**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

UNITED STATES OF AMERICA

1. The Committee against Torture considered the second report of the United States of America (CAT/C/48/Add.3/Rev.1) at its 702nd and 705th meetings (CAT/C/SR.702 and 705), held on 5 and 8 May 2006, and adopted, at its 720th and 721st meetings, on 17 and 18 May 2006 (CAT/C/SR.720 and 721), the following conclusions and recommendations.

A. Introduction

2. The second periodic report of the United States of America was due on 19 November 2001, as requested by the Committee at its twenty-fourth session in May 2000 (A/55/44, para. 180 (f)) and was received on 6 May 2005. The Committee notes that the report includes a point-by-point reply to the Committee's previous recommendations.

3. The Committee commends the State party for its exhaustive written responses to the Committee's list of issues, as well as the detailed responses provided both in writing and orally to the questions posed by the members during the examination of the report. The Committee expresses its appreciation for the large and high-level delegation, comprising representatives from relevant departments of the State party, which facilitated a constructive oral exchange during the consideration of the report.

4. The Committee notes that the State party has a federal structure, but recalls that the United States of America is a single State under international law and has the obligation to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") in full at the domestic level.

5. Recalling its statement adopted on 22 November 2001 condemning utterly the terrorist attacks of 11 September 2001, the terrible threat to international peace and security posed by acts of international terrorism and the need to combat by all means, in accordance with the Charter of the United Nations, the threats caused by terrorist acts, the Committee recognizes that these attacks caused profound suffering to many residents of the State party. The Committee acknowledges that the State party is engaged in protecting its security and the security and freedom of its citizens in a complex legal and political context.

B. Positive aspects

6. The Committee welcomes the State party's statement that all United States officials, from all government agencies, including its contractors, are prohibited from engaging in torture at all times and in all places, and that all United States officials from all government agencies, including its contractors, wherever they may be, are prohibited from engaging in cruel, inhuman or degrading treatment or punishment, in accordance with the obligations under the Convention.

7. The Committee notes with satisfaction the State party's statement that the United States does not transfer persons to countries where it believes it is "more likely than not" that they will be tortured, and that this also applies, as a matter of policy, to the transfer of any individual, in the State party's custody, or control, regardless of where they are detained.

8. The Committee welcomes the State party's clarification that the statement of the United States President on signing the Detainee Treatment Act on 30 December 2005 is not to be interpreted as a derogation by the President from the absolute prohibition of torture.

9. The Committee also notes with satisfaction the enactment of:

(a) The Prison Rape Elimination Act of 2003, which addresses sexual assault of persons in the custody of correctional agencies, with the purpose, inter alia, of establishing a "zero-tolerance standard" for rape in detention facilities in the State party; and

(b) That part of the Detainee Treatment Act of 2005 which prohibits cruel, inhuman, or degrading treatment and punishment of any person, regardless of nationality or physical location, in the custody or under the physical control of the State party.

10. The Committee welcomes the adoption of National Detention Standards in 2000, which set minimum standards for detention facilities holding Department of Homeland Security detainees, including asylum-seekers.

11. The Committee also notes with satisfaction the sustained and substantial contributions of the State party to the United Nations Voluntary Fund for the Victims of Torture.

12. The Committee notes the State party's intention to adopt a new Army Field Manual for intelligence interrogation, applicable to all its personnel, which, according to the State party, will ensure that interrogation techniques fully comply with the Convention.

C. Subjects of concern and recommendations

13. Notwithstanding the statement by the State party that “every act of torture within the meaning of the Convention is illegal under existing federal and/or state law”, the Committee reiterates the concern expressed in its previous conclusions and recommendations with regard to the absence of a federal crime of torture, consistent with article 1 of the Convention, given that sections 2340 and 2340 A of the United States Code limit federal criminal jurisdiction over acts of torture to extraterritorial cases. The Committee also regrets that, despite the occurrence of cases of extraterritorial torture of detainees, no prosecutions have been initiated under the extraterritorial criminal torture statute (arts. 1, 2, 4 and 5).

The Committee reiterates its previous recommendation that the State party should enact a federal crime of torture consistent with article 1 of the Convention, which should include appropriate penalties, in order to fulfil its obligations under the Convention to prevent and eliminate acts of torture causing severe pain or suffering, whether physical or mental, in all its forms.

The State party should ensure that acts of psychological torture, prohibited by the Convention, are not limited to “prolonged mental harm” as set out in the State party’s understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration.

The State party should investigate, prosecute and punish perpetrators under the federal extraterritorial criminal torture statute.

14. The Committee regrets the State party’s opinion that the Convention is not applicable in times and in the context of armed conflict, on the basis of the argument that the “law of armed conflict” is the exclusive *lex specialis* applicable, and that the Convention’s application “would result in an overlap of the different treaties which would undermine the objective of eradicating torture” (arts. 1 and 16).

The State party should recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction and that the application of the Convention’s provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16.

