relate to combating racial discrimination, including under the CERD.

5. The United States submitted its initial, second and third periodic reports as a single document to the Committee in September 2000, hereinafter “Initial U.S. Report” or “Initial Report,” and made its presentation to the Committee on August 3 and 6, 2001. The fourth, fifth, and sixth periodic reports of the United States were also submitted as one document in

April 2007 (hereinafter the “2007 Report”); the United States made its presentation to the Committee in February 2008, the Committee issued its concluding observations in May of 2008, and the United States submitted a one-year follow-up report on January 13, 2009. This report provides an update on progress since the submission of the prior reports. All these documents, and the Committee’s observations with regard to these reports, may be viewed at <http://www.state.gov/j/drl/reports/treaties/index.htm>.

6. In an effort to be responsive to the Committee’s reporting guidelines, CERD/C/2007/1, many subheadings in this report track those guidelines. However, given recent reports containing related information, including the common core document and annex as well as the comprehensive report on the International Covenant on Civil and Political Rights (ICCPR) submitted to the Human Rights Committee on December 30, 2011 (hereinafter “2011 U.S. ICCPR Report”), and given our desire to seek to respect the recommended 40-page limit, we have included cross references to other reports. Due to page constraints, some issues may not be addressed in the order or level of detail suggested in the Committee’s guidelines. In addition, there are cases where we may not agree with the legal or factual premises underlying a given request for information or where concluding observations do not bear directly on obligations under the Convention; nevertheless, in the interest of promoting dialogue and cooperation, we have provided requested information to the degree possible. The Committee’s concluding observations are addressed throughout the report.

## **II. Additional information relating to articles of the Convention**

### **Article 1**

#### **A. Definitions of racial discrimination in domestic law and the Convention**

7. Definition of racial discrimination in domestic law. Existing U.S. constitutional and statutory law and practice provide strong and effective protections against discrimination on the bases covered by article 1 of the Convention in all fields of public endeavour, and provide remedies for those who, despite these protections, become victims of discrimination.<sup>1</sup> For discussion of U.S. constitutional provisions and laws providing protections against racial and ethnic discrimination, please see sections II and III of the common core document.

8. Prohibition of discriminatory effects or disparate impact. With regard to paragraph 10 of the Committee’s concluding observations, although establishing a race discrimination violation of the U.S. Constitution requires proof of discriminatory intent, many U.S. civil rights statutes and regulations go further, prohibiting policies or practices that have discriminatory effects or disparate impact on members of racial or ethnic minorities or other protected classes. In cases involving disparate impact analysis, the inquiry is whether evidence establishes that a facially neutral policy, practice, or procedure causes a significantly disproportionate negative impact on the protected group and lacks a substantial legitimate justification. When facts support the use of disparate impact analysis,

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<sup>1</sup> As noted in the 2007 Report, although the definition used in Article 1(1) of the Convention contains two specific terms (“descent” and “ethnic origin”) not typically used in U.S. federal civil rights legislation and practice, no indication exists in the negotiating history of the Convention that those terms encompass characteristics not already subsumed in the terms “race,” “colour,” and “national origin” as those terms are used in existing U.S. law. The United States thus interprets and intends to carry out its obligations under the Convention on that basis.

the United States is committed to using these valuable tools to address indirect discrimination. Laws that address disparate impact discrimination include:

- Title VII of the Civil Rights Act of 1964 (Title VII), prohibiting disparate impact in employment, as seen in the recent holding that New York City's use of examinations for fire-fighters had an unlawful disparate impact on Blacks/African Americans and Hispanics/Latinos. *U.S. v. City of New York, NY*, 683 F. Supp. 2d 77 (E.D.N.Y. 2009).
- The Voting Rights Act, which prohibits certain voting practices and procedures, including redistricting plans that have disparate impact on the basis of race, colour, or membership in a language minority group. For example, a recent enforcement action led to an agreement with Shannon County, South Dakota to ensure the voting rights of Lakota-speaking Native American voters with limited English proficiency.
- Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, and its implementing regulations, which prohibit practices that have the effect of discriminating by state or local governments or private entities receiving federal financial assistance, including schools, hospitals and health care facilities, law enforcement agencies, courts, and creditors such as banks and credit card companies.<sup>2</sup> For example, in 2010, the Department of Health and Human Services Office for Civil Rights (HHS/OCR) secured a settlement requiring the University of Pittsburgh Medical Center to ensure that closure of a hospital in a predominately Black/African American community did not have a disparate impact on the residents of that area. Other examples are noted below in the discussion under articles 2 and 5.
- The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), which prohibits discrimination in the sale, rental, and financing of dwellings based, inter alia, on race, colour, or national origin; and the Equal Credit Opportunity Act, which prohibits creditors from discriminating against credit applicants on the basis of, inter alia, race, colour, or national origin. For example, in 2011, DOJ obtained its largest fair lending settlement, requiring Countrywide Financial Corporation to provide \$335 million to some 230,000 Black/African American and Hispanic/Latino borrowers who were steered into sub-prime loans or forced to pay more for their mortgages than similarly-qualified White borrowers.

9. As part of its recently reinvigorated civil rights enforcement, in 2010 DOJ/CRT issued a letter to chief justices and administrators of state courts, clarifying the obligation under Title VI of courts that receive federal financial assistance to provide language assistance services to people with limited English language ability in all proceedings and court operations. DOJ also provides technical assistance to federal agencies to strengthen their Title VI enforcement efforts.

10. Examples of recent policy developments concerning disparate impact include the following. In 2013 the Department of Housing and Urban Development (HUD) published a

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<sup>2</sup> In 2001, the Supreme Court held in *Alexander v. Sandoval*, 532 U.S. 275 (2001), that section 602 of Title VI, authorizing promulgation of regulations to enforce the disparate impact provisions of the statute, failed to provide for a private right of action to bring certain disparate impact claims in federal court. Thus, such claims must be brought by the government. Private individuals may file administrative complaints alleging disparate impact with the federal agency that provides funds to the recipient, and such complaints can result in voluntary settlements with the agency, agency decisions to terminate funds, or agency referrals to DOJ for litigation. In 2011, the President sent a legislative proposal to Congress that included restoration of the private right of action under Title VI.



final rule on the implementation of a discriminatory effects standard with regard to housing, designed to promote enforcement against housing practices that have an unjustified discriminatory effect, <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>. In April 2012, the Equal Employment Opportunity Commission (EEOC) issued guidance, inter alia, on the application of disparate impact analysis in cases involving employer use of arrest and conviction records in employment decisions – decisions that often have a disproportionate impact on racial minorities, [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm). Further examples of enforcement of laws against activities with unjustified discriminatory effect or disproportionate impact are found in the common core document and in the 2011 U.S. ICCPR Report (discussion under article 2).

11. Understanding of the phrase “public life.” The United States understands that identification of the rights protected under the Convention by reference in article 1 to the fields of “public life” reflects a distinction between spheres of public conduct that are customarily subject to government regulation, and spheres of private conduct that may not be. With regard to this issue, and also in response to paragraph 11 of the Committee’s concluding observations, at the time it became party to the CERD, the United States carefully evaluated the treaty to ensure that it could fully implement all of the obligations it would assume. In this case, the definition of “racial discrimination” under article 1 (1) of the Convention, the obligation imposed in article 2 (1) (d) to bring to an end all racial discrimination “by any persons, groups or organizations,” and the specific requirements of paragraphs 2 (1) (c) and (d) and articles 3 and 5 could be read as imposing a requirement on States parties to take action to prohibit and punish purely private conduct of a nature generally held to lie beyond the proper scope of governmental regulation under U.S. law. For this reason, in close collaboration with the U.S. Senate, the United States crafted a formal reservation that U.S. undertakings in this regard are limited by the reach of constitutional and statutory protections under U.S. law as they may exist at any given time. We believe this reservation continues to be necessary, although we note that anti-discrimination laws in this area have broad reach. As described in greater detail in paragraph 154 of the common core document and also discussed below in the context of article 2, the protections against discrimination in the U.S. Constitution and federal laws reach significant areas of non-government activity, ranging from reliance on U.S. civil rights laws to prohibit private actors from engaging in racial or ethnic (national origin) discrimination in activities such as the sale or rental of private property, employment at private businesses, admission to private schools, and access to public facilities; or the use of the Immigration and Nationality Act’s (INA) anti-discrimination provisions to protect authorized immigrants from discriminatory practices by private employers based on the workers’ immigration status, how they look or speak, or where they are from. Similarly, many state anti-discrimination laws cover discriminatory practices by private employers, landlords, creditors, and educational institutions.

12. Differential treatment based on citizenship or immigration status. The United States strongly shares the Committee’s view that citizens and noncitizens alike should enjoy protection of their human rights and fundamental freedoms. Although the Convention by its terms does not apply to “distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens,” as a general matter the United States believes that every State must be vigilant in protecting the rights that noncitizens enjoy in the State, regardless of immigration status, as a matter of applicable domestic and international law.

13. As the common core document makes clear, the United States has one of the most open immigration systems in the world. Aliens within the United States, regardless of their immigration status, enjoy substantial protections under the U.S. Constitution. Many of these protections are shared on an equal basis with citizens, including protections against racial and national origin discrimination. The guarantee of equal protection of the laws under the Fifth and Fourteenth Amendments to the Constitution applies in some respects to

aliens who have made an entry into the United States, even if such entry was unlawful. In addition to constitutional protections, which, for example, make it unlawful to deny elementary and secondary school children in the United States a free public education on the basis of their immigration status, see, e.g., *Plyler v. Doe*, 457 U.S. 202 (1982), many federal statutes prohibit discrimination against noncitizens. These include (1) section 274B(a)(1) of the INA, 8 U.S.C. 1324b (a)(1) (prohibiting employment discrimination against certain work authorized individuals, including some noncitizens, on the basis of national origin or citizenship status with respect to hiring, firing, or recruitment for a fee); (2) the protections of federal labour law; and (3) anti-discrimination employment laws, see EEOC Compliance Manual, Sec. 2, Threshold Issues, <http://www.eeoc.gov/policy/docs/threshold.html#2-III-A-4> (“Individuals who are employed in the United States are protected by the EEO statutes regardless of their citizenship or immigration status.”). In addition, the federal prohibition against discrimination based on race, colour, or national origin under Title VI of the Civil Rights Act applies to citizens and noncitizens alike. See DOJ/CRT Title VI Legal Manual, p. 6, <http://www.justice.gov/crt/about/cor/coord/vimannual.pdf>.

14. The United States prioritizes elimination of racial discrimination against all individuals, both citizens and noncitizens alike. For example, in 2011 DOJ and the Department of Education (ED) issued guidance reminding public schools of their obligation under *Plyler* to enrol all students regardless of their or their parents’ immigration status. DOJ and ED have since provided technical assistance to schools to help them fulfil these obligations. They have also investigated schools that are reportedly not following the rules leading, inter alia, to a recent settlement agreement with a Georgia school district that improperly notified parents that their children would be withdrawn from school for failure to provide social security numbers and failed to make enrolment procedures accessible to parents with limited English proficiency. Also in 2011, Alabama passed an immigration law (H.B. 56) that required the disclosure to schools of the immigration status of enrolling children and their parents. DOJ immediately travelled to Alabama to meet with parents, students, teachers, and other community leaders. DOJ challenged the law in Federal court, and private parties in a separate case also challenged the law. Ultimately, the court held that the disclosure provision (Section 28) of H.B. 56 violated the Equal Protection Clause of the U.S. Constitution and enjoined the operation of that section. *United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012); *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

15. DOJ investigates employment discrimination against noncitizens under the INA; the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) of DOJ/CRT works with local communities to prevent violations of, and to seek out and prosecute those who violate, anti-discrimination laws with regard to noncitizens. The United States also devotes substantial resources to assisting and providing services to noncitizens, for example, through the Department of Labour (DOL) Migrant Worker Partnership Program, designed to facilitate protection of the rights of noncitizens working in the United States. In addition, the EEOC enforces prohibitions against employment discrimination based on race and national origin without regard to immigration status; in recognition of the need to serve this vulnerable population more effectively, it created an Immigrant Worker Team in 2011 to develop policies for enforcement and outreach to immigrant groups. EEOC continues to prioritize serving vulnerable immigrant workers in its 2012 Strategic Plan and Strategic Enforcement Plan identifying agency priorities through FY 2016. For further discussion, see paragraphs 101-108 (Law with regard to Aliens) of the 2011 U.S. ICCPR Report and the discussion of noncitizens under article 5, below.

**B. Information on special measures**

16. The United States legal system provides for special measures when circumstances so warrant. See the discussion under article 2 below and the discussion in paragraphs 197 to 206 of the common core document. Recently, DOJ actively defended the undergraduate admission program of the University of Texas, which was challenged by two unsuccessful White candidates for undergraduate admission. The Texas program adopts a holistic approach – examining race as one component among many – when selecting among applicants who are not otherwise eligible for automatic admission by virtue of being in the top ten percent of their high school classes. The U.S. Court of Appeals for the Fifth Circuit upheld the University’s limited use of race as justified by a compelling interest in diversity and as narrowly tailored to achieve a critical mass of minority students. The Supreme Court heard arguments in the case, *Fisher v. Texas*, in October 2012, and is expected to decide the case by June 2013. In its amicus curiae brief, the Solicitor General argued, on a brief signed by several federal agencies, that, like the University, the United States has a compelling interest in the educational benefits of diversity, and that the University’s use of race in freshman class admissions to achieve the educational benefits of diversity is constitutional.

**Article 2****A. Brief description of legal framework and general policies**

17. Racial discrimination by the government is prohibited at all levels. Prohibitions cover all public authorities and institutions as well as private organizations, institutions, and employers under many circumstances. For a description of the general legal framework and policies addressing racial discrimination, see paragraphs 142-175 of the common core document.

18. Recent laws relating to discrimination, including discrimination based on race, colour, and national origin, or minority groups, include:

- The Lilly Ledbetter Fair Pay Act, signed by President Obama in 2009, provides that the statute of limitations for bringing a wage discrimination claim, including claims alleging wage discrimination based on race or national origin, runs from the time an individual is “affected by application of a discriminatory compensation decision including each time wages, benefits, or other compensation is paid.” The law overrides a Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 500 U.S. 618 (2007).
- The Genetic Information Non-discrimination Act of 2008 governs the use of genetic information in health insurance and employment decisions. Protected genetic information includes genetic services (tests, counselling and education), genetic tests of family members, and family medical history. As it relates to racial and ethnic discrimination, this law prohibits an insurer or employer from refusing to insure or employ someone with a genetic marker for disease associated with certain racial or ethnic groups, such as sickle cell trait.
- The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (*Shepard-Byrd Act*) creates a new federal prohibition on hate crimes, 18 U.S.C. 249; simplifies the jurisdictional predicate for prosecuting violent acts undertaken because of, inter alia, the actual or perceived race, colour, religion, or national origin of any person; and, for the first time, allows federal prosecution of violence undertaken because of the actual or perceived gender, disability, sexual orientation or gender identity of any person.

- The American Recovery and Reinvestment Act of 2009 provided funding for programs that will help reduce discrimination and improve the lives of members of minority populations through education, training, and programs to end homelessness.
- The Patient Protection and Affordable Care Act (ACA) of 2010 provides many Americans access to health insurance. Section 1557 extends the application of federal civil rights laws to any health program or activity receiving federal financial assistance, any program or activity administered by an executive agency, or any entity established under Title 1 of the ACA.
- The Tribal Law and Order Act of 2010<sup>3</sup> gives tribes greater authority to prosecute and punish criminals; expands recruitment, retention, and training for Bureau of Indian Affairs (BIA) and tribal officers; includes new guidelines and training for domestic violence and sex crimes; strengthens tribal courts and police departments; and enhances programs to combat drug and alcohol abuse and help at-risk youth.
- The Claims Resolution Act of 2010 provides funding and statutory authorities for settlement agreements reached in the *In re Black Farmers Discrimination Litigation* (brought by Black/African American farmers who filed late claims in an earlier case concerning discrimination by the U.S. Department of Agriculture (USDA) in the award and servicing of farm loans), and also for several settlement agreements reached with regard to indigenous issues – the Cobell lawsuit (alleging U.S. government mismanagement of individual Indian money accounts), and four major Native American water rights cases.
- The Fair Sentencing Act of 2010 reduces sentencing disparities between powder cocaine and crack cocaine offenses, capping a long effort to address the fact that those convicted of crack cocaine offenses are more likely to be members of racial minorities.
- The financial reform legislation of 2010 includes a new consumer protection bureau that will help address the unjustified disproportionate effect of the foreclosure crisis on communities of colour.
- The Violence Against Women Reauthorization Act of 2013, signed by President Obama in March of this year, reauthorizes critical grant programs created by the original Violence Against Women Act (VAWA) and subsequent legislation, establishes new programs, and strengthens federal laws. Section 3 prohibits discrimination on the basis of, inter alia, actual or perceived race or national origin in any VAWA-funded program or activity.

**B. Specific information on the legislative, judicial, administrative or other measures taken**

19. To give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that public authorities and public institutions act in conformity with this obligation. Federal agencies actively enforce federal non-discrimination laws against public authorities and institutions at all levels of government. The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C.

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<sup>3</sup> Note that the term “tribe” or “tribal” as used in this report means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

3789d; and Title VI of the Civil Rights Act, 42 U.S.C. 2000d, authorize the Attorney General to bring civil actions to eliminate patterns or practices of law enforcement misconduct, including racial discrimination. DOJ/CRT investigates police departments, prisons, jails, juvenile correction facilities, mental health facilities, and related institutions to ensure compliance with the law and brings lawsuits to enforce the laws, where necessary. For example, a recent investigation of the New Orleans Police Department (NOPD) found a pattern or practice of unconstitutional conduct or violations of federal law in numerous areas, including: racial and ethnic profiling; failures to provide effective policing services to persons with limited English proficiency; unconstitutional stops, searches and arrests; gender-biased policing; and use of excessive force. In 2012, DOJ/CRT reached one of the most comprehensive reform agreements in its history to address these findings. See <http://www.justice.gov/crt/about/spl/nopd.php>. DOJ/CRT's work under 42 U.S.C.14141 and Title VI also seeks to ensure due process and equal protection in the administration of juvenile justice. For example, in 2012, DOJ entered into a settlement with the Juvenile Court of Memphis and Shelby County in Tennessee to address the disproportionate representation of Black/African-American children in almost every phase of the juvenile justice system and the system's need to respect all children's due process rights.

20. In the area of education, DOJ/CRT monitors and enforces approximately 200 federal school desegregation cases and actively combats discrimination against English Language Learner (ELL) students and their parents through enforcement of the Equal Educational Opportunities Act of 1973 (EEOA) and Title VI. During the last four years, CRT has pursued relief in 43 desegregation cases that integrate faculties, expand access to advanced courses, eliminate race-based extra-curricular activities, disrupt the "school-to-prison pipeline",<sup>4</sup> halt segregative student transfers, open magnet schools, and close de facto single-race schools. During that time, CRT also reached 16 settlement agreements to ensure that states and school districts provide equal opportunities for students of all national origins regardless of their English language abilities.

21. DOJ/CRT also has sought to address one part of the "school-to-prison pipeline" problem by preventing students of colour from being excluded from school as a result of discriminatory suspensions and expulsions. In September 2010, CRT brought national attention to this critical issue by co-hosting with ED a first-of-its kind conference convening researchers, advocates and policy-makers to address best practices for keeping students in school.

22. DOJ/CRT also investigates and prosecutes cases of pattern or practice of employment discrimination by state or local government employers under Title VII. CRT filed 32 lawsuits under Title VII between 2009 and 2012, obtaining substantial relief for victims. It also launched a new pattern or practice initiative designed to use publicly available information in a systematic way to identify employers that should be investigated for potential pattern or practice of discrimination, without a referral from the EEOC. Primarily as a result of this initiative, by the end of October 2012, CRT was pursuing 28 active pattern or practice investigations, all of which had been initiated since January 2009.

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<sup>4</sup> Student discipline policies that may require student suspension or expulsion for infractions relating to alcohol, drugs, weapons, violence, or other violations of school rules (i.e., "zero tolerance" policies) can interrupt a student's education, lead to increased rates of students dropping out of school, and diminish students' chances for success. In too many cases, these school-imposed sanctions may lead to students being placed in (or drawn into) the criminal justice system, a pathway sometimes referred to as the "school-to-prison pipeline." This issue is discussed in more detail in the discussion related to paragraph 34 of the Committee's observations below.

23. In the area of voting, in addition to its usual work under Section 5 of the Voting Rights Act, since early 2011 DOJ/CRT has received approximately 2,200 redistricting plans for review under Section 5 to make sure they do not discriminate on the basis of, inter alia, race or ethnicity. In the past two years alone, CRT has blocked 14 voting changes because the jurisdiction had failed to show that the change complied with the Section 5 standards. These included 12 redistricting plans and two new photo identification requirements for voting.

24. DOJ/CRT has placed a priority on investigating allegations of discrimination against Arab Americans, South Asian Americans, and others perceived to be members of these groups. Many such complaints have been resolved informally. Others have resulted in lawsuits or settlements.

25. Other agencies, such as ED, HUD, DOL, EEOC, HHS and the Department of Homeland Security (DHS) also enforce non-discrimination laws related to race, colour, and national origin against public entities. Descriptions of these laws and their enforcement are found in other sections of this report and in paragraphs 159-175 of the common core document.

26. To give effect to the undertaking to prohibit and bring to an end racial discrimination by any persons, groups, or organizations: Civil rights laws, including 42 U.S.C. 1981 and 1982 and Titles II and VII of the Civil Rights Act of 1964, prohibit private actors from engaging in racial discrimination in making contracts or property transactions, such as the sale or rental of private property, the formation or terms of employment contracts, admission to private schools, and access to public facilities. In addition, enforcement against private parties who engage in discrimination is pursued under the Fair Housing Act and the Equal Credit Opportunity Act; Title VI of the 1964 Civil Rights Act (entities that receive federal funds); Executive Order 11246 (federal contractors and subcontractors); and the INA (discrimination on the basis of national origin or, for certain classes of “protected individuals,” citizenship status). See paragraphs 159-175 of the common core document and other sections of this report for examples of such cases.

27. To give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations. The U.S. government does not sponsor, defend, or support racial discrimination, and the Constitution, laws, and policies provide protections in this regard at all levels in the United States. See, e.g., <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1208101.html>.

28. To review and if necessary amend or rescind governmental, national and local policies. Laws, regulations and policies in the United States are under continuous legislative and administrative review and revision, as well as judicial review, at all levels of government. For example:<sup>5</sup>

- Universal periodic review (UPR) implementation – Federal government agencies are reviewing implementation of recommendations accepted by the United States during its first Universal Periodic Review before the UN Human Rights Council in November 2010, including through the creation of several thematic working

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<sup>5</sup> Inclusion on this list of examples does not reflect an assessment that any underlying policy had “the effect of creating or perpetuating racial discrimination,” as used in Article 2(1)(c) of the CERD, but they have been included here as examples of reviews that may ultimately result in improved promotion of racial equality, including by reducing or eliminating discrimination on the basis of race, colour or national origin. The list here, as with other discussions throughout the report, is illustrative, but not exhaustive.

groups focusing on a range of issues, including, inter alia, civil rights, criminal justice, indigenous issues, and immigration.

