

Annotated
Concluding Observations of the Committee on the
Elimination of Racial Discrimination¹

December 2012

Based on CERD Committee Concluding Observations issued March 7, 2008

2012 Annotations in italics

1. The Committee considered the fourth, fifth and sixth periodic reports of the United States of America, submitted in a single document (CERD/C/USA/6), at its 1853rd and 1854th meetings (CERD/C/SR.1853 and 1854), held on 21 and 22 February 2008. At its 1870th meeting (CERD/C/SR.1870), held on 5 March 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the reports, and the opportunity to continue an open and constructive dialogue with the State party. The Committee also expresses appreciation for the detailed responses provided to the list of issues, as well as for the efforts made by the high-level delegation to answer the wide range of questions raised during the dialogue.

B. Positive aspects

3. The Committee welcomes the acknowledgement of the multi-racial, multi-ethnic, and multi-cultural nature of the State party.

4. The Committee notes with satisfaction the work carried out by the various executive departments and agencies of the State party which have responsibilities in the field of the elimination of racial discrimination, including the Civil Rights Division of the U.S. Department of Justice, the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD).

5. The Committee welcomes the re-authorization, in 2005, of the *Violence Against Women Act* of 1994 (VAWA).

The 2005 reauthorization expired in September 2011. VAWA is currently being considered again for reauthorization, with divisive partisan battles occurring in both chambers of Congress. The Senate version of the reauthorization², which extends protections to LGBT families, undocumented immigrants, and Native Americans, passed the Senate with 68 votes in April, but is now resisted by House Republicans who assert that as a revenue-raising bill, it was constitutionally required to originate in the House.³ The House version,⁴ which does not endorse those Senate extensions and retreats from some protections in the existing law

¹ (prepared by the Poverty & Race Research Action Council for the CERD Task Force of USHRN & HuRAH)

² See To reauthorize the Violence Against Women Act, S. 2338, 112th Cong. (2nd Sess. 2012).

³ Kate Boldaun, *Violence Against Women Act in Limbo*, CNN (May 18, 2012), http://articles.cnn.com/2012-05-18/politics/politics_violence-against-women-act_1_senate-democrats-republican-leaders-bipartisan-support?_s=PM:POLITICS.

⁴ To reauthorize the Violence Against Women Act, H.R. 4970, 112th Cong. (2nd Sess. 2012).

for immigrant victims, was passed by the House with 222 votes on May 16, 2012.⁵ Both versions are currently stalled in the opposite Congressional body.⁶

Potential NGO Contacts for Shadow Reports:

- *Legal Momentum*

6. The Committee also welcomes the re-authorisation, in 2006, of the *Voting Rights Act* of 1965 (VRA).

- In 2008, in *Northwest Austin Mun. Utility Dist #1 v. Holder*, the Supreme Court, in an opinion by Chief Justice Roberts, indicated that it was possible that the time for the VRA was coming to an end.⁷
- On November 9, 2012, the Supreme Court granted the Petition of Shelby County, Alabama in the case *Shelby County v. Holder*. The Court will consider the question whether Congress' decision in 2006 to reauthorize Section 5 of the Voting Rights Act under the pre-existing coverage formula of Section 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the United States Constitution.⁸
- On August 16, 2012, the federal court in Washington, D.C. in the case *Texas v. Holder*, found that Texas' photo ID requirement would discriminate against African American and Latino voters. Accordingly, the court denied approval of the law under the Voting Rights Act. Therefore, Texas could not use its discriminatory photo ID requirement in November 2012 general election. Instead, voters could use a large variety of types of documents for identification at the polls, including non-photo ID.⁹
- On October 10, 2012, the federal court in Washington, DC in the case *South Carolina v. United States* found that South Carolina's effort to implement its photo ID law in the November election was discriminatory, and refused federal approval under the Voting Rights Act for the November 2012 general election. Instead, voters will continue to be able to use their voter registration card for identification at the polls. In addition, implementation of the law in future elections is not expected to preclude any registered voter from casting a ballot.¹⁰

Potential NGO Contacts for Shadow Reports:

- *Lawyer's Committee on Civil Rights*

⁵ See Boldau, *supra* note 2.

⁶ *Id.*

⁷ See

http://www2.bloomberglaw.com/public/document/Northwest_Austin_Mun_Utility_Dist_No_One_v_Holder_129_S.Ct_2504_1

⁸ <http://www.scotusblog.com/case-files/cases/shelby-county-v-holder>

⁹ http://www.lawyerscommittee.org/projects/voting_rights/page?id=0132

¹⁰ http://www.lawyerscommittee.org/projects/voting_rights/page?id=0120

7. The Committee commends the launch, in 2007, of the *E-RACE Initiative* (“Eradicating Racism and Colorism from Employment”), aimed at raising awareness on the issue of racial discrimination in the workplace.

8. The Committee notes with satisfaction the *National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations*, created in 2007, as well as the various programmes adopted by the U.S. Department of Health and Human Services (HHS) to address the persistent health disparities affecting low-income persons belonging to racial, ethnic and national minorities.

9. The Committee also notes with satisfaction the *California Housing Element Law* of 1969, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.

C. Concerns and recommendations

10. *Definition of racial discrimination as a matter of federal and state law*

Committee observations and recommendations:

The Committee reiterates the concern expressed in paragraph 393 of its previous concluding observations of 2001 (A/56/18, paras. 380-407) that the definition of racial discrimination used in the federal and state legislation and in court practice is not always in line with that contained in 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 in effect. In this regard, the Committee notes that indirect – or *de facto* – discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. (Article 1 (1))

The Committee recommends the State party to review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure – in light of the definition of racial discrimination provided for in article 1, paragraph 1, of the Convention – that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.

Responsible federal actors:

- *US Commission on Civil Rights (USCCR) – Review federal and state law to assess under what circumstances both purpose and effect constitute discrimination as a matter of law.*
- *Congress – 1) **Draft individual pieces of federal legislation that reach both discriminatory purpose and effect.** See, e.g., Title VII of the Civil Rights Act of 1964, which prohibits both disparate treatment and disparate impact of members of a protected group, and provides for both agency enforcement (through the EEOC and*

analogous state agencies) and a private right of action. 2) **Provide for a private right of action to enforce Title VI disparate impact.** In *Alexander v. Sandoval*,¹¹ the Supreme Court held that while agencies could validly promulgate regulations proscribing both disparate treatment and disparate impact under Title VI, only the ban on intentional discrimination could be enforced through a private right of action until Congress indicated otherwise.¹¹

- *Executive* – All agencies should issue regulations prohibiting disparate impact (e.g. Treasury), as authorized by civil rights statutes. Despite fears following *Alexander v. Sandoval*, regulations validly promulgated to prohibit disparate impact under statute are still enforceable by agency action.¹²

Developments:

- HUD has proposed Title VIII discriminatory effects regulation.¹³ The proposed regulation would establish uniform standards for determining when a housing practice with a discriminatory effect (even without any intent to discriminate) violates the Fair Housing Act. Under the proposed rule, liability will be determined by the following 3-step burden-shifting approach: 1) The plaintiff or complainant bears the burden of establishing its *prima facie* case of either disparate impact or perpetuation of segregation. 2) The defendant or respondent must prove that the practice has a “necessary and manifest relationship” to a legitimate, non-discriminatory interest. 3) The plaintiff or complainant may rebut this by providing an alternative policy or decision to serve that interest, while providing a less discriminatory effect.
- Treasury still lacks a Title VI regulation, though it has published guidance to recipients of federal funds regarding their Title VI obligations to limited-English-proficient persons.¹⁴ The most recent publication of guidance, now 7 years old, cautions against actions that disparately impact LEPs and states that the Treasury intends to promulgate regulations implementing Title VI. According to the guidance, “[t]hese will be consistent with this longstanding Federal policy prohibiting the use of criteria or methods of administration which have the effect of discriminating on the basis of race, color, or national origin.”
- The Supreme Court has yet to address the cognizability of disparate impact under Title VIII. A case addressing this was granted *certiorari* in November 2011, but dismissed shortly before scheduled oral arguments in February 2012 after the parties jointly agreed to dismiss (*Magner v. Gallagher*, which raised

¹¹ See *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

¹² Memorandum from Ralph F. Boyd, Jr., Assistant Attorney General of the Civil Rights Division, DOJ (Oct. 26, 2001), available at <http://www.justice.gov/crt/about/cor/lep/Oct26memorandum.pdf>.

¹³ Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 76 Fed. Reg. 70,921 (Nov. 16, 2011) (to be codified at 24 CFR pt. 100), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29515.pdf>.

