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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventh to ninth periodic reports of United States of America*

1. The Committee considered the seventh to ninth periodic reports of the United States of America, submitted in one document (CERD/C/USA/7-9), at its 2299th and 2300th meetings (CERD/C/SR.2299 and SR.2300), held on 13 and 14 August 2014. At its 2317th meeting, held on 26 August 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined seventh to ninth periodic reports submitted by the State party, which provides detailed information on the implementation of the previous recommendations of the Committee (CERD/C/USA/CO/6).

3. The Committee also welcomes the supplementary information provided orally by the large and diverse State party delegation to the issues raised by the Committee during the frank and constructive dialogue between the Committee and the delegation.

B. Positive aspects

4. The Committee notes with appreciation the legislative and policy developments in the State party to combat racial discrimination since its last report, including:

(a) The termination of the National Security Entry-Exit Registration System in April 2011, as recommended by the Committee in its previous concluding observations (CERD/C/USA/CO/6, para.14);

(b) The issuance of Executive Order 13583 to require agencies to develop strategies to identify and remove existing barriers to equal employment opportunity in Government recruitment, hiring, promotion, retention, professional development and training, as well as Executive Order 13515 in October 2009 to improve the participation of Asian Americans and Pacific Islanders in federal programmes and employment;

(c) The increased use of the "Systemic Initiative" by the Equal Employment Opportunity Commission to target "class-based recruitment and hiring practices that

* Adopted by the Committee at its eighty-fifth session (11-29 August 2014)

Exhibit A

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discriminate against racial and ethnic groups", resulting in an increased number of systemic lawsuits and financial settlements;

(d) The adoption of the Fair Sentencing Act in August 2010, which has reduced, although not eliminated, the disparity between more lenient sentences for powder cocaine charges and more severe sentences for crack cocaine charges, which are more frequently brought against members of racial and ethnic minorities;

(e) The adoption of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in October 2009, which inter alia creates a new federal prohibition on hate crimes and simplifies the jurisdictional predicate for prosecuting violent acts undertaken because of actual or perceived race, colour, or national origin; and

(f) The enactment of the Lilly Ledbetter Fair Pay Act in January 2009, which overrides the Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.* and enables the 180-day statute of limitations for bringing a wage discrimination claim to be reset with each payment of wages, benefits, or other compensation.

C. Concerns and recommendations

Applicability of the Convention at the national level

5. While noting the applicability of the disparate impact doctrine in certain fields of life, the Committee remains concerned at its limited scope and applicability. It thus reiterates its previous concern that the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1 of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect (CERD/C/USA/CO/6, para.10). The Committee expresses further concern at the lack of progress achieved in withdrawing or narrowing the scope of the reservation to article 2 of the Convention and in prohibiting all forms of discriminatory acts perpetrated by private individuals, groups or organizations (CERD/C/USA/CO/6, para.11) (arts.1(1), 2 and 6).

The Committee underlines the responsibility of the federal state for the implementation of the Convention, and calls upon the State party to take concrete steps to:

(a) Prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life, in accordance with article 1, paragraph 1 of the Convention; and

(b) Consider withdrawing or narrowing its reservation to article 2 of the Convention, and broaden the protection afforded by law against all discriminatory acts perpetrated by private individuals, groups or organizations; and

(c) Improve the system of monitoring and response by federal bodies to prevent and challenge situations of racial discrimination.

National human rights institution

6. While taking note of the creation of the Equality Working Group, the Committee reiterates its concern at the lack of an institutionalized coordinating mechanism with capacities to ensure the effective implementation of the Convention at the federal, state and local levels (CERD/C/USA/CO/6, para.13). Noting the role that an independent national human rights institution can play in this regard, the Committee expresses regret at the lack

of progress in establishing a national human rights institution as recommended in its previous concluding observations (CERD/C/USA/CO/6, para.12) (art. 2).

The Committee recommends that the State party create a permanent and effective coordinating mechanism, such as a national human rights institution established in accordance with the principles relating to the status of national institutions (the "Paris Principles", General Assembly resolution 48/134, Annex), to ensure the effective implementation of the Convention throughout the State party and territories under its effective control; monitor compliance of domestic laws and policies with the provisions of the Convention; and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels.

Special measures

7. Taking note of the Supreme Court decision of April 2014 in *Schuette v. Coalition to Defend Affirmative Action* and the measures adopted by several states against the use of affirmative action in school admissions, the Committee expresses concern at the increasing restrictions on the use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin (art. 2(2)).