- The President created the National Equal Pay Enforcement Task Force to improve compliance with, public education regarding, and enforcement of equal pay laws. Task Force recommendations were announced in July 2010.
- Equality Working Group – As described above, this initiative is designed to enhance the government’s domestic implementation of our international human rights treaty obligations and commitments that relate to non-discrimination and equal opportunity, including those in the CERD.
- DOJ – DOJ has indicated that it is reviewing the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.
- Following up on the report of the National Prison Rape Elimination Commission, in May 2012, DOJ issued a rule that sets national standards to prevent, detect, and respond to sexual abuse in confinement facilities. The rule, which is the first-ever federal effort to set standards to protect inmates in all correctional facilities at the federal, state, and local levels, is binding on the Federal Bureau of Prisons, and states that do not comply with the standards are subject to a 5 per cent reduction in funds otherwise received for prison operations.
- In 2011, the President sent a comprehensive legislative proposal to Congress that included restoration of the private right of action under Title VI (discussed in footnote 2 above). The language was included in S. 3322, introduced in the U.S. Senate in June 2012.
- For the purpose of reviewing thousands of redistricting plans under Section 5 of the Voting Rights Act to make sure they do not discriminate based on, inter alia, race or ethnicity, in 2011 DOJ made significant substantive updates to its Section 5 procedures for the first time since 1987 and also updated its guidance to states and local jurisdictions, [http://www.justice.gov/crt/about/vot/Policy\\_Guidance.php](http://www.justice.gov/crt/about/vot/Policy_Guidance.php).
- The Attorney General has established and convened a Cabinet-Level Re-entry Council, a government-wide Council involving HUD, EEOC and other agencies to address both short- and long-term issues related to re-entry of those returning from prison and jail.
- DHS – U.S. Immigration and Customs Enforcement (ICE) is engaged in an on-going review and reform of immigration detention management policies and practices to ensure conditions of confinement consistent with the unique civil, rather than penal, authorities and purpose of immigration detention. The ICE Office of Detention Policy and Planning (ODPP) was established to spearhead ICE’s detention reform initiative through both short- and long-term improvements (see the discussion of immigration detention under article 5, below).
- ICE is engaged in on-going data collection and research, data analysis, monitoring, oversight, and policy development to ensure that its immigration enforcement efforts, such as the Criminal Alien Program, Secure Communities, and the 287(g) program, do not become conduits for discriminatory policing. Steps taken by ICE include provision of awareness video briefings for state and local law enforcement to explain civil rights dimensions of immigration enforcement (including racial profiling, domestic violence and trafficking, limited English proficiency, etc.).
- As a result of a review, including consultation with affected communities, in April 2010 the Administration rescinded the DHS Transportation Security

Administration (TSA) policy subjecting airline passengers from certain countries to secondary screening. Under the revised policy, passengers are selected for screening based on real-time, threat-based intelligence information covering all passengers traveling to the United States.

- As part of the Quadrennial Homeland Security Review, in July 2010 DHS realigned department program activities and organizational structure with mission goals. This review, which included dialogues with more than 20,000 stakeholders from all 50 states and the District of Columbia, incorporates civil rights and civil liberties protections.
- EEOC – EEOC has put in place a new strategic plan and accompanying enforcement plan to emphasize systemic and high impact litigation and to focus on national priority issues. Enforcement priorities for 2013-2016 include targeting “class-based recruitment and hiring practices that discriminate against racial and ethnic groups,” and protecting immigrant, migrant, and other vulnerable workers, particularly with respect to “disparate pay, job segregation, harassment, trafficking, and discriminatory policies affecting vulnerable workers.” This plan also requires increased coordination between EEOC and state and local government Fair Employment Practice Agencies (FEPAs) to enforce federal laws. See <http://www.eeoc.gov/eeoc/plan/>.
- The EEOC reviewed the quality and complaint processing times of agency decisions with regard to discrimination claims made against federal agencies.
- ED – ED will work with Congress on reauthorization of the Elementary and Secondary Education Act (ESEA) to promote the use of academic standards that prepare students to succeed in college and the workplace and accountability systems that recognize student growth and school progress, while continuing to close the achievement gap between students of different races and ethnicities. In March 2010, ED issued its recommendations for ESEA reauthorization, entitled A Blueprint for Reform.
- ED and DOJ issued guidance in December 2011 on the voluntary use of race in K-12 schools and higher education. The guidance helps ensure that integration does not end when a desegregation case is dismissed and that the benefits of educational diversity remain achievable for all students. ED’s Office for Civil Rights (ED/OCR) also issued guidance concerning institutions’ obligations under Title VI of the Civil Rights Act of 1964, as amended, and other laws to protect students from student-on-student harassment on the basis of race, colour, national origin, and other factors – guidance that clarifies the relationship between bullying and discriminatory harassment.
- HHS – As a result of an extensive review, in April 2011 HHS released its Action Plan to Reduce Racial and Ethnic Health Disparities. At the same time, the National Partnership for Action to End Health Disparities released its Stakeholder Strategy for Achieving Health Equity – a roadmap for eliminating health disparities through cooperative action.
- HUD – In 2011-12, HUD conducted an in-depth process involving stakeholders to update its regulations regarding its Affirmatively Furthering Fair Housing (AFFH) program, designed to combat racial and ethnic discrimination in housing. In 2013, HUD is drafting a proposed rule that will provide greater clarity on how jurisdictions and public housing authorities can improve access and advance the ability for all residents to make true housing choices. HUD is also working closely with communities and regions receiving regional planning grants to support decisions and actions that promote AFFH.



- DOL – Each year, DOL’s Office of Federal Contract Compliance (OFCCP) audits the employment policies and practices of approximately 4,000 companies doing business with the federal government to ensure that these companies do not discriminate on the basis of, inter alia, race, colour, or national origin and to ensure that they take affirmative steps to recruit, hire, and promote minorities and women. In 2010, OFCCP enhanced its enforcement capability by hiring 200 additional investigators. It has also greatly increased its outreach to community organizations and the public and proposed changes to enhance the effectiveness of its audit process.
- EPA – EPA has led the government’s efforts to re-energize the Federal Working Group on Environmental Justice (EJ IWG) under Executive Order 12898. In August 2011, 17 cabinet secretaries, agency administrators, and White House office heads signed a Memorandum of Understanding formally recommitting all agencies to environmental justice and establishing priorities, structures, and procedures for the IWG. The IWG conducted 20 community listening sessions across the country and, in 2012, 15 federal agencies issued final agency environmental justice strategies, implementation plans, and/or progress reports.

29. Legislative and judicial actions: The basic U.S. legal framework to address discrimination is described in paragraphs 142-148 and 153-155 of the common core document. Recent enactment of laws expanding human rights protections is noted above under article 2, section A. Judicial actions are described throughout this report.

30. To encourage, where appropriate, non-governmental organizations and institutions that combat racial discrimination and foster mutual understanding: Due to the open nature of U.S. society and its ever-increasing racial and ethnic diversity, a plethora of national, state, and local nongovernmental organizations and movements exist to promote racial and ethnic tolerance and coexistence in the United States. Government entities at all levels reach out to and work with such organizations in pursuing equal protection goals. For example, the newly established Equality Working Group creates a forum for dialogue between civil society and the federal government on issues of equality and human rights. DOJ’s Community Relations Service (DOJ/CRS) engages with non-governmental organizations as it pursues its mission of mediation, technical assistance, and training to assist communities in avoiding racial and ethnic conflict, and to help resolve disputes when they occur. Other agencies throughout the federal government also work with non-governmental organizations, seeking their input and offering training and education to members of the public. States, local jurisdictions and tribal and territorial governments also engage with such organizations. Examples are noted in this report and in the Common core document and its annex.

### **C. Coordination among bodies mandated with combating racial discrimination**

31. The issue of a national human rights institution, noted in paragraph 12 of the Committee’s concluding observations, is discussed in the common core document in the section on Framework within which Human Rights are Promoted at the National Level. Although the United States does not have a single independent national human rights institution in accordance with the Paris Principles, multiple complementary protections and mechanisms serve to reinforce the ability of the United States to guarantee respect for human rights, including through our independent judiciary at both federal and state levels. Within the federal government, numerous departments and agencies are responsible for implementing U.S. human rights treaty obligations through the enforcement of domestic law, with DOJ/CRT playing a lead coordinating role. Numerous state and local governments within the United States have state and/or local civil rights and/or human rights organizations or commissions, many of which participate in the International

Association of Official Human Rights Agencies. Some Indian tribes and territorial governments also have human rights organizations or commissions.<sup>6</sup> The United States continues to examine ways to improve human rights treaty implementation at all levels of government.

32. With regard to the recommendation in paragraph 13 of the Committee's concluding observations that the United States establish appropriate mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state, and local levels, the United States fully agrees that mechanisms designed to strengthen coordination are critical, and numerous such mechanisms do exist. The framework within which human rights are promoted and coordinated in the United States is described in paragraphs 124-130 of the common core document. All federal agencies with mandates related to non-discrimination, including DOJ, EEOC, ED, HUD, DHS, DOL and others, coordinate within the federal government, as well as with state and local authorities, human rights commissions, and non-governmental entities. For example, a hallmark of DOJ's civil rights work in this Administration is partnership and collaboration – strengthening relationships with other agencies, state Attorney General offices throughout the nation, and community and civil society partners to leverage resources and coordinate efforts to maximize impact. DOJ/CRT coordinates enforcement of Title VI of the Civil Rights Act of 1964 and assists other agencies with Title VI and other enforcement responsibilities, ensuring that recipients of federal financial assistance (including state and local governments) do not discriminate in their programs, including on the basis of race, colour and national origin. Over the last four years, DOJ has provided training, technical assistance, and counsel to civil rights offices in federal government agencies, and has reviewed other agencies' Title VI implementing regulations and guidance. DOJ has also created a Title VI Interagency Working Group, which facilitates interagency information sharing to strengthen Title VI enforcement efforts at the federal level. Additionally, several of the UPR Working Groups and the Equality Working Group were created with a view to further strengthening coordination and U.S. domestic implementation of human rights treaty obligations and commitments related to non-discrimination and equal opportunity.

#### **D. Special measures**

33. With regard to article 2, paragraph 2 and paragraph 15 of the Committee's concluding observations, the United States is committed to using all the tools at its disposal to address disparities in outcomes, across a host of indicators, that disproportionately impact members of racial and ethnic minorities, and the United States has in place measures that are race-based as well as measures that may be based on other factors, such as economic factors. Under the U.S. Constitution, classification by race is permissible in some circumstances for certain purposes, such as redressing past racial discrimination and promoting diversity in educational settings. A substantial number of federal ameliorative measures, including many described throughout this report, can be considered special measures for purposes of article 2, paragraph 2. Use of special measures is described further in paragraphs 197-206 of the common core document.

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<sup>6</sup> Examples of activities at state, local, tribal and territorial levels are set forth in the annex A to the U.S. Common Core Document.

## Article 3

### **Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 3, in particular**

34. Measures to prevent, prohibit, and eradicate all practices of racial segregation. The United States condemns racial segregation and apartheid and undertakes to prevent, prohibit, and eradicate all practices of this nature. No such policies or practices are permitted, and it remains the U.S. position that such practices should be condemned and eradicated wherever found.

35. Measures to ensure proper monitoring of all trends that can give rise to racial segregation. As noted above, U.S. law reaches not only intentional discrimination but also certain facially neutral practices that may result in an unjustified disparate impact on members of a protected class. U.S. agencies, such as DOJ/CRT, the ED Office for Civil Rights (ED/OCR), the EEOC, and others, as well as state, territorial, tribal, and local agencies, monitor issues of segregation and discrimination to ensure that appropriate actions are taken under applicable law. The United States also collects census data in a manner that allows analysis by racial, ethnic, and other characteristics. Since the 2000 census, information has also been collected on Americans of Arab ancestry. Recognizing that racial segregation is a problem that in some cases has contributed to neighbourhoods of concentrated poverty, the Obama Administration has initiated programs, such as the Neighbourhood Revitalization Initiative, designed to support local communities in developing the tools needed to revitalize neighbourhoods of concentrated poverty into neighbourhoods of opportunity.

36. Measures to prevent and avoid as much as possible the discrimination prohibited under the Convention, in particular in the areas of education and housing. It is of concern that, in some cases, minorities are concentrated in areas or communities that may have sub-standard living conditions and/or services, and one of the missions of civil rights laws and authorities in the United States is to ensure that such situations are not the result of discriminatory policies or practices (direct or disparate impact) related to housing, education or other areas receiving federal financial assistance.

37. With regard to paragraphs 16 and 17 of the Committee's concluding observations, the causes and effects of de facto segregation and racial and ethnic disparities in housing and education, as well as in other aspects of American life, are issues of active study and concern. The United States continues its efforts to overcome not only current discrimination but also the lingering effects of racism, intolerance, and destructive policies relating to members of minorities. Although it has been more than 40 years since the passage of the Fair Housing Act, housing discrimination and segregation continue to taint communities across the country. Far too many home seekers are shut out by housing providers' prejudice and stereotypes instead of being welcomed into communities that are diverse and thriving. Continuing discrimination affects Blacks/African Americans, Latinos/Hispanics, Arab Americans, Asian Americans, and other minority groups. DOJ/CRT has reinvigorated fair housing enforcement in recent years, working to ensure that local governments and private housing providers offer safe and affordable housing on a non-discriminatory basis, <http://www.justice.gov/crt/publications/>.

38. Housing: The Housing and Community Development Act of 1974 prohibits discrimination in allocation of community development funds on the basis, inter alia, of race, colour or national origin. Under the Fair Housing Act (FHA), HUD requires jurisdictions and other recipients not only to address discrimination, but also to take affirmative steps to overcome barriers to fair housing choice and equal access to opportunity. Thus, communities receiving federal funding must take specific actions to promote diverse, inclusive communities. HUD is working to clarify the FHA obligations

and to provide more assistance and guidance for meeting them. HUD and DOJ are also emphasizing high impact litigation, and in 2011, DOJ and HUD achieved the largest residential fair lending settlement in U.S. history, requiring Countrywide Financial Corporation to pay \$335 million in compensation for Black/African American and Hispanic/Latino victims of discriminatory mortgage lending practices from 2004 through 2008. In 2012, HUD investigated 81 cases involving steering<sup>7</sup> and 11 cases involving redlining<sup>8</sup> along with other efforts to combat housing discrimination by private actors.

39. Federal housing assistance programs play an important role in covering the difference between the rents that low-income families are able to afford and the cost of rental housing. In 2012, the U.S. provided \$2.95 billion in Community Development Block Grants to support housing, \$1 billion for the HOME program, \$685 million in Native American Fair Housing Grants, and \$5.8 billion to public housing programs, <http://portal.hud.gov/hudportal/HUD?src=/fy2012budget>. Furthermore, 2,142,134 families received housing choice vouchers in 2012. In addition, HUD continues to help recipients of rental assistance in moving into higher-opportunity neighbourhoods. For example, the Baltimore Housing Mobility Program (BHMP) provides vouchers and counselling services to move individuals into neighbourhoods where less than 30 per cent of residents are members of a minority group, less than 10 per cent of residents live in poverty, and less than 5 per cent of all housing is public or HUD-assisted. In a recent study of BHMP, more than 95 per cent of new movers surveyed said that their new neighbourhoods were better or much better than their old neighbourhoods, and 63 per cent rated their new neighbourhoods as an excellent or very good place to raise children.

40. HUD is also creating new solutions to address the challenge of homelessness. In 2011, nearly 60 per cent of all sheltered homeless persons were minorities. Data from HUD's most recent count of homeless persons in January 2012 indicated a marginal decline in the estimated homeless population from 636,017 in 2009 to 633,782. In 2011, HUD estimated that there was a 7 per cent drop in homelessness among veterans, 40 per cent of whom are Black/African American or Hispanic/Latino. To help further combat homelessness, in 2009 Congress provided a one-time appropriation of \$1.5 billion for the Homelessness Prevention and Rapid Re-Housing Program, which served nearly 1,378,000 people with services to prevent homelessness or rapidly re-house those who experienced homelessness. HUD currently manages several programs directly addressing homelessness, including the Continuum of Care program, the Emergency Shelter Grant program, and two programs targeting homeless veterans in collaboration with the Department of Veterans Affairs and the Department of Defense. Furthermore, in 2010, the U.S. Interagency Council on Homelessness published *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* – a comprehensive approach by 19 federal agencies to prevent and end veteran, chronic, and family and youth homelessness. This Plan presents 52 strategies based on best practices from around the country that build on the lesson that housing, health, education, and human service programs must be fully engaged and coordinated to prevent and end homelessness, <http://www.usich.gov/>.

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<sup>7</sup> Steering is the practice of directing persons to certain buildings, neighbourhoods, loans, or insurance products because of their race or other protected characteristic.

<sup>8</sup> Redlining is "the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents [...]. Reverse redlining is the practice of extending credit on unfair terms to those same communities." *United Companies Lending Corp. v. Sargeant*, 20 F. Supp.2d 192, 203 n.5 (D. Mass. 1998) (internal citations omitted), see also the United States Amicus Curiae Brief in *Hargraves v. Capital City Mortgage Corp.*, 147 F. Supp. 2d 1 (D.D.C. 2001) (available at <http://www.justice.gov/crt/about/hce/documents/hargraves1.php>).

41. Education: The United States also actively addresses de facto segregation in education – an issue not unrelated to residential segregation. Despite the promise of the *Brown v Board of Education* decision, far too many students still attend segregated schools with segregated faculties or unequal facilities. Even those enrolled in racially diverse schools too often are assigned to single-race classes, denied equal access to advanced courses, disciplined unfairly due to their race, or separated by race in prom and homecoming events. To ensure equal educational opportunities for all children, DOJ and ED enforce laws, such as Titles IV and VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Patsy T. Mink Equal Opportunity in Education Act of 1972 (Title IX), and the Rehabilitation Act of 1973, that prohibit discrimination in education, including on the basis of race, colour and national origin. DOJ/CRT monitors and seeks further relief, as necessary, in approximately 200 school districts that had a history of segregation and remain under court supervision. For example, since May 2011, CRT has been actively litigating to ensure that the Cleveland, Mississippi school district meets its long overdue obligation under U.S. law to desegregate its schools. CRT has argued that schools on the west side of the railroad tracks, which had been de jure segregated White schools until 1969 when the federal court ordered them to desegregate, still retain their character and reputation as White schools more than forty years later, while the formerly legally segregated schools on the east side of the tracks remain all Black/African American. Only one mile separates the all Black/African American schools from the high school and middle school with substantial White enrolments. CRT successfully asked the court to order the district to devise a new plan to desegregate its middle school and high school student bodies, as well as the faculties in all its schools. At a recent hearing, DOJ/CRT objected to the district's proposed plan and urged the court to order the immediate and effective desegregation of the middle and high schools.

42. CRT also investigates new allegations of discrimination and harassment, including those based on race, colour, and national origin, at all educational levels and, when appropriate, brings cases or intervenes in private suits. One example concerns complaints of severe harassment of Asian American students at South Philadelphia High School, including violent physical attacks against the students on school grounds. CRT engaged the school district, the Asian American Legal Defense and Education Fund, local advocacy organizations, the Pennsylvania Human Relations Commission, students, and the community in an extensive investigation of the school district's policies and practices regarding student-on-student harassment, leading to a December 2010 settlement agreement with the district to address and prevent such harassment. Advocates and students report that the school climate at South Philadelphia High School has improved since the agreement's implementation.

43. ED receives and resolves civil rights complaints filed by members of the public, receiving more than 15,674 complaints in Fiscal Years (FYs) 2011 and 2012, including more than 4,056 complaints alleging discrimination based on race, colour, or national origin. ED also initiates compliance reviews where information suggests widespread discrimination. Between FY 2009 and 2012, ED initiated more than 60 reviews specifically targeting Title VI discrimination issues.

44. The United States also assists school districts in voluntarily ending de facto segregation and avoiding racial isolation and in promoting diversity by (1) providing technical assistance in achieving these compelling government interests in ways that comply with non-discrimination laws, and (2) providing financial incentives to school districts for programs like magnet schools – schools with specialized courses or curricula that attract students from different areas with differing educational, economic, racial and ethnic backgrounds. ED/OCR conducts hundreds of technical assistance and outreach activities each year and offers assistance on its website in 20 languages. ED also administers higher education programs that provide financial aid to students in need;

promotes educational equality for students who are members of minority groups; assists school districts in offering educational opportunities to Native Hawaiians, American Indians, and Alaska Natives; and provides grants to strengthen higher education institutions that serve populations historically underserved (e.g., minority serving institutions and historically Black colleges and universities). In May 2011, ED/OCR and DOJ/CRT jointly released guidance to remind school districts of the federal obligation to provide equal educational opportunities to all children residing within district boundaries, regardless of the actual or perceived citizenship or immigration status of the children and their parents or guardians. In December 2011, DOJ and ED also released two guidance documents on the voluntary use of race to achieve diversity and avoid racial isolation, one for school districts and one for colleges and universities.

45. In 2011, ED formed the Equity and Excellence Commission to recommend ways school finance can be improved to increase equity and achievement. The Commission issued a report containing its findings and recommendations in February 2013. See <http://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf>. The federal government is also working closely with civil society groups and state and local education authorities to address the factors that contribute to the achievement gap and to ensure equality for all children in public schools – particularly Black/African American and Hispanic/Latino children, and ELL students. In 2011, ED held a series of National Conversations on ELL education that brought together key stakeholders in six cities. President Obama and Dr. Jill Biden also convened the first White House Summit on Community Colleges in 2010 to discuss the role of community colleges in making higher education available to all. ED continued this dialogue by holding four regional community college summits and a Community College Virtual Symposium, which resulted in the production of four papers to assist community college leaders and practitioners in promoting college and career readiness for low-skill adults, aligning secondary and postsecondary education, reforming remedial education programs to meet student needs more effectively, and increasing employer engagement at community colleges. In April 2012, ED released *Investing in America's Future: A Blueprint for Transforming Career and Technical Education*, which emphasizes improved data systems and incentives to identify and close participation and achievement gaps where they exist in career and technical education programs.

46. Through the American Recovery and Reinvestment Act of 2009, the Administration made an unprecedented financial commitment of almost \$100 billion to education, including the Race to the Top (RTT) program. RTT provides incentives to states to implement large-scale, system-changing reforms to improve student achievement, narrow achievement gaps, and increase graduation and college enrolment rates. Recovery Act funds are also being used to increase available financial aid and loans for postsecondary school education, and to provide \$12 billion for community colleges to enrol workers who need further education and training.

## **Article 4**

### **A. Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 4, including enactment and enforcement of laws**

47. With regard to article 4 and paragraph 18 of the Committee's concluding observations, the United States is deeply committed to combating racial discrimination. The United States has struggled to eliminate racial discrimination throughout our history, from abolition of slavery to our civil rights movement. We are not at the end of the road toward equal justice, but our nation is a far better and fairer place than it was in the past. The

progress we have made has been accomplished without banning speech or restricting freedom of expression, assembly or association. We believe that banning and punishing offensive and hateful speech is neither an effective approach to combating intolerance, nor an appropriate role for government in seeking to promote respect for diversity. As President Obama stated in a speech delivered in Cairo, Egypt in June 2009, suppressing ideas never succeeds in making them go away. In fact, to do so can be counterproductive and even raise the profile of such ideas. We believe the best antidote to offensive and hateful speech is constructive dialogue that counters and responds to such speech by refuting it through principled arguments. In addition, we believe that governments should speak out against such offensive speech and employ tools to address intolerance that include a combination of robust legal protections against discrimination and hate crimes, proactive government outreach, education, and the vigorous defense of human rights and fundamental freedoms, including freedom of expression. It is incumbent upon both governments and members of society to model respect, welcome diversity of belief, and build respectful societies based on open dialogue and debate.