15. The Committee notes that a number of the Convention’s provisions are expressed as applying to “territory under [the State party’s] jurisdiction” (arts. 2, 5, 13, 16). The Committee reiterates its previously expressed view that this includes all areas under the de facto effective control of the State party, by whichever military or civil authorities such control is exercised. The Committee considers that the State party’s view that those provisions are geographically limited to its own de jure territory to be regrettable.

The State party should recognize and ensure that the provisions of the Convention expressed as applicable to “territory under the State party’s jurisdiction” apply to, and are fully enjoyed, by all persons under the effective control of its authorities, of whichever type, wherever located in the world.

16. The Committee notes with concern that the State party does not always register persons detained in territories under its jurisdiction outside the United States, depriving them of an effective safeguard against acts of torture (art. 2).

The State party should register all persons it detains in any territory under its jurisdiction, as one measure to prevent acts of torture. Registration should contain the identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.

17. The Committee is concerned by allegations that the State party has established secret detention facilities, which are not accessible to the International Committee of the Red Cross. Detainees are allegedly deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures with respect to their detention. The Committee is also concerned by allegations that those detained in such facilities could be held for prolonged periods and face torture or cruel, inhuman or degrading treatment. The Committee considers the “no comment” policy of the State party regarding the existence of such secret detention facilities, as well as on its intelligence activities, to be regrettable (arts. 2 and 16).

The State party should ensure that no one is detained in any secret detention facility under its de facto effective control. Detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated. The State party should publicly condemn any policy of secret detention.

The Committee recalls that intelligence activities, notwithstanding their author, nature or location, are acts of the State party, fully engaging its international responsibility.

18. The Committee is concerned by reports of the involvement of the State party in enforced disappearances. The Committee considers the State party’s view that such acts do not constitute a form of torture to be regrettable (arts. 2 and 16).

The State party should adopt all necessary measures to prohibit and prevent enforced disappearance in any territory under its jurisdiction, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention.

19. Notwithstanding the State party's statement that "[u]nder U.S. law, there is no derogation from the express statutory prohibition of torture" and that "[n]o circumstances whatsoever ... may be invoked as a justification or defense to committing torture", the Committee remains concerned at the absence of clear legal provisions ensuring that the Convention's prohibition against torture is not derogated from under any circumstances, in particular since 11 September 2001 (arts. 2, 11 and 12).

The State party should adopt clear legal provisions to implement the principle of absolute prohibition of torture in its domestic law without any possible derogation. Derogation from this principle is incompatible with paragraph 2 of article 2 of the Convention, and cannot limit criminal responsibility. The State party should also ensure that perpetrators of acts of torture are prosecuted and punished appropriately.

The State party should also ensure that any interrogation rules, instructions or methods do not derogate from the principle of absolute prohibition of torture and that no doctrine under domestic law impedes the full criminal responsibility of perpetrators of acts of torture.

The State party should promptly, thoroughly, and impartially investigate any responsibility of senior military and civilian officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates.

20. The Committee is concerned that the State party considers that the non-refoulement obligation, under article 3 of the Convention, does not extend to a person detained outside its territory. The Committee is also concerned by the State party's rendition of suspects, without any judicial procedure, to States where they face a real risk of torture (art. 3).

The State party should apply the *non-refoulement* guarantee to all detainees in its custody, cease the rendition of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspects have the possibility to challenge decisions of *refoulement*.

21. The Committee is concerned by the State party's use of "diplomatic assurances", or other kinds of guarantees, assuring that a person will not be tortured if expelled, returned, transferred or extradited to another State. The Committee is also concerned by the secrecy of such procedures including the absence of judicial scrutiny and the lack of monitoring mechanisms put in place to assess if the assurances have been honoured (art. 3).

When determining the applicability of its *non-refoulement* obligations under article 3 of the Convention, the State party should only rely on "diplomatic assurances" in regard to States which do not systematically violate the Convention's provisions, and after a thorough examination of the merits of each individual case. The State party should establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return

monitoring arrangements. The State party should also provide detailed information to the Committee on all cases since 11 September 2001 where assurances have been provided.

22. The Committee, noting that detaining persons indefinitely without charge constitutes per se a violation of the Convention, is concerned that detainees are held for protracted periods at Guantánamo Bay, without sufficient legal safeguards and without judicial assessment of the justification for their detention (arts. 2, 3 and 16).

The State party should cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured, in order to comply with its obligations under the Convention.

23. The Committee is concerned that information, education and training provided to the State party's law-enforcement or military personnel are not adequate and do not focus on all provisions of the Convention, in particular on the non-derogable nature of the prohibition of torture and the prevention of cruel, inhuman and degrading treatment or punishment (arts. 10 and 11).

The State party should ensure that education and training of all law-enforcement or military personnel, are conducted on a regular basis, in particular for personnel involved in the interrogation of suspects. This should include training on interrogation rules, instructions and methods, and specific training on how to identify signs of torture and cruel, inhuman or degrading treatment. Such personnel should also be instructed to report such incidents.

The State party should also regularly evaluate the training and education provided to its law-enforcement and military personnel as well as ensure regular and independent monitoring of their conduct.