The Committee reiterates its previous recommendation to adopt and strengthen the use of special measures, which is an obligation arising from article 2, paragraph 2 of the Convention, when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin. In this regard, it recommends that the State party take into account the Committee's general recommendation No.32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination.

Racial profiling and illegal surveillance

8. While welcoming the acknowledgement made by the State party that racial or ethnic profiling is not effective law enforcement practice and is inconsistent with its commitment to fairness in the justice system, the Committee remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials, including the Federal Bureau of Investigation (FBI), Transportation Security Administration, border enforcement officials, and local police (arts.2, 4(c) and 5(b)).

Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify efforts to effectively combat and end the practice of racial profiling by federal, state and local law enforcement officials, including by:

(a) Adopting and implementing legislation which specifically prohibits law enforcement officials from engaging in racial profiling, such as the End Racial Profiling Act;

(b) Swiftly revising policies insofar as they permit racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies;

(c) Ending immigration enforcement programmes and policies, which indirectly promote racial profiling, such as the Secure Communities programme and the 287(g) programme; and

(d) Undertaking prompt, thorough and impartial investigations into all allegations of racial profiling, surveillance, monitoring and illegal intelligence-gathering; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition.

Racist hate speech and hate crimes

9. The Committee reiterates its concern at the lack of prohibition of racist hate speech except for instances amounting to incitement to imminent violence or "true threats" of violence, as well as the wide scope of the reservations to article 4 of the Convention (CERD/C/USA/CO/6, para.18). It is also concerned at the underreporting of instances of hate crimes by the victims to the police, as well as by law enforcement officials to the FBI given the voluntary nature to comply with the FBI's request for hate crime statistics (arts. 2 and 4).

The Committee recommends that the State party:

(a) Consider withdrawing or narrowing its reservation to article 4 of the Convention, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, which outlines diverse measures to effectively combat racist hate speech while protecting the legitimate right to freedom of expression;

(b) Improve its data collection system for statistics on complaints of hate crimes, including by officially requiring all law enforcement agencies to record and transmit all such instances to the FBI, disaggregated by factors such as race, ethnicity, age and religion, and regularly publicize such information;

(c) Ensure that all law enforcement officials and all new recruits are provided with initial and ongoing in-service training on the investigation and reporting of complaints of hate crimes; and

(d) Provide statistical information concerning trends in instances of racist hate speech in its next periodic report so as to assess the impact of measures adopted by the State party in combating racist hate speech.

Disparate impact of environmental pollution

10. While welcoming the acknowledgment by the State party that low income and minority communities are exposed to an unacceptable amount of pollution, as well as the initiatives taken to address the issue, the Committee is concerned that individuals belonging to racial and ethnic minorities as well as indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries. It also reiterates its previous concern regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions (CERD/C/USA/CO/6, para.30) (arts. 2 and 5(e)).

The Committee calls upon the State party to:

(a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;

(b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected

communities, bring those responsible to account, and ensure that victims have access to appropriate remedies;

(c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; and

(d) Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities.

Right to vote

11. The Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due inter alia to restrictive voter identification laws, district gerrymandering, and state-level felon disenfranchisement laws. It is also concerned at the Supreme Court decision in *Shelby County v. Holder*, which struck down Section 4(b) of the Voting Rights Act and made Section 5 inoperable, thus invalidating the procedural safeguards to prevent the implementation of voting regulations that may have discriminatory effect. It expresses further concern at the continued denial of the right of residents of the District of Colombia (D.C.), half of whom are African Americans, to vote for and elect representatives to the United States Senate and voting-members to the House of Representatives (arts. 2 and 5(c)).

The Committee recommends that the State party take effective measures to:

(a) Enforce federal voting rights law throughout the State party in ways that encourage voter participation, and adopt federal legislation to prevent the implementation of voting regulations which have discriminatory impact in light of the *Shelby County v. Holder* decision;

(b) Ensure that indigenous peoples can effectively exercise their right to vote and address their specific concerns;

(c) Ensure that all states reinstate voting rights to persons convicted of felony who have completed their sentences, provide inmates with information about their voting restoration options, and review automatic denial of the right to vote to imprisoned felons regardless of the nature of the offence; and

(d) Provide for the full voting rights of residents of Washington, D.C.