48. In light of this framework, the United States has long made clear its concerns over resorting to restrictions on freedom of expression, assembly, and association in order to promote tolerance and respect. This concern includes the restrictions contained in article 4 of the CERD to the extent that they might be interpreted as allowing or requiring restrictions on forms of expression that do not constitute incitement to imminent violence or “true threats” of violence.<sup>9</sup> Indeed, these concerns were so fundamental that the United States took a reservation to article 4 and the corresponding provisions of article 7 when it became a party to the CERD, noting that it would not accept any obligation that could limit the extensive protections for such fundamental freedoms guaranteed in the U.S. Constitution.<sup>10</sup>

49. Freedom of speech was critical to the achievement of equality in the United States. Many people complained that the words of Dr. Martin Luther King and other civil rights leaders were dangerous, and sought to ban them as disturbing the peace in communities where majorities of whites wanted to perpetuate racial segregation. When this issue was brought to the Supreme Court in the case of *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Court ruled that an official in Alabama could not sue civil rights advocates over an advertisement that made negative statements about the police. Earlier in our history, the abolition of slavery was accelerated by the exhortations of preachers from pulpits and the writings of abolitionist pamphleteers. Today, in the United States, public expressions of hateful beliefs almost invariably draw larger and more powerful expressions of racial and religious equality and harmony. For example, a march by neo-Nazis that draws a dozen or so participants may be met with a peaceful interfaith vigil of hundreds of counter-demonstrators.

50. In short, we protect freedom of expression not only because it is enshrined in our Constitution as the law of the land, but also because our democracy depends on the free exchange of ideas and the ability to dissent. And we protect freedom of expression because the cost of stripping away individual rights is far greater than the cost of tolerating hateful words. We also have grave concerns about how empowering government to ban offensive speech could easily be misused to undermine democratic principles.

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<sup>9</sup> A true threat is a statement that a reasonable recipient would take to mean that the speaker, or people working with the speaker, intends to commit physical harm against the recipient.

<sup>10</sup> or a more in-depth discussion of these issues, see the United States comments submitted to the CERD Committee on August 20, 2012 for consideration in connection with the CERD Committee’s thematic discussion on racist hate speech, <http://geneva.usmission.gov/2012/08/27/curtailing-freedom-of-expression-is-not-the-way-to-combat-hateful-speech>.

51. Consistent with the First Amendment, we do not permit speech that incites imminent violence. This is a limited exception to freedom of expression, and such speech is only unlawful when it “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Speech may also be restricted based on its content if it falls within the narrow class of “true threats” of violence. Moreover, numerous federal and state laws in the United States prohibit hate crimes. Federal statutes punish acts of violence or hostile acts motivated by bias based on race, ethnicity, or colour and intended to interfere with the participation of individuals in certain activities such as employment, housing, public accommodation, and use of public facilities. See, e.g., 19 U.S.C. 245 (federally protected activities), 18 U.S.C. 3631 (housing). In addition, 47 states have hate crimes laws, as do U.S. territories. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act is a significant expansion of federal hate crimes laws. The Act creates a new criminal code provision, 18 U.S.C. 249, that criminalizes the wilful causing of bodily injury (or attempting to do so with fire, firearm, or other dangerous weapon) when the crime was committed because of the actual or perceived race, colour, religion, national origin of any person and that, unlike Section 245, does not require proof of intention to interfere with a federally protected activity. The law also provides funding and technical assistance to state, local and tribal jurisdictions to help them prevent, investigate, and prosecute hate crimes. Subsequent to enactment of the Shepard-Byrd Act, DOJ/CRT worked with U.S. Attorneys’ Offices, the Federal Bureau of Investigation (FBI), and DOJ/CRS across the country to ensure that federal prosecutors, federal law enforcement agents, state and local law enforcement officers, non-governmental organizations, and interested members of the public were trained on the Act’s requirements. Of particular importance, DOJ/CRT has trained law enforcement officers who are the first responders to assaults or other acts of violence so that they know what questions to ask and what evidence to gather at the scene to allow prosecutors to make an informed assessment of whether a case should be prosecuted as a hate crime.

52. In a memorandum to all United States Attorneys concerning the importance of the new Shepard-Byrd Hate Crimes Prevention Act, the Assistant Attorney General for the Civil Rights Division recognized that, unfortunately, hate crimes and the intolerance that breeds them remain all too prevalent in the United States. According to FBI statistics, in 2011 6,222 criminal incidents involving 7,254 offenses were reported as a result of bias toward a particular race, religion, sexual orientation, ethnicity/national origin, or physical or mental disability. See <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/narratives/incidents-and-offenses>. Of these, there were 6,216 single-bias incidents, of which 46.9 per cent were motivated by a racial bias, and 11.6 per cent were motivated by an ethnicity/national origin bias. Of the 4,623 hate crime offenses classified as crimes against persons, intimidation accounted for 45.6 per cent, simple assaults for 34.5 per cent, and aggravated assaults for 19.4 per cent. Four murders and seven forcible rapes were reported as hate crimes. Law enforcement agencies reported that 3,465 single-bias hate crime offenses were racially motivated. Of these offenses, 72 per cent were motivated by anti-Black bias, 16.7 per cent were motivated by anti-White bias, 4.8 per cent resulted from anti-Asian/Pacific Islander bias, 4.7 per cent were a result of bias against groups of individuals consisting of more than one race, and 1.9 per cent were motivated by anti-American Indian/Alaska Native (AI/AN) bias (Id. Table 1).

53. DOJ/CRT aggressively prosecutes hate crimes, including cross burnings, arsons, vandalisms, shootings, and assaults committed because of the victim’s race. CRT convicted 140 defendants of federal hate crimes between 2009 and 2012, a 73 per cent increase over the previous 4 years. It has brought 15 cases charging 39 defendants under the Shepard-Byrd Act and has prosecuted cases in Arkansas, Kentucky, Michigan, Minnesota, Mississippi, New Mexico, New York, Ohio, South Carolina, Texas, and Washington. Cases under the Shepard-Byrd Act include: conviction in 2011 of two Arkansas men after they



chased a group of Hispanic/Latino men and intentionally rammed their truck repeatedly into the victim's car; securing guilty pleas in 2010 against three men for assaulting a 22-year-old developmentally disabled Native American man in New Mexico, including branding a swastika into his arm and defacing his body with White supremacist symbols; securing guilty pleas in 2012 from three men involved in the fatal assault of an African American man in West Jackson, Mississippi; conviction of defendants in Shenandoah, Pennsylvania for assault of a Latino man after making racially charged comments; and securing the guilty plea in 2010 of a defendant who sent a series of threatening email communications to employees of five civil rights organizations that work to challenge discrimination against Latinos.

54. Through its post- 9-11 discriminatory backlash initiative, DOJ/CRT has investigated over 800 incidents in which defendants targeted those they perceived to be Muslims or those they perceived to be of Arab or South East Asian descent. CRT has also devoted enormous resources to the investigation and prosecutorial assessment of unsolved murders committed during the Civil Rights Era to determine whether perpetrators could be brought to justice in federal or state courts, and to bring closure to victims' family members even where no prosecution is possible.

55. DOJ engages in extensive outreach to educate people about their rights and available government services. One example includes the DOJ Community Relations Service newly revised Sikh Cultural Competency Training, designed to inform and educate communities experiencing tensions arising from incomplete knowledge of Sikh community neighbours and serve as a resource to help prevent violent hate crimes. In some areas, federal, state, and local authorities and community organizations have formed coalitions to track, prevent, and combat hate crimes. In 2010, the FBI devoted additional resources to combating hate crimes in cities most at risk for bias-motivated violence, working in collaboration with state and local law enforcement agencies and non-governmental partners.

56. The prosecution of hate crimes is only one element in broader efforts related to community engagement and empowerment. The U. S. Government works with state and local entities to educate young people through anti-bullying curricula and other educational programs aimed at eliminating hate among our nation's youth. Through these kinds of actions, the United States encourages communities and schools to address racism before it becomes fuel for violence. Active outreach programs also exist in communities, where federal, state, and local law enforcement officers work to build trust among different ethnic and racial groups, to understand sensitivities and break down stereotypes, and to increase dialogue. Finally, political leaders from the President to state and local officials speak out about intolerance and condemn such acts when they do occur. Discrimination and racist hatred have no place in our nation, and we are committed not only to combating these problems, but also to working with communities to prevent them from occurring in the first place.

## **B. Racial motives as aggravating circumstances under domestic penal legislation**

57. The commission of a crime based on the victim's race, national origin, or ethnicity is an aggravating factor under many U.S. criminal statutes at both the federal and state levels. In 1994, the U.S. Congress passed the Hate Crimes Sentencing Enhancement Act, 28 U.S.C. 994, which required the U.S. Sentencing Commission to increase penalties for crimes committed because of animus toward a person's "actual or perceived race, colour, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." As described above, the federal criminal code treats certain bias motivated crimes as specific offenses. Most states either have specific hate crimes laws (see, e.g., Washington, New York and Massachusetts) or allow bias motivation in criminal offenses to be taken into account as aggravating circumstances in sentencing (see, e.g., Alabama, Arizona,

California, and Florida). Penalty enhancement provisions generally apply to a wide range of violent acts, but in some states are limited to specific crimes, such as assault and battery.

## **Article 5**

### **I. Information grouped under particular rights**

58. Article 5 obligates States parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, without distinction as to race, colour, or national or ethnic origin. The protections of the U.S. Constitution meet this fundamental requirement, as do laws, policies, and objectives of government at all levels. Article 5 specifically requires States parties to guarantee equality and non-discrimination in the enjoyment of certain enumerated rights. As noted in our prior CERD reports, article 5 does not affirmatively require States parties to provide or to ensure observance of each of the listed rights themselves, but rather to prohibit discrimination in the enjoyment of those rights to the extent they are provided in domestic law. In this respect, U.S. law fully complies with the requirements of the Convention. The U.S. continues to work to achieve the desired goals with regard to non-discrimination in each of the enumerated areas.

#### **A. Equal treatment before tribunals and other organs administering justice**

59. Independent and Effective Scrutiny of Claims: The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution guarantees the right to equal treatment before organs administering justice in the United States. At all levels, claims of discrimination based on race, colour or national or ethnic origin, including claims made against officials, are investigated by independent authorities and are subject to independent and effective scrutiny by courts and/or administrative tribunals established to hear such claims.

60. The Sixth Amendment to the U.S. Constitution provides for the right to counsel in federal criminal prosecutions. In 2013, we commemorate the 50th anniversary of the landmark U.S. Supreme Court decision, *Gideon v. Wainwright*, which extended the right to counsel at government expense to individuals who cannot afford it for criminal prosecutions in state court. Over the years in a series of decisions since *Gideon*, the Supreme Court has recognized that the Sixth Amendment right to counsel applies in misdemeanor cases and in juvenile delinquency proceedings. By law, counsel for indigent defendants is provided without discrimination based on race, colour, ethnicity, and other factors. Federal, state, and local courts use a variety of methods to deliver indigent criminal defense services, including public defender programs, assigned counsel programs, and contract attorneys.

61. Although there is no right to counsel at government expense for civil matters, limited free civil legal assistance exists across the country, primarily through non-profit legal aid programs, such as those funded by the Legal Services Corporation (LSC), and pro bono initiatives led by the private bar. Established by Congress in 1974 as an independent non-profit corporation, LSC is the single largest funder of civil legal aid for low-income Americans. Its 134 grantees provide free legal assistance through more than 900 offices across the country and in U.S. territories. To leverage scarce resources, LSC encourages partnering with other funders of civil legal aid, including state and local governments, Interest on Lawyer's Trust Accounts (IOLTAs), state access to justice commissions (established in approximately half of the states), the private bar, philanthropic foundations, and businesses.

62. Regarding paragraph 22 of the Committee's concluding observations, the United States faces challenges in both its provision of legal representation to indigent criminal defendants and its provision of free and affordable civil legal services to the poor and middle class. We recognize that these challenges are felt acutely by members of racial and ethnic minorities.

63. To address these issues, DOJ established the Access to Justice Initiative (ATJ) in March 2010. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. ATJ has worked to expand research and funding to improve the delivery of indigent defense services. In 2012, DOJ's Office of Justice Programs awarded nearly \$3 million in grants for this purpose and has committed to approximately \$2 million additional in 2013. ATJ has also worked to strengthen defender services in tribal courts and, in partnership with the BIA, has launched the Tribal Court Trial Advocacy Training Program, which provides free trainings to public defenders, prosecutors, and judges who work in tribal courts.

64. To strengthen civil legal services, ATJ is working with other federal agencies to determine whether existing federal safety-net grant programs could perform more successfully by incorporating legal services. Specifically, ATJ staff has established partnerships with agencies working to promote access to health and housing, education and employment, and family stability and community well-being, to remove unintended barriers that prevent legal aid providers from participating as grantees or sub-grantees. ATJ also supports expanded civil legal research through collaboration with legal scholars and the American Bar Foundation. ATJ is providing technical assistance to more than a dozen states considering creation of new access to justice commissions, which generally support civil legal services at the state level. Responding to a challenge from ATJ, the Conference of Chief Justices unanimously adopted a resolution in 2010 urging the approximately two dozen states without active commissions to establish them, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol8Access.html>. ATJ staff has also worked with the American Bar Association (ABA) Resource Center for Access to Justice Initiatives, and the Public Welfare Foundation to develop a national strategy for establishing and strengthening commissions, and ATJ staff now serves on a new national ABA Access to Justice Commission Expansion Project Advisory Committee.

65. With regard to prevention of racial discrimination in the criminal justice system, the United States acts to assess and address the indicators of racial discrimination; eliminate laws that discriminate; develop training and other programs to foster dialogue and promote tolerance; and ensure equal access to law and justice at all stages of the complaint and hearing process. While laws and systems are in place to ensure equality of access to and treatment in the criminal justice system, the United States recognizes that racial and ethnic disparities continue to exist. Statistics relating to the crime rates of persons belonging to some minority groups, treatment of minorities in some cases by law enforcement personnel, and the proportion of minority persons in the justice and prison systems indicate the need for further understanding of the issues and for continued vigilance to make further progress in pursuing the goal of equality.

66. With regard to paragraph 20 of the Committee's concluding observations, a number of steps have been taken in recent years to address racial disparities in the administration and functioning of the criminal justice system. The Fair Sentencing Act, enacted in August 2010, reduced the disparity between more lenient sentences for powder cocaine charges and more severe sentences for crack cocaine charges, which are more frequently brought against minorities. Based on a request by the Attorney General, the Sentencing Commission voted to apply retroactively the guideline amendment implementing the Fair Sentencing Act. As of December 2012, 6,626 federal crack offenders' sentences had been reduced as a result of retroactive application of the Fair Sentencing Act. Of these, 93.5 per cent were

Black/African American or Hispanic/Latino. DOJ also intends to conduct further statistical analysis and issue annual reports on sentencing disparities in the criminal justice system, and is working on other ways to implement increased system-wide monitoring steps. DOJ has also pledged to work with the Sentencing Commission on reform of mandatory minimum sentencing statutes and to implement the recommendations set forth in the Commission's 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*. Finally, at the state and local level, many law enforcement authorities are implementing innovative solutions. For example, the Vera Institute for Justice has launched a program in several municipalities to help prosecutors' offices identify potential bias and to respond when bias is found.

67. Language access services are also critical in ensuring equal access to the judicial system for Limited English Proficient (LEP) persons. DOJ/CRT's Courts Language Access Initiative combines enforcement tools with policy, technical assistance, and collaboration in an effort to ensure that LEP parties receive interpretation and language services in court proceedings and operations. Noting the Supreme Court holding that failure to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination, *Lau v. Nichols*, 414 U.S. 563 (1974), and based on the government's long commitment to that legal principle, in August 2010, the Assistant Attorney General for the Civil Rights Division sent a letter to all state chief justices and state court administrators concerning the need to bring state court language access policies and practices into compliance with Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968. Among other things, the letter notes that language services must not be restricted to courtrooms; rather, meaningful access also extends to functions conducted in other court-managed offices, operations, and programs, such as intake or filing offices; cashiers; probation and parole offices; alternative dispute resolution programs; and detention facilities. Grant funds provided to the states by the Office of Justice Programs may be used to support language services for these purposes, [http://www.lep.gov/final\\_courts\\_ltr\\_081610.pdf](http://www.lep.gov/final_courts_ltr_081610.pdf).

68. A recent study by the Sentencing Project, based on data from the DOJ Bureau of Justice Statistics (BJS), shows a shift in the racial makeup of U.S. prisons, suggesting that, while still stark, disparities in the prison population may be starting to diminish. Decline in incarceration rates was most striking for Black/African American women, dropping from six times the rate of White women in 2000 to 2.8 times in 2009 – a 30.7 per cent drop. For Black/African American men, the rate decreased by 9.8 per cent, from 7.7 times the rate of White men in 2000 to 6.4 in 2009. Incarceration rates for White men and women increased over the same period, rising 47.1 per cent for White women and 8.5 per cent for White men. By the end of the decade, Hispanic men were slightly less likely to be in prison, a drop of 2.2 per cent, but Hispanic women were imprisoned more frequently, an increase of 23.3 per cent, [http://sentencingproject.org/doc/publications/rd\\_Changing%20Racial%20Dynamics%202013.pdf](http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf).

69. With regard to paragraph 23 of the Committee's concluding observations, the situation regarding capital punishment in the United States, including the applicable limitations, the heightened procedural protections, and the decline in use of the death penalty is described in Part I B, section 3 of the common core document. Since submission of the common core document in 2011, enactment of legislation abolishing the death penalty by the states of Connecticut and Maryland has reduced to 32 the number of states that authorize capital punishment, in addition to the federal government and the U.S. Military. Eighteen states and the District of Columbia do not authorize the death penalty.

70. With respect to the Committee's comment concerning a potential moratorium on the death penalty, there is vigorous public debate in the United States on the death penalty. However, the use of the death penalty is a decision left to democratically elected

governments at the federal and state levels. The U.S. Constitution grants states broad powers to regulate their own general welfare, including enactment and enforcement of criminal laws, public safety, and correction, and a number of states currently prohibit imposition of the death penalty either by law or by executive decision of the Governor. Any further decisions concerning a moratorium would have to be made separately at the federal level and by each of the 32 states that retain the death penalty.

71. With regard to paragraph 21 of the Committee's concluding observations, the U.S. Supreme Court has limited applicability of juvenile sentences of life without the possibility of parole (JLWOP) in two recent cases. In *Graham v. Florida*, 130 S. Ct. 2011 (2010), the Court ruled that application of JLWOP to juveniles who commit non-homicide offenses violates the Constitution's prohibition against cruel and unusual punishment. In *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the Court held that sentencing schemes that mandate LWOP for those under 18 at the time of their crimes also violated the prohibition against cruel and unusual punishment, because mandating life without parole for juveniles prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change, and also runs afoul of the requirement for individualized sentencing for defendants facing the most serious penalties. States have responded to *Miller* in different ways, with courts in Louisiana and Illinois deciding that the ruling applies retroactively and courts in Michigan and Florida deciding that it does not. Iowa's governor has commuted life sentences for 38 individuals serving JLWOP sentences, and North Carolina and Pennsylvania have enacted legislative fixes. DOJ has provided to federal Public Defenders a list of all potentially affected persons in the federal system and is also considering possible federal legislation.

72. Like all criminal defendants in the United States, juveniles charged with homicide offenses are afforded extensive due process and other protections throughout the trial and sentencing process and are provided the ability to appeal their convictions and sentences to the fullest extent afforded by law. While the considerations vary from state to state, JLWOP sentences are generally imposed only after a judge determines, based upon numerous factors such as the juvenile's age, personal circumstances and background, the type and seriousness of the offense, the juvenile's role in the crime, and the juvenile's prior record/past treatment records, that the juvenile can be tried as an adult. A small group of states and the District of Columbia have prohibited JLWOP sentences for all juvenile offenders, and state courts in some jurisdictions have also reduced sentences.

73. Through its enforcement of the Civil Rights of Institutionalized Persons Act and the Violent Crime Control and Law Enforcement Act of 1994, DOJ vigorously protects the rights of juveniles who are incarcerated in facilities run by or for states, including those serving life sentences without parole. The 1974 Juvenile Justice and Delinquency Prevention Act is designed to ensure that youth are not treated merely as "little adults," and that they receive necessary and appropriate rehabilitative services in the least restrictive environment consistent with public safety. The Act created an office within DOJ dedicated to supporting federal, state, and local efforts to prevent juvenile crime, imprisonment in the juvenile justice system, and addressing the needs of juvenile crime victims. This office, the Office of Juvenile Justice and Delinquency Prevention, provides funding to states for system improvement and research to identify optimal prevention and intervention strategies for youth in the juvenile justice system or at risk of entering it. In addition to its traditional work in this area, DOJ/CRT is using authority under a section of the Violent Crime Control and Law Enforcement Act of 1994 to address civil rights violations that occur early in the juvenile justice process. Under this law, DOJ can determine whether youths' civil rights are being violated not only in detention facilities, but in juvenile arrests, juvenile courts, and juvenile probation systems as well. During the last four years, DOJ has used this authority to investigate the conduct of police in arresting children for school-based offenses, and to examine whether juvenile courts and probation systems comply with due process rights, the

constitutional guarantee of equal protection, and federal laws prohibiting racial discrimination.

74. For example, under this authority, and based on an extensive investigation, including analysis of over 50,000 youth case files, DOJ/CRT found in 2012 that the juvenile court in Shelby County, Tennessee systemically violated the due process rights of all children who appear for delinquency proceedings, as well as the equal protection rights of African American children. CRT is working with the juvenile court to ensure wholesale reform. Using its authority to protect youths confined in juvenile detention facilities run by state or local governments, CRT also launched an investigation in Meridian, Mississippi that found a “school-to-prison pipeline” in which the rights of children were repeatedly and routinely violated. Children were systematically incarcerated for allegedly committing minor offenses, including school disciplinary infractions, and punished disproportionately without due process of law; the students most affected were Black/African American children and children with disabilities. When the local and state governments administering juvenile justice failed to enter into meaningful settlement negotiations, CRT filed a lawsuit to vindicate the children’s rights. While the juvenile justice lawsuit is still pending, CRT reached a comprehensive settlement in a related federal lawsuit against the Meridian Public Schools to prevent and address racial discrimination in the school district’s discipline practices. Under the settlement, the district will limit the use of discipline measures that remove students from the classroom, such as suspension; provide training to school personnel on non-discrimination and classroom management; request law enforcement assistance only when necessary to protect safety; and collect and analyze data on discipline referrals and consequences to identify and address racial disparities.

75. Non-Discrimination in Terrorism Measures and Racial Profiling. In its fight against terrorism, the United States does not unlawfully discriminate against individuals based on race, colour or national or ethnic origin. U.S. anti-terrorism laws, which proscribe knowing or intentional participation in, or provision of material support to, violent unlawful conduct or formally designated Foreign Terrorist Organizations, do not discriminate on grounds of race, colour, or national or ethnic origin. In the aftermath of 9/11, the United States has stepped up its training of law enforcement officers with a view to combating prejudice that may lead to violence, making one of the focus areas for such training the increased bias against Arab Americans and others. The United States seeks to ensure that its laws and practices protect innocent people from violence, while at the same time living up to our commitment of fair treatment.

76. With regard to paragraph 24 of the Committee’s concluding observations concerning measures to combat terrorism, the United States is committed to ensuring fairness before tribunals and other organs administering justice, including that all persons appearing before such organs are not discriminated against on grounds of race, colour, or national or ethnic origin.

77. With respect to enemy alien belligerents, the United States provided updated information relating to the Committee’s concerns in the 2011 U.S. ICCPR Report, in particular in the discussion regarding habeas corpus, the operation of military commissions, and other proceedings contained in paragraphs 569-582. In brief, the United States has worked to ensure proper treatment of detainees at Guantanamo Bay, Cuba. On January 22, 2009, President Obama issued an Executive Order, entitled “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities.” That order requires that detention at Guantanamo conform to all applicable laws governing conditions of confinement, including common article 3 of the Geneva Conventions, see E.O. 13492, sec. 6. The Order also directed the Secretary of Defense to review the conditions of detention at Guantanamo. The resulting review by Admiral Walsh found that those conditions comply with, and often exceed, the requirements of common

article 3. Moreover, each detainee held by the United States in military detention at Guantanamo Bay is entitled to petition the federal district courts for habeas corpus review of the lawfulness of his detention. Most Guantanamo detainees have availed themselves of this right, and the district and appellate courts have completed review of approximately 50 cases to date. With respect to military commissions, the Military Commissions Act of 2009 made many significant changes, including: prohibiting the admission at trial of statements obtained by use of torture or cruel, inhuman, or degrading treatment, except against a person accused of torture or such treatment as evidence that the statement was made; strengthening the restrictions on admission of hearsay evidence; stipulating that an accused in a capital case be provided with counsel learned in applicable law relating to capital cases; providing the accused with greater latitude in selecting his or her own military defense counsel; enhancing the accused's right to discovery; and establishing new procedures for handling classified information. Finally, regarding the Committee's concerns about non-refoulement to torture, as the United States explained in the 2011 U.S. ICCPR Report, beginning at paragraph 553, consistent with firm U.S. policy, the United States will not transfer any person to a country where it determines that it is more likely than not that the person will be tortured.