24. The Committee is concerned that in 2002 the State party authorized the use of certain interrogation techniques that have resulted in the death of some detainees during interrogation. The Committee also regrets that "confusing interrogation rules" and techniques defined in vague and general terms, such as "stress positions", have led to serious abuses of detainees (arts. 11, 1, 2 and 16).

The State party should rescind any interrogation technique, including methods involving sexual humiliation, "waterboarding", "short shackling" and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention.

25. The Committee is concerned at allegations of impunity of some of the State party's law-enforcement personnel in respect of acts of torture or cruel, inhuman or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department (art. 12).

The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice, in order to fulfil its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above-mentioned case.

26. The Committee is concerned by reliable reports of acts of torture or cruel, inhuman and degrading treatment or punishment committed by certain members of the State party's military or civilian personnel in Afghanistan and Iraq. It is also concerned that the investigation and prosecution of many of these cases, including some resulting in the death of detainees, have led to lenient sentences, including of an administrative nature or less than one year's imprisonment (art. 12).

The State party should take immediate measures to eradicate all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its jurisdiction, and should promptly and thoroughly investigate such acts, prosecute all those responsible for such acts, and ensure they are appropriately punished, in accordance with the seriousness of the crime.

27. The Committee is concerned that the Detainee Treatment Act of 2005 aims to withdraw the jurisdiction of the State party's federal courts with respect to habeas corpus petitions, or other claims by or on behalf of Guantánamo Bay detainees, except under limited circumstances. The Committee is also concerned that detainees in Afghanistan and Iraq, under the control of the Department of Defense, have their status determined and reviewed by an administrative process of that department (art. 13).

The State party should ensure that independent, prompt and thorough procedures to review the circumstances of detention and the status of detainees are available to all detainees, as required by article 13 of the Convention.

28. The Committee is concerned at the difficulties certain victims of abuses have faced in obtaining redress and adequate compensation, and that only a limited number of detainees have filed claims for compensation for alleged abuse and maltreatment, in particular under the Foreign Claims Act (art. 14).

The State party should ensure, in accordance with the Convention, that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or abuse, including sexual violence, perpetrated by its officials.

29. The Committee is concerned at section 1997 e (e) of the 1995 Prison Litigation Reform Act which provides “that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury” (art. 14).

The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly.

30. The Committee, while taking note of the State party’s instruction number 10 of 24 March 2006, which provides that military commissions shall not admit statements established to be made as a result of torture in evidence, is concerned about the implementation of the instruction in the context of such commissions and the limitations on detainees’ effective right to complain. The Committee is also concerned about the Combatant Status Review Tribunals and the Administrative Review Boards (arts. 13 and 15).

The State party should ensure that its obligations under articles 13 and 15 are fulfilled in all circumstances, including in the context of military commissions and should consider establishing an independent mechanism to guarantee the rights of all detainees in its custody.

31. The Committee is concerned at the fact that substantiated information indicates that executions in the State party can be accompanied by severe pain and suffering (arts. 16, 1 and 2).

The State party should carefully review its execution methods, in particular lethal injection, in order to prevent severe pain and suffering.

32. The Committee is concerned at reliable reports of sexual assault of sentenced detainees, as well as persons in pretrial or immigration detention, in places of detention in the State party. The Committee is concerned that there are numerous reports of sexual violence perpetrated by detainees on one another, and that persons of differing sexual orientation are particularly vulnerable. The Committee is also concerned by the lack of prompt and independent investigation of such acts and that appropriate measures to combat these abuses have not been implemented by the State party (arts. 16, 12, 13 and 14).

The State party should design and implement appropriate measures to prevent all sexual violence in all its detention centres. The State party should ensure that all allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation.

33. The Committee is concerned at the treatment of detained women in the State party, including gender-based humiliation and incidents of shackling of women detainees during childbirth (art. 16).

The State party should adopt all appropriate measures to ensure that women in detention are treated in conformity with international standards.

34. The Committee reiterates the concern expressed in its previous recommendations about the conditions of the detention of children, in particular the fact that they may not be completely segregated from adults during pretrial detention and after sentencing. The Committee is also concerned at the large number of children sentenced to life imprisonment in the State party (art. 16).

The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.

35. The Committee remains concerned about the extensive use by the State party's law-enforcement personnel of electroshock devices, which have caused several deaths. The Committee is concerned that this practice raises serious issues of compatibility with article 16 of the Convention.

The State party should carefully review the use of electroshock devices, strictly regulate their use, restricting it to substitution for lethal weapons, and eliminate the use of these devices to restrain persons in custody, as this leads to breaches of article 16 of the Convention.

36. The Committee remains concerned about the extremely harsh regime imposed on detainees in "supermaximum prisons". The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).

The State party should review the regime imposed on detainees in "supermaximum prisons", in particular the practice of prolonged isolation.

37. The Committee is concerned about reports of brutality and use of excessive force by the State party's law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation which have not been adequately investigated (art. 16 and 12).

The State party should ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

38. The Committee strongly encourages the State party to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in full conformity with the terms of reference for fact-finding missions by special procedures of the United Nations, to visit Guantánamo Bay and any other detention facility under its de facto control.

39. The Committee invites the State party to reconsider its express intention not to become party to the Rome Statute of the International Criminal Court.