¹⁴ Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 70 Fed. Reg. 6,067 (Feb. 4, 2005), available at <http://www.gpo.gov/fdsys/pkg/FR-2005-02-04/pdf/05-2156.pdf>.

*the questions of whether disparate impact claims were cognizable under Title VIII and what test ought to be used to assess such claims).*¹⁵

- *This remains a live issue. In the meanwhile, the proposed HUD regulation, if promulgated and upheld, will provide a uniform federal standard for recognizing disparate impact under Title VIII.*

Possible NGO Contacts for Shadow Reports:

- *Not an NGO, but these individuals prepared the Shadow Report addressing this subject in 2008: Stephen Menendian, Marguerite Spencer, Lidija Knuth, John Powell, Sara Jackson, Fran Fajana, Andrew Grant-Thomas, Jason Reece, Eva Paterson, and Kimberly Rapp.*

11. Liability for private actors

Committee observations and recommendations:

While appreciating that the Constitution and laws of the State party may be used in many instances to prohibit private actors from engaging in acts of racial discrimination, the Committee remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to discriminatory acts perpetrated by private individuals, groups or organisations. (Article 2)

The Committee recommends that the State party consider withdrawing or narrowing the scope of its reservation to article 2 of the Convention, and to broaden the protection afforded by the law against discriminatory acts perpetrated by private individuals, groups or organisations.

Responsible federal actors:

- *Executive with Senate – withdraw reservation to Article 2.*
- *Legislative – pass new legislation addressing private discrimination.*

Developments:

- *The reservation remains in place.*

Possible NGO Contacts for Shadow Reports:

- *Not an NGO, but these individuals prepared the Shadow Report addressing this subject in 2008: Stephen Menendian, Marguerite Spencer, Lidija Knuth, John Powell, Sara Jackson, Fran Fajana, Andrew Grant-Thomas, Jason Reece, Eva Paterson, and Kimberly Rapp.*

12. Independent national human rights institution

Committee observations and recommendations:

¹⁵ Lyle Denniston, *Fair Housing Case Dismissed*, SCOTUSblog (Feb. 10, 2012, 2:27 PM), <http://www.scotusblog.com/?p=138799>.

The Committee notes that no independent national human rights institution established in accordance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex) exists in the State party. (Article 2)

The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex).

Responsible federal actors:

- *Executive and Legislative - Change US Commission on Civil Rights (USCCR) to US Commission on Civil and Human Rights (USCCHR)*

Developments:

- *Continuing reform efforts. (See The Road to Rights: Developing a Domestic Human Rights Institution in the United States, Columbia Law School and LCCHR¹⁶)*

Possible NGO Contacts for Shadow Reports:

- *U.S. Human Rights Network's CERD Working Groups on Local Implementation and Treaty Obligations*

13. Mechanism to coordinate CERD's implementation

Committee observations and recommendations:

While welcoming the acknowledgement by the delegation that the State party is bound to apply the Convention throughout its territory and to ensure its effective application at all levels – federal, state, and local – regardless of the federal structure of its government, the Committee notes with concern the lack of appropriate and effective mechanisms to ensure a co-ordinated approach towards the implementation of the Convention at the federal, state and local levels. (Article 2)

The Committee recommends that the State party establish appropriate mechanisms to ensure a co-ordinated approach towards the implementation of the Convention at the federal, state and local levels.

Responsible federal actors:

- *Executive - Inter-Agency Working Group*
- *Executive and Legislative – Change USCCR to USCCHR with State Action Committees (SACs).*

¹⁶Columbia Law School Human Rights Institute & The Leadership Conference, The Road to Rights: Establishing a Domestic Human Rights Institution in the United States: Report from the Global Exchange on National Human Rights Commissions at the Rockefeller Foundation Center, Ballagio, Italy: August 2-6, 2010 (2010), available at http://www.law.columbia.edu/ipimages/Human_Rights_Institute/The%20Road%20To%20Rights.Outcomes%20Document.pdf.

Developments:

- *The Interagency Working Group is beginning to engage in meetings with civil society but has not drawn up a coordinated, ongoing plan for CERD implementation.*

Possible NGO Contacts for Shadow Reports:

- *U.S. Human Rights Network's CERD Working Groups on Local Implementation and Treaty Obligations.*

14. Racial profiling

Committee observations and recommendations:

The Committee notes with concern that despite the measures adopted at the federal and state levels to combat racial profiling – including the elaboration by the Civil Rights Division of the U.S. Department of Justice of the *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* – such practice continues to be widespread. In particular, the Committee is deeply concerned about the increase in racial profiling against Arabs, Muslims and South Asians in the wake of the 9/11 attack, as well as about the development of the National Entry and Exit Registration System (NEERS) for nationals of 25 countries, all located in the Middle East, South Asia or North Africa. (Articles 2 and 5 (b))

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its efforts to combat racial profiling at the federal and state levels, *inter alia* by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation. The Committee also draws the attention of the State party to its general recommendation no. 30 (2004) on discrimination against non-citizens, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and urges the State party, in accordance with article 2, paragraph 1 (c), of the Convention, to put an end to the National Entry and Exit Registration System (NEERS) and to eliminate other forms of racial profiling against Arabs, Muslims and South Asians.

Responsible federal actors:

- *Executive – Department of Homeland Security, Immigration and Customs Enforcement, and DOJ.*
- *Legislative – Pass legislation such as the End Racial Profiling Act.*

Developments:

- *NSEERS was suspended in April 2011.¹⁷*

¹⁷ Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. 23830 (April 28, 2011), available at <https://www.federalregister.gov/articles/2011/04/28/2011-10305/removing-designated-countries-from-the-national-security-entry-exit-registration-system-nseers>.

- The End Racial Profiling Act was introduced in both the House and the Senate in late 2011.¹⁸ Both versions of the bill prohibit all law enforcement agents and agencies from engaging in any degree of racial profiling, provide a civil cause of action for the US or any injured individuals to obtain declaratory or injunctive relief from racial profiling, require state and local governmental entities and law enforcement agencies who apply for certain federal grants to certify that they have adequate policies in place to eliminate racial profiling, and give the Attorney General the power to collect racial profiling data and implement the Act. The House version has been, as of January 2012, referred to the House Subcommittee on Crime, Terrorism, and Homeland Security. The Senate version, as of April 2012, is currently in the hands of the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights, where hearings have been held.
- OK: The Taxpayer and Citizen Protection Act was struck down by 10th Cir in 2010.¹⁹
- *Rajah v. Mukasey*, 2008 WL 4350021 (2nd Cir. Sept. 24, 2008) upheld NSEERS Special Call-In Registration Program as "a 'plainly rational attempt to enhance national security'".
- In 2012, the Supreme Court addressed the anti-immigration legislation in Arizona, SB 1070. While the court struck down 3 provisions of the law (making it a state misdemeanor to be in the country illegally, making it a crime for undocumented immigrants to work in the state, and allowing warrantless arrests of individuals law enforcement officials suspect may be deportable), it upheld the controversial provision that allows law enforcement to stop someone they may be here illegally. Though the court left room for that provision to be overturned in a later case, it found that on its face the law was constitutional.²⁰ There remain current challenges to the law, especially as it relates to racial profiling.²¹ Copycat legislation will thus likely be effected in the same way (which exists in AL, GA, IN, SC, UT).²²

Possible NGO Contacts for Shadow Reports:

- Lawyers Committee for Civil Rights (Tanya Clay House)

15. U.S. Supreme Court cases and state voter referendums that prevent race-based affirmative action

¹⁸ End Racial Profiling Act of 2011, S. 1670, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s1670is/pdf/BILLS-112s1670is.pdf>; End Racial Profiling Act of 2011, H.R. 3618, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3618ih/pdf/BILLS-112hr3618ih.pdf>.

¹⁹ *Chamber of Commerce v. Edmondson*, 594 F.3d 742 (10th Cir. 2010).

²⁰ See *Arizona v. United States*, No. 11-182 (U.S. June 15, 2012).

²¹ See *Friendly House v. Whiting*, No. CV 10-1061-PHX-SRB, 2012 WL 671674, at *8 (D. Ariz. 2012).

²² See *What's at Stake: SB 1070 at the Supreme Court*, American Civil Liberties Union, <http://www.aclu.org/immigrants-rights/infographic-whats-stake-sb-1070-supreme-court> (last visited July 17, 2010).