78. With respect to the Committee's concerns about the rights of noncitizens and equal treatment in the judicial system, as a matter of U.S. law, aliens within the United States, regardless of their immigration status, enjoy substantial protections under the U.S. Constitution and other domestic laws. Both DHS and DOJ have offices responsible for civil rights and civil liberties that help shape and implement policy, reach out to communities, and investigate and resolve complaints. For Fiscal Year 2012, the DHS Office for Civil Rights and Civil Liberties (CRCL) opened 256 new complaints (compared to 298 in FY 2011) and closed 281 complaints (compared to 219 in FY 2011) involving various DHS components such as ICE, U.S. Customs and Border Protection (CBP), the Transportation Security Administration (TSA), U.S. Citizenship and Immigration Services (USCIS), and others. A number of the closed complaints resulted in policy recommendations related to the protection of individuals' civil rights. Of the 256 new complaints, 26 involved abuse of authority, discrimination, or profiling.

79. DHS/CRCL also runs the CRCL Institute, which provides classroom and on-line training for DHS and other agencies in civil rights protections. In addition, DHS/CRCL, through its Community Engagement Section, engages in extensive outreach to the public and non-governmental organizations, including convening and participating in regular roundtables with leaders from American Arab, Muslim, Sikh, Somali, Latino, South and Pacific Asian communities, among others, to discuss issues such as disaster preparedness, naturalization wait times, TSA airport screening, outreach to new immigrant communities, searches of electronic devices, and allegations of improper conduct toward Arab, Muslim, Sikh, South Asian and Somali American travellers at U.S. ports of entry. CRCL has established an Incident Community Coordination Team for communication with Arab, Muslim, Sikh, South Asian, and Somali American community leaders in the immediate aftermath of an incident.

80. With regard to paragraph 14 of the Committee's concluding observations concerning racial profiling, the United States recognizes that racial or ethnic profiling is not effective law enforcement practice and is not consistent with our commitment to fairness in our justice system.<sup>11</sup> For many years, concerns about racial profiling arose mainly in the context of motor vehicle or street stops related to the enforcement of drug or immigration laws.

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<sup>11</sup> The United States understands the term "racial profiling" to mean the invidious use of race or ethnicity as the basis for targeting suspects or conducting stops, searches, seizures and other law enforcement investigative procedures.

More recently, and especially since 9/11, the debate has also included examination of law enforcement conduct in the effort to combat terrorism.

81. In addition to the U.S. Constitution, several federal statutes and regulations impose limits on the use of race or ethnicity by law enforcement, and the Obama Administration has vigorously relied on these tools to respond to such unlawful practices. These include Title VI of the Civil Rights Act of 1964 (prohibiting discrimination in all federally assisted programs or activities), and 42 U.S.C. 14141 (allowing suits against police departments for injunctive relief if they are engaging in a pattern or practice of unlawful conduct). Between 2009 and 2012, DOJ/CRT opened 15 investigations of police departments and currently is pursuing more than two dozen open investigations – the largest number at any one time in history, and involving larger police departments than ever before. In 2012 alone, CRT entered into far reaching, enforceable agreements with six jurisdictions to address serious policing challenges, the most agreements reached in a single year. If a violation is determined to exist, DOJ works with the law enforcement agency to revise policies and procedures and to provide training to ensure the constitutionality of police practices. Recent cases have included: the investigation of the New Orleans Police Department described above under article 5; an investigation of the Seattle Police Department that found an unlawful pattern or practice of excessive force and also raised concerns about discriminatory policing, leading to a court-approved settlement in September of 2012; and an investigation of the East Haven, Connecticut Police Department that found a pattern or practice of discriminatory policing against Hispanics/Latinos, targeting them for discriminatory traffic enforcement, leading to a settlement agreement providing for comprehensive reforms. The East Haven Police Department announced that the Department had hired its first Latino officer – a highly qualified bilingual woman, who will assist with building ties to the immigrant community.

82. DOJ/CRT strongly prefers to work in a cooperative fashion with local governments and police departments to address unconstitutional policing, and in almost every case, it is able to work in that manner to spur reform. DOJ also works with organizations that develop national standards for law enforcement, such as the International Association of Chiefs of Police. However, CRT does not hesitate to use litigation to combat racial profiling or other unlawful policing when cooperation proves elusive. For example, after lack of cooperation by the Maricopa County Sheriff's Office in an investigation of potential anti-Latino bias in policing and jail practices, DOJ filed a wide-ranging lawsuit. In December 2012, a federal court denied the County's motion to dismiss the case, and the litigation is continuing in 2013. In addition, in a case brought by DOJ, the Supreme Court struck down on pre-emption grounds three provisions of Arizona's immigration law, S.B. 1070 – section 3, which made it a crime to fail to carry valid immigration papers; section 5(c), which criminalized applying for or holding a job without proper immigration papers; and section 6, which was found to create an obstacle to federal law by authorizing state and local officers to make warrantless arrests of certain aliens, *United States v. Arizona*, 132 S. Ct. 2492 (2012). The Court also emphasized that there are serious constitutional questions regarding Section 2 of the Arizona law, which requires law enforcement officials to verify the immigration status of any person lawfully stopped or detained when they have reason to suspect that the person is here unlawfully. The Attorney General issued a statement assuring communities that DOJ will continue vigorously to enforce federal prohibitions against racial and ethnic discrimination, and DOJ is closely monitoring the impact of S.B. 1070 to ensure compliance with federal immigration law and applicable civil rights laws, including ensuring that law enforcement agencies and others do not implement the law in a manner that has the purpose or effect of discriminating against the Latino or any other community. See <http://www.justice.gov/opa/pr/2012/June/12-ag-801.html>.

83. DHS acts to ensure that its programs and activities are free of invidious racial or ethnic profiling. Certain immigration enforcement programs, including some of those in



which DHS cooperates with state and local police to enforce federal immigration law, also contain clear prohibitions against racial and ethnic profiling. Under the 287(g) program, for example, certain specially trained state and local law enforcement officers are authorized to enforce federal immigration law in jails and prisons. These officers receive specific training to ensure that they do not engage in racial profiling. Individuals alleging racial or ethnic profiling may file complaints with DHS/CRCL and ICE's Office of Professional Responsibility. DHS/CRCL is currently reviewing complaints alleging racial or ethnic profiling with regard to agency language access requirements and other issues in the ICE 287(g) program.

84. DHS continues to enhance its screening methodology; DHS security measures are tailored to specific intelligence about potential threats. These measures, which are part of a dynamic, threat-based process covering all passengers traveling to the United States, do not rely solely on a traveller's country of citizenship to determine the level of screening. Specific screening rules are reviewed quarterly by DHS/CRCL, the DHS Privacy Office, and the DHS Office of the General Counsel.

85. In addition, DHS/CRCL has created a special training program designed to increase the cultural competency of federal, state, local, and tribal law enforcement authorities. The training aims to increase communication, build trust, and encourage interactive dialogue among law enforcement officers and the diverse American communities, in which they work, including Arab, Muslim, South Asian, and Somali American communities, and is particularly designed to equip law enforcement personnel with enhanced competency in communicating with such communities. DOJ, the FBI, and the Coast Guard have also engaged in training for this purpose.

86. Recognizing public concerns related to the National Security Entry-Exit Registration System (NSEERS), DHS conducted several reviews of the program involving substantial consultations with the public and civil society. The reviews resulted initially in narrowing of the program's application and elimination of the domestic call-in portion of the program. As a result of further review and the development of new, enhanced security measures, in April 2011, DHS announced the official ending of the NSEERS registration process, <http://www.dhs.gov/dhs-removes-designated-countries-nseers-registration-may-2011>. In April 2012, DHS issued internal guidance on the treatment of individuals who were previously subject to, but failed to comply with, NSEERS requirements. It clarified that noncompliance with those requirements, in and of itself, is not a sufficient basis for negative immigration consequences. Rather, negative immigration consequences may apply only where DHS personnel have determined, based on the totality of the evidence, that the individual's NSEERS violation was wilful.

## **B. Security of person and protection by the State against violence or bodily harm**

87. The U.S. Constitution and laws provide protection against violence or bodily harm through statutes such as the Violent Crime Control and Law Enforcement Act of 1994, the Civil Rights Acts, and federal "hate crimes" laws. Hate crimes are discussed under article 4, above.

88. Measures to prevent racially motivated acts of violence and ensure prompt response from the justice system. As described in paragraphs 166 and 177 of the common core document and above under article 4, DOJ/CRS assists state and local governments, private and public organizations, and community groups in preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and restoring racial stability and harmony, through mediation, technical assistance and training. Other federal, state, and local agencies also engage in training and community outreach to prevent racially motivated acts of violence. Please see the discussion of outreach under article 7, below, for some of the measures taken.

89. Measures to prevent use of illegal force by police against protected groups. With regard to article 5 and paragraph 25 of the Committee's concluding observations, the Constitution and federal statutes prohibit racially discriminatory actions by law enforcement agencies, see, e.g., the Pattern or Practice of Police Misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d. Since 2009, the Administration has intensified its enforcement of these laws. Federal law prohibits the use of excessive force by any law enforcement officer against any individual in the United States, including members of racial and ethnic minorities, and undocumented migrants crossing U.S. borders. Victims of police brutality may seek legal remedies, such as criminal punishment of the perpetrator or civil damages. DOJ has successfully prosecuted law enforcement officers and public officials where sufficient evidence indicates that they wilfully violated a person's constitutional rights.

90. Depending on the location of the conduct, the actor, and other circumstances, any number of remedies, including the following, may be available:

- Criminal charges, which can lead to investigation and possible prosecution, 18 U.S.C. 242.
- Civil actions in federal or state court under the federal civil rights statute, 42 U.S.C. 1983, directly against state or local officials for money damages or injunctive relief.
- Suits for damages for negligence of federal officials and for negligence and intentional torts of federal law enforcement officers under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or of state and municipal officials under comparable state statutes.
- Suits against federal officials directly for damages under provisions of the U.S. Constitution for "constitutional torts," see *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Davis v. Passman*, 442 U.S. 228 (1979).
- Challenges to official action or inaction through judicial procedures in state courts and under state law, based on statutory or constitutional provisions.
- Suits for civil damages from participants in conspiracies to deny civil rights under 42 U.S.C. 1985.
- Claims for administrative remedies for alleged police misconduct.
- Federal civil proceedings under the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, or federal administrative and civil proceedings against law enforcement agencies receiving federal funds.
- Individual administrative actions or civil suits against law enforcement agencies receiving federal financial assistance under federal civil rights laws, see 42 U.S.C. 2000d (Title VI); 42 U.S.C. 3789d (Safe Streets Act).
- In the case of persons in detention or other institutionalized settings, federal civil proceedings under the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), 42 U.S.C. 1997.

91. The Administration aggressively enforces laws against police brutality and discriminatory policing. As noted above, DOJ investigates police departments, prisons and other institutions to ensure compliance with the law and brings legal action where necessary against both institutions and individuals. DOJ has convicted 254 such defendants for

violating the civil rights laws between FY 2009 and FY 2012, a 13.4 per cent increase from the number convicted in the previous four years.

92. Within DHS, component agencies such as CBP and ICE are subject to strict restrictions and to investigations, when warranted, regarding incidents of assaults, harassment, threats, or shootings involving employees. State and local law enforcement agency personnel who exercise limited authority to help enforce U.S. immigration laws in prisons and jails under programs such as the ICE 287(g) program are bound by similar restrictions, and ICE closely monitors their compliance, including through investigations by the ICE Office of Professional Responsibility. All law enforcement officers authorized to perform 287(g) program functions in prisons and jails must pass a four-week training course at the ICE Academy, which includes coursework on the ICE Use of Force Policy, among other topics.

93. Finally, in addition to government-initiated actions, private litigants may sue law enforcement agencies for discriminatory police activities. See, e.g., *Elliot-Park v. Manglona*, 592 F. 3d 1003 (9th Cir. 2010) (failure to investigate an auto accident due to race of persons involved violated equal protection).

94. Encourage arrangements for communication and dialogue. DOJ/CRS provides conciliation services intended to prevent violence and reduce community tensions stemming from issues of race, colour, and national origin. CRS works directly with local law enforcement and minority communities to address actual or perceived instances of racial profiling, biased policing practices and policies, and the excessive use of force. This is done through a combination of mediation, training, and bringing law enforcement officials and minority community leaders together for facilitated problem-solving dialogues. DOJ/CRS has established a Law Enforcement Mediation Skills Program, designed to equip law enforcement officers with basic mediation and conflict resolution skills. In addition, the DOJ Office of Community Oriented Policing Services (COPS) is charged with advancing the practice of community policing at all levels. To that end, COPS has published more than 35 documents regarding anti-discrimination to help state and local law enforcement.

95. In addition, beginning in 2003, the DOJ Office for Victims of Crime (DOJ/OVC) ) funded a multiyear effort of the International Association of Chiefs of Police (IACP) to develop and implement a national strategy to create systemic change among law enforcement agencies in their response to victims, both in philosophy and practice. Under the Enhancing Law Enforcement Response to Victims, the IACP developed and field-tested a comprehensive package of resources for local agencies to facilitate implementation of this shift. The strategy focuses on core elements of leadership, community partnering, training, and performance monitoring – with communication critical to each of those elements. Potential benefits of enhancing law enforcement’s response to victims include: better citizen perception of community safety and increased confidence and trust in law enforcement, and greater willingness on the part of victims to cooperate with investigations. The resources are available at [www.responsetovictims.org](http://www.responsetovictims.org). DOJ, the DHS Federal Law Enforcement Training Center, and state and local agencies and training academies are also heavily involved in training law enforcement officers, including diversity training and training in defusing racially and ethnically tense situations. Law enforcement officers receive periodic training on these issues throughout their careers. The DHS CRCL Institute offers multiple training courses and materials, including materials on working effectively with Arab and Muslim Americans and others. DHS/CRCL also conducts robust and sustained engagement on a regular basis with communities throughout the United States whose civil rights and liberties may be affected by government policies, programs, or personnel. This community engagement takes a whole-of-government approach that

ensures the participation of federal, state, and local authorities to address diverse community concerns and provide avenues of redress.

96. Many law enforcement agencies partner with NGOs to provide training to their officers. For example, the non-governmental American-Arab Anti-Discrimination Committee offers a Law Enforcement Outreach Program that has trained representatives of many federal law enforcement agencies, including the FBI, DHS, and the U.S. Park Police, in addition to training more than 20,000 individuals in academic institutions and industries such as the airlines. Local and state law enforcement agencies also reach out to community members.

97. Recruitment of minorities in law enforcement: According to the DOJ Bureau of Justice Statistics (BJS), *Federal Law Enforcement Officers, 2008*, members of minorities made up 34.3 per cent of all federal law enforcement officers in 2008. This representation included Hispanic/Latino officers (19.8 per cent), non-Hispanic Black/African American officers (10.4 per cent), Asians and Pacific Islander officers (3.0 per cent), and Native American officers (1.0 per cent). There were gains since 1996, when members of minorities made up only 28 per cent of officers, and 2004 when minorities made up 33.2 per cent. The largest gain occurred for Hispanic/Latino officers, who increased from 13.1 per cent in 1996 to 19.8 per cent in 2008, <http://bjs.gov/content/pub/pdf/fleo08.pdf>. While the composition of the law enforcement community overall now more closely represents that of the U.S. population as a whole, recognizing the importance of broad representation at all levels, police departments and law enforcement agencies continue to reach out to candidates from minority groups.

98. Return or removal to another country: Discussion of immigration relief and protection from removal available to asylum-seekers and other noncitizens in the United States is provided under article 13 of the 2011 U.S. ICCPR Report.

### **C. Political rights**

99. The Fifteenth and Nineteenth Amendments to the U.S. Constitution and other U.S. laws guarantee the equal right to participate in elections, to vote and stand for election, to take part in the conduct of public affairs, and to have equal access to public service without regard to race or ethnicity. Consistent with the Convention, some distinctions are made on the basis of citizenship status. This section discusses recent initiatives to improve equal access to the political system, as well as some particular areas of concern.

100. Enforcement of voting rights: DOJ enforces statutes that protect the right to vote, including the Voting Rights Act of 1965 (VRA), the National Voter Registration Act of 1993 (NVRA), the Help America Vote Act of 2002 (HAVA), and the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act of 2009 (the MOVE Act). Among other protections, the VRA prohibits discrimination in voting on the basis of race, colour, or membership in a language minority group; requires certain covered jurisdictions to provide bilingual written materials and other assistance; and requires that voters who require assistance to vote by reason of blindness, disability, or inability to read or write be given assistance by a person of the voter's choice. Section 5 of the VRA requires that any changes in the election practices or procedures of the state and local jurisdictions it covers cannot take effect until those changes have been determined by either DOJ or a three-judge panel of the D.C. District Court to have neither discriminatory purpose nor effect. The NVRA contains a number of requirements for federal elections intended to increase the number of eligible citizens who register to vote and to ensure accurate and current registration lists. HAVA includes a number of minimum standards for election technology and election administration in federal elections. UOCAVA and the MOVE Act protect the right to

register and vote absentee in federal elections for members of the armed services, their families, and overseas citizens.

101. In 2011 and 2012, DOJ/CRT handled record numbers of new voting-related litigation matters, including vigilant enforcement of absentee voting protections for service members and overseas citizens, as well as challenges to state-wide redistricting plans and state photo identification requirements for voting where those changes would have a discriminatory effect. In addition, each year DOJ sends federal observers from the Office of Personnel Management, along with DOJ personnel, into the field to monitor elections around the country and throughout the election calendar, for federal, state, and local elections. The job of personnel deployed as observers is to monitor for violations of federal voting rights laws. In 2012, DOJ assigned more than 1,200 OPM observers and DOJ staff to monitor 101 elections, in 69 different jurisdictions, in 24 states.

102. With regard to paragraph 27 of the Committee's concluding observations, the situation regarding felony disenfranchisement in the United States is described in Part I B of the common core document. The U.S. Constitution generally assigns to the individual states, and not to the U. S. Congress, the responsibility for determining eligibility to vote. At the same time, Congress does have the power to regulate elections for federal offices and also the constitutional authority to eradicate discrimination in voting. Federal legislation addressing voting by former felons in federal elections has been proposed, but not enacted. As described in the common core document, a number of states have limited felony disenfranchisement or have otherwise facilitated the recovery of voting rights for those who can regain them.

103. Issues related to voting representation in Congress for residents of the District of Columbia and insular areas are addressed in paragraph 37 of the common core document.

104. Representation in federal workforce: Members of minorities are well represented in the federal workforce, although not always at levels that reflect their proportion of the overall population. The federal leadership under President Obama evidences broad racial and ethnic diversity. According to the EEOC's Annual Report on the Federal Workforce for FY 2010, the approximately 2.85 million members of the federal workforce include 65.5 per cent White, 7.9 per cent Hispanic/Latinos, 17.9 per cent Black/African Americans (higher than their percentage in the population overall), 5.9 per cent Asians, 0.4 per cent Native Hawaiian and Other Pacific Islanders, 1.6 per cent American Indian/Alaska Natives, and 0.8 per cent persons of two or more races. Over a period of 10 years, the number of Hispanics/Latinos in the total federal workforce has increased by 32.6 per cent, Asians by 37.2 per cent, and Blacks/African Americans by 11.6 per cent. In the same period, their participation in senior level positions also increased – Asians by 130.2 per cent, Hispanics/Latinos by 51.8 per cent, and Blacks/African Americans by 41.4 per cent. However, minority groups remain under-represented at senior levels, with Hispanics/Latinos holding 3.7 per cent, Blacks/African Americans 7.5 per cent, Asian Americans 4.5 per cent, American Indian/Alaska Natives 0.8 per cent, and Native Hawaiian/Pacific Islanders 0.07 per cent of the senior jobs.<sup>12</sup> Recognizing that the federal workforce does not at all levels represent the people it serves, in August 2011 President Obama issued Executive Order 13583, requiring agencies to develop strategies to identify and remove existing barriers to equal employment opportunity in government recruitment, hiring, promotion, retention, professional development, and training. These requirements broadened the President's earlier action in 2009, through Executive Order 13515, to improve participation of Asian Americans and Pacific Islanders in federal programs and

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<sup>12</sup> EEOC, Annual Report on the Federal Workforce for Fiscal Year 2010, Part 2, Tables 2 and 3, available at [http://www.eeoc.gov/federal/reports/fsp2010\\_2/index.cfm](http://www.eeoc.gov/federal/reports/fsp2010_2/index.cfm).

employment. In 2012, the EEOC issued practical guidance for federal employers on Asian American and Pacific Islander employment pursuant to E.O. 13515, [http://www.eeoc.gov/federal/reports/aapi\\_practical\\_guide.cfm](http://www.eeoc.gov/federal/reports/aapi_practical_guide.cfm). In addition, in 2013 it issued a report compiling reported barriers to the advancement of Black/African American federal workers, available at <http://www.eeoc.gov/federal/reports/aawg.cfm>.

105. Representation in public office: Members of minorities are also represented in federal elected offices, but not at rates that reflect their proportions of the population. As all are aware, the highest office in the United States – the President – is held by a Black/African American, who was elected to a second four-year term in 2012. The proportions of minorities in Congress, as reported in the common core document, generally show modest growth from the levels described in the 2007 Report. In 2011, 10 of the state and territorial governors were members of racial or ethnic minorities – three Blacks/African Americans (Massachusetts, New York, and the U.S. Virgin Islands); three Hispanics/Latinos, one of whom was the first female Hispanic/Latina Governor in the United States (New Mexico, Nevada, and Puerto Rico); and four Asian and Pacific Islanders including one female (Louisiana, South Carolina, American Samoa and Guam). These numbers represent increases from those reported in 2007.

106. According to the 4th edition of the American Bar Association Directory of Minority Judges in the United States, published in 2008, of the approximately 60,000 judges and judicial officers in state, federal, and tribal courts (including in Puerto Rico, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands) in 2007, 4,169 were members of racial or ethnic minority groups (approximately 6.9 per cent). Of these, 1,751 were Black/African American, 1,452 were Hispanic/Latino American, 384 were Asian or Pacific Islander American, 35 were Native American (in state or federal courts), and 547 were Native American judges serving in tribal courts. This represents a modest increase from the 4,051 minority judges and judicial officers in 2000 and approximately 3,610 in 1997.

107. Involvement in development and implementation of policies and programs: As a matter of law and policy, governments at all levels in the United States endeavour to involve potentially affected persons in decisions concerning laws and policies that may affect them. Persons have access to their elected representatives to make their views known on legislation. Regulatory activity is accomplished through well-established, legally mandated processes that involve publication of proposed regulations and opportunity for public comment. This report contains numerous examples of programmatic outreach to the public to make members of the public aware of their rights and seek public input. With regard to indigenous peoples, U.S. law and policy mandate consultation with tribes in many areas, as described in the response to paragraphs 38 and 29 of the Committee's concluding observations, below.

108. Measures to promote awareness and eliminate obstacles to participation in public life. Robust opportunities for freedom of speech and the right to vote and participate in public life exist in the United States. Officials at all levels engage in active outreach to make the public aware of their rights and opportunities. Non-governmental organizations are also heavily involved in promoting awareness and encouraging involvement.