40. The Committee reiterates its recommendation that the State party should consider withdrawing its reservations, declarations and understandings lodged at the time of ratification of the Convention.

41. The Committee encourages the State party to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention.

42. The Committee requests the State party to provide detailed statistical data, disaggregated by sex, ethnicity and conduct, on complaints related to torture and ill-treatment allegedly committed by law-enforcement officials, investigations, prosecutions, penalties and disciplinary action relating to such complaints. It requests the State party to provide similar statistical data and information on the enforcement of the Civil Rights of Institutionalized Persons Act by the Department of Justice, in particular in respect to the prevention, investigation and prosecution of acts of torture, or cruel, inhuman or degrading treatment or punishment in detention facilities and the measures taken to implement the Prison Rape Elimination Act and their impact. The Committee requests the State party to provide information on any compensation and rehabilitation provided to victims. The Committee encourages the State party to create a federal database to facilitate the collection of such statistics and information which assist in the assessment of the implementation of the provisions of the Convention and the practical enjoyment of the rights it provides. The Committee also requests the State party to provide information on investigations into the alleged ill-treatment perpetrated by law-enforcement personnel in the aftermath of Hurricane Katrina.

43. The Committee requests the State party to provide, within one year, information on its response to its recommendations in paragraphs 16, 20, 21, 22, 24, 33, 34 and 42 above.

44. The Committee requests the State party to disseminate its report, with its addenda and the written answers to the Committee's list of issues and oral questions and the conclusions and recommendations of the Committee widely, in all appropriate languages, through official websites, the media and non-governmental organizations.

45. The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 19 November 2011, the due date of the fifth periodic report.

**International covenant
on civil and
political rights**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

UNITED STATES OF AMERICA

1. The Committee considered the second and third periodic reports of the United States of America (CCPR/C/USA/3) at its 2379th, 2380th and 2381st meetings (CCPR/C/SR.2379-2381), held on 17 and 18 July 2006, and adopted the following concluding observations at its 2395th meeting (CCPR/C/SR.2395), held on 27 July 2006.

A. Introduction

2. The Committee notes the submission of the State party's second and third periodic combined report, which was seven years overdue, as well as the written answers provided in advance. It appreciates the attendance of a delegation composed of experts belonging to various agencies responsible for the implementation of the Covenant, and welcomes their efforts to answer to the Committee's written and oral questions.

3. The Committee regrets that the State party has not integrated into its report information on the implementation of the Covenant with respect to individuals under its jurisdiction and outside its territory. The Committee notes however that the State party has provided additional material "out of courtesy". The Committee further regrets that the State party, invoking grounds of non-applicability of the Covenant or intelligence operations, refused to address certain serious allegations of violations of the rights protected under the Covenant.

4. The Committee regrets that only limited information was provided on the implementation of the Covenant at the State level.

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B. Positive aspects

5. The Committee welcomes the Supreme Court's decision in *Hamdan v. Rumsfeld* (2006) establishing the applicability of common article 3 of the Geneva Conventions of 12 August 1949, which reflects fundamental rights guaranteed by the Covenant in any armed conflict.
6. The Committee welcomes the Supreme Court's decision in *Roper v. Simmons* (2005), which held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. In this regard, the Committee reiterates the recommendation made in its previous concluding observations, encouraging the State party to withdraw its reservation to article 6 (5) of the Covenant.
7. The Committee welcomes the Supreme Court's decision in *Atkins v. Virginia* (2002), which held that executions of mentally retarded criminals are cruel and unusual punishments, and encourages the State party to ensure that persons suffering from severe forms of mental illness not amounting to mental retardation are equally protected.
8. The Committee welcomes the promulgation of the National Detention Standards in 2000, establishing minimum standards for detention facilities holding Department of Homeland Security detainees, and encourages the State party to adopt all measures necessary for their effective enforcement.
9. The Committee welcomes the Supreme Court's decision in *Lawrence et al. v. Texas* (2003), which declared unconstitutional legislation criminalizing homosexual relations between consenting adults.

C. Principal subjects of concern and recommendations

10. The Committee notes with concern the restrictive interpretation made by the State party of its obligations under the Covenant, as a result in particular of (a) its position that the Covenant does not apply with respect to individuals under its jurisdiction but outside its territory, nor in time of war, despite the contrary opinions and established jurisprudence of the Committee and the International Court of Justice; (b) its failure to take fully into consideration its obligation under the Covenant not only to respect, but also to ensure the rights prescribed by the Covenant; and (c) its restrictive approach to some substantive provisions of the Covenant, which is not in conformity with the interpretation made by the Committee before and after the State party's ratification of the Covenant. (articles 2 and 40)

The State party should review its approach and interpret the Covenant in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of its object and purpose. The State party should in particular (a) acknowledge the applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory,

as well as its applicability in time of war; (b) take positive steps, when necessary, to ensure the full implementation of all rights prescribed by the Covenant; and (c) consider in good faith the interpretation of the Covenant provided by the Committee pursuant to its mandate.