Committee observations and recommendations:

The Committee notes with concern that recent case law of the U.S. Supreme Court and the use of voter referenda to prohibit states from adopting race-based affirmative action measures have further limited the permissible use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms. (Article 2 (2))

The Committee reiterates that the adoption of special measures “when circumstances so warrant” is an obligation arising from article 2, paragraph 2, of the Convention. The Committee therefore calls once again on the State party to adopt and strengthen the use of such measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms and ensure the adequate development and protection of members of racial, ethnic and national minorities.

Responsible federal actors:

- *Judiciary - existing law curtails some race-conscious strategies.*

Developments:

- *Ricci v. DeStefano (New Haven firefighters case) – striking down race-based employment actions by municipality used to avoid racially discriminatory impact where actions did not have strong basis in evidence.*²³
- *Upcoming: potential ramifications of Fisher v. University of Tx. in Supreme Court re UT’s use of race in admissions.*²⁴
- *State Developments: 2008, Nebraska approved legislation banning race-based affirmative action, while Colorado voters struck down such legislation.*
 - *Prop 209 in California (1996)*²⁵
 - *Proposal 2 in Michigan (2006)*²⁶
 - *Nebraska Civil Rights Initiative 424 (2008)*²⁷
 - *Arizona Proposition 107 (2010)*²⁸

16. Housing and residential segregation

Committee observations and recommendations:

²³ *Ricci v. DeStefano*, 557 U.S. 557 (2009).

²⁴ *Fisher v. University of Texas at Austin*, 631 F.3d 213 (5th Cir. 2011), *cert. granted*, No. 11-345 (U.S. February 21, 2012).

²⁵ See Cal. Const. art I, § 31 (West 2012).

²⁶ See Mich. Const. art. I, § 26 (West 2012) (currently in effect, but was overturned by court case that is being appealed. See *Coalition to Defend Affirmative Action v. Regents of the University of Michigan*, 352 F.3d 607 (6th Cir. 2011).)

²⁷ See Neb. Const. art. I, § 30 (West 2012).

²⁸ See Ariz. Const. art. II, § 36 (West 2012).

The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. (Article 3)

The Committee urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups. In particular, the Committee recommends that the State party:

- (i) support the development of public housing complexes outside poor, racially segregated areas;
- (ii) eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and
- (iii) ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of “steering” and other discriminatory practices carried out by private actors.

Responsible federal actors:

- *Executive – agencies including HUD and Treasury should issue or revise regulations as necessary to support integration and equitable investment.*
- *Legislative – supply funding for housing subsidies outside segregated areas*

Developments:

- *Treasury Department has yet to issue Title VI or Title VIII regulations; no progress in civil rights regulations governing LIHTC program.*
- *HUD has Title VIII (Fair Housing Act) regulations on disparate impact and affirmatively furthering fair housing pending – have not yet been released.*
- *Limited progress in reform of Section 8 voucher program.*
- *Increased fair housing enforcement by HUD, and slightly increased funding for private fair housing groups.*

Possible NGO Contacts for Shadow Reports:

- *PRRAC, National Fair Housing Alliance, National Low Income Housing Coalition, NAACP Legal Defense & Education Fund, Lawyer’s Committee for Civil Rights Under Law, National Law Center on Homelessness and Poverty, Center for Responsible Lending, Center for Social Inclusion, Kirwan Institute, Human Rights Center, Institute on Race & Poverty, Center for Civil Rights, ACLU of Maryland Fair Housing Project, Inclusive Communities Project, New Jersey Regional Coalition, Fair Housing Center*

17. De facto segregation in education

Committee observations and recommendations:

The Committee remains concerned about the persistence of *de facto* racial segregation in public schools. In this regard, the Committee notes with particular concern that the recent U.S. Supreme Court decisions in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and *Meredith v. Jefferson County Board of Education* (2007) have rolled back the progress made since the U.S. Supreme Court's landmark decision in *Brown v. Board of Education* (1954), and limited the ability of public school districts to address *de facto* segregation by prohibiting the use of race-conscious measures as a tool to promote integration. (Articles 2 (2), 3 and 5 (e) (v))

The Committee recommends that the State party undertake further studies to identify the underlying causes of *de facto* segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school de-segregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures – including the enactment of legislation – to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.

Responsible federal actors:

- *Executive –Department of Education; DOJ; HUD*
- *Executive and Legislative – USCCR to USCHR (particularly for the purposes of studying racially segregated public schools to identify the underlying causes of this segregation)*

Developments:

- *Release of new school diversity guidance in December 2011 from the Departments of Education and Justice.*²⁹
- *Enhanced enforcement, but no new programmatic funding.*

Possible NGO Contacts for Shadow Reports:

- *Center for Human Rights and Humanitarian Law (Amelia Parker)*
- *Leitner Center for International Law and Justice (Catherine Powell and Michael McLaughlin)*
- *Jewish Council on Urban Affairs (Brian Gladstein)*
- *Lawyers' Committee for Civil Rights Under Law (John Brittain, Callie Kozlak, Michelle Woolley, Kenneth Chandler, Denise Ballesteros, and Francis Nugent Mexican)*

²⁹ U.S. Dep't of Justice, New Guidance Supports Voluntary Efforts to promote Diversity and Reduce Racial Isolation in Education (2011), available at <http://www.justice.gov/opa/pr/2011/December/11-ag-1569.html>.

- *American Legal Defense and Education Fund (Peter Zamora)*
- *National Economic and Social Rights Initiative (Elizabeth Sullivan)*
- *NAACP Legal Defense and Education Fund, Inc (Anurima Bhargava)*
- *New York University School of Law*
- *PRRAC (Phil Tegeler)*
- *University of Minnesota Human Rights Center*
- *University of Pennsylvania Law School, Transnational Legal Clinic (Sarah Paoletti)*
- *Urban Justice Center*

18. *Hate speech and reservations*

Committee observations and recommendations:

While appreciating that some forms of hate speech and other activities designed to intimidate, such as the burning of crosses, are not protected under the First Amendment to the U.S. Constitution, the Committee remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to the dissemination of ideas based on racial superiority and hatred. (Article 4)

The Committee draws the attention of the State party to its general recommendations No. 7 (1985) and No. 15 (1993) concerning the implementation of article 4 of the Convention, and request the State party to consider withdrawing or narrowing the scope of its reservations to article 4 of the Convention. In this regard, the Committee wishes to reiterate that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression, given that the exercise of this right carries special duties and responsibilities, including the obligation not to disseminate racist ideas.

Responsible federal actors:

- *Executive – DOJ, DOE*

Developments:

- *Anti-bullying legislation (the Student Non-Discrimination Act and the Safe Schools Improvement Act) has been introduced in Congress and is supported by the Obama administration.*
- *Matthew Shepherd & James Byrd Jr. Hate Crimes Prevention Act passed in 2009 by both houses and signed into law by the President.³⁰The law expands the definition of hate crime to include violence based on gender, sexual*

³⁰ See 18 U.S.C. § 249(a)(2).

orientation, gender identity, and disability.³¹The law previously only considered crimes motivated by race, religion, or national origin to be hate crimes.³²

Potential NGO Contacts for Shadow Reports:

- Anti-Defamation League (Michael Lieberman)
- Center for Democratic Renewal

19. *Western Shoshone and the Committee's Decision 1 (68) [in response to the 2006 Urgent Action]*

Committee observations and recommendations:

While noting the explanations provided by the State party with regard to the situation of the Western Shoshone indigenous peoples, considered by the Committee under its early warning and urgent action procedure, the Committee strongly regrets that the State party has not followed up on the recommendations contained in paragraphs 8 to 10 of its decision 1 (68) of 2006 (CERD/C/USA/DEC/1). (Article 5)

The Committee reiterates its Decision 1 (68) in its entirety, and urges the State party to implement all the recommendations contained therein.

Responsible federal actors:

- Executive – issue policies protecting ancestral land from natural resource exploitation and halt leasing of land.
- Legislative – Congress should enact legislation that would achieve the Committee's recommended outcome with regard to Shoshone possession of ancestral land and protection of that land from natural resource exploitation.

Developments:

- No significant progress.

Possible NGO Contacts for Shadow Reports:

- Western Shoshone National Council, Timbisha Shoshone Tribe, the Yomba Shoshone Tribe, Western Shoshone Defense Project, University of Arizona Indigenous Peoples Law and Policy Program

20. *Persistent racial disparities in criminal justice system*

Committee observations and recommendations:

³¹ *Id.*

³² *Id.* at (a)(1).

The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings. (Article 5 (a))

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, according to which stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination, the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.