Criminalization of homelessness

12. While appreciating the measures taken by federal and some state and local authorities to address homelessness, the Committee is concerned at the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces (arts.2 and 5(e)).

The Committee calls upon the State party to:

(a) Abolish laws and policies making homelessness a crime;

(b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and

(c) Offer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.

Discrimination and segregation in housing

13. While acknowledging the positive steps taken by the State party to address discrimination in access to housing and to reverse historical patterns of segregation, the Committee remains concerned at: (a) the persistence of discrimination in access to housing on the basis of race, colour, ethnicity or national origin; (b) the high degree of racial segregation and concentrated poverty in neighbourhoods characterized by sub-standard conditions and services, including poor housing conditions, limited employment opportunities, inadequate access to health-care facilities, under-resourced schools and high exposure to crime and violence; and (c) discriminatory mortgage lending practices and the foreclosure crisis which disproportionately affected and continues to affect racial and ethnic minorities (arts. 3 and 5(e)).

The Committee urges the State party to intensify its efforts to eliminate discrimination in access to housing and residential segregation based on race, colour ethnicity or national origin, including by:

(a) Ensuring the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement by the Department of Housing and Urban Development and across all agencies administering housing programmes;

(b) Strengthening the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act and Title VIII of the Civil Rights Act of 1968, including through the provision of adequate resources and increasing the capacity of the Department of Housing and Urban Development; and

(c) Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering, and redlining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.

Education

14. While welcoming measures taken by the State party to address de facto racial segregation in education, such as the formation of the Equity and Excellence Commission in 2011, the Committee remains concerned that students from racial and ethnic minorities disproportionately continue to attend segregated schools with segregated or unequal facilities, and that even those who are enrolled in racially diverse schools are frequently assigned to "single-race" classes, denied equal access to advanced courses, and disciplined unfairly and disproportionately due to their race, including through referral to the criminal justice system. It also expresses concern at racial disparities in academic achievement, which contribute to unequal access to employment opportunities (arts.3 and 5(e)).

The Committee recommends that the State party intensify its efforts to ensure equal access to education, including by:

(a) Developing and adopting a comprehensive plan to address racial segregation in schools and neighbourhoods with concrete goals, timelines and impact assessment mechanisms;

(b) Increasing federal funding for programmes and policies that promote racially integrated learning environments for students;

(c) Effectively implementing the recommendations contained in the report of the Equity and Excellence Commission published in February 2013;

(d) Reauthorizing the Elementary and Secondary Education Act with provisions that support and encourage solutions to address school segregation; and

(e) Continuing to work closely with state and local education authorities as well as civil society groups to strengthen measures to address the factors that contribute to the educational achievement gap.

Right to health and access to health care

15. While commending the adoption of the Patient Protection and Affordable Care Act (ACA) in March 2010, the Committee is concerned that many states with substantial numbers of racial and ethnic minorities have opted out of the Medicaid expansion programme following the Supreme Court decision of June 2012 in the *National Federation of Independent Business v. Sebelius*, thus failing to fully address racial disparities in access to affordable and quality health care. It is also concerned at the exclusion of undocumented immigrants and their children from coverage under the Affordable Care Act, as well as the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by Medicaid and Children's Health Insurance Programme, resulting in difficulties for immigrants in accessing adequate health care. It also reiterates its previous concern at the persistence of racial disparities in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among African American communities (CERD/C/USA/CO/6, para.33) (art. 5(e)).

The Committee recommends that the State party:

(a) Take concrete measures to ensure that all individuals, and in particular racial and ethnic minorities who reside in states that have opted out of the ACA, undocumented immigrants, and immigrants and their families who have been residing lawfully in the United States for less than five years, have effective access to affordable and adequate health-care services;

(b) Eliminate racial disparities in the field of sexual and reproductive health and standardize the data collection system on maternal and infant deaths in all states to effectively identify and address the causes of disparities in maternal and infant mortality rates; and

(c) Improve monitoring and accountability mechanisms for preventable maternal mortality, including by ensuring that state maternal mortality review boards have sufficient resources and capacity.

Gun violence

16. The Committee is concerned at the high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans. It is also concerned at the proliferation of "Stand Your Ground" laws, which are used to circumvent the limits of legitimate self-defence in violation of the State

party's duty to protect life, and has a disproportionate and discriminatory impact on members of racial and ethnic minorities (arts. 2, 5(b) and 6).