#### **D. Other civil rights**

109. Article 5(d) obligates States parties to ensure equality of enjoyment of a number of human rights and fundamental freedoms, including freedom of movement and residence; the right to leave and return to one's country; the right to nationality; the right to marriage and choice of spouse; the right to own property alone as well as in association with others; the right to inherit; the right to freedom of thought, conscience, and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and

association. These are guaranteed to persons in the United States without regard to race, ethnicity, or national origin, and interference with them may be criminally prosecutable under a number of statutes.

#### **E. Economic, social and cultural rights**

110. Non-discrimination in employment and in the right to form and join trade unions. The right to form and join trade unions is guaranteed under federal laws to persons in the United States without regard to race, ethnicity or national origin. Similar protections are contained in some state constitutions and statutes. In addition, it is an unfair immigration-related employment practice to discriminate against certain work-authorized individuals, including some noncitizens, on the basis of national origin or citizenship status with respect to hiring, firing, or recruitment for a fee, 8 U.S.C. 1324b. According to Bureau of Labour Statistics (BLS) data, in 2012 the percentage of wage and salary workers who were union members was 11.3 per cent, down from 11.8 per cent in 2011 and down from 20.1 per cent in 1983 – the first year for which comparable data were available. In 2012, the rate of union membership for public sector workers (35.9 per cent) was substantially higher than the rate for the private sector (6.6 per cent). In the public sector, local government workers had the highest membership rate at 41.7 per cent, including highly unionized occupations such as teachers, police officers, and fire fighters. The private sector industries with the highest unionization rates were transportation and utilities (20.6 per cent) and construction (13.2 per cent). The lowest private sector unionization rates were in agriculture and related industries (1.4 per cent) and financial activities (1.9 per cent). Black/African American workers (13.4 per cent) were more likely to be members of unions than White workers (11.1 per cent), Asian workers (9.6 per cent), or Hispanic/Latino workers (9.8 per cent), <http://www.bls.gov/news.release/pdf/union2.pdf>. Data on rates of participation in the labour force, occupational breakdowns, and unemployment by race, ethnicity, and in some cases sex, are set forth in the common core document.

111. The United States has strong legal protections safeguarding free choice of, and just and fair conditions in, employment. DOJ and the EEOC have reinvigorated efforts to enforce Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based, inter alia, on race, colour, and national origin, and also prohibits retaliation against employees who bring charges or otherwise oppose discrimination.

112. Workplace discrimination charges filed with the EEOC against private employers and state or local governments declined slightly in FY 2012 to a total of 99,412.<sup>13</sup> In addition, state and local fair employment practice agencies received 43,467 charges of employment discrimination on behalf of the EEOC in FY 2012.<sup>14</sup> Nonetheless, it is notable that the total number of charges alleging race or national origin-based employment discrimination declined in 2012, now accounting for 33.7 per cent (race) and 10.9 per cent (national origin) of all charges filed, compared to 35.4 per cent and 11.8 per cent in FY 2011, respectively.<sup>15</sup> The EEOC filed 122 new lawsuits, including 15 alleging race and/or national origin discrimination in employment in FY 2012.

<sup>13</sup> Further EEOC statistical data is available at <http://www.eeoc.gov/eeoc/statistics/index.cfm>.

<sup>14</sup> This figure represents “dual filed” complaints that fall within both state and EEOC jurisdiction – i.e., charges of discrimination and retaliation filed against employers with at least 15 (or 20 for age discrimination) employees. Claims filed solely under state or local laws alleging employment discrimination are not included in the above total.

<sup>15</sup> From the day EEOC opened its doors in 1965 until 2010, race discrimination was the most frequently filed charge received by the agency. Since FY 2010, however, retaliation has become the most alleged basis of discrimination, with charges on this basis continuing to increase.

113. During FY 2012, the EEOC resolved a total of 254 of its employment discrimination lawsuits against private sector employers, 57 of which involved allegations of race and/or national origin discrimination. The EEOC also resolved a total of 111,139 private sector charges, 38,426 of which alleged race discrimination and 12,364 of which alleged national origin discrimination. Through its combined administrative enforcement, mediation and litigation programs, the EEOC secured more than \$409 million in monetary benefits from employers. Of the total recovery, an unprecedented \$100.9 million was obtained through administrative enforcement of race discrimination claims, and \$37 million, the most since 2001, for national origin discrimination claims. Through litigation, the EEOC recovered more than \$22 million for victims of race or national origin discrimination. With respect to complaints filed by employees and applicants against federal government employers, the EEOC resolved 7,538 requests for hearings, securing more than \$61.9 million in relief. In contrast to private sector charges, race and national origin comprised very small percentages (9.5 per cent and 1.5 per cent, respectively) of discrimination findings against the federal government, with the bulk of federal sector discrimination findings (33.3 per cent) concerning retaliation for asserting workplace rights.

114. The EEOC has continued its commitment to mediation and outreach. In FY 2012, the EEOC's mediation program obtained 8,714 resolutions with more than \$153.2 million in monetary benefits for complainants. Of these resolutions, 3,379 involved claims alleging race or national origin discrimination, with almost \$48 million obtained for these claimants. The EEOC expanded its reach to underserved communities, providing education, training, and public outreach to approximately 318,000 persons. The EEOC's systemic program is discussed below.

115. DOL also enforces non-discrimination laws, including Titles VI and VII of the Civil Rights Act of 1964, Executive Order 11246 (federal contractors and subcontractors), and Section 188 of the Workforce Investment Act of 1998 (WIA) covering programs that are part of the American Jobs Center system. DOL has expanded its enforcement focus through regulatory changes, training, partnerships, and outreach. Through DOL and other agencies, the federal government requires private companies with which it conducts significant business to take proactive steps to increase the participation of members of minorities in the workplace, when they are underrepresented, and to ensure fairness in recruiting, hiring, promotion, and compensation.

116. Protection of U.S. citizens, nationals, and legal immigrants from employment discrimination on the basis of national origin. DOJ's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) enforces certain anti-discrimination provisions of the INA, see 8 U.S.C.1324b. Under section 1324b, it is an unfair immigration-related employment practice to discriminate against certain work authorized individuals, including some noncitizens, on the basis of national origin or citizenship status with respect to hiring, firing, or recruitment for a fee. Employment discrimination claims based on national origin also may be raised with the EEOC under Title VII.<sup>16</sup>

117. With regard to paragraph 28 of the Committee's concluding observations, the United States recognizes that, despite almost fifty years of intense federal efforts at fighting employment discrimination and a general increase in workplace diversity, members of minorities, including women and migrant workers, nonetheless are more likely than others

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<sup>16</sup> DOJ/OSC jurisdiction over national origin discrimination under the INA extends to employers with 4-14 employees; larger employers are handled by the EEOC under Title VII. DOJ/OSC and the EEOC have a formal Memorandum of Understanding to prevent overlap and ensure an administrative forum for national origin-based complaints.



to be found in low paying and dangerous jobs. The Obama Administration is working hard to eradicate employment discrimination, as evidenced by increased enforcement by the agencies involved.

118. Since 2009, DOJ/CRT has worked to reinvigorate its pattern or practice enforcement program to combat de facto discrimination in the workplace. Between 2009 and 2012 DOJ filed 32 lawsuits under Title VII to address cases where there is a pattern or practice of employment discrimination and it has obtained substantial relief for victims in cases brought by DOJ as well as cases referred by the EEOC. For example, DOJ/CRT challenged New York City Fire Department's (FDNY's) use of written fire-fighter examinations, which disproportionately screened out qualified African American and Latino applicants without enabling FDNY to predict job performance. In July 2009, a federal court ruled that New York City's use of the examinations constituted a pattern or practice of discrimination. The court ultimately ordered New York City to pay up to \$128 million in back pay damages to those unfairly rejected from jobs – DOJ's largest-ever damages award in an employment discrimination case – as well as to provide priority job offers for 293 victims of the city's discrimination. The court also ordered the city to develop and implement new hiring practices at the FDNY, including a new written examination, which, unlike the challenged exams, actually tests for the skills and abilities that are important to the fire-fighter position. DOJ/CRT also successfully challenged the state of New Jersey's use of a written examination to decide who to promote to police sergeant, on the basis that the test disproportionately excluded African American and Hispanic police officers from promotions and did not test for the skills necessary to do the job. An agreement reached with New Jersey requires the state to use a new procedure to promote police officers based on merit, not race or national origin, and also to provide up to \$1 million in back pay and priority promotions to qualified officers who were denied promotions on a discriminatory basis.

119. In recent years, the EEOC has also significantly increased its "Systemic Initiative," which targets pattern and practice or class action employment discrimination that has a broad impact on an industry, profession, company, or geographic location. In 2012, EEOC resolved 430 systemic employment discrimination charges that concerned race or national origin, recovering more than \$22 million for victims of such employment discrimination. As of September 30, 2012, 886 charges of race or national origin discrimination were pending in the Systemic Initiative. The EEOC filed 10 systemic lawsuits, 2 of which concerned race or national origin; it also resolved 9 race or national origin systemic lawsuits in FY 2012. These included a \$3.13 million settlement for a class of over 300 African Americans disproportionately affected by soft drink maker Pepsi Beverages' policy of excluding applicants with criminal records, which excluded those arrested but never convicted of any crime; this settlement also requires Pepsi to offer jobs to class members who qualify under a new set of policies. Systemic claims now comprise 20 per cent of all active EEOC litigation. Working with the EEOC, DOL has increased the scope and effectiveness of its enforcement against systemic discrimination, including enterprise-wide reviews of multiple offices within a single large corporation to evaluate compliance and correct deficiencies throughout the corporation instead of addressing only one facility at a time.

120. The U.S. government also addresses discrimination in the workplace with job training and education efforts. The EEOC conducted "technical assistance" training in FY 2012 for more than 5,000 Human Resources professionals and lawyers on how to comply with federal employment anti-discrimination laws. DOL provides funding for more than 3,000 local American Job Centers nationwide, offering access to employment assistance, labour market information, job training and income support services. These services are particularly critical for disadvantaged populations.

121. Regarding the Committee's concerns about undocumented migrant workers, all workers in the United States, regardless of immigration status, are entitled to the protections of U.S. labour and employment laws, including those related to minimum wage, overtime, child labour, workplace health and safety, compensation for work-related injuries, freedom from unlawful discrimination, and freedom from retaliation. Federal agencies charged with enforcing worker protection laws understand that effective enforcement of labour law is essential to ensure proper wages and working conditions for all workers. When investigating potential violations of labour or employment laws, DOL and EEOC do not inquire into the immigration status of the workers involved. In litigation, EEOC actively attempts to keep information about citizenship out of trials, and it uses injunctions and other devices to stop employer threats of violence or deportation against workers who complain. Employers are held accountable without regard to the legal status of workers, although limited remedies may not be available to undocumented workers.<sup>17</sup>

122. DOL has also initiated a Migrant Worker Partnership Program with the embassies and consulates of ten countries, designed to assist DOL in the protection of migrant workers employed in the United States and to help communicate with workers whom the Department might not otherwise be able to reach. The Secretary of Labour has established formal partnerships with the embassies of Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Peru and the Philippines; and the Department is currently working to expand these partnerships to other countries. The EEOC has also partnered with embassies and consulates to protect the rights of their citizens to be free from employment discrimination while working in the United States.

123. DHS programs that help employers comply with the INA's prohibition against the knowing hiring or employment of unauthorized workers, such as the DHS E-Verify program (offering employers an electronic method of verifying whether their employees are eligible to work in the United States) and the ICE Mutual Agreement between Government and Employers (IMAGE) program (assisting employers in voluntary compliance with this prohibition), include prohibitions against selective or discriminatory use as well as provisions for outreach to employers on worker rights and non-discrimination. In 2011, DOL and DHS entered into a revised Memorandum of Understanding (MOU) to ensure that immigration enforcement does not inadvertently interfere with the protection of the rights of workers.

124. Non-discrimination with regard to housing. The Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968, as amended) prohibits discrimination in housing, including on the basis of race, colour, and national origin. Public and private housing providers, as well as other entities such as municipalities, banks, and homeowners' insurance companies, are covered by the Act. The Equal Credit Opportunity Act of 1974 also prohibits discrimination on these same grounds in the extension of credit.

125. In enforcing the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and Section 3 of the Housing and Urban Development Act of 1968, the HUD Office of Fair Housing and Equal Opportunity (HUD/FHEO) receives complaints, investigates cases, and engages in active outreach to lenders, housing providers, home-seekers, landlords, tenants, and others

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<sup>17</sup> For example, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) placed a narrow limitation on a single remedy for a violation of the National Labor Relations Act in saying that undocumented workers may be denied back pay as a remedy for unfair labor practices for work not performed where such employment was secured through fraud and in violation of U.S. immigration law. The decision, however, does not preclude a range of other remedies that help to compensate and protect undocumented workers.

concerning their rights and obligations. In many regions, FHEO also authorizes and provides funding for state or local fair housing enforcement agencies to receive and investigate complaints, as long as the state or local government can show that its fair housing law provides protections substantially equivalent to those of the Fair Housing Act. At the end of 2012, there were 96 Fair Housing Assistance Program (FHAP) agencies in 38 states and the District of Columbia, three of which enforced fair housing laws for both city and county jurisdictions. In 2012, HUD made about \$7.5 million available to FHAP agencies nationwide to partner with local entities in additional fair housing enforcement and outreach beyond their normal FHAP enforcement work, such as more effective testing, outreach to address housing segregation, and efforts to diminish LEP barriers.

126. During FY 2012, HUD and the FHAP agencies received 8,802 complaints alleging violations of the Fair Housing Act. The most common basis of complaints was disability (50 per cent), followed by race (29 per cent), familial status (14 per cent), national origin (12 per cent), and sex discrimination (12 per cent). The most common complaint involved discrimination in the terms or conditions of the sale or rental of property (62 per cent), followed by failure to make a reasonable accommodation (28 per cent) and refusal to rent (26 per cent). Through enforcement, in 2012 HUD and FHAP agencies obtained more than \$9.6 million in monetary relief, plus other types of relief, including changes in policies and procedures and training for staff. HUD also engages in active education and outreach; its National Fair Housing Training Academy conducts multilingual training for housing counsellors and consumers, and HUD has translated several hundred HUD documents into 20 languages.

127. In the wake of the nationwide housing and foreclosure crisis, DOJ/CRT realized the critical need for increased enforcement of the nation's fair lending laws. While many communities nationwide were devastated during the housing and foreclosure crises, African-American and Hispanic/Latino families were hit especially hard. Across the country CRT found cases where qualified Black/African American and Hispanic/Latino families paid more for loans because of their race or national origin, or were steered to more expensive and risky subprime loans. CRT also found some lenders who failed to offer credit in African American and Hispanic communities on an equal basis with White communities.

128. The creation of DOJ/CRT's Fair Lending Unit in early 2010 bolstered collaboration with federal agencies that regulate banks and the housing market. Federal bank regulators, HUD, the newly created Consumer Financial Protection Bureau, and the Federal Trade Commission referred 109 matters to DOJ between 2009 and 2011, nearly half of which (53) involved race or national origin discrimination, almost double the 30 referrals received in the previous eight years combined. Between early 2010 and 2012, DOJ/CRT filed or resolved 22 lending matters, providing more than \$575 million in monetary relief for more than 300,000 individual borrowers and affected communities, including the large Countrywide settlement referenced above.

129. Regarding paragraph 31 of the Committee's concluding observations, federal and state governments have worked diligently with affected communities to ensure availability of affordable housing to persons displaced by Hurricanes Katrina and Rita. The DHS Federal Emergency Management Agency (FEMA) provided more than \$7.8 billion in housing and other assistance (e.g., transportation, clothing, furniture) to roughly 2.2 million individuals and households affected by the hurricanes. FEMA conducted the largest temporary housing operation in the history of the United States, providing temporary housing units to 143,123 households across the Gulf Coast. As of January 7, 2013, only one household remained in a temporary housing unit. FEMA also funded a Disaster Case Management Program that connected survivors to disaster assistance, including affordable rental housing, and the Gulf states themselves produced more than 8,700 affordable rental

units. More federally assisted housing exists in New Orleans today than existed before the hurricane, and hundreds of families have returned home.

130. HUD also implemented three major programs following Hurricane Katrina: the Katrina Disaster Housing Assistance Program (KDHAP), which provided rental assistance to approximately 10,000 displaced HUD-assisted and homeless households from October 2005 to January 2006; the \$390 million Disaster Voucher Program (DVP), which assisted more than 36,000 previously-assisted HUD families; and the Disaster Housing Assistance Program (DHAP), which provided both housing rental assistance and case management services enabling more than 50,000 families to transition to available rental housing in the market of their choice. Upon conclusion of DHAP in 2009, Congress provided further assistance that was eventually available to all families displaced by Hurricanes Katrina and Rita. All of HUD's programs include strong civil rights requirements and protections and involve consultation with affected communities; each state must follow a detailed citizen participation plan and ensure that grants are administered in conformity with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act. In addition to the FEMA and HUD programs noted above, the Small Business Administration (SBA) offered loans and grants to assist homeowners, renters, businesses of all sizes, and private, non-profit organizations repair or replace real estate, personal property, and other assets.

131. With regard to outreach and community involvement, FEMA and the State of Louisiana sponsored "Louisiana Speaks" to involve survivors in the disaster recovery planning process. A national Louisiana Planning Day invited displaced people from across the country to provide thoughts on recovery priorities for their communities. Engaging and consulting with communities continues to be important in ensuring non-discrimination in preparedness, response, and recovery following disasters. For example, community involvement in developing post-Katrina evacuation plans helped facilitate evacuations for Hurricane Gustav in 2008. After the Deep-water Horizon oil spill in April 2010, which devastated the livelihoods of many minority communities, DHS established the Deep-water Integrated Services Team, consisting of DHS and 17 other federal agencies, to engage with affected communities. FEMA also deployed Community Relations Outreach Teams, and FEMA and DHS/CRCL created a new Standard Operating Procedure for outreach to populations with limited English proficiency or with additional communication needs, including low literacy levels. More recently, during Hurricanes Isaac and Sandy in 2012, the federal government engaged with diverse communities and, considering the potential impact of these storms on many immigrant communities, issued a statement in several languages on cessation of immigration enforcement activities associated with officially-ordered evacuations or an emergency government response. During Hurricane Sandy, DHS also issued a reminder to states, localities, and other recipients of federal financial assistance concerning their obligations under federal non-discrimination laws.

132. In September 2011, the federal government published a National Disaster Recovery Framework (NDRF), which emphasizes inclusiveness in the recovery process, including giving a voice to underserved populations in recovery, and sensitivity and respect for social and cultural diversity. Aware of the concerns that have been expressed with regard to the timeliness and availability of assistance to the persons most in need, the Administration has worked forthrightly to address problems and to ensure that assistance is available expeditiously, is targeted for those who need it most, and is appropriately designed for transition to a sustainable future.

133. Non-discrimination regarding public health, medical care, social security and social services. Disparities in access and treatment: With regard to article 5 and paragraph 32 of the Committee's concluding observations, under Title VI of the Civil Rights Act of 1964, discrimination on the basis of race, colour or national origin, including action that has a disparate impact on members of minorities, has long been prohibited in all federally funded

hospitals and health care facilities. HHS and DOJ vigorously enforce these laws, and HHS collects and analyzes statistics on health care disparities. Every year since 2003, HHS has produced the National Healthcare Quality Report (NHQR) and the National Healthcare Disparities Report (NHDR), which track the level of health care quality, access, and disparities for the nation. Data are based on more than 200 health care measures categorized in areas such as access to care, efficiency of care, effectiveness of care, and health system infrastructure for racial and ethnic minority and low income groups and other priority populations, such as residents of rural areas and persons with disabilities. These analyses indicate that, in many cases, health care quality in America could be improved. The gap between best possible care and that which is routinely delivered remains substantial. The analyses also indicate that, despite substantial efforts to improve health care for all, disparities based on race and ethnicity, socioeconomic status and other factors persist at unacceptably high levels.

134. According to the 2011 reports, improvements in health care quality continue to progress at a slow rate – about 2.5 per cent a year. Few disparities in quality of care are narrowing, and almost no disparities in access to care are getting smaller. Overall, Blacks/African Americans and Hispanics/Latinos received worse care than Whites for about 40 per cent of measures, and Asian Americans and American Indians and Alaska Natives received worse care than Whites for about 30 per cent of measures. Poor people received worse care than high-income people for about 50 per cent of measures. (For related charts and additional statistical data, see the NHDR Chapter 10 “Priority Populations,” pp. 233-247, available at <http://www.ahrq.gov/qual/qrd11.htm>).

135. Some minor improvements in health disparities have occurred. For example, since 1990, the gap in life expectancy between White males and Black/African American males narrowed from eight years to five years, and the gap in life expectancy between White females and Black/African American females decreased from six years to four years. (Health, United States, 2011, HHS Centers for Disease Control and Prevention (CDC), National Center for Health Statistics, available at <http://www.cdc.gov/nchs/hus.htm>).

136. In 2011, HHS also released the HHS CDC Health Disparities and Inequalities Report – United States, 2011 – the first in a series of periodic assessments that highlight health disparities by various characteristics, including race and ethnicity. This report, which represents a milestone in CDC’s history of work to eliminate disparities, addresses disparities in health care access, exposure to environmental hazards, mortality, morbidity, behavioural risk factors, disability status, and social determinants of health. It finds that in recent decades the nation has made substantial progress in improving U.S. residents’ health and reducing health disparities. Yet health disparities by race and ethnicity, along with other social characteristics, still persist. For example, persons who live and work in low socioeconomic circumstances are at increased risk for premature mortality, morbidity, unhealthy behaviours, reduced access to healthcare, and inadequate quality of care. Environmental hazards, such as inadequate and unhealthy housing and unhealthy air quality, likewise affect health outcomes. The study found that the highest infant mortality was for non-Hispanic Black/African American women, with a rate 2.4 times that for non-Hispanic White women. With regard to coronary heart disease, Black/African American women and men had much higher coronary heart disease rates in the 45-74 age group than women and men of the three other races. Likewise, obesity rates were lower for Whites than for Blacks/African Americans and Hispanic/Latino Americans.

137. The report recommends that health disparities be addressed with dual intervention strategies related to health and social programs and, more broadly, access to economic, educational, employment, and housing opportunities. The dual strategy includes making national and locally determined interventions universally available as well as making targeted interventions available to populations with specific needs. To address health

disparities and inequalities at the national, state, tribal, and local levels, the CDC is leading an effort to compile and publish evidence-based and promising practices and strategies used by CDC-funded programs to address some of the persistent health disparities and inequalities highlighted in the HHS CDC Health Disparities and Inequalities Report. These practices and strategies will serve as a resource for practitioners at all levels in their efforts to address health disparities and inequalities. The HHS CDC Health Disparities and Inequalities Report – United States 2013 will also provide updates on topics covered in the 2011 report and introduce new topics as well.

138. The United States is committed to improving access to quality health care for all, and to reducing and eventually eliminating these disparities. For many years the United States has provided government benefits programs to address health care, such as Medicare and Medicaid. Hundreds of hospitals that are federally funded under the Hill-Burton Act are obligated to provide free or reduced-cost health care, regardless of an individual's ability to pay. In addition, the Emergency Medical Treatment and Labour Act requires Medicare-participating hospitals to provide, regardless of ability to pay, a medical screening examination when a request is made for emergency treatment, and also to provide the individual stabilizing treatment or an appropriate transfer if the hospital is unable to stabilize the individual within its capacity.