11. The Committee expresses its concern about the potentially overbroad reach of the definitions of terrorism under domestic law, in particular under 8 U.S.C. § 1182 (a) (3) (B) and Executive Order 13224 which seem to extend to conduct, e.g. in the context of political dissent, which, although unlawful, should not be understood as constituting terrorism (articles 17, 19 and 21).

The State party should ensure that its counter-terrorism measures are in full conformity with the Covenant and in particular that the legislation adopted in this context is limited to crimes that would justify being assimilated to terrorism, and the grave consequences associated with it.

12. The Committee is concerned by credible and uncontested information that the State party has seen fit to engage in the practice of detaining people secretly and in secret places for months and years on end, without keeping the International Committee of the Red Cross informed. In such cases, the rights of the families of the detainees are also being violated. The Committee is also concerned that, even when such persons may have their detention acknowledged, they have been held incommunicado for months or years, a practice that violates the rights protected by articles 7 and 9. In general, the Committee is concerned by the fact that people are detained in places where they cannot benefit from the protection of domestic or international law or where that protection is substantially curtailed, a practice that cannot be justified by the stated need to remove them from the battlefield. (articles 7 and 9)

The State party should immediately cease its practice of secret detention and close all secret detention facilities. It should also grant the International Committee of the Red Cross prompt access to any person detained in connection with an armed conflict. The State party should also ensure that detainees, regardless of their place of detention, always benefit from the full protection of the law.

13. The Committee is concerned with the fact that the State party has authorized for some time the use of enhanced interrogation techniques, such as prolonged stress positions and isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20-hour interrogations, removal of clothing and deprivation of all comfort and religious items, forced grooming, and exploitation of detainees' individual phobias. Although the Committee welcomes the assurance that, according to the Detainee Treatment Act of 2005, such interrogation techniques are prohibited by the present Army Field Manual on Intelligence Interrogation, the Committee remains concerned that (a) the State party refuses to acknowledge that such techniques, several of which were allegedly applied, either individually or in combination, over a protracted period of time, violate the prohibition contained by article 7 of the Covenant; (b) no sentence has been pronounced against an officer, employee, member of the Armed Forces, or other agent of the United States Government for using harsh interrogation techniques that had been approved; (c) these interrogation techniques may still be authorized or used by other agencies, including intelligence agencies and "private contractors"; and (d) the

State party has provided no information to the fact that oversight systems of such agencies have been established to ensure compliance with article 7.

The State party should ensure that any revision of the Army Field Manual only provides for interrogation techniques in conformity with the international understanding of the scope of the prohibition contained in article 7 of the Covenant; the State party should also ensure that the current interrogation techniques or any revised techniques are binding on all agencies of the United States Government and any others acting on its behalf; the State party should ensure that there are effective means to follow suit against abuses committed by agencies operating outside the military structure and that appropriate sanctions be imposed on its personnel who used or approved the use of the now prohibited techniques; the State party should ensure that the right to reparation of the victims of such practices is respected; and it should inform the Committee of any revisions of the interrogation techniques approved by the Army Field Manual.

14. The Committee notes with concern shortcomings concerning the independence, impartiality and effectiveness of investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment inflicted by United States military and non-military personnel or contract employees, in detention facilities in Guantanamo Bay, Afghanistan, Iraq, and other overseas locations, and to alleged cases of suspicious death in custody in any of these locations. The Committee regrets that the State party did not provide sufficient information regarding the prosecutions launched, sentences passed (which appear excessively light for offences of such gravity) and reparation granted to the victims. (articles 6 and 7)

The State party should conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders) as well as contract employees, in detention facilities in Guantanamo Bay, Afghanistan, Iraq and other overseas locations. The State party should ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime. The State party should adopt all necessary measures to prevent the recurrence of such behaviors, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities, in line with articles 7 and 10 of the Covenant. During the course of any legal proceedings, the State party should also refrain from relying on evidence obtained by treatment incompatible with article 7. The Committee wishes to be informed about the measures taken by the State party to ensure the respect of the right to reparation for the victims.

15. The Committee notes with concern that section 1005 (e) of the Detainee Treatment Act bars detainees in Guantanamo Bay from seeking review in case of allegations of ill-treatment or poor conditions of detention. (articles 7 and 10)

The State party should amend section 1005 of the Detainee Treatment Act so as to allow detainees in Guantanamo Bay to seek review of their treatment or conditions of detention before a court.

16. The Committee notes with concern the State party's restrictive interpretation of article 7 of the Covenant according to which it understands (a) that the obligation not to subject anyone to treatment does not include an obligation not to expose anyone to such treatment by means of transfer, rendition, extradition, expulsion or refoulement; (b) that, in any case, it is not under any other obligation not to deport an individual who may undergo cruel, inhumane or degrading treatment or punishment other than torture, as the State party understands the term; and (c) that it is not under any international obligation to respect a non-refoulement rule in relation to persons it detains outside its territory. The Committee also notes with concern the "more likely than not" standard the State party uses in non-refoulement procedures. The Committee is concerned that in practice the State party appears to have adopted a policy to remove, or to assist in removing, either from the United States or other States' territories, suspected terrorists to third countries, for the purpose of detention and interrogation, without the appropriate safeguards to protect them from treatment prohibited by the Covenant. The Committee is also concerned by numerous, well-publicized and documented allegations that persons sent to third countries in this way were indeed detained and interrogated under conditions grossly violating the prohibition contained in article 7, allegations that the State party did not contest. It is deeply concerned with the invocation of State-secrets privilege in cases where the victims of these practices have brought claim before the State party's courts (e.g. the cases of *Maher Arar v. Ashcroft* (2006) and *Khaled Al-Masri v. Tenet* (2006)). (article 7)