The Committee urges the State party to take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence, including by adopting legislation expanding background checks for all private firearm transfers and prohibiting the practice of carrying concealed handguns in public venues; increasing transparency concerning gun use in crime and illegal gun sales, including by repealing the Tiahrt Amendments; and reviewing the Stand Your Ground Laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when deadly force is used for self-defence.

Excessive use of force by law enforcement officials

17. While recognizing the efforts made by the State party to intensify the enforcement of relevant laws, the Committee reiterates its previous concern at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on African Americans and on undocumented migrants crossing the United States-Mexico border (CERD/C/USA/CO/6, para.25). It also remains concerned that despite the measures taken by the State party to prosecute law enforcement officials for criminal misconduct, impunity for abuses, in particular those committed by the Customs and Border Protection (CBP) against Hispanic/Latino Americans and undocumented migrants, remains a widespread problem (arts. 5(b) and 6).

The Committee urges the State party to:

(a) Ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated; that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation;

(b) Intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure that the new CBP directive on the use of force is applied and enforced in practice;

(c) Improve the reporting of cases involving the excessive use of force, and strengthen oversight of and accountability for inappropriate use of force; and

(d) Provide, in its next periodic report, detailed information concerning investigations undertaken into allegations of excessive use of force by law enforcement officials, including the CBP, as well as their outcomes, including disciplinary or prosecutorial action taken against the perpetrator and remedies provided to victims or their families.

Immigrants

18. The Committee is concerned at the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws; increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice. It is also concerned that workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour, and that some

children from racial and ethnic minorities, particularly Hispanic/Latino children, are employed in the agriculture industry and may harsh and dangerous conditions (arts. 2, 5 and 6).

The Committee calls upon the State party to ensure that the rights of non-citizens are fully guaranteed in law and in practice, including inter alia by:

(a) Abolishing "Operation Streamline" and dealing with any breaches of immigration law through civil, rather than criminal immigration system;

(b) Undertaking thorough and individualized assessment for decisions concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters;

(c) Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labour standards, and ensuring effective oversight of labour conditions; and

(d) Ratifying ILO Convention No.29 concerning Forced or Compulsory Labour and ILO Convention No.138 concerning Minimum Age for Admission to Employment.

Violence against women

19. While acknowledging the measures taken by the State party to reduce the prevalence of violence against women, the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence. Additionally, it notes that while the Tribal Law and Order Act of 2010 increased the length of sentences tribal courts can issue in criminal cases, and that the Violence Against Women Reauthorization Act of 2013 expanded the jurisdiction of tribes over domestic violence and violence of protective orders committed on their lands, the jurisdiction is limited to those who live or work on the reservation, or to those who are married or are in partnership with a tribal member. The Committee thus reiterates its previous concern at the denial of indigenous women to access justice and to obtain adequate reparation or satisfaction for damages suffered (CERD/C/USA/CO/6, para.26) (arts. 5 and 6).

The Committee calls upon the State party to intensify its efforts to prevent and combat violence against women, particularly against American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies. It also urges the State party to take effective measures to guarantee, in law and in practice, the right to access justice and effective remedies for all indigenous women who are victims of violence. It also reiterates its previous recommendation that the State party provide sufficient resources for violence prevention and service programmes; provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors, judges and medical personnel; and undertake awareness raising campaigns on the mechanisms and procedures available to seek remedies for violence against women.

Criminal justice system

20. While welcoming the measures taken by the State party to address racial disparities in the criminal justice system, such as the launch of the "Smart on Crime" initiative in

August 2013, the Committee remains concerned that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty. It expresses concern that the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws. The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).

The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee's general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, including by:

(a) Amending laws and policies leading to racially disparate impact in the criminal justice system at the federal, state and local levels, and implementing effective national strategies or plans of action aimed at eliminating structural discrimination;

(b) Imposing, at the federal level, a moratorium on the death penalty with a view to abolishing the death penalty; and

(c) Ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convicted of a non-violent offence and promoting the use of alternatives to imprisonment.

Juvenile justice

21. The Committee is concerned at racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and are referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole. It also remains concerned that despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary life without parole sentences are still permitted for juveniles convicted of homicide (arts. 2, 5 and 6).

The Committee calls upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting "school-to-prison pipeline", throughout the State party, and ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing. It also reiterates its previous recommendation to prohibit and abolish life imprisonment without parole for those under 18 at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving such sentences.