Responsible federal actors:

- *Executive - Bureau of Prisons; DOJ*
- *Executive and Legislative – USCCR to USCHR (particularly for the purposes of conducting “further studies to determine the nature and scope of the problem” of the overrepresentation of people of color in the criminal justice system).*

Developments:

- *Law addressing cocaine sentencing disparities. In 2010, Congress passed and the President signed the Fair Sentencing Act.³³ This reduced the disparity between the sentences for crack and powder cocaine, which, while scientific research had revealed their effects to be relatively similar, were shockingly disproportionate. Crack cocaine was punished at a ratio of 100:1 to punishment of powder cocaine, which many critics claimed was part of systematic racial discrimination.*

Potential NGO Contacts for Shadow Reports

- *Sentencing Project*
- *Center for Constitutional Rights*
- *National Association of Criminal Defense Lawyers*

21. JLWOP via federal and state law

Committee observations and recommendations:

³³ See Fair Sentencing Act of 2010, S. 1789, 111th Cong. (2nd Sess. 2010).

The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole. (Article 5 (a))

The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders – including children – belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.

Responsible federal actors:

- *Legislative – pass legislation that prohibits JLWOP for federal crimes or within jurisdictions subject to federal jurisdictions (see, e.g. D.C.); condition federal funding to state governments on the elimination of JLWOP as an available sentence for state crimes.*
- *Executive – ensure that federal prosecutors do not subject youth offenders to JLWOP sentencing when choosing the charges for indictment and/or making sentencing recommendations to the courts.*
- *Judicial – see S.Ct. cases below. The question remains whether the Court will rule JLWOP unconstitutional in all circumstances for any offense.*

Developments:

- *In 2012, the Supreme Court held in Miller v. Alabama and Jackson v. Hobbs that mandatory JLWOP for homicide crimes is a violation of the 8th Amendment because it does not permit a court to conduct an individualized sentencing that considers mitigating circumstances of youth. However, the court held open the option of JLWOP as one of multiple sentences available to minors convicted of homicide as long as there is an individualized sentencing with consideration of mitigating circumstances of youth before determining the appropriate sentence.*
- *In 2010, the Supreme Court held that JLWOP is unconstitutional for nonhomicide crimes, Graham v. Florida.*

Possible NGO Contacts for Shadow Reports:

- *Human Rights Watch, National Council of La Raza, Children and Family Justice Center (Northwestern Law), Human Rights Institute (Columbia), Amnesty International, ALCU Michigan, Coalition for Human Rights at Home, Institute for Children, Youth, and Families, Drug Policy Alliance, Justice Policy Institute, Penal Reform International, National Juvenile Defender Center, National Economic and Social Rights Initiative, U.S. Racial*

Discrimination Program of Global Rights, Center for Community Alternatives, W. Haywood Burns Institute, Center for Law and Global Justice (University of San Francisco Law School), The Sentencing Project, National Criminal Justice Representative of American Friends Service Committee

22. Criminal defense for poor and no right to counsel in civil proceedings

Committee observations and recommendations:

While welcoming the recent initiatives undertaken by the State party to improve the quality of criminal defense programmes for indigent persons, the Committee is concerned about the disproportionate impact that persistent systemic inadequacies in these programmes have on indigent defendants belonging to racial, ethnic and national minorities. The Committee also notes with concern the disproportionate impact that the lack of a generally recognised right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities. (Article 5 (a))

The Committee recommends that the State party adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defense programmes for indigent persons have on defendants belonging to racial, ethnic and national minorities, *inter alia* by increasing its efforts to improve the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. The Committee further recommends that the State party allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs – such as housing, health care, or child custody – are at stake.

Responsible federal actors:

- *Executive/Legislative – Legal Services Corporation (LSC); DOJ*
- *Judiciary – Office of Defender Services with Federal Defender Organization and CJA Panel attorneys*

Developments:

- *DOJ established Access to Justice Commission in 2010.³⁴*
- *Turner v. Rogers (2011): no constitutional right to appointed counsel at a civil contempt proceeding that results in incarceration³⁵*
- *In 2011, Obama administration requested that Congress increase funding for Legal Services Corporation and remove the restrictions on class actions, but Congress did not act on this.*
- *State indigent defense budgets have been cut; increased need due to foreclosure proceedings*

³⁴ *The Access to Justice Initiative*, U.S. Dep't of Justice, <http://www.justice.gov/atj/> (last visited, July 20, 2012).

³⁵ *Turner v. Rogers*, 131 S.Ct. 2507 (2011).

- *Need for counsel in deportation proceedings.*

Potential NGO Contacts for Shadow Reports

- NLADA
- Brennan Center
- National Association of Criminal Defense Lawyers
- The Sentencing Project
- Program on Human Rights and the Global Economic (Northeastern University Law)

23. Death penalty

Committee observations and recommendations:

The Committee remains concerned about the persistent and significant racial disparities with regard to the imposition of the death penalty, particularly those associated with the race of the victim, as evidenced by a number of studies, including a recent study released in October 2007 by the American Bar Association (ABA).³⁶ (Article 5 (a))

Taking into account its general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices. The Committee wishes to reiterate its previous recommendation – contained in paragraph 396 of its previous concluding observations of 2001 – that the State party adopt all necessary measures, including a moratorium, to ensure that death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.

Responsible federal actors:

- *Executive and Legislative – USCCR to USCHR (particularly for the purposes of conducting “further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty.”)*
- *Executive and/or Legislative – moratorium for federal capital crimes (Executive only if this is something that could be accomplished by way of Executive Order. If not, then need legislation.)*

Developments:

³⁶ American Bar Association, “State Death Penalty Assessments: Key Findings,” 29 October 2007, <http://www.abanet.org/moratorium/assessmentproject/keyfindings.doc>.

- *State Level: There has been movement in some states to repeal the death penalty. Joining Alaska, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin, and the District of Columbia, five states have recently abolished the death penalty. New Jersey and North Dakota both abolished it in 2007, New Mexico in 2009, Illinois in 2011, and Connecticut in 2012, bringing the total number of states without the death penalty, including DC, to 18.³⁷ The governor of Oregon placed a moratorium on all executions in the state until the State legislature could vote on it, which will likely happen in 2013.³⁸*
- *Execution of Troy Davis.*
- *In 2008, the Supreme Court ruled that the death penalty for the rape of a child where the victim does not die is unconstitutional in Kennedy v. Louisiana.³⁹*

Possible NGO Contacts for Shadow Reports:

- *National Association of Criminal Defense Lawyers*

24. CERD and application to foreign detainees held as enemy combatants. US contends the law of armed conflict is exclusive source of any rights held by such detainees

Committee observations and recommendations:

The Committee regrets the position taken by State party that the Convention is not applicable to the treatment of foreign detainees held as “enemy combatants”, on the basis of the argument that the law of armed conflict is the exclusive *lex specialis* applicable, and that in any event the Convention “would be inapplicable to allegations of unequal treatment of foreign detainees” in accordance to article 1, paragraph 2, of the Convention. The Committee also notes with concern that the State party exposes non-citizens under its jurisdiction to the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment by means of transfer, rendition, or *refoulement* to third countries where there are substantial reasons to believe that they will be subjected to such treatment. (Articles 5 (a), 5 (b) and 6)

Bearing in mind its general recommendation no. 30 (2004) on non-citizens, the Committee wishes to reiterate that States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in article 5 of the Convention, including the right to equal treatment before the tribunals and all other organs administering justice, to the extent recognised under international law, and that Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination set out in article 1, paragraph 1, of the Convention.

The Committee also recalls its Statement on racial discrimination and measures to combat terrorism (A/57/18), according to which States parties to the Convention are under an obligation to ensure that measures taken in the

³⁷ States with and without the Death Penalty, DeathPenaltyInfo.org, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (last visited July 20, 2012).

³⁸ William Yardley, *Oregon Governor Says He Will Block Executions*, N.Y. Times, November 22, 2011, available at <http://www.nytimes.com/2011/11/23/us/oregon-executions-to-be-blocked-by-gov-kitzhaber.html>.

³⁹ *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin.

The Committee therefore urges the State party to adopt all necessary measures to guarantee the right of foreign detainees held as “enemy combatants” to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violations. The Committee further request the State party to ensure that non-citizens detained or arrested in the fight against terrorism are effectively protected by domestic law, in compliance with international human rights, refugee and humanitarian law.

Responsible federal actors:

- Executive - DHS; DOD; DOJ
- Judicial – including the Supreme Court.