The State party should review its position, in accordance with the Committee's general comments No 20 (1992) on Article 7 and No 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. The State party should take all necessary measures to ensure that detainees, including in facilities outside its own territory, are not removed to another country by way of, *inter alia*, transfer, rendition, extradition, expulsion or refoulement, if there are substantial reasons to believe that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should conduct thorough and independent investigations into allegations that persons have been removed to third countries where they have been victims of torture or cruel, inhuman or degrading treatment or punishment; modify its legislation and policies to ensure that no such situation will recur; and provide appropriate reparation to the victims. The State party should exercise the utmost care in the use of diplomatic assurances and adopt clear and transparent procedures, with adequate judicial mechanisms for review, prior to removing any detainees to third countries. It should also establish effective mechanisms to monitor scrupulously and vigorously the removal of detainees to third countries. The State party should be aware that in countries where torture or cruel, inhuman or degrading treatment are common practice, it is likely to be used regardless of assurances to the contrary, however stringent any agreed follow-up procedures may be.

17. The Committee is concerned that the Patriot Act and the 2005 REAL ID Act of 2005 may bar from asylum and withholding of removal any person who has provided "material support" to a "terrorist organization", whether voluntarily or under duress. It regrets having received no response on this matter from the State party. (article 7)

The State party should ensure that the "material support to terrorist organisations" bar is not applied to those who acted under duress.

18. The Committee is concerned that, following the Supreme Court ruling in *Rasul v. Bush* (2004), proceedings before Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs), mandated respectively to determine and review the status of detainees, may not offer adequate safeguards of due process, in particular due to : (a) their lack of independence from the executive branch and the army, (b) restrictions on the rights of detainees to have access to all proceedings and evidence, (c) the inevitable difficulty CSRTs and ARBs face in summoning witnesses, and (d) the possibility given to CSRTs and ARBs, under Section 1005 of the 2005 Detainee Treatment Act, to weigh evidence obtained by coercion for its probative value. The Committee is further concerned that detention in other locations, such as Afghanistan and Iraq, is reviewed by mechanisms providing even fewer guarantees. (article 9)

The State party should ensure, in accordance with article 9 (4) of the Covenant, that persons detained in Guantanamo Bay are entitled to proceedings before a court to decide, without delay, on the lawfulness of their detention or order their release. Due process, independence of the reviewing courts from the executive branch and the army, access of detainees to counsel of their choice and to all proceedings and evidence, should be guaranteed in this regard.

19. The Committee, having taken into consideration information provided by the State party, is concerned by reports that, following the September 11 attacks, many non-U.S. citizens, suspected to have committed terrorism-related offences have been detained for long periods pursuant to immigration laws with fewer guarantees than in the context of criminal procedures, or on the basis of the Material Witness Statute only. The Committee is also concerned with the compatibility of the Statute with the Covenant since it may be applied for up-coming trials but also to investigations or proposed investigations. (article 9)

The State party should review its practice with a view to ensuring that the Material Witness Statute and immigration laws are not used so as to detain persons suspected of terrorism or any other criminal offences with fewer guarantees than in criminal proceedings. The State party should also ensure that those improperly so detained receive appropriate reparation.

20. The Committee notes that the decision of the Supreme Court in *Hamdan v. Rumsfeld*, according to which Guantanamo Bay detainees accused of terrorism offences are to be judged by a regularly constituted court affording all the judicial guarantees required by common article 3 of the Geneva Conventions of 12 August 1949, remains to be implemented. (article 14)

The State party should provide the Committee with information on its implementation of the decision.

21. The Committee, while noting some positive amendments introduced in 2006, notes that section 213 of the Patriot Act, expanding the possibility of delayed notification of home and office searches; section 215 regarding access to individuals' personal records and belongings; and section 505, relating to the issuance of national security letters, still raise issues of concern in relation to article 17 of the Covenant. In particular, the Committee is concerned about the

restricted possibilities for the concerned persons to be informed about such measures and to effectively challenge them. Furthermore, the Committee is concerned that the State Party, including through the National Security Agency (NSA), has monitored and still monitors phone, email, and fax communications of individuals both within and outside the U.S., without any judicial or other independent oversight. (articles 2(3) and 17)

The State party should review sections 213, 215 and 505 of the Patriot Act to ensure full compatibility with article 17 of the Covenant. The State party should ensure that any infringement on individual's rights to privacy is strictly necessary and duly authorized by law, and that the rights of individuals to follow suit in this regard are respected.

22. The Committee is concerned with reports that some 50 % of homeless people are African American although they constitute only 12 % of the United States population. (articles 2 and 26)

The State party should take measures, including adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination.