139. The ACA, which was upheld by the U.S. Supreme Court, *National Federation of Independent Business et al. v. Sebelius*, 132 S. Ct. 2566 (2012), is intended to help reduce health care disparities, inter alia, by: (1) expanding insurance coverage; (2) promoting preventive and wellness services; (3) improving chronic disease management; (4) increasing access to Community Health Centers, which provide comprehensive primary health care to patients regardless of ability to pay; (5) strengthening the cultural competency skills of health care professionals; (6) promoting implementation of HHS's April 2011 Action Plan to Reduce Racial and Ethnic Health Disparities and; (7) increasing the diversity of the health care workforce. Under the ACA, it is estimated that as many as 5.4 million Hispanics/Latinos, 3.8 million Blacks/African Americans, and 2 million Asian Americans who would otherwise be uninsured will gain coverage by 2016 through the expansion of Medicaid eligibility and creation of Affordable Insurance Exchanges; that 1.3 million young adult members of minority groups (736,000 Hispanics/Latinos, 410,000 Blacks/African Americans, 97,000 Asian Americans, and 29,000 American Indian/Alaska Natives) have gained coverage because they are now able to stay on their parents' insurance through age 26; and that 45.1 million women can receive recommended preventive services without having to pay a co-pay or deductible. Under the ACA's expansion of the Community Health Centers program, more than 8,500 service delivery sites provide health care to more than 20 million patients throughout the United States and its territories – approximately 35 per cent of patients served are Hispanic/Latino and 25 per cent are Black/African American. In May 2012 HHS announced awards of \$728 million to build, expand and improve community health centers nationwide – part of a \$9.5 billion five-year expansion plan under the ACA. The ACA has also helped nearly to triple the number of clinicians in the National Health Service Corps, a network of primary care providers who receive scholarships and loan repayment in exchange for working in underserved communities. Black/African American physicians make up about 17.8 per cent of the Corps, a percentage that greatly exceeds their 6.3 per cent share of the national physician workforce.

140. In 2011, HHS released its Action Plan to Reduce Racial and Ethnic Health Disparities, outlining the goals and actions it will take to reduce racial and ethnic health disparities, building on the ACA. At the same time, the National Partnership for Action to End Health Disparities (NPA) released its National Stakeholder Strategy for Achieving Health Equity, which complements the Action Plan by providing a roadmap for public and private sector initiatives and partnerships to address disparities. The NPA is intended to

mobilize a comprehensive, community-driven, and sustained approach to combating health disparities and to move the nation toward achieving health equity, <http://minorityhealth.hhs.gov/npa/>. In February 2013, under the leadership of HHS/OCR, HHS released its 2013 Language Access Plan, ensuring that LEP individuals have meaningful access to HHS programs, including Medicare and those established under Title I of the ACA.

141. Healthy People 2020 is an ambitious, yet achievable, disease prevention/health promotion agenda to improve the health of all Americans throughout the decade ending in 2020 and to achieve health equity, eliminate disparities, and improve the health of the Nation during that period. HHS grants more than \$14.2 million to universities and medical schools to study and implement more effective health strategies among racial and ethnic minority populations. It also has programs to improve the cultural and linguistic competency of health care providers, such as the HHS/OCR Medical Schools National Initiative, which has worked with 18 medical schools to develop the flagship course, “Stopping Discrimination Before It Starts: The Impact of Civil Rights Laws on Healthcare Disparities – A Medical School Curriculum,” <https://www.mededportal.org/publication/7740>.

142. With regard to Native American health disparities, the Obama Administration understands and seeks to support the priority tribal leaders place on improving the delivery of health care services in their communities. The Indian Health Service (IHS) has engaged for many years with federally recognized tribes. The Obama Administration achieved a 29 per cent increase in funding for the IHS during the last 4 years, in addition to \$500 million provided to the IHS under the Recovery Act. Under the Indian Health Care Improvement Act, which was made permanent by the ACA, IHS is addressing priorities identified by tribes, including long-term care, behavioural health, diabetes/dialysis, and improving the collaboration and coordination of services for veterans eligible for services of both the Department of Veterans Affairs (VA) and IHS. In consultation with tribal leaders, HHS and DOI are also working together to combat a full range of social issues affecting health in Indian Country.

143. Non-discrimination with regard to Social Security. Social Security retirement benefits are available without regard to race, colour, or national origin to all eligible persons who have worked at least 10 years. Age 65 is the full retirement age for those born between 1938 and 1943, as is age 66 for those born between 1943 and 1959, although benefits may begin as early as age 62. Social Security disability coverage is likewise available to all eligible persons without regard to race, colour or national origin. Medicare, a health insurance program for people age 65 or older (or under age 65 with certain disabilities), is also available without regard to race, colour or national origin. Medicaid provides health insurance to low-income individuals and families of any age, also without discrimination.

144. Environmental justice: Recognizing that low income and minority communities often are exposed to an unacceptable amount of pollution, the Obama Administration is committed to making environmental justice a central part of the everyday decision-making process. The Administration has re-energized the Federal Interagency Working Group on Environmental Justice (EJ IWG), founded in 1994 under Executive Order 12898. In addition, the White House Forum on Environmental Justice, held in December 2010, focused on addressing environment and health disparities and on how low income and minority communities can prepare for the environmental and health impacts of climate change. Administration initiatives include: issuing final environmental justice strategies, implementation plans and/or progress reports for 15 agencies, including Plan Environmental Justice (“EJ”) 2014, which is EPA’s strategy to develop stronger community relationships and increase agency efforts to improve environmental and health conditions in overburdened communities; and increasing collaboration between the EJ IWG

and other federal partnerships, such as the Partnership for Sustainable Communities and the Action Plan to Reduce Racial Ethnic Asthma Disparities. The Asthma Action Plan recognizes that poor and minority children suffer a greater burden of the disease, and focuses on ensuring that the populations most severely affected receive evidence-based comprehensive care.

145. Non-discrimination with regard to education and training: De jure racial segregation in education has been illegal in the United States since the landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). As discussed above under article 2, DOJ/CRT and ED/OCR work actively to ensure non-discrimination in education. DOJ/CRT monitors compliance of school districts with U.S. civil rights laws and initiates case reviews to ensure that school districts operating under court orders as a result of former de jure segregation live up to the requirements of those orders; relief has been secured in 43 desegregation cases in the last four years. DOJ/CRT and ED/OCR also enforce laws prohibiting discrimination in schools, colleges, and universities on the basis of factors that include race, colour, and national origin, such as Titles IV (non-discrimination by public school districts, colleges, and universities on the basis of race, colour or national origin) and VI of the Civil Rights Act of 1964 (non-discrimination by recipients of federal financial assistance), and the EEOA of 1974 (prohibiting discrimination by public schools based on race, colour, or national origin, including failing to help ELL students overcome language barriers, enforced by DOJ). Between FY 2009 and FY 2012, ED/OCR received 28,971 complaints and resolved 28,577 complaints under Title VI. The two agencies have conducted joint investigations and compliance reviews under these statutes in the last four years. Cases have included two comprehensive EEOA/Title VI settlements with the Boston Public Schools to resolve findings that roughly 8,500 ELL students had been without services to help them acquire proficiency in English. As noted above, the two agencies have also provided guidance reminding school districts of the obligation under federal law to provide equal educational opportunities regardless of actual or perceived immigration status, and also guidance for K-12 school districts and college and universities on the voluntary use of race to achieve diversity or avoid racial isolation.

146. ED also administers the Elementary and Secondary Education Act of 1965 (ESEA), which, as amended, provides a framework for improving performance for all students. This law and the Obama Administration's actions to re-tool it more effectively to prepare students to succeed in college and the workplace, while at the same time giving states greater flexibility in addressing achievement gaps, are described in detail in paragraphs 59 and 60 of the 2011 U.S. ICCPR Report. In 2011, ED announced a flexibility opportunity under the ESEA to set aside barriers unintentionally inhibiting reforms in exchange for rigorous and comprehensive state-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Currently, 34 states and the District of Columbia have been approved for ESEA flexibility, and requests from a number of additional states are under review. Under the ESEA, states administer state-developed assessments in reading/language arts and mathematics in grades 3 through 8 and once in high school, and in science in three grade spans (3-5, 6-9, 10-12). States must disaggregate data from these assessments by gender, major racial/ethnic groups, poverty, migrant status, students with disabilities, and ELLs) to highlight achievement gaps among these groups. In addition, ED administers assessments for students in the 4th and 8th grades every two years, with an additional test in the 12th grade. These tests, called the National Assessment of Educational Progress (NAEP) and published as the "Nation's Report Card," show modest progress in reducing achievement gaps in some areas, although significant gaps continue to exist between White and other racial groups except the combined group consisting of Asians and Pacific Islanders (who sometimes score above White students on average). Native Hawaiians and other Pacific Islanders, reported separately for the first time in 2011, scored below White students in



both reading and mathematics. Statistics regarding educational attainment can be found in paragraphs 11 to 13 of the common core document and at [www.nces.ed.gov/nationsreportcard](http://www.nces.ed.gov/nationsreportcard).

147. The ESEA, as amended, requires states to develop and implement English language proficiency standards and to carry out annual assessments of ELL students. The National Center for Education Statistics reports that between the 2000-01 and 2009-10 school years, the number of school age children (ages 5-17) being served in appropriate programs of language assistance (e.g., English as a Second Language, High Intensity Language Training, bilingual education) increased from 3.7 million to 4.7 million – from 8 per cent to 10 per cent of the population in this age range. Under Title VI of the Civil Rights Act of 1964, ELL students must receive from their states and local educational agencies instructional services appropriate to their level of English proficiency. In addition, Title III of the ESEA provides formula grants to states for supplementary services to ELLs to increase their English proficiency.

148. ED also provides formula grant funds to school districts to meet the culturally related academic needs of AI/AN students, and also provides funding to tribes, school districts, and other entities under several discretionary grant programs to improve educational opportunities. Under a new pilot program, ED is funding tribal educational agencies that have entered agreements with their state educational agencies to provide services to public schools located on Indian reservations. In addition, based on consultations with tribal officials concerning the importance of preserving Native languages, the Administration has proposed changes to the ESEA that support, inter alia, flexibility in the use of federal education funds for Native language immersion and Native language restoration programs. Advancement of native languages is also a recognized factor in other programs as indicated in the White House report, *Continuing the Progress in Tribal Indian Communities*, [http://www.whitehouse.gov/sites/default/files/wh\\_tnc\\_accomplishments\\_report\\_final.pdf](http://www.whitehouse.gov/sites/default/files/wh_tnc_accomplishments_report_final.pdf).

149. With regard to paragraph 34 of the Committee's concluding observations concerning the achievement gap, in the 48 years since enactment of the Civil Rights Act of 1964, access to quality academic programs has increased tremendously among minority students and ELL students. While progress has been made in reducing the achievement gaps in some areas, as noted above, the data indicate that significant gaps continue to exist. The Obama Administration is committed to working to eliminate these gaps.

150. The Administration's work to address the achievement gap includes the following ED programs, among others: (1) the Race to the Top program, which has inspired many forward-thinking state reforms in education (in 2010 nearly \$4.3 billion was awarded to 11 states and the District of Columbia, assisting 13.6 million students and 980,000 teachers, and an additional \$700 million was made available in 2011 for the RTT program and the Race to the Top-Early Learning Challenge program, a state grant to promote high quality early childhood education and close the achievement gap for children with high needs); (2) programs that are part of the Investing in Innovation Initiative ("i3"), Promise Neighbourhoods, and School Improvement Grants, which are intended to foster innovation, reform the lowest performing schools, and provide support for effective school reform (e.g., for "i3," \$650 million was made available in 49 grants in 2010, \$148 million in 23 grants in 2011, and \$142 million in 20 grants in 2012; and for Promise Neighbourhoods, \$10 million was awarded in 21 grants in 2010, \$30 million in 20 grants in 2011, and \$60 million, including 17 new grants, in 2012), and; (3) continued implementation of other federal programs focused on reducing achievement gaps (e.g., Title I, Part A of the ESEA, which provides more than \$14.5 billion annually to local educational agencies (LEAs) to improve achievement of low-achieving students in high poverty schools; and Title III of the ESEA, which provides grants to LEAs to increase the English proficiency of ELLs). For additional

information on measures to address the achievement gap, see the discussion above under paragraphs 16 and 17 of the Committee's concluding observations.

151. Zero tolerance policies. Crime in schools has decreased significantly since the mid-1990s.<sup>18</sup> However, in response to public perception that U.S. public schools were becoming increasingly violent, many schools revised their discipline practices, policies, and procedures, including policies mandating suspension or expulsion, or permitting or requiring referrals to juvenile justice authorities after specific disciplinary offenses or specific numbers of offenses have been committed. Such student discipline policies can interrupt a student's education and diminish that student's chances for success, and for too many students these school-imposed sanctions lead to students being placed in (or drawn into) the criminal justice system through a pathway commonly referred to as the "school-to-prison pipeline." The federal government is keenly aware that some of these policies and practices have had a disproportionate impact on minority students, in particular on Black/African American boys.

152. DOJ and ED are committed to addressing racial disparities in discipline as well as the resulting "school-to-prison pipeline." For example, in 2011, the two agencies announced a collaborative initiative to improve school discipline practice and reduce disparities in discipline, <http://www.ed.gov/news/press-releases/secretary-duncan-attorney-general-holder-announce-effort-respond-school-prison-p>. Examples of cases are found above in the discussion of education as it relates to article 2 and paragraph 21 of the Committee's concluding observations. ED/OCR is collecting data on a number of students receiving expulsions under zero tolerance policies, suspensions, referrals to law enforcement and corporal punishment. ED's Office of Safe and Healthy Students has forged links between school police chiefs and juvenile and family court judges and is circulating information on best practices to prevent, mitigate, and deal with crime and violence in schools, and as noted above, ED and DOJ hosted a first-ever conference on this issue in 2010. ED/OCR has recently resolved three compliance reviews addressing discriminatory discipline in school districts in California and Delaware. DOJ recently reached comprehensive settlement agreements addressing discriminatory discipline based on race and national origin with school districts in Mississippi and Florida.

153. As discussed above with respect to paragraphs 16 and 17 of the Committee's concluding observations, the Administration is committed to addressing harassment and bullying in schools. It has formed the Interagency-6-Bullying Working Group, a coordinated effort to develop a national strategy to end bullying in schools. School districts have a responsibility to stop bullying and harassment whenever it happens, and when harassment occurs because of a student's race, colour, national origin, or other protected ground, DOJ/CRT and ED/OCR have the legal enforcement authority to take action under the Equal Protection Clause of the U.S. Constitution and federal laws such as Titles IV and VI of the Civil Rights Act of 1964. In 2010, ED/OCR issued guidance on school responsibilities to address harassment and bullying under the civil rights laws. In addition to DOJ/CRT's settlement resolving the severe harassment of Asian-American students at South Philadelphia High School referenced above, DOJ/CRT and ED/OCR resolved a case of harassment and disproportionate discipline of Somali-American students at Owatonna High School in Minnesota in which the district had meted out disproportionate discipline for students involved in a fight and the district's policies, procedures, and trainings were not adequately addressing harassment against Somali-American students. DOJ/CRT also recently reached settlements to resolve investigations of alleged racial harassment at

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<sup>18</sup> See, e.g., National Center for Education Statistics and Bureau of Justice Statistics, "Indicators of School Crime and Safety 2010," Table 3.1, "Percentage of students ages 12-18 who reported criminal victimization at school during the previous 6 months, 1995-2007", pp. 94-95.

schools in Ohio and Indiana. These settlements require changes to policies and training to ensure schools are safe and inclusive places for learning for all students.

154. President Obama has made clear his commitment to protecting children from bullying and harassment of all kinds; he and First Lady Michelle Obama convened a conference at the White House in March 2011 to bring students, parents, educators and other stakeholders together to discuss bullying prevention. Federal officials have also met with advocates from Arab and South Asian communities and other advocacy organizations, and have spoken to schools and other groups concerning this issue.

155. Non-discrimination with regard to participation in cultural activities and access to places or services intended for use by the general public. The rich and diverse cultural heritage of the United States grows even richer and more diverse as the United States becomes increasingly multi-racial and multi-ethnic. The long tradition of cultural expression in the United States continues to be evidenced in the thousands of ethnic heritage events, clubs, and theatrical, artistic, sports, and musical events that celebrate cultural affiliation and diversity nationwide. Equal participation in cultural activities and access to places and services intended for use by the general public, such as transportation, hotels, restaurants, theatres and parks, are protected primarily through the First, Fifth, and Fourteenth Amendments of the Constitution, supplemented by U.S. laws, including Title II of the Civil Rights Act of 1964, as amended, which makes it unlawful for certain places of public accommodation, such as hotels, restaurants and places of entertainment, to discriminate on the basis of, inter alia, race, colour or national origin. For example, in 2012 CRT partnered with the Pennsylvania Human Relations Commission to resolve allegations that a swim club in Philadelphia discriminated on the basis of race, <http://www.justice.gov/opa/pr/2012/August/12-crt-1017.html>. A declining proportion of public accommodations cases in recent years has involved race and ethnicity, with an increasing proportion now based on disability. DOJ may bring lawsuits for injunctive relief under Title II when there is reason to believe that a person has engaged in a pattern or practice of discrimination. Individuals may also file suit to enforce their rights under Title II and other federal and state statutes. Title III of the Civil Rights Act of 1964 likewise prohibits discrimination by public facilities, such as public museums or centers. See annex A to the common core document for a discussion of state laws and enforcement efforts.

## **II. Information by relevant groups of victims or potential victims of racial discrimination**

### **A. Discussion of types of persons**

156. Refugees and displaced persons: With regard to paragraph 37 of the Committee's concluding observations, the Refugee Act of 1980 introduced into U.S. law a definition of "refugee" generally conforming to the definition contained in the 1951 Convention Relating to the Status of Refugees, as amended and incorporated by reference into the 1967 Protocol Relating to the Status of Refugees, to which the United States is a Party. This definition is found in section 101 (a)(42) of the INA, 8 U.S.C. 1101 (a)(42), and governs both the adjudication of asylum status for persons physically present in the United States and refugee status for individuals overseas seeking resettlement in the United States through the U.S. Refugee Admissions Program. See 8 U.S.C. 1157-1158.

157. In FY 2012, the United States admitted 58,238 refugees through its refugee resettlement program. For refugees resettled in the United States in FY 2012, the leading countries of nationality were Burma, Iraq, and Bhutan. The refugee admissions numbers were above those for 2011 (56,424) but below those for 2010 (73,311). In 2012, refugees were 54 per cent male and 46 per cent female. The United States granted asylum through

“affirmative” applications to U.S. Citizenship and Immigration Services (USCIS) in almost 13,000 cases to individuals already present in the United States. The affirmative asylum numbers were above those for both 2011 (10,700) and 2010 (9,174). The United States also granted nearly 12,000 “defensive” asylum applications in FY 2012 in removal proceedings before DOJ immigration judges. For asylees in FY 2012, the leading countries of nationality for successful applicants were China, Egypt, and Ethiopia (affirmative applications) and China, Ethiopia, and Nepal (defensive applications).

158. The United States recognizes that refugees may benefit from targeted assistance that acknowledges the particular vulnerabilities they may face and helps them integrate into American society. The DOS Bureau of Population, Refugees, and Migration maintains cooperative agreements with non-profit organizations to assist refugees during the first three months after arrival by providing goods and services necessary to help them transition into their new communities. The HHS Office of Refugee Resettlement works through the states and non-profit organizations to provide longer-term cash and medical assistance, as well as language and social services. For example, the Unaccompanied Refugee Minors Program establishes legal responsibility for unaccompanied alien children, under state law, to ensure that they receive the full range of assistance, care, and services available to all foster children in the state.

159. Additionally, U.S. law provides for temporary protected status (TPS) for eligible noncitizens in the United States who are nationals of certain countries, as designated by the Secretary of Homeland Security, that are enduring an armed conflict, devastation from a natural disaster, or other extraordinary and temporary conditions. For a discussion of TPS and other protections against return, in particular those available to asylum-seekers, please refer to the discussion under article 13 of the 2011 U.S. ICCPR Report.

160. Non-citizens: The United States has one of the most open immigration systems in the world. As noted in paragraph 7 of the common core document, 13 per cent of the U.S. population is now foreign born. The percentage of the foreign born population that has become naturalized citizens stood at 43.7 per cent in 2010. Citizenship status is positively correlated with the number of years spent in the U.S. since arrival, as well as education. Data from 2010 show that foreign born persons from Central America and Mexico had much lower rates of naturalization than persons from Europe, Asia, and the Caribbean. See “The Foreign-Born Population in the United States: 2010,” U.S. Census Bureau, May 2012, at p. 11, <http://www.census.gov/prod/2012pubs/acs-19.pdf>. In 2011, the foreign born accounted for 15.9 per cent of the U.S. labour force; their labour force participation rate was 67 per cent, compared to 63.6 per cent for the native born. Foreign born workers were more likely than native born workers to be employed in service occupations; production, transportation, and material moving occupations; and natural resources, construction, and maintenance occupations. See *id.*

161. As noted in the discussions related to noncitizens under articles 1 and 5 above, as a matter of U.S. law, all persons within the territory of the United States, regardless of immigration status, enjoy substantial protections under the U.S. Constitution and domestic laws, including the right to equal treatment before tribunals and other organs administering justice. Many of these protections are shared equally with citizens, including a broad range of protections against racial and national origin discrimination in education and employment. For further discussion of issues related to employment discrimination, please see the discussion above regarding paragraph 28 of the Committee’s concluding observations. Protection of noncitizens, including refugees, asylum-seekers and stateless persons, from discrimination is discussed further in paragraphs 101-108 (Law with regard to Aliens) of the 2011 U.S. ICCPR Report.

162. Immigration detention: Regarding the Committee’s request for information on immigration detention in paragraph 37 of its concluding observations, immigration laws

generally require certain categories of noncitizens to be detained pending removal proceedings. Among those categories are noncitizens who are subject to expedited removal proceedings after having been found inadmissible upon arrival at a port of entry (including noncitizens subject to expedited removal proceedings after having been found inadmissible for having engaged in fraud or wilful misrepresentation or for lack of proper entry documents), those who have committed certain serious criminal offenses, and those subject to terrorism-related grounds of inadmissibility. For most aliens, DHS has discretion to authorize release while such proceedings are pending, and, with some exceptions, detained aliens in removal proceedings have a right to a custody redetermination hearing before an immigration judge. See 8 C.F.R. 1003.19(h)(2)(ii). Once an individual's order of removal becomes administratively final, DHS may detain the individual for a period reasonably necessary to bring about his or her removal. See 8 U.S.C. 1231(a); 8 C.F.R. 241.13-14; see also *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (six months is a presumptively reasonable period of time for removal for admitted aliens); *Clark v. Martinez*, 543 U.S. 371, 377-78 (2005) (same for applicants for admission). Individuals who are released from immigration detention pending removal may be released on bond, placed on other forms of supervision, or enrolled in an alternative to detention (ATD) program. These custody decisions are based on analysis of flight risk, public safety factors, and the availability of detention resources.

163. Under the INA's expedited removal provisions, when an immigration officer determines that an arriving alien or an alien physically present in the United States for less than 14 days without being admitted or paroled and encountered within 100 air miles of any U.S. border is inadmissible because the alien engaged in fraud or misrepresentation (8 U.S.C. 1182(a)(6)(C)) or lacks proper entry documents (8 U.S.C. 1182(a)(7)), the individual may be ordered removed from the United States, subject to review and approval by a supervisor, without a hearing before an immigration judge. See 8 U.S.C. 1225(b). However, if an individual expresses a fear of persecution or torture, an intention to apply for asylum, or a fear of return to his or her country, the case is referred to a USCIS asylum officer for credible fear protection screening. Individuals in the expedited removal process who are referred to USCIS for a credible fear interview are generally subject to mandatory detention pending a determination by an asylum officer and any review of that determination by an immigration judge. See 8 U.S.C. 1225(b)(1)(B)(IV); 8 C.F.R. 235.3(b)(4)(ii). Individuals found to have a credible fear are automatically considered for parole under the 2010 policy and procedures described below, and a majority of these individuals are released on parole.