Developments:

- Supreme Court declined to hear civil suit of Jose Padilla, an American citizen tortured while being held as an “enemy combatant.” The Fourth Circuit Court of Appeals upheld the district court’s ruling that an American citizen designated an “enemy combatant” by the executive branch could not sue to vindicate his constitutional rights based on a claim that he was tortured at the direction of senior government officials. *Padilla v. Rumsfeld*
- Supreme Court vacated case of *Al-Marri v. Spagone*, 555 U.S. 1220, 129 S. Ct. 1545, 173 L. Ed. 2d 671 (2009). Case sought to challenge the President’s authority to order domestic detentions, arguing that neither the 9/11 Resolution enacted after the 2001 terrorist attacks or the Constitution authorized such actions.
- March 7, 2011 Executive Order issued permitting ongoing indefinite detention of Guantánamo detainees while establishing a periodic administrative review process for them.

25. Police brutality especially involving Latinos, African Americans and undocumented migrants at US-Mexico border

Committee observations and recommendations:

While recognising the efforts made by the State party to combat the pervasive phenomenon of police brutality, the Committee remains concerned about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border. The Committee also notes with concern that despite the efforts made by the State party to prosecute law enforcement officials for criminal misconduct, impunity of police officers responsible for abuses allegedly remains a widespread problem. (Articles 5 (b) and 6)

The Committee recommends that the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, *inter alia* by establishing adequate

systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

Responsible federal actors:

- *Executive - DHS and ICE (undocumented migrants); DOJ*

Developments:

- *DOJ filed complaint against Sherriff Arpaio of Maricopa County, AZ, alleging mistreatment in jails as well as racial profiling.*
- *Video footage showed Anastasio Hernández-Rojas beaten to death by U.S. Border Patrol agents in May 2010 on the California side of the U.S.-Mexico border.⁴⁰*

Potential NGO Contacts for Shadow Report

- *National Black Lawyers Association*
- *Rights Working Group*
- *National Association for Immigrant and Refugee Rights*

26. Violence against women

Committee observations and recommendations:

While welcoming the various measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, the Committee remains deeply concerned about the incidence of rape and sexual violence experienced by women belonging to such groups, particularly with regard to American Indian and Alaska Native women and female migrant workers, especially domestic workers. The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered. (Articles 5 (b) and 6)

The Committee recommends that the State party increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, *inter alia* by:

- (i) setting up and adequately funding prevention and early assistance centres, counselling services and temporary shelters;

⁴⁰ See “Need to Know,” PBS documentary available at <http://www.pbs.org/wnet/need-to-know/video/video-crossing-the-line-at-the-border/15559/>.

- (ii) providing specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and medical personnel;
- (iii) undertaking information campaigns to raise awareness among women belonging to racial, ethnic and national minorities about the mechanisms and procedures provided for in national legislation on racism and discrimination; and
- (iv) ensuring that reports of rape and sexual violence against women belonging to racial, ethnic and national minorities, and in particular Native American women, are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.

The Committee requests the State party to include information on the results of these measures and on the number of victims, perpetrators, convictions, and the types of sanctions imposed, in its next periodic report.

Responsible federal actors:

- *Legislative – legislation including VAWA reauthorization.*
- *Executive - VAWA office, DOJ, ICE, BIA, Surgeon General*

Developments:

- *VAWA reauthorization pending.*
 - *In the Senate form of the bill, there were greater protections for Native American women who were sexually assaulted by non-Indians. Under this new version, tribal jurisdiction for the crimes of domestic violence, dating violence, and violations of protection orders committed in Indian country would extend over those individuals, which would help ensure equal access to justice for Native American women.⁴¹*
 - *In the Senate form of the bill, there are protections for victims of domestic violence who are LGBT.⁴²*
 - *In the Senate form of the bill, there are protections for battered immigrants.⁴³*
- *DOJ issued revised (improved) definition of rape. The new definition does not limit the victim or perpetrator to a certain gender, includes all penetrative action, vaginally, orally, and anally, and includes instances where the victim is unable to give consent.⁴⁴*
- *Jessica Gonzales v. USA: first case brought by a survivor of domestic violence against the U.S. before an international human rights tribunal - the Inter-American Commission on Human Rights (IACHR) found that the United States*

⁴¹ See To reauthorize the Violence Against Women Act, S. 2338, 112th Cong. (2nd Sess. 2012).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Attorney General Eric Holder Announces Revisions to the Uniform Crime Report's Definition of Rape, U.S. Dep't of Justice, <http://www.justice.gov/opa/pr/2012/January/12-ag-018.html> (last visited July 20, 2012).

violated the human rights of Jessica Lenahan (formerly Gonzales) and her children.⁴⁵

- *Amnesty International report on domestic violence rates on Indian reservations. Proposed amendments in the Senate VAWA reauthorization bill would create a new grant program to assist tribes in strengthening tribal justice systems to better handle domestic violence cases.*

Potential NGO Contacts for Shadow Reports

- *National Congress of American Indians*
- *Legal Momentum (Lisalyn Jacobs)*
- *Transgender, Gender Variant, and Intersex Justice Project*
- *Justice Now*
- *WILD for Human Rights*

27. Felony disenfranchisement

Committee observations and recommendations:

The Committee remains concerned about the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences. (Article 5 (c))

Taking into account the disproportionate impact that the implementation of disenfranchisement laws has on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, the Committee recommends that the State Party adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence.

Responsible federal actors:

- *Legislative – Congress can pass legislation, such as the Democracy Restoration Act, to ensure that voting rights are restored to formerly incarcerated citizens who have returned to their communities. Representative Conyers and Senator Cardin lead this legislation in Congress.*

Developments:

⁴⁵ *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm's H.R., Report No. 80/11 (2011).

- *Judiciary* – *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010); *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1234 (11th Cir. 2005) (*en banc*); *Hayden v. Pataki*, 449 F.3d 305, 323 (2d Cir. 2006) (*en banc*); *Simmons v. Galvin*, 575 F.3d 24, 41 (1st Cir. 2009)
- *Legislative* – *The Democracy Restoration Act* was re-introduced in both House and Senate in 2011. The Act would restore the right to vote in federal elections to citizens who are released from prison or are serving probation sentences. If passed, it would create a uniform standard for federal elections across the country, eliminating the confusing patchwork of state laws currently in place.

Possible NGO Contacts for Shadow Reports:

- Global Rights, Prison Working Group, Court Proceedings Working Group

28. *Employment discrimination and abuse (particularly of women and undocumented migrant workers)*

Committee observations and recommendations:

The Committee regrets that despite the various measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination, workers belonging to racial, ethnic and national minorities, in particular women and undocumented migrant workers, continue to face discriminatory treatment and abuse in the workplace, and to be disproportionately represented in occupations characterized by long working hours, low wages, and unsafe or dangerous conditions of work. The Committee also notes with concern that recent judicial decisions of the U.S. Supreme Court – including *Hoffman Plastics Compound, Inc. v. NLRB* (2007), *Ledbetter v. Goodyear Tire and Rubber Co.* (2007) and *Long Island Care at Home, Ltd. v. Coke* (2007) – have further eroded the ability of workers belonging to racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or work-related injury or illnesses. (Articles 5 (e) (i) and 6)

The Committee recommends that the State party take all appropriate measures – including increasing the use of “pattern and practice” investigations – to combat *de facto* discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures – including the enactment of legislation, such as the proposed Civil Rights Act of 2008 – to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.

Responsible federal actors:

- *Legislative* – Congress must pass legislation to effectively protect the work-related rights of workers. The *Ledbetter Fair Pay Act* (enacted January 2009) has already addressed one of the Committee’s concerns. Congress has not yet put forward legislative fixes for *Hoffman Plastics Compound, Inc.* and *Long Island Care at Home, Ltd. v. Coke*. However, as discussed below DOL has since proposed a rule to

undo the damage done in the Coke case.