Guantanamo Bay

22. While welcoming the commitment made by the President of the United States to close the detention facilities at Guantanamo Bay in January 2009, the Committee remains concerned that non-citizens continue to be arbitrarily detained without effective and equal access to the ordinary criminal justice system and at the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment (arts. 2, 5 and 6).

The Committee urges the State party to end the system of administrative detention without charge or trial and ensure the closure of the Guantanamo Bay facility without further delay. Recalling its general recommendation No.30 (2004) on non-citizens and general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, it also calls upon the State party to guarantee the right of detainees to a fair trial in compliance with international human rights standards, and to ensure that any detainee who is not charged and tried is released immediately.

Access to legal aid

23. While welcoming the steps taken by the State party to improve access to justice by indigent persons, such as the Access to Justice Initiative launched in March 2010, the Committee remains concerned at the ongoing challenges faced by indigent persons belonging to racial and ethnic minorities to effectively access legal counsel in criminal proceedings in practice. It also reiterates its concern at the lack of a generally recognized right to counsel in civil proceedings (CERD/C/USA/CO/6, para.22), which disproportionately affects indigent persons belonging to racial and ethnic minorities to seek an effective remedy in matters such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation (art. 6).

The Committee reiterates its previous recommendation that the State party adopt all necessary measures to eliminate the disproportionate impact of systemic inadequacies in criminal defence programmes on indigent defendants belonging to racial and ethnic minorities, including by improving the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. It also recommends that the State party allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation proceedings.

Rights of indigenous peoples

24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

(a) Lack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;

(b) The ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements;

(c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting inter alia from resource extraction, industrial development, construction of border fences and walls, tourism, and urbanization;

(d) The continued and previous removal of indigenous children from their families and communities through the United States child welfare system; and

(e) The lack of sufficient and adequate information provided by the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1) adopted under the Early Warning and Urgent Action Procedure in 2006, as well as the ongoing infringement of the rights of the Western Shoshone peoples (arts.5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to:

(a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;

(b) Take effective measures to eliminate undue obstacles to the recognition of tribes;

(c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;

(d) Effectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities; and

(e) Take immediate action to implement the recommendations contained in Decision 1(68) and provide comprehensive information to the Committee on concrete measures taken in this regard.

National Action Plan to combat racial discrimination

25. While noting various measures taken by the State party to combat prejudice and promote understanding and tolerance, the Committee expresses concern at the absence of a National Action Plan to combat racial discrimination and to implement the recommendations of the Committee, as well as the lack of inclusion of human rights in the school curricula (art. 7).

The Committee recommends that the State party adopt a National Action Plan to combat structural racial discrimination, and to ensure that school curricula, textbooks and teaching materials be informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.

D. Other recommendations

Request for further information

26. The Committee requests the State party to provide, in its next periodic report, detailed information on: (a) the implementation of the provisions of the Convention in non-autonomous territories administered by the United States; (b) the rate at which African American children in foster care are prescribed psychotropic drugs; (c) the use of non-consensual psychiatric treatment and other restrictive and coercive practices on racial and ethnic minorities in mental health services; and (d) the current status of political activists from the Civil Rights era who reportedly continue to be incarcerated.

Declaration under article 14

27. The committee recommends that the state party consider making a declaration in accordance with article 14 of the convention, recognizing the competence of the committee to receive and consider individual complaints.

Amendment to article 8 of the Convention

28. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Ratification of other treaties

29. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006), and International Convention for the Protection of All Persons from Enforced Disappearance (2006).

Follow-up to the Durban Declaration and Programme of Action

30. While noting the position of State party concerning the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in September 2001, the Committee, in light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference held in Geneva in April 2009, invites the State party to take into account the elements considered pertinent in the Durban Declaration and Programme of Action as well as in the outcome document of the Durban Review Conference when implementing the Convention in its domestic legal order. The Committee requests the State party to include in its next periodic report specific information on action plans and other measures taken in this regard.

Consultations with organizations of civil society

31. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

32. The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention throughout its territory, make the State party reports readily available and accessible to the public at the time of their submission, and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information.

within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 17(a) and (b), 18 and 22 above.

Paragraphs of particular importance

34. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 12, 16 and 24, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

35. The Committee recommends that the State party submit its tenth, eleventh and twelfth periodic reports in a single document by 20 November 2017, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).