164. On January 4, 2010, ICE changed its parole policy for arriving aliens found to have a credible fear. See [http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alins\\_found\\_credible\\_fear.pdf](http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alins_found_credible_fear.pdf). Under the new policy, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," aliens who were subject to expedited removal but were found to have a credible fear of persecution or torture are automatically considered by ICE for parole from custody pending removal proceedings before an immigration judge, rather than having affirmatively to request parole in writing. The new policy also adds heightened quality assurance safeguards, and defines when paroling aliens is in the public interest. The USCIS Asylum Division, which conducts credible fear and reasonable fear screenings for detained aliens, has assisted ICE in implementing the policy changes, including by developing a notice to such aliens that parole from custody may be available.

165. In furtherance of its reform of detention management policies and protections, and in addition to other detention reform initiatives noted under the discussion of policy reviews and revisions under article 2 above, ICE has accomplished the following:

- Created an Office of Detention Policy and Planning (ODPP) to coordinate reform efforts (2009).
- Established two advisory boards of local and national stakeholders, and secured on-going non-governmental organization collaboration on key reform initiatives (2009).
- Created the Detention Monitoring Council, which engages ICE senior leadership in the review of detention facility inspection reports, assessment of corrective action plans, and follow-up to ensure that remedial plans are implemented and to determine whether ICE should continue to use a particular facility (2010).
- Created the Enforcement and Removal Operations Public Advocate position to assist in timely resolution of immigration enforcement and detention problems or concerns.
- Initiated nationwide deployment of a new automated Risk Classification Assessment (RCA) instrument containing objective criteria to guide decision-making at detention facilities concerning whether an alien should be detained or released and, if detained, the alien's appropriate custody classification level (2012).
- Established an On-Site Detention Compliance Oversight Program, with a corps of more than 40 new federal Detention Service Managers, located at detention facilities housing more than 80 percent of the detainee population, who monitor facilities to ensure compliance with ICE detention standards, report and respond to problems, and work with ICE field offices to address concerns (2010).
- Issued a new Transfer Directive that will minimize the long-distance transfer of detainees within ICE's detention system (2012).
- Improved alignment of detention capacity with DHS apprehension activity, resulting in a reduction in pre-final order long-distance transfers from the areas where detainees were apprehended (on-going).
- Issued a revised set of national detention standards, the 2011 Performance-Based National Detention Standards (PBNDS 2011), developed in collaboration with non-governmental stakeholders, to address more effectively the needs of ICE's detainee population for services such as medical and mental health care, legal resources, and protection against sexual abuse while maintaining a safe and secure detention environment (2012).
- Streamlined the process for clinical directors to authorize detainee health care treatment and installed regional managed care coordinators to provide expeditious and on-going case management for complex medical cases (2010).
- Established a toll-free hotline to address concerns from the public, including prosecutorial discretion requests, questions about immigration court cases and detention concerns (2012).
- Launched a Web-based detainee locator system enabling attorneys, family, and friends to find a detainee in ICE custody and to access information about visitation (2010).
- Issued a new Access Policy Directive establishing procedures for stakeholders to tour and visit detention facilities (2011).
- Distributed to all detention facilities a "Know Your Rights" video, developed by the American Bar Association, and self-help legal materials developed by various Legal Orientation Programs (2012).

- Opened Delaney Hall, a 450-bed civil detention facility in Essex, New Jersey, to provide low-risk detainees with improved conditions of confinement, including robust indoor and outdoor recreation, freedom of movement, and contact visitation (2011).
- Opened the Karnes County Civil Detention Center in Karnes City, Texas, which is the first facility designed and built from the ground up with ICE's civil detention reform standards in mind, to offer the least restrictive environment permissible to manage persons in administrative custody (2012) and
- Issued a Notice of Proposed Rulemaking, later required by section 1101 of the Violence Against Women Act of 2013, which amends the Prison Rape Elimination Act, 42 U.S.C. 15601-15609, to make it applicable to DHS and HHS detention and care facilities. The proposed rule sets standards to prevent, detect, and respond to sexual abuse in DHS confinement facilities. See 77 Fed. Reg. 75,300 (Dec 19, 2012); see also 78 Fed. Reg. 8987 (Feb. 7, 2013) (extending comment period) (2012-2013).

166. Alternatives to immigration detention (ATD): The ATD program permits certain individuals who might otherwise be detained in ICE custody to live in the community at large, while ensuring compliance with their conditions of release. ATD is a release condition that may be added to an individual's conditions of release after a determination is made that he or she may be released from detention. The review for ATD eligibility considers current immigration status, criminal history, pending charges, prior supervision history, and special circumstances, including disability, advanced age, pregnancy, nursing, sole caregiver responsibilities, mental health issues, or prior victimization. The ATD program works with more than 1,500 community-based organizations throughout the country to refer participants for services, such as legal advice, food and clothing assistance, substance abuse treatment, and medical, dental, or mental health care. Bilingual and multi-lingual case workers are involved and, whenever possible, case workers are hired from within the communities served by the program to facilitate strong community connections. Further detail can be found in the discussion under article 10 of the 2011 U.S. ICCPR Report.

167. Indigenous peoples: General discussion of indigenous peoples is found in paragraphs 189-196 of the common core document. The Committee's concluding observations in paragraphs 38 and 29 raise concerns regarding activities to promote the culture and traditions of Native American, Native Hawaiian and Pacific Islander communities, and consultation with indigenous peoples.

168. The United States recognizes the importance of understanding matters of spiritual or cultural significance to Native American communities, and doing so in consultation with tribal leaders. As President Obama has said, the indigenous peoples of North America have invaluable cultural knowledge and rich traditions, which continue to thrive in communities across our country. The many facets of indigenous cultures – including religions, languages, traditions and arts – are respected. Examples of federal agency efforts can be found in the December 2012 White House publication, *Continuing the Progress in Tribal Communities*, [http://www.whitehouse.gov/sites/default/files/wh\\_tnc\\_accomplishments\\_report\\_final.pdf](http://www.whitehouse.gov/sites/default/files/wh_tnc_accomplishments_report_final.pdf).

169. Based on the government-to-government relationship between the United States and federally recognized tribes, the United States supports tribal authority over a broad range of internal and territorial affairs, including membership, culture, language, religion, education, information, social welfare, community and public safety, family relations, economic activities, lands and resource management, environment, and entry by non-members, as well as ways and means for financing these autonomous governmental functions. Many

states also have comparable statutes. Federal laws and Executive Orders relevant to protection of tribal culture and traditions include:

- The American Indian Religious Freedom Act declares that “it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians,” 42 U.S.C. 1996.
- The Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., provides protection for certain cultural resources, including human remains, and funerary or sacred objects excavated or discovered on tribal or federal land.
- Federal law prohibits public schools, colleges, and universities from denying students equal educational opportunities because of their religion. See Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6.
- Executive Order 13007 directs federal agencies to “accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners.”
- The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb, invalidates government action that substantially burdens religious exercise unless the action is justified by a compelling governmental interest.
- The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc et seq., protects individuals, houses of worship, and other religious institutions from discrimination in zoning and land marking laws, and requires that state and local institutions not place arbitrary or unnecessary restrictions on religious practice of prisoners or those who are institutionalized.
- The National Historic Preservation Act, 16 U.S.C. 470 et seq., provides for the recognition of historic properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations. It also requires federal agencies to consider the effects of projects they carry out, financially assist, or license on historic properties and to consult Indian tribes and Native Hawaiian organizations that attach religious and cultural importance to such properties in that process. The Act also provides for federal funding for Tribal Historic Preservation Officers.
- The Tribal Law and Order Act of 2010 contains provisions to prevent counterfeiting of Indian-produced crafts.
- Executive Order 13592 directs federal agencies “to support activities that will strengthen the Nation by expanding educational opportunities and improving educational outcomes for all AI/AN students in order to fulfill our commitment to furthering tribal self-determination and to help ensure that AI/AN students have an opportunity to learn their Native languages and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives.”

170. The U.S. government also recognizes the elected governments of the insular areas and strongly supports the preservation and maintenance of the insular areas’ indigenous cultures, including languages and customs. In February 2012, pursuant to Presidential Executive Order 13537, the Office of Insular Affairs in DOI hosted the second annual meeting of the Interagency Group on Insular Areas. This group solicits information and advice from the elected leaders of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and makes recommendations to the President annually, or as appropriate, on the establishment or



implementation of federal programs concerning these Insular Areas. The results of the meeting are at <http://www.doi.gov/oia/igia/2012/index.cfm>.

171. Because it is crucial that U.S. agencies have input from tribal leaders before taking actions that significantly impact tribes, in 2009 President Obama signed the Presidential Memorandum on the implementation of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, directing all federal agencies to develop detailed plans of action to implement that Order. Numerous federal laws also require consultation with tribes and in some cases with the Native Hawaiian community, on matters that affect them, e.g., the Archaeological Resources Protection Act of 1979; NAGPRA, the National Historic Preservation Act, and the American Indian Religious Freedom Act. Many states also have comparable statutes. Although federal agencies' current consultation policies relative to federally recognized tribes are not generally applicable to the Native Hawaiian community and Indigenous Insular Communities, DOI is taking steps to improve outreach to and participation of those communities as well. This includes educating federal agencies concerning the importance of outreach to the Native Hawaiian community and the benefits of incorporating Native Hawaiian knowledge and experience in federal plans, and developing a DOI Native Hawaiian community consultation policy.

172. The U.S. government actively pursues outreach to tribes, including tribal consultations. President Obama himself has held four high-level conferences with more than 350 tribal leaders in 2009, 2010, 2011, and 2012 to discuss tribal government priorities. Federal agencies are implementing the consultation plans required by the Presidential Memorandum mentioned above. As a result, the number of tribal consultations is at a very high level, and DOI Bureaus and offices worked through thousands of issues with tribes in 2012. Several agencies have created new offices (VA, USDA) or tribal steering or advisory committees (Department of Energy, HHS) to ensure proper consultation. Some have also experimented with webinars and other online technologies to facilitate participation by tribal leaders. These innovations show the seriousness with which federal agencies are taking these consultations.

173. Recent and on-going agency consultations and other outreach to tribes include:

- At the direction of the Secretary of Agriculture, between July 2010 and April 2011, the USDA Office of Tribal Relations and the Forest Service engaged in listening sessions in more than 50 locations. Hundreds of tribal elected officials and tribal culture keepers provided recommendations to improve the Forest Service's protection of sacred sites. In December 2012, the Secretary of Agriculture released the resulting report on Indian Sacred Sites and joined the Departments of Defense, Energy and Interior in signing an MOU for access to and protection of sacred sites under a plan of action.
- In May 2011, EPA published its Policy on Consultation and Coordination with Indian Tribes.
- As part of the reissuance of the Cook Inlet National Pollutant Discharge Elimination System Wastewater General Permit for Oil and Gas facilities, EPA, through a contractor, collected traditional ecological knowledge from local tribes, leading to development of two new study requirements for the permit – additional ambient monitoring requirements and no discharge zones. The same template has been used to collect traditional knowledge from North Slope and Northwest Arctic communities regarding permits for discharge of wastewater associated with oil and gas exploration in the Chukchi and Beaufort Seas.
- In July 2010, the World Heritage Committee inscribed the Papahānaumokuākea Marine National Monument as the first mixed (natural and cultural) World Heritage Site in the United States. This was the result of active consultation with

the Native Hawaiian community for whom this development has significant importance.

- The DOI Fish and Wildlife Service and DOJ are working with tribes to facilitate eagle feather possession for cultural and traditional uses and to promote coordination in wildlife investigations and enforcement efforts to protect golden and bald eagles. In October 2012, DOJ announced a new policy on this issue. In FY 2012, DOI awarded \$8.95 million to support historic preservation for Indian tribes, Alaska Natives, and Native Hawaiian organizations. The National Park Service is also conducting tribal consultations in its consideration of a regulatory change that would allow gathering of plants and minerals on Park lands by members of federally recognized tribes for traditional uses.
- The federal government consults formally and informally with the Northwest Treaty Tribes when considering designation of critical habitat for endangered species, including salmon, to ensure that agencies are informed of relevant tribal science and any potential impacts on the tribes, including tribal treaty fishing rights.
- Since April 2010, ED has held 25 informal and formal regional consultations with tribal officials regarding reauthorization of the ESEA and implementation of Executive Order 13592, covering in particular the importance of preserving Native languages and the strengthening of tribes to participate meaningfully in the education of AI/AN public school children. Drawing from input received at these consultations, the Administration has proposed changes to the ESEA that support, inter alia, flexibility in the use of federal education funds to allow funding for Native language immersion and restoration, and expanded authority for tribal education agencies.
- The DHS Tribal Consultation and Coordination Plan of March 2010 expands the Department's commitment to close coordination with tribal partners across the nation on security initiatives, and continues to ensure direct involvement of tribes in developing regulatory policies, recommending grant procedures, and advising on key issues. Every component and office in the Department has identified a dedicated tribal liaison or point of contact. Further, DHS has formalized agreements with the Tohono O'odham Nation of Arizona, the Seneca Nation of Indians, the Kootenai Tribe of Idaho, and the Pascua Yaqui of Arizona to develop Western Hemisphere Travel Initiative compliant Enhanced Tribal Cards, which verify identity, tribal membership, and citizenship for the purpose of entering the United States by land or sea. This enhances safety and security at U.S. borders while facilitating legitimate travel and trade. CBP continues to work with other tribes across the country on this initiative.
- Based on tribal consultations and public comment and the passage of the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act) in 2012, DOI issued regulations that will streamline the leasing process on Indian lands, spurring increased home ownership and expediting business and commercial development, including renewable energy projects. Two tribal governments have already taken advantage of the new law and regulations and many others are anticipated to follow their example.

174. The federal government has also cooperated with tribes to protect tribal lands and resources, including cooperative resource protection activities with the Sac and Fox Tribe on the Iowa River, restoration of the Klamath River through possible dam removal in partnership with the Klamath River Basin tribes, and assistance to the Great Lakes Indian Fish and Wildlife Commission to assess the impact of land use and climate change on

wetlands; a grant of \$37.3 million in Recovery Act funds to tribes for wild land fire management and improvement of habitat and watersheds, plus grants of \$213 million in Recovery Act funds by the Forest Service to benefit tribes and tribal lands; grants of more than \$50 million in the past eight years for 400 conservation projects administered by 162 federally recognized tribes to benefit fish and wildlife resources and habitat; and many other grants and joint projects. In addition, 188 notices of decisions to repatriate human remains and cultural items were published in FY 2012. The Forest Service is also exercising its authority to assist tribes in reburial of over 3,000 sets of human remains and associated cultural items earlier removed from National Forests.

175. Many federal agencies continue to raise awareness of Indian law and policy. One example, “Working Effectively with Tribal Governments,” is available to the public and state and local governments online at <http://tribal.golearnportal.org/>.

176. Regarding the recommendation in paragraph 29 of the Committee’s concluding observations, the United States, in announcing its support for the United Nations Declaration on the Rights of Indigenous Peoples, went to great lengths to describe its position on various issues raised by the Declaration, <http://www.state.gov/documents/organization/153223.pdf>. Concerning the Committee’s recommendation that the Declaration be used as a guide to interpret CERD treaty obligations, the United States does not consider that the Declaration – a non-legally binding, aspirational instrument that was not negotiated for the purpose of interpreting or applying the CERD – should be used to reinterpret parties’ obligations under the treaty. Nevertheless, as stated in the United States announcement on the Declaration, the United States underlines its support for the Declaration’s recognition in the preamble that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess certain additional, collective rights.

177. In response to paragraph 30 of the Committee’s concluding observations, the United States strongly supports accountability for corporate wrongdoing regardless of who is affected, and implements that commitment through its domestic legal and regulatory regime, as well as its deep and on-going engagement with governments, businesses, and NGOs in initiatives to address these concerns globally. The United States is a strong supporter of the business and human rights agenda, particularly regarding extractive industries whose operations can so dramatically affect the living conditions of indigenous peoples. In the context of extractive industries, one way we work to promote better business practices is through participation in the Voluntary Principles on Security and Human Rights Initiative (VPI), a multi-stakeholder initiative that promotes implementation of a set of principles that guides extractive companies on providing security for their operations in a manner that respects human rights. The Voluntary Principles discuss, inter alia, consultations with local communities, respect for human rights, and appropriate handling of allegations of human rights abuses in the context of maintaining the safety and security of business operations. The U.S. government has devoted significant resources to ensuring that the VPI has stable foundations to focus more effectively on implementation and outreach efforts. Working with other participants, the United States has helped develop an institutional framework to increase the efficiency and efficacy of VPI. Additionally, in the annual Country Reports on Human Rights Practices, the State Department has in recent years increased efforts to highlight the impacts and the lack of accountability surrounding the extraction of natural resources, including with regard to indigenous peoples.

178. Paragraph 19 of the Committee’s concluding observations concerns Decision 1(68) related to the Western Shoshone. The United States respectfully refers the Committee to its 2007 Report and accompanying Annex II for a description of the history of this matter, [http://www.state.gov/j/drl/rls/cerd\\_report/83406.htm](http://www.state.gov/j/drl/rls/cerd_report/83406.htm). In 2004, Congress passed a law (the Western Shoshone Land Claims Distribution Act) that authorized distribution of

\$145 million to qualifying Western Shoshone individuals. Distribution of the funds was completed on September 30, 2012. A total of 5,362 persons were determined eligible to participate in the Judgment, 902 appeals were filed, and final decisions were made by the Assistant Secretary for Indian Affairs. The Western Shoshone Judgment Act also established a Western Shoshone Scholarship, for which rules for eligibility are being drawn up. A total of 45 reports detailing the steps leading to completion of the fund distribution can be found at the IA website, <http://www.bia.gov/WhoWeAre/RegionalOffices/Western/WeAre/WSC/index.htm>.

179. On March 1, 2011, the U.S. District Court for the District of Columbia granted a motion to dismiss in a case challenging the Western Shoshone Claims Distribution Act, *Timbisha Shoshone Tribe v. Salazar*, 766 F. Supp. 2d 175 (D.D.C. 2011). In this case, a number of individual members of the Timbisha Shoshone Tribe sued in the tribe's name claiming that the Distribution Act unlawfully takes tribal property by distributing the fund to individuals instead of to the Western Shoshone Tribes, and violates the Equal Protection Clause of the U.S. Constitution because it impermissibly discriminates on the basis of race by distributing the fund to a group of descendants rather than to tribal members. The Court upheld the Distribution Act under a rational basis standard, finding that the classification was not a racial classification. The plaintiff appealed and, on May 15, 2012, the U.S. Court of Appeals for the D.C. Circuit concluded that the individuals who brought the suit (the Kennedy faction) had no standing to bring the case after the federal government recognized the Gholson faction, based on tribal election results, 678 F.3d 935 (D.C. Cir. 2012). The case was remanded with instructions to dismiss the complaint for lack of jurisdiction. The United States believes that it should not interfere in the internal dispute among the Western Shoshone, and that they have been properly compensated for the land at issue.

180. San Francisco Peaks: With regard to concerns that have been raised by the Committee concerning the decision of the United States Forest Service to grant the request of the operator of the Arizona Snow bowl ski area to make artificial snow from reclaimed waste water purchased from the City of Flagstaff, Arizona, the United States offers the following. This issue relates to a modification of a permit for operation of the Snow bowl ski area that has existed since 1937. In considering the modification, the Forest Service engaged in extensive consultations with interested and affected tribes, including the Acoma, Apache, Havasupai, Hopi, Hualapai, Navajo, Southern Paiute, Yavapai, and Zuni. In all, the Forest Service held approximately 41 meetings with tribal representatives, made more than 200 calls to tribal officials, and exchanged 245 letters with tribes as part of the consultation process. These consultations resulted in modifications to the permit to meet specific tribal concerns. In addition, in its decision the Forest Service committed itself to ensuring that the tribes continue to have access to the area for ceremonies and to harvest traditionally used forest products. The Forest Service also noted that, with the support of the tribes, it had previously worked to obtain wilderness status for the Kachina Peaks Wilderness, an 18,960-acre area of the mountain around Snow bowl, and also to remove 74,380 acres encompassing the San Francisco Peaks from mineral entry – all to preserve and protect those areas from future development. The Forest Service continues to seek frequent input of tribes pursuant to a Memorandum of Agreement in which the Forest Service committed, inter alia, to continue to allow the tribes access to the Peaks and to work with them periodically to inspect the condition of the religious and cultural sites on the Peaks and ensure that the tribes' religious activities on the Peaks are uninterrupted.

181. Several tribes objected to the Forest Service's decision and sued in federal courts under the Religious Freedom Restoration Act. Both the U.S. District Court for the District of Arizona and the U.S. Court of Appeals for the Ninth Circuit, however, found that the tribes' rights under the law did not preclude the federal government from authorizing this otherwise permissible activity on federal lands. The Court of Appeals noted that no plants, springs, natural resources, shrines with religious significance, or religious ceremonies

would be physically affected by the artificial snow, and that the tribes would continue to have virtually unlimited access to the mountain, including the ski area, for religious and cultural purposes. A second suit, filed in 2009, was also dismissed at the district court level, a decision upheld by the Ninth Circuit Court of Appeals in February 2012. For further discussion of this matter, as well as an overall review of U.S. law and policy concerning consultations with tribes and U.S. legal protection of religious freedom, we respectfully refer the Committee to the discussions in this report, as well as to the U.S. Response, dated November 17, 2011, to the Office of the High Commissioner for Human Rights and the Special Rapporteur on the Rights of Indigenous Peoples, [https://spdb.ohchr.org/hrdb/19th/USA\\_17.11.11\\_\(10.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/USA_17.11.11_(10.2011).pdf).

182. **Border Fence:** In response to the Committee's March 2013 letter concerning the effects of the border fence on indigenous communities, in particular the Kickapoo Tribe of Texas, the Ysleta Del Sur Pueblo (Tigua) and the Lipan Apache (Nde), the U.S. government recognizes the potential impact that physical security barriers may have on local communities and landowners. More than 200 meetings and consultations have been held, including extensive consultations with American Indian tribes. For example, the government has consulted with the Ysleta Del Sur regarding access to cultural sites that may be affected by the fence. During the deployment of the fence, the DHS/CBP El Paso Sector Program Management Office met with representatives of the Ysleta Del Sur Pueblo and the construction company to ensure that native vegetation, especially the vegetation required for tribal ceremonies, was reseeded once the construction was completed. The Ysleta Del Sur Pueblo and the El Paso Sector also agreed to allow tribal access to the river and flood plain area for religious ceremonies. The Pueblo and the Sector have had a Memorandum of Agreement in place since March 14, 2005 to make allowances for the tribe's cultural and religious practices. In addition, DHS/CBP's Del Rio Sector staff meets with the Kickapoo tribe a few times each year to discuss issues related to tribal lands and border security, and to plan community events. CBP has not conducted outreach specifically related to the border fence with the Kickapoo; their land is close to thirty miles away from the fence. CBP has not conducted outreach activities with the Lipan Apache tribe.

183. CBP trains its agents and officers in the cultural sensitivities involved in screening, inspection, and patrolling on tribal lands or with travellers transiting areas of operation near tribal artefacts. CBP is aware of the cultural and historic importance of the environments in which it works. CBP outreach encompasses training to respect and preserve the land and its history. An example is the discovery and preservation of two significant Tohono O'odham tribal archaeological areas in 2012. The cultural awareness of CBP to not disturb, but rather document the locations and notify the proper authorities, demonstrates a balance between conducting necessary law enforcement activities and preserving cultural heritage.

184. With regard to litigation, we are not aware of any instance in which lands held by any federally recognized tribe were acquired through eminent domain proceedings for the purposes of constructing the border fence and related infrastructure. The Ysleta del Sur Pueblo joined a number of non-tribal entities in challenging the portions of a U. S. law providing for the waiver of other U. S. laws (and related state and tribal laws) to facilitate construction of the border fence. Although the court rejected the legal position that such a waiver violated the U. S. Constitution, the court did fully consider the arguments. See *County of El Paso, Texas v. Chertoff*, No. 08-CA-196, 2008 WL 4372693 (W.D. Tex. Aug. 29, 2008), cert. denied, 129 S. Ct. 2789 (2009).