- *Executive – DOJ; DOL; DHS; ICE; EEOC; NLRB.*

Developments:

- *DOL has issued guidance and rules, eg new rules protecting nonimmigrant workers (H-2B visa holders) to prevent fraud and wage and hour abuses.*
- *EEOC policy guidance on use of criminal record checks, acknowledging that criminal record checks have a disparate impact on minorities. The revised guidance requires employers to conduct individualized assessments of applicants, and to consider the age and seriousness of the offense and its relevance to the job the applicant is applying for.*
- *Walmart v. Dukes (2011): The Supreme Court reversed class certification for over 1.5 million current and former female employees of Walmart alleging employment discrimination (pay and promotion disparities). The Court conflated the merits stage with the class certification stage. Statistics of disparities and allegations of culture of bias were deemed not sufficient to show show women had a common legal claim; plaintiffs required to offer significant proof of a general policy of discrimination and identify a “common mode of discretion” exercised by their supervisors.*
- *The Equal Employment Opportunity Restoration Act, introduced in the Senate in June 2012, would ensure that in cases raising claims under the covered employment discrimination statutes, workers are once again able to effectively fight unlawful discrimination by joining together to challenge subjective employment practices that are faulty and biased.*
- *The Paycheck Fairness Act, which was introduced in both the House and Senate, came to a vote on the Senate floor in June 2012 and received majority support, but fell short of the votes necessary for cloture. The Act would have made a number of long-needed reforms to the Equal Pay Act to close loopholes that have made that law less effective over time, including prohibiting retaliation against employees who inquire about their employers' wage practices or disclose their own pay to colleagues, strengthening penalties for equal pay violations, and requiring employers to demonstrate that disparities in pay between men and women working the same job result from factors other than sex.*
- *DOL's Wage and Hour Division proposed a rule to expand federal minimum wage and overtime protections to cover home care workers. Finalizing that rule would help to undo the damage done by the Supreme Court's decision in Long Island Care at Home v. Coke. That ruling allowed the continued exclusion of skilled domestic services workers from minimum wage and overtime rules under DOL's 1975 regulations implementing the Fair Labor Standards Act (FLSA). Of the millions of home care workers who will finally receive basic labor protections when the new DOL rule is finalized, about 90 percent are women, and nearly half are people of color.*

29. Nuclear testing, toxic and dangerous waste storage, mining and logging on

spiritually and culturally significant lands

Committee observations and recommendations:

The Committee is concerned about reports relating to activities – such as nuclear testing, toxic and dangerous waste storage, mining or logging – carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention. (Articles 5 (d) (v), 5 (e) (iv) and 5 (e) (vi))

The Committee recommends that the State party take all appropriate measures – in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

The Committee further recommends that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.

Responsible federal actors:

- *Executive - Department of the Interior; BIA; EPA; Nuclear Regulatory Agency; Bureau of Land Management; U.S. Fish and Wildlife Service*

Developments:

- *The Department of Interior has initiated a series of listening sessions with tribes regarding American Indian sacred sites located on federal lands. According to the BIA, the sessions are intended to assist in developing policies that will result in protection of and tribal access to culturally/spiritually significant places to tribal nations.*

Potential NGO Contacts for Shadow Reports:

- *International Indian Treaty Council (Andrea Carmen)*
- *Western Shoshone Defense Project*
- *Indian Law Resource Center*

30. *Economic activities connected with exploiting natural resources outside of the U.S. by U.S.-registered TNCs with a special concern about any adverse impact on indigenous peoples*

Committee observations and recommendations:

The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life of indigenous peoples living in these regions. (Articles 2 (1) (d) and 5 (e))

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.

Responsible federal actors:

- *Executive – Department of Commerce; EPA*
- *Executive and Legislative – legislation to regulate as a matter of foreign commerce*

Developments:

- *No significant progress.*

Potential NGO Contacts for Shadow Reports:

- *International Indian Treaty Council*
- *Western Shoshone Defense Project*
- *Indian Law Resource Center*

31. *Katrina and disparate impact on low-income African American residents, many of whom remain displaced*

Committee observations and recommendations:

The Committee, while noting the efforts undertaken by the State party and civil society organisations to assist the persons displaced by Hurricane Katrina of 2005, remains concerned about the disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane. (Article 5 (e) (iii))

The Committee recommends that the State party increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if

feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence. In particular, the Committee calls on the State party to ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.

Responsible federal actors:

- *Executive - FEMA/The Road Home Program, HUD, DOJ; DOL.*

Developments:

- *Federal aid grants have been distributed, but disparate impact continues.*

Potential NGO Contacts for Shadow Reports:

- *Advocates for Environmental Human Rights (Monique Harden)*
- *Peoples' Hurricane Relief Fund*

32. Health insurance and adequate healthcare and services

Committee observations and recommendations:

While noting the wide range of measures and policies adopted by the State party to improve access to health insurance and adequate health care and services, the Committee is concerned that a large number of persons belonging to racial, ethnic and national minorities still remain without health insurance and face numerous obstacles to access to adequate health care and services. (Article 5 (e) (iv))

The Committee recommends that the State party continue its efforts to address the persistent health disparities affecting persons belonging to racial, ethnic and national minorities, in particular by eliminating the obstacles that currently prevent or limit their access to adequate health care, such as lack of health insurance, unequal distribution of health care resources, persistent racial discrimination in the provision of health care and poor quality of public health care services. The Committee requests the State party to collect statistical data on health disparities affecting persons belonging to racial, ethnic and national minorities, disaggregated by age, gender, race, ethnic or national origin, and to include it in its next periodic report.

Responsible federal actors:

- *Executive – Surgeon General; HHS; NIH; Office of Public Health Service; Social Security Administration; VA; DOJ.*

Developments:

- *Passage of Affordable Care Act (2010). The Supreme Court upheld the passage of the ACA in 2012 as a constitutional act of Congress under the taxing power. See NFIB v. Sebelius.⁴⁶*

⁴⁶ See *NFIB v. Sebelius*, No. 11-393, 11-398, 11-400, slip op. at 58-59 (2012).

- *HHS launched Community Health Data Initiative*⁴⁷
- *In May 2012, Vermont passed a law that provides for a single-payer, universal health insurance system for the state, making it the first state to do so.*⁴⁸

Possible NGO Contacts for Shadow Reports:

- *The Opportunity Agenda, PRRAC, National Health Law Program, Center for American Progress, Center for Reproductive Rights, New York Lawyers for Public Interest, Families USA, Physicians for Human Rights, Alliance for Healthy Homes, Center for Social Inclusion, Summit Health Institute for Research and Education, Community Catalyst, Lawyers committee for Civil Rights Under Law, Out of Many, One, National Economic and Social Rights Initiative, Uplift International, Generations Ahead, natural Resources Defense Council, Policy Link, The Praxis Project, Kirwan Institute for the Study of Race and Ethnicity, Ipas, Kellogg Health Scholars Program, Medical-Legal Partnership for Children at Boston Medical Center, Environmental Justice Resource Center at Clark Atlanta University*

33. Sexual and reproductive health disparities.

Committee observations and recommendations:

The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans, the high incidence of unintended pregnancies and greater abortion rates affecting African American women, and the growing disparities in HIV infection rates for minority women. (Article 5 (e) (iv))

The Committee recommends that the State party continue its efforts to address persistent racial disparities in sexual and reproductive health, in particular by:

- (i) improving access to maternal health care, family planning, pre- and post- natal care and emergency obstetric services, *inter alia* through the reduction of eligibility barriers for Medicaid coverage;
- (ii) facilitating access to adequate contraceptive and family planning methods; and
- (iii) providing adequate sexual education aimed at the prevention of unintended pregnancies and sexually-transmitted infections.

Responsible federal actors:

- *Executive – White House; HHS; NIH; Office of Public Health Service*

⁴⁷ *Community Health Data Initiative*, Dep't of Health and Human Serv's., <http://www.hhs.gov/open/plan/opengovernmentplan/initiatives/initiative.html> (last visited July 20, 2012).

⁴⁸ See *Making Quality Health Care Available to All Vermonters*, Vermont's Health Care Reform Agency of Administration, <http://hcr.vermont.gov/> (last visited July 23, 2012).

- *Legislative – Congressional action to repeal the Hyde Amendment, pass the Health Equity and Accountability Act*

Developments:

- ***Patient Protection and Affordable Care Act (ACA)*** – *The Affordable Care Act contains 10 categories of essential health benefits that all insurance plans that participate in the health insurance exchanges must cover in their scope of benefits. One such benefit is maternal and newborn care, which is not currently covered in many individual insurance plans and typically requires a waiting period or the purchase of a separate rider. Now all new plans and all plans operating in the state insurance exchanges must cover pregnancy-related care. In addition, the “preventive services” category includes coverage without cost-sharing for eight key women’s preventive services, including key reproductive services such as cancer screenings and contraceptive methods and counseling. HIV screening and counseling is also covered under preventive services, offering the promise of reducing the high HIV/AIDS infection rate among women of color. HHS issued a preventive services rule specifying that the full range of FDA-approved contraceptive methods must be covered. The administration has indicated, however, that it interprets this benefit as covering female contraceptive methods only. Facing objection from some religious employers about the contraception benefit, HHS exempted strictly religious organizations, such as houses of worship, from the rule, and provided a one-year grace period for a broader class of religiously affiliated employers, such as hospitals and universities, to come into compliance. In addition, the administration announced its intention to provide an accommodation for these religiously affiliated employers, whereby they may ultimately opt out of paying for, and communicating about, contraception coverage. Instead, insurance companies will be required to offer the coverage directly to employees after the one-year grace period. Many details of the accommodation remain to be worked out, such as how it will work for employers that self-fund their health benefits and do not use a third party insurer. This accommodation is still subject to an ongoing rulemaking process, which is not expected to continue until after the November presidential election. Moreover, contraceptive coverage remains under attack as dozens of lawsuits challenging the rule have been filed and some state legislatures are passing legislation to override this provision of the ACA and allow employers with religious objections to the coverage of contraception to opt out of the mandate.*