23. The Committee notes with concern reports of de facto racial segregation in public schools, reportedly caused by discrepancies between the racial and ethnic composition of large urban districts and their surrounding suburbs, and the manner in which schools districts are created, funded and regulated. The Committee is concerned that the State party, despite measures adopted, has not succeeded in eliminating racial discrimination such as regarding the wide disparities in the quality of education across school districts in metropolitan areas, to the detriment of minority students. It also notes with concern the State party's position that federal government authorities cannot take legal action if there is no indication of discriminatory intent by state or local authorities. (articles 2 and 26)

The Committee reminds the State party of its obligation under articles 2 and 26 of the Covenant to respect and ensure that all individuals are guaranteed effective protection against practices that have either the purpose or the effect of discrimination on a racial basis. The State party should conduct in-depth investigations into the de facto segregation described above and take remedial steps, in consultation with the affected communities.

24. The Committee, while welcoming the mandate given to the Attorney General to review the use by federal enforcement authorities of race as a factor in conducting stops, searches, and other enforcement procedures, and the prohibition of racial profiling made in guidance to federal law enforcement officials, remains concerned about information that such practices still persist in the State party, in particular at the state level. It also notes with concern information about racial disparities and discrimination in prosecuting and sentencing processes in the criminal justice system. (articles 2 and 26)

The State party should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials. The Committee wishes to receive more detailed information about the extent to which such practices

still persist, as well as statistical data on complaints, prosecutions and sentences in such matters.

25. The Committee notes with concern allegations of widespread incidence of violent crime perpetrated against persons of minority sexual orientation, including by law enforcement officials. It notes with concern the failure to address such crime in the legislation on hate crime adopted at the federal level and in many states. It notes with concern the failure to outlaw employment discrimination on the basis of sexual orientation in many states. (articles 2 and 26)

The State party should acknowledge its legal obligation under articles 2 and 26 to ensure to everyone the rights recognized by the Covenant, as well as equality before the law and equal protection of the law, without discrimination on the basis of sexual orientation. The State party should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence and that federal and state employment legislation outlaw discrimination on the basis of sexual orientation.

26. The Committee, while taking note of the various rules and regulations prohibiting discrimination in the provision of disaster relief and emergency assistance, remains concerned about information that the poor, and in particular African-Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States, and continue to be disadvantaged under the reconstruction plans. (articles 6 and 26)

The State party should review its practices and policies to ensure the full implementation of its obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in matters related to disaster prevention and preparedness, emergency assistance and relief measures. In the aftermath of Hurricane Katrina, the State party should increase its efforts to ensure that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare. The Committee wishes to be informed about the results of the inquiries into the alleged failure to evacuate prisoners at the Parish prison, as well as the allegations that New Orleans residents were not permitted by law enforcement officials to cross the Greater New Orleans Bridge to Gretna, Louisiana.

27. The Committee regrets that it has not received sufficient information on the measures the State party considers adopting in relation to the reportedly nine million undocumented migrants now in the United States. While noting the information provided by the delegation that National Guard troops will not engage in direct law enforcement duties in the apprehension or detention of aliens, the Committee remains concerned about the increased level of militarization on the southwest border with Mexico. (articles 12 and 26)

The State party should provide the Committee with more detailed information on these issues, in particular on the concrete measures adopted to ensure that only agents who have received adequate training on immigration issues enforce

immigration laws, which should be compatible with the rights guaranteed by the Covenant.

28. The Committee regrets that many federal laws which address sex-discrimination are limited in scope and restricted in implementation. The Committee is especially concerned about the reported persistence of employment discrimination against women. (articles 3 and 26)

The State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex, in particular in the area of employment.

29. The Committee regrets that the State party does not indicate that it has taken any steps to review federal and state legislation with a view to assessing whether offences carrying the death penalty are restricted to the most serious crimes, and that, despite the Committee's previous concluding observations, the State party has extended the number of offences for which the death penalty is applicable. While taking note of some efforts towards the improvement of the quality of legal representation provided to indigent defendants facing capital punishment, the Committee remains concerned by studies according to which the death penalty may be imposed disproportionately on ethnic minorities as well as on low-income groups, a problem which does not seem to be fully acknowledged by the State party. (articles 6 and 14)

The State party should review federal and state legislation with a view to restricting the number of offences carrying the death penalty. The State party should also assess the extent to which death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem. In the meantime, the State party should place a moratorium on capital sentences, bearing in mind the desirability of abolishing death penalty.