185. **Minorities and descent-based communities:** As noted in the common core document and throughout this report, despite the existence, implementation, and enforcement of myriad laws, policies, and programs designed to ensure equality for all, some members of racial and ethnic minorities, in particular Blacks/African Americans, Hispanics/Latinos, and

Native Americans, continue to experience disproportionate levels of poverty, lower educational attainment, and other problems. Significant progress has been made in these areas, including as a result of the laws, policies and programs described throughout this report, but we recognize that we still have a great distance to go before we reach our goal.

186. Women: Committee guidelines request a description of factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention. Discrimination based on sex, gender and race or ethnicity can take different forms, including race/ethnic-and gender-based violence, higher poverty rates for women of disadvantaged racial and ethnic groups, differences in educational attainment, and discrimination in the labour market, health care, and other areas. Minority women have made strides in a number of areas; for example, as noted in paragraph 13 of the common core document, in 2009 Hispanic/Latino women were more likely than Hispanic/Latino men to have college degrees or higher – a change from prior years back to 1970. From 1970 to 2009, the percentage of Black/African American women with college degrees also grew faster than that for Black/African American men.<sup>19</sup> Despite gains, however, problems remain for women in general, including minority women – in particular with respect to discrimination in salary and promotions and harassment in employment; discrimination in sale and rental of housing; and violence against women. This section discusses gender related dimensions of race/ethnic discrimination with regard to two particular areas of concern expressed by the Committee – sexual violence and women’s health issues.

187. In response to paragraph 26 of the Committee’s concluding observations concerning sexual violence, individuals of every race, gender, and background face sexual violence; however, some communities are disproportionately affected. The United States believes that the best response to violence against women – the response most likely to empower survivors and hold offenders accountable – is a response driven and defined by the community served. Recognizing this, the United States provides grants to community organizations serving minority women who are survivors of sexual assault.

188. As noted by the Committee, an area of particular concern is violence against American Indian and Alaska Native women. Addressing such violence is an Administration priority. The problem stems at least in part from the fact that under U.S. law, tribal authorities have been prevented from exercising criminal jurisdiction over non-Indians on Indian lands, and are also limited in their criminal sentencing authority. Provisions proposed by DOJ and included in the 2013 reauthorization of VAWA address this situation with regard to certain common domestic abuse cases, as noted below.

189. Title XI of the 2005 reauthorization of VAWA, “The Safety for Indian Women Act,” was designed to strengthen the capacity of Indian tribes and Alaska Natives communities to respond to violent crimes against women. Recognizing that more must be done, in July 2010 President Obama signed the Tribal Law and Order Act, which expands support for BIA and tribal officers; includes new guidelines and training for domestic violence and sex crimes; strengthens tribal courts and police departments; strengthens cooperation among tribal, state, and federal agencies; and enhances programs to combat drug and alcohol abuse and help at-risk youth. In April 2011, the Attorney General approved establishment of a National Coordination Committee to solicit advice about the

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<sup>19</sup> See U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 226, <http://www.census.gov/population/www/socdemo/educ-attn.html>. Annual data on the employment of minority women by employers with at least 100 employees are available from EEOC’s Job Patterns for Minorities and Women in Private Industry (EEO-1), <http://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm>.

complex issues surrounding the response to sexual violence in AI/AN communities and to advise DOJ's Office for Victims of Crime and other DOJ components about the unique cultural issues faced by AI/AN adult and child victims of sexual violence. The Committee, composed of representatives from tribal organizations and federal agencies, is developing recommendations to enhance the ability of federal agencies and tribal communities to address sexual violence against AI/AN adults and children. The 2013 reauthorization of VAWA, signed by President Obama in March of 2013, also significantly improves the safety of Native women and allows federal and tribal law enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes.<sup>20</sup>

190. Numerous federal agencies have programs aimed at preventing violence against Native American women. In FY 2012, the DOJ Office on Violence Against Women (OVW) awarded \$36 million to more than 67 tribal governments and their designees to enhance the ability of tribes to respond to violent crimes, including sexual assault, domestic violence, dating violence and stalking, against AI/AN women; enhance victim safety; and develop education and prevention strategies. DOJ has also provided funding to establish a national clearinghouse on sexual assault for Native women – a one-stop shop where tribes can request on-site training and technical assistance in developing tribal sexual assault codes, establishing Sexual Assault Response Teams, and accessing tools to gain sexual assault forensic evidence collection certifications. In 2012, DOJ provided funding to four tribes to cross-designate tribal prosecutors to pursue violence against women cases in both tribal and federal courts. The Tribal Special Assistant U.S. Attorney initiative is another step in DOJ's on-going efforts to increase engagement, coordination, and action on public safety in tribal communities; it involves OVW, the Executive Office of U.S. Attorneys, and the U.S. Attorneys' Offices in Montana, Nebraska, New Mexico, North Dakota, and South Dakota. Many examples of actions taken to address violence against AI/AN women are listed in the Public Safety section of the December 2012 White House publication, "Continuing the Progress in Tribal Communities," [http://www.whitehouse.gov/sites/default/files/wh\\_tnc\\_accomplishments\\_report\\_final.pdf](http://www.whitehouse.gov/sites/default/files/wh_tnc_accomplishments_report_final.pdf).

191. In FY 2010, HHS awarded \$87 million through the Family Violence Prevention and Services Program in support of more than 1,600 tribal and community-based domestic violence prevention and service programs. Annually, these programs respond to more than 2.7 million calls to crisis hotlines, and provide emergency shelter and other services to more than 119,300 victims of domestic violence and 120,900 children. This funding also supports state, territorial, and tribal programs to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. Institutions such as the Asian and Pacific Islander Institute on Domestic Violence, the Institute on Domestic Violence in the African American Community, Casa de Esperanza: the National Latina Network of Healthy Families and Communities, and the National Indigenous Women's Resource Center, Inc. also raise awareness and improve services for minority communities.

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<sup>20</sup> VAWA 2013 includes a three-pronged strategy to respond to domestic violence in Indian country by: (1) recognizing tribes' concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country; (2) clarifying that tribal courts have full civil jurisdiction to issue and enforce certain protection orders against both Indians and non-Indians, and; (3) amending the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating, or wounding.

192. With regard to educational institutions, in April 2011, Vice President Biden and Secretary of Education Duncan announced ED's issuance of guidance to make clear that under Title IX of the Education Amendments of 1972 discrimination can include sexual violence, and thus any school, college or university receiving federal funds is obligated to respond promptly and effectively to sexual violence. The guidance also provides practical enforcement strategies. In addition, ED's Office of Safe and Healthy Students uses the Internet, listservs, and trainings to elevate the awareness of educators, parents, and students about trafficking of children and to increase identification of trafficked children in schools. A toolkit on trafficking in persons, which will help school personnel better identify and serve students who are vulnerable to trafficking recruitment and students who have been victimized by trafficking, is expected to be available in late 2013. With regard to housing, DOJ and HUD actively enforce the Fair Housing Act's provisions against sexual harassment in housing, including pursuing many cases that involve minority women survivors of such harassment. HUD also issued guidance in 2011 to clarify that residents who are denied or evicted from housing as a result of domestic violence may have the basis to file discrimination complaints under the federal Fair Housing Act.

193. Through its Federal Law Enforcement Training Center (FLETC) and the ICE Victim Assistance Program (VAP), and with the assistance of non-government organizations, DHS actively trains its law enforcement personnel concerning issues related to violence against women in its immigration and law enforcement activities. All VAP providers must adhere to the DOJ Attorney General Guidelines for Victim and Witness Assistance 2011 Edition (rev. May 2012). VAP responds to victims' issues in crimes, including human trafficking, child pornography, child sex tourism, white collar crime, and human rights abuses; and DHS/CRCL's Compliance Branch investigates allegations of sexual assault, harassment, or abuse occurring in DHS detention facilities. DHS is also actively pursuing its "Blue Campaign" to combat human trafficking through enhanced public awareness and law enforcement training.

194. The BJS publication, "Criminal Victimization, 2011," indicates that the overall rate of violent crime declined from 32.1 to 22.5 victimizations per 1,000 persons age 12 and older from 2002 to 2011. This continues a long-term decline from 79.8 victimizations per 1,000 in 1993. Likewise, the rape/sexual assault rate fell from 1.5 per 1,000 persons in 2002 to 1.0 per 1,000 persons in 2010 and 0.9 per 1,000 persons in 2011. The study showed that violence against males and persons 24 and younger occurred at higher or somewhat higher rates than rates of violence against females and persons 25 and older. In 2011, no differences were detected in the rate of violence committed against Blacks/African Americans, Whites, or Hispanics/Latinos. However, the rate of serious violence (rape, sexual assault, robbery, and aggravated assault) for Blacks/African Americans was higher than the rate for Whites and Hispanics/Latinos. About half (49 per cent) of all violent crimes were reported to the police, with violent crimes against females more likely to be reported (58 per cent) than those against males (42 per cent). <http://bjs.gov/content/pub/pdf/cv11.pdf> and <http://www.bjs.gov/index.cfm?ty=nvat>. In January 2012, the Attorney General announced revisions to the Uniform Crime Report's definition of rape, which will lead to a more comprehensive statistical reporting of rape, <http://www.justice.gov/opa/pr/2012/January/12-ag-018.html>.

195. That violence against women is decreasing overall does not negate the serious problems experienced by women who are survivors of violence or the particular intensity of the problem for AI/AN women. The BJS National Crime Victimization Survey for 2011 indicates that the overall rate of violence for Native Americans is 45 per 1,000, with Native American males having a rate of 44 per 1,000 and Native American females with rates of 47 per 1,000, <http://www.bjs.gov/content/pub/pdf/cv11.pdf> and <http://www.bjs.gov/index.cfm?ty=nvat>.



196. With regard to paragraph 33 of the Committee's concluding observations, the United States recognizes that more can be done to increase women's access to health care, reduce unintended pregnancies, and support maternal and child health. As President Obama noted in his May 2009 speech at the University of Notre Dame, we must begin "reducing unintended pregnancies, and making adoptions more available, and providing care and support for women who do carry their child to term." In part to address these issues, the White House established the White House Council on Women and Girls in 2009. The United States is also increasing women's access to health care through the ACA which, inter alia, ensures that more women have access to health care services for healthy pregnancies, including screening for harmful conditions and smoking cessation and alcohol counselling programs.

197. The HHS Office of Population Affairs oversees the Title X Family Planning Program, which is the only federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services. This program is designed to provide access to contraceptive services, supplies, and information to all who want and need them. By law, priority is given to persons from low-income families. Title X-supported clinics also provide related preventive health services such as patient education and counselling; breast and cervical cancer screening; sexually transmitted disease (STD) and HIV prevention education, counselling, testing, and referral. In fiscal year 2012, Congress appropriated more than \$297 million for family planning activities under Title X, and in calendar year 2012, 98 Title X grantees provided family planning services to approximately 5 million women and men through a network of more than 4,500 community-based clinics, including state and local health departments, tribal organizations, hospitals, university health centers, independent clinics, community health centers, faith-based organizations, and others. Approximately 75 per cent of U.S. counties have at least one clinic that provides Title X services.

198. Through its Personal Responsibility Education Program, HHS awards grants to state agencies to educate young people on both abstinence and contraception to prevent pregnancy and sexually transmitted infections, including HIV/AIDS. The program targets youth ages 10-19 who are homeless, in foster care, live in rural areas or in geographic areas with high teen birth rates, or are members of racial or ethnic minority groups. The program also supports pregnant youth and mothers under the age of 21.

199. In September 2010, HHS awarded \$27 million to support pregnant and parenting teens and women in states and tribes across the country. Of these funds, \$24 million was awarded to 17 states and tribes through the Pregnancy Assistance Fund, created by the ACA. Also in September 2010, the HHS Office of Adolescent Health awarded \$100 million in teen pregnancy prevention grants to support programs that have been found effective through rigorous research and to test new models and innovative strategies to prevent teen pregnancy. As of September 2012, a total of \$12 million was awarded to 25 tribes, tribal organizations, and urban Indian organizations through the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Grant Program. This program also serves high risk American Indian and Alaska Natives, Native Hawaiians, Pacific Islanders, African American, Puerto Rican and other Hispanic ethnicities in high-need maternal and child health disparate communities. In FY 2011, MIECHV grants (totalling \$250 million) were provided to every state.

200. To address the complex challenges to safe motherhood, the Maternal and Child Health Services Title V Block Grant Program provided \$556 million in federal funds for comprehensive maternal health services, including access to prenatal and postnatal care for low-income and at-risk pregnant women. In 2009, more than 39 million individuals were served, including 2.5 million pregnant women, 4.1 million infants, 27.6 million children, and 1.9 million children with special health care needs. The HHS Health Resources

Services Administration (HRSA) has also developed the Bright Futures for Women's Health and Wellness Initiative to encourage patient – provider relationships and better health among women across their lifespans. One of its target populations is underserved and minority women.

201. In July 2010, the United States issued a National HIV/AIDS Strategy and Federal Implementation Plan to: (1) reduce HIV incidence; (2) increase access to care and optimize health outcomes; and (3) reduce HIV related health disparities. Also, in March 2012 a working group was established by Presidential Memorandum to look at health-related disparities and the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities. <http://www.whitehouse.gov/the-press-office/2012/03/30/presidential-memorandum-establishing-working-group-intersection-hivaids>. To address disparities in HIV prevention and care involving racial and ethnic minorities and other marginalized populations, the United States is committed to reducing HIV-related mortality in communities at high risk for HIV infection; adopting community-level approaches to reduce HIV infection in high-risk communities; and reducing stigma and discrimination against people living with HIV.

202. The Black/African American infant mortality rate is twice as high as the national average. In May 2007, the HHS Office of Minority Health (OMH) launched A Healthy Baby Begins with You, a national campaign to raise awareness about infant mortality with an emphasis on the Black/African American community, <http://www.minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid+117>. Since 2008, OMH has held more than 60 awareness events (health fairs, community meetings, etc.), conducted media outreach, and launched a successful preconception education effort with colleges and universities, including training for more than 1,000 Preconception Peer Educators in more than 100 schools. In addition, in December 2012, OMH launched “Native Generations,” a campaign to improve birth outcomes and lower infant mortality rates among AI/AN, <http://www.uihi.org/projects/native-generations>.

#### **B. Racial discrimination mixed with other causes of discrimination**

203. As noted in this report and in Section III B 1 of the common core document, most U.S. laws prohibit discrimination based on a number of different factors, including factors not covered by the Convention. Cases may be brought and won based on multiple types of discrimination.

### **Article 6**

204. U.S. law offers numerous avenues for individuals to seek remedies for acts of racial discrimination. While litigation can be costly, lower-cost administrative remedies are also available in many cases at all levels. Available remedies are described in paragraphs 156-158 of the common core document and in the response to paragraph 25 of the Committee's concluding observations above.

205. As noted throughout this report, government agencies at all levels and civil society organizations engage in active outreach to provide information concerning rights and remedies. U.S. law and policy also seek to ensure that victims do not fear or endure reprisals for seeking relief from discrimination; retaliation is a basis for suit with regard to employment discrimination. Agencies train their enforcement officials to ensure that they are sufficiently alert to and aware of offenses with racial motives, and that victims can trust that police and judicial authorities will address complaints with fairness and effectiveness. We recognize that responses by authorities do not always meet the standards sought, and we commit to continue to improve outreach and services to victims of discrimination at all levels.

206. With regard to issues related to burden of proof in civil proceedings and paragraph 35 of the Committee's concluding observations, as noted above in response to paragraph 10 of the Committee's concluding observations, U.S. law does not invariably require proof of discriminatory intent. While a violation of the U.S. Constitution requires such proof, many of our most fundamental civil rights statutes and regulations go further, prohibiting policies or practices that have an unjustified disproportionate or disparate impact on racial or ethnic minorities and other protected classes. When the facts support the use of disparate impact theory, the United States is committed to using these valuable tools.

207. For example, under Title VII of the Civil Rights Act of 1964, as amended, the principal federal legislation prohibiting race-based employment discrimination, an employer may be liable for employment practices that are intentionally discriminatory (disparate treatment) or that are facially neutral but disproportionately screen out racial or other minorities, absent a demonstration that the challenged practice is job related for the position in question and consistent with business necessity. The burdens of proof in these two types of cases differ.

208. To prevail in a Title VII disparate treatment case, a plaintiff must establish that race or another protected characteristic was a motivating factor for an employment practice. Title VII follows the conventional rule of civil litigation in the United States, which requires the plaintiff to prove his or her case by a preponderance of the evidence. Typically, the plaintiff does this by establishing a prima facie case of discrimination and then by showing that the employer's asserted reason for the employment practice was a pretext for discrimination. A prima facie case of disparate treatment is relatively easy to establish, and therefore may create only a weak inference of discrimination. Its main function is to eliminate some of the more common non-discriminatory reasons for an employment decision, such as that the plaintiff was not qualified for the job. By eliminating these reasons, the prima facie case creates an inference of discrimination in the absence of evidence of a legitimate, non-discriminatory reason for the decision. By presenting evidence that the decision was taken for a non-discriminatory reason, the employer, in turn, can eliminate that inference. To prevail, the plaintiff bears the ultimate burden of proof in showing that the employer's action was motivated by discrimination. Often, this is accomplished by showing that the employer's stated reason for its action was really a pretext for discrimination.

209. A disparate impact claim, on the other hand, requires a plaintiff to isolate a specific employment practice and to show that it has a significant disparate impact on racial or ethnic minorities. In a disparate impact case, once there has been a sufficient showing of impact, the employer's only defense is to show that the action is job related for the position in question and justified by business necessity. An employer is in a much better position than the plaintiff to establish whether its policy is required for safe or efficient business operations, and therefore, the employer bears the burden of proof in showing business necessity. The employee ultimately has an opportunity to rebut the employer's business necessity case by showing that alternative policies or practices could satisfy the employer's needs with less impact on the affected group.

## **Article 7**

210. The United States engages broadly and at all levels in measures to combat prejudice and promote understanding and tolerance.

211. Education and teaching: Development of educational curricula in the United States is decentralized, with primary responsibility for education at the state and local levels. Many schools feature human rights education, and some colleges, universities and law schools have special centers devoted to the study of human rights. Educational programs

are often developed in partnership with NGOs, such as Amnesty International USA and the Education Caucus, a branch of the U.S. Human Rights Network. Although the federal government does not have authority to direct or control curricula or programs of instruction in schools, ED engages in initiatives to further the principles of human rights, civil responsibility, and character development, including knowledge about diverse cultures and religious traditions, tolerance, civility, and mutual respect. Recently ED began a civic learning and engagement initiative to encourage and strengthen high-quality civic education, including civic principles and civic, global, and intercultural literacy, <http://www.ed.gov/civic-learning>. ED's 2012 report on enhancing civic learning explains that, "[d]one well, civic education teaches students to communicate effectively, to work collaboratively, to ask tough questions, and to appreciate diversity."

212. Culture. Activities to promote cultural understanding, tolerance and friendship among groups are discussed throughout this report, including in the responses to Committee observations 29 and 38 concerning indigenous peoples, above.

213. Information. Although the United States does not have "State media," the federal agencies that address discrimination actively develop and disseminate publications and fact sheets designed to ensure that the issue of racial and ethnic equality is kept in the consciousness of the American public. Publications are available in multiple languages, including Chinese, Arabic, Haitian Creole, Korean, Russian, Spanish, Vietnamese, Farsi, Hindi, Laotian, Urdu, Tagalog, Hmong and Punjabi. For example, all USCIS material available in foreign languages can be found at the USCIS Multilingual Resource Center, [www.uscis.gov/multilingual](http://www.uscis.gov/multilingual).

214. Racial and ethnic prejudice is also the focus of attention by both print media and other forms of public communication. Newspapers throughout the United States routinely publish articles on issues related to race and ethnicity, and the non-print media increasingly addresses these difficult issues as well. Training and continuing education is available for journalists through a number of organizations and associations.

215. With regard to paragraph 36 of the Committee's concluding observations, in recent years, the U.S. government has increased its outreach to state, tribal, and local human rights organizations concerning the roles they play in implementing U.S. human rights treaty obligations. For example, in 2009, DOS Legal Adviser Koh sent a memorandum to state governors providing information on our human rights treaty obligations and asking that they share the information with their Attorneys General and other relevant officials. Legal Adviser Koh also sent letters requesting input for U.S. human rights reports to state governors in 2010 and to tribal officials in 2011. We also have sought to improve coordination at all levels, working with the International Association of Official Human Rights Agencies. The DOS website, <http://www.state.gov/j/drl/reports/treaties/index.htm>, contains considerable information relating to U.S. human rights treaty obligations, including the U.S. reports and the conclusions and observations adopted by the human rights treaty bodies.

216. Other outreach: Other U.S. agencies are also actively engaged in outreach to the public concerning the domestic protections that relate to, and in many cases implement, our CERD and other human rights treaty obligations and related commitments, including the following:

- DOJ – DOJ/CRS trains community leaders and law enforcement officers, and conducts community dialogues and mediations to prevent discrimination and to promote peace. CRS has also reached out to identify ways the NGO and law enforcement communities can work together to facilitate reporting, investigation, and prevention of hate crimes.

- HHS – HHS/OCR provides training and technical assistance to ensure that the more than 500,000 health care and human service programs that receive HHS funds comply with civil rights laws. In FY 2011 OCR provided training and technical assistance to more than 100,000 individuals, partnering with health agencies and professional associations.
- DHS – In addition to the many training programs it offers for law enforcement and other officials at all levels of government, DHS/CRCL conducts regular roundtables and meetings to bring together federal, state, and local government officials with community leaders to raise awareness of issues related to racial profiling and discrimination. In 2011, CRCL expanded engagement with new communities and in new geographic areas, increased engagement with youth, raised CRCL’s online profile through social networking, continued to work with ethnic media outlets, and broadened DHS participation in major ethnic and religious community conventions and conferences.
- ED – ED/OCR conducts hundreds of technical assistance and outreach activities each year with institutions and individuals. Extensive materials are posted on ED’s website in English and 19 other languages.
- EEOC – In addition to technical assistance programs provided to educate employers on anti-discrimination laws, the EEOC conducts extensive public outreach and awareness programs, including special efforts to reach historically underserved populations. In FY 2012, the EEOC conducted 3,992 no-cost events for the public, and nearly 1,000 other educational events for employers.

### **III. Additional issues raised by the Committee**

217. Regarding the Committee’s observations in paragraph 39 concerning the Durban Declaration and Program of Action, the concerns of the United States about the 2001 Durban Declaration and Programme of Action (DDPA) and its follow-up are well known. In 2009, after working to try to achieve a positive, constructive outcome in the Durban Review Conference that would get past the deep flaws of the Durban process to date to focus on the critical issues of racism, the United States withdrew from participating because the review conference’s outcome document reaffirmed, in its entirety, the DDPA which unfairly singled out Israel and endorsed overbroad restrictions on freedom of expression that run counter to the U.S. commitment to robust free speech. Regarding the Committee’s observations in paragraph 40 concerning the optional declaration provided for in article 14, the United States remains aware of the possibility of making the optional declaration under article 14, but has not made a decision to do so. As noted in the 2007 Report, if such a declaration were contemplated, it would be submitted to the Senate for consent to ratification. With regard to the Committee’s observations in paragraph 41 concerning ratification of the amendment to article 8, the United States has no plans to do so. The Committee’s observations in paragraph 42 concerning making reports and observations readily available to the public are addressed in paragraph 5 of this report and in other discussions of outreach to the public. Its observations in paragraph 43 concerning consultation with civil society are addressed in paragraph 3 of this report.

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