Though providing very important steps towards ensuring affordable healthcare access, the ACA perpetuates harmful eligibility exclusions to health insurance programs that will prevent many low-income immigrants from obtaining affordable health care. Under the Act, undocumented immigrants remain ineligible for Medicaid and may not use tax credits to offset the high cost of private insurance, nor purchase private insurance on the health insurance exchanges. In addition, immigrants lawfully present in the U.S. for under five years are unable to qualify for Medicaid even if they meet income eligibility requirements. Finally, a new rule announced by HHS on Aug. 28, 2012 precludes eligibility for individuals that are granted deferred action under the Deferred Action for Childhood Arrivals program (established by President Obama on June 15, 2012 to provide relief from the threat of deportation for over one million undocumented immigrants brought to the U.S. as children). The later rule is likely to affect 500,000 to 700,000 young women of

reproductive age. Most women affected by these exclusions are women of color, thus perpetuating barriers to reproductive and sexual health care that will likely exacerbate racial and ethnic disparities and undermine the health equity goals of the ACA.

- **Abortion restrictions** – A provision of the ACA called the Nelson Amendment specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion coverage in the health insurance exchanges that will be operational in 2014 (except in cases of rape or incest, or when the life of the woman is endangered). On March 24, 2010, President Obama issued Executive Order No. 13525, stating that the ACA preserves restrictions on federally-sponsored insurance coverage for abortion services, except in cases of rape or incest, or when the life of the woman is in danger. Plans that offer abortion coverage in the exchanges are subject to administrative requirements to segregate payments to ensure that federal dollars do not pay for abortion coverage, requirements that could discourage plans from offering this benefit. This law will limit access to insurance coverage of abortion for some women currently insured by small employers, or for women who will purchase individual insurance policies through the new healthcare exchanges.
- **HIV/AIDS** - The latest statistics on HIV infection from the Centers for Disease Control and Prevention showed that Blacks overall accounted for 44% of all new HIV infections in 2009, even though they constitute only 14% of the population. The HIV rate is growing rapidly among Black women, with new infections among Black women reaching 15 times that of white women and over three times the rate of Hispanic women. The White House has taken concrete action to address the most critical gaps in sexual and reproductive health care services for women living with HIV by creating the White House Working Group on the Intersection of HIV/AIDS, Violence against Women and Girls, and Gender-related Health Disparities. This working group has been charged with interagency coordination to improve and increase integration of HIV care and prevention with sexual and reproductive health care and interpersonal violence care and prevention.
- **International assistance for reproductive health services** – The harmful “global gag rule,” which bans U.S.-funded family planning groups based overseas from discussing or providing any **abortion**-related services, even with their own money, was rescinded by President Obama in Executive Order No. 13535, signed on January 23, 2009. However, the Obama administration has continued to improperly implement the Helms Amendment, a law permitting funding for abortion services that are not for the purpose of “family planning,” including those necessary to save a woman’s life, or in cases of rape or incest. For almost 40 years the Helms Amendment has been incorrectly interpreted as a total ban on all abortions and on information and counseling about abortion.

Areas where improvement is needed:

- **Maternal mortality** – Lack of standardized data collection on maternal mortality continues to serve as a barrier to changes in policy, programs and health system approaches to racial disparities in maternal mortality. Indicators for the National Prevention Strategy and the annual report on Health Disparities issued by the CDC fail to include indicators for maternal mortality.

One key obstacle frustrating reliable data collection is inconsistent state classifications of maternal mortality. Most states also lack an independent review board to evaluate health system failures resulting in maternal death or procedures to hold systems accountable for such failures.

- **Access to abortion** – For the past 34 years, the **Hyde Amendment** has been used to ban the federal government from spending money on abortion with very few exceptions. The Hyde restrictions make it extremely difficult for poor and low-income women, federal employees, and women in the military to finance abortion services and severely limit their right to reproductive healthcare. The struggle to raise funds forces many women to delay obtaining services and have later abortions, while others are forced to carry unwanted pregnancies to term. Congress should repeal the Hyde Amendment and adopt legislation extending Medicaid coverage (and coverage under other government insurance programs) to all women in need of abortion services. President Obama should repeal the Executive Order that applies Hyde to the ACA. He should also ensure that the Helms Amendment is implemented in the least restrictive way possible in foreign aid programs.
- **Access to contraception** – President Obama’s administration should reject calls to expand the existing religious employer exemption, and decline to apply a new exemption or any future accommodation to for-profit entities. HHS should also reconsider whether male contraceptive methods are included within the scope of the contraception benefit, and ensure that insurers’ application of “reasonable medical management techniques” does not undercut the value of the benefit by allowing overly restrictive formularies that limit access.
- **Immigrant women’s access to reproductive healthcare** – Congress should repeal discriminatory provisions in the ACA excluding certain immigrants from eligibility for benefits under the new law. Those currently affected include immigrants who are lawfully present in the U.S. for under five years and undocumented women, even pregnant women. HHS should repeal the interim rule excluding individuals granted deferred action through the DACA program from eligibility for government health insurance coverage or tax credits for private insurance coverage available under the ACA.

Possible NGO Contacts for Shadow Reports:

- The Opportunity Agenda, PRRAC, National Health Law Program, Center for American Progress, Center for Reproductive Rights, New York Lawyers for Public Interest, Families USA, Physicians for Human Rights, Alliance for Healthy Homes, Center for Social Inclusion, Summit Health Institute for Research and Education, Community Catalyst, Lawyers Committee for Civil Rights Under Law, Out of Many, One, National Economic and Social Rights Initiative, Uplift International, Generations Ahead, Natural Resources Defense Council, Policy Link, The Praxis Project, Kirwan Institute for the Study of Race and Ethnicity, Ipas, Kellogg Health Scholars Program, Medical-Legal Partnership for Children at Boston Medical Center, Environmental Justice Resource Center at Clark Atlanta University

34. No Child Left Behind- K-12

Committee observations and recommendations:

While welcoming the measures adopted by the State party to reduce the significant disparities in the field of education, including the adoption of the *No Child Left Behind Act* of 2001 (NCLB), the Committee remains concerned about the persistent “achievement gap” between students belonging to racial, ethnic or national minorities, including English Language Learner (“ELL”) students, and white students. The Committee also notes with concern that alleged racial disparities in suspension, expulsion and arrest rates in schools contribute to exacerbate the high drop out rate and the referral to the justice system of students belonging to racial, ethnic or national minorities. (Article 5 (e) (v))

The Committee recommends that the State party adopt all appropriate measures – including special measures in accordance with article 2, paragraph 2, of the Convention – to reduce the persistent “achievement gap” between students belonging to racial, ethnic or national minorities and white students in the field of education, *inter alia* by improving the quality of education provided to these students. The Committee also calls on the State Party to encourage school districts to review their “zero tolerance” school discipline policies, with a view to limiting the imposition of suspension or expulsion to the most serious cases of school misconduct, and to provide training opportunities for police officers deployed to patrol school hallways.

Responsible federal actors:

- *Legislative – reforms to ESEA are necessary as well as legislation that would provide alternative to zero-tolerance policies and overly punitive school discipline.*
- *Executive - Department of Education (particularly OCR), and DOJ.*

Developments:

- *The Department of Education (ED) reinstated and expanded the Civil Rights Data Collection (CRDC), an effort which began in 1968 and was discontinued under the Bush administration. The CRDC now includes additional categories related to punitive discipline, such as multiple suspensions and expulsions under zero tolerance policies, among others. These new categories provide much-needed insight into the serious disparities in punishments for students of color and students with disabilities, which often result in those students being pushed out of school and into the criminal justice system. This data collection needs to be made, permanent, annual and universal. We would also like to see additional data points collected, such as the incidents of corporal punishment, not just the number of students.*
- *In 2011, Attorney General Eric Holder and Secretary of Education Arne Duncan launched the Supportive School Discipline Initiative. This collaborative project between the Department of Justice and the Department of Education is intended to support good school discipline practices in our nation's schools. The Supportive School Discipline Initiative will assist students by, for example, developing necessary agency guidance to ensure that school discipline policies and practices comply with the nation's civil rights laws, promote positive disciplinary alternatives and collaborate on the data collection necessary to inform this work. The school discipline guidance, which has not yet been issued, is a critical step in reducing school push-out due to the overly punitive use of and discriminatorily applied school*

discipline.

- *The Positive Behavior for Safe and Effective Schools Act (HR 3165), was introduced by Rep. Danny Davis (D-IL) and Rep. Platts (R-PA) in October 2011. The bill gives schools the ability to use Title I funds for PBS programs as an alternative to overly punitive school discipline practices, which disproportionately affect minority students and students with disabilities. The bill is intended to reduce reliance on zero-tolerance policies that push kids out of school.*
- *The Keeping All Students Safe Act, which would drastically limit restraint and seclusion practices in public schools, was introduced in the House and Senate in 2011. The Senate version of the bill, S. 2020, received a hearing in the Senate HELP Committee in July 2012. Currently, no federal laws exist that restrict the use of restraint and seclusion in schools, and state laws regulating the practice vary widely, with data indicating that minorities and students with disabilities are subjected to restraint and seclusion at a disproportionate rate.*
- *The Ending Corporal Punishment in Schools Act, H.R. 3027, was introduced in the House of Representatives in 2011. The bill which would ban the corporal punishment in public schools and private schools that serve students who receive federal services. Over 200,000 students are subjected to corporal punishment yearly, and data shows that it is disproportionately applied against African American students and students with disabilities.*

Possible NGO Contacts for Shadow Reports:

- *Center for Human Rights and Humanitarian Law (American University Washington College of Law), Leitner Center for International Law and Justice (Fordham Law School), Jewish Council on Urban Affairs, Lawyers' Committee for Civil Rights Under Law, Mexican American Legal Defense and Educational Fund, National Economic and Social Rights Initiative, NAACP Legal Defense and Educational Fund, NYU Law, PRRAC, University of Minnesota Human Rights Center, University of Pennsylvania Law School, Transnational Legal Clinic, Urban Justice Center*

35. Burden of proof in racial discrimination claims

Committee observations and recommendations:

While welcoming the clarifications offered by the State party with regard to the burden of proof in racial discrimination claims under civil rights statutes, the Committee remains concerned that claims of racial discrimination under the Due Process Clause of the Fifth Amendment to the U.S. Constitution and the Equal Protection Clause of the Fourteenth Amendment must be accompanied by proof of intentional discrimination. (Articles 1 (1) and 6)

The Committee recommends that the State party review its federal and state legislation and practice concerning the burden of proof in racial discrimination claims, with a view to allowing – in accordance with article 1, paragraph 1 of the Convention – a more balanced sharing of the burden of proof between the plaintiff, who must establish a *prima facie* case of discrimination, whether direct or based on a disparate impact, and the defendant, who should provide evidence of an objective and reasonable justification for the differential treatment. The Committee calls in particular on the State Party to consider

adoption of the Civil Rights Act of 2008.

Responsible federal actors:

- *Executive – should strengthen guidance and enforcement actions under civil rights statutes prohibiting both discriminatory treatment and discriminatory impact.*

Developments:

- *Release of draft disparate impact regulation under Title VIII by HUD.*

Possible NGO Contacts for Shadow Reports:

- *Not an NGO, but these individuals prepared the Shadow Report addressing this subject in 2008: Stephen Menendian, Marguerite Spencer, Lidija Knuth, John Powell, Sara Jackson, Fran Fajana, Andrew Grant-Thomas, Jason Reece, Eva Paterson, and Kimberly Rapp.*

36. CERD-specific training and public education programs

Committee observations and recommendations:

The Committee regrets that despite the efforts made by the State party to provide training programmes and courses on anti-discrimination legislation adopted at the federal and state levels, no specific training programmes or courses have been provided to, *inter alia*, government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and other public officials in order to raise their awareness about the Convention and its provisions. Similarly, the Committee notes with regret that information about the Convention and its provisions has not been brought to the attention of the public in general. (Article 7)

The Committee recommends that the State party organise public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.

Responsible federal actors:

- *Executive - DOJ; EEOC, DHS, Inter-agency Working Group*
- *Executive and Legislative – USCCR*

Possible NGO Contacts for Shadow Reports:

- *U.S. Human Rights Network's CERD Working Groups on Local Implementation and Treaty Obligations*

37. Refugees and asylum-seekers

Committee observations and recommendations:

The Committee requests the State party to provide, in its next periodic report, detailed information on the legislation applicable to refugees and asylum seekers, and on the alleged mandatory and prolonged detention of a large number of non-citizens, including undocumented migrant workers, victims of trafficking, asylum seekers and refugees, as well as members of their families. (Article 5 (b), 5 (e) (iv) and 6)

Responsible federal actors:

- *Executive – DHS; ICE; State Dept.; HHS (refugee resettlement)*
- *Legislative – GAO review*

Developments:

- *The United States has re-enacted its policy to deport Haitian deportations in December 2010, after almost a year of having Haiti in a protected status due to the earthquake in January of 2010. This was done despite UN and Human Rights organizations urging that the US not resume deportations because of the human rights conditions for those deported to Haiti.⁴⁹*

Possible NGO Contacts for Shadow Reports:

- *Minnesota Advocates for Human Rights, National Asian Pacific Women's Forum, National Immigrant Justice Center, Centro Legal, National Network for Immigrant and Refugee Rights*

38. Preserving and promoting indigenous cultures and traditions

Committee observations and recommendations:

The Committee also requests the State party to provide, in its next periodic report, detailed information on the measures adopted to preserve and promote the culture and traditions of American Indian and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) peoples. The Committee further requests the State party to provide information on the extent to which curricula and textbooks for primary and secondary schools reflect the multi-ethnic nature of the State party, and provide sufficient information on the history and culture of the different racial, ethnic and national groups living in its territory. (Article 7)

Responsible federal actors:

- *Executive – EPA, BIA, DOI, DOE.*

Developments:

- *The Esther Martinez Native American Languages Preservation Act expires in FY 2012. This act should be fully funded, including an expanded commitment to immersion schools.*

⁴⁹ Rep. of the Independent Expert on the situation of human rights in Haiti, Michel Forst, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012) at 11.

Potential NGO Contacts for Shadow Reports:

- *International Indian Treaty Council (Andrea Carmen)*
- *Western Shoshone Defense Project*
- *Indian Law Resource Center*

39. Durban Review Conference

Committee observations and recommendations:

The Committee is aware of the position of the State party with regard to the Durban Declaration and Programme of Action and its follow up, but in view of the importance that such process has for the achievement of the goals of the Convention, it calls on the State party to consider participating in the preparatory process as well as in the Review Conference itself.

Responsible federal actors:

- *Executive - State Department (including U.N. Ambassador), NSC*

Developments:

- *Rejected by administration⁵⁰*

40. Optional declaration

Committee observations and recommendations:

The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites it to consider doing so.

Responsible federal actors:

- *Executive and Legislative/Senate – sign and ratify*

41. Article 8 amendment

Committee observations and recommendations:

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 on 16 December 1992 (resolution A/RES/47/111). In this connection, the Committee cites General Assembly resolution of 19 December 2006 (A/RES/61/148), in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

⁵⁰ U.S. Statement on the Durban Declaration and Programme of Action, Mission of the United States, <http://geneva.usmission.gov/2011/09/27/durban-declaration-and-programme-of-action/> (last visited July 20, 2012).

Responsible federal actors:

- *Executive and Legislative/Senate – sign and ratify*

42. Distributing periodic reports

Committee observations and recommendations:

The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicised in the official and national languages.

Responsible federal actors:

- *State*

43. Civil society consultation

Committee observations and recommendations:

The Committee recommends that the State party consult widely with organisations 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.

Responsible federal actors:

- *State Department in coordination w/ other agencies*

Developments:

- *In progress.*

44. Core document

Committee observations and recommendations:

The Committee invites the State party to update its core document in accordance with the harmonised guidelines on reporting under the international human rights treaties, in particular those on the Common Core Document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

Responsible federal actors:

- *State in coordination w/ other agencies*

45. One-year follow-up

Committee observations and recommendations:

The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 14, 19, 21, 31 and 36, pursuant to paragraph 1 of rule 65 of the rules of procedure.

Responsible federal actors:

- *State Department in coordination w/ other agencies*

46. ***Periodic reports***

Committee observations and recommendations:

The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports in a single document, due on 20 November 2011, and that the report be comprehensive and address all points raised in the present concluding observations.

Responsible federal actors:

- *State in coordination w/ other agencies*

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