30. The Committee reiterates its concern about reports of police brutality and excessive use of force by law enforcement officials. The Committee is concerned in particular by the use of so-called less lethal restraint devices, such as electro-muscular disruption devices (EMDs), in situations where lethal or other serious force would not otherwise have been used. It is concerned about information according to which police have used tasers against unruly schoolchildren; mentally disabled or intoxicated individuals involved in disturbed but non-life-threatening behaviour; elderly people; pregnant women; unarmed suspects fleeing minor crime scenes and people who argue with officers or simply fail to comply with police commands, without in most cases the responsible officers being found to have violated their departments' policies. (articles 6 and 7)

The State party should increase significantly its efforts towards the elimination of police brutality and excessive use of force by law enforcement officials. The State party should ensure that EMDs and other restraint devices are only used in situations where greater or lethal force would otherwise have been justified, and in particular that they are never used against vulnerable persons. The State party

should bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

31. The Committee notes that (a) waivers of consent in research regulated by the U.S. Department of Health and Human Services and the Food and Drug Administration may be given in case of individual and national emergencies; (b) some research may be conducted on persons vulnerable to coercion or undue influence such as children, prisoners, pregnant women, mentally disabled persons, or economically disadvantaged persons; (c) non-therapeutic research may be conducted on mentally ill persons or persons with impaired decision-making capacity, including minors; and (d) although no waivers have been given so far, domestic law authorizes the President to waive the prior informed-consent requirement for the administration of an investigational new drug to a member of the U.S. Armed Forces, if the President determines that obtaining consent is not feasible, is contrary to the best interests of the military members, or is not in the interests of U.S. national security. (article 7)

The State party should ensure that it meets its obligation under article 7 of the Covenant not to subject anyone without his/her free consent to medical or scientific experimentation. The Committee recalls in this regard the non-derogable character of this obligation under article 4 of the Covenant. When there is doubt as to the ability of a person or a category of persons to give such consent, e.g. prisoners, the only experimental treatment compatible with article 7 would be treatment chosen as the most appropriate to meet the medical needs of the individual.

32. The Committee reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detainees with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners. It also expresses concern about the reported high numbers of severely mentally ill persons in these prisons, as well as in regular in U.S. jails.

The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

33. The Committee, while welcoming the adoption of the Prison Rape Elimination Act of 2003, regrets that the State party has not implemented its previous recommendation that legislation allowing male officers access to women's quarters should be amended to provide at least that they will always be accompanied by women officers. The Committee also expresses concern about the shackling of detained women during childbirth. (articles 7 and 10)

The Committee reiterates its recommendation that male officers should not be granted access to women's quarters, or at least be accompanied by women officers. The Committee also recommends the State party to prohibit the shackling of detained women during childbirth.

34. The Committee notes with concern reports that forty-two states and the Federal government have laws allowing persons under the age of eighteen at the time the offence was committed, to receive life sentences, without parole, and that about 2,225 youth offenders are currently serving life sentences in United States prisons. The Committee, while noting the State party's reservation to treat juveniles as adults in exceptional circumstances notwithstanding articles 10 (2) (b) and (3) and 14 (4) of the Covenant, remains concerned by information that treatment of children as adults is not only applied in exceptional circumstances. The Committee is of the view that sentencing children to life sentence without parole is of itself not in compliance with article 24 (1) of the Covenant. (articles 7 and 24)

The State party should ensure that no such child offender is sentenced to life imprisonment without parole, and should adopt all appropriate measures to review the situation of persons already serving such sentences.

35. The Committee is concerned that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications. The Committee also notes with concern that the recommendation made in 2001 by the National Commission on Federal Election Reform that all states restore voting rights to citizens who have fully served their sentences has not been endorsed by all states. The Committee is of the view that general deprivation of the right vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of articles 25 of 26 of the Covenant, nor serves the rehabilitation goals of article 10 (3).

The State party should adopt appropriate measures to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. The Committee also recommends that the State party review regulations relating to deprivation of votes for felony conviction to ensure that they always meet the reasonableness test of article 25. The State party should also assess the extent to which such regulations disproportionately impact on the rights of minority groups and provide the Committee with detailed information in this regard.

36. The Committee, having taken note of the responses provided by the delegation, remains concerned that residents of the District of Columbia do not enjoy full representation in Congress, a restriction which does not seem to be compatible with article 25 of the Covenant. (articles 2, 25 and 26)

The State party should ensure the right of residents of the District of Columbia to take part in the conduct of public affairs, directly or through freely chosen representatives, in particular with regard to the House of Representatives.

37. The Committee notes with concern that no action has been taken by the State party to address its previous recommendation relating to the extinguishment of aboriginal and indigenous rights. The Committee, while noting that the guarantees provided by the Fifth Amendment apply to the taking of land in situations where treaties concluded between the Federal Government and Indian tribes apply, is concerned that in other situations, in particular where land was assigned by creating a reservation or is held by reason of long possession and use, tribal property rights can be extinguished on the basis of the plenary authority of Congress for conducting Indian affairs without due process and fair compensation. The Committee is also concerned that the concept of permanent trusteeship over the Indian and Alaska native tribes and their land as well as the actual exercise of this trusteeship in managing the so called Individual Indian Money (IIM) accounts may infringe upon the full enjoyment of their rights under the Covenant. Finally, the Committee regrets that it has not received sufficient information on the consequences on the situation of Indigenous Native Hawaiians of Public Law 103-150 apologizing to the Native Hawaiians Peoples for the illegal overthrow of the Kingdom of Hawaii, which resulted in the suppression of the inherent sovereignty of the Hawaiian people. (articles 1, 26 and 27 in conjunction with Article 2, paragraph 3 of the Covenant).

The State party should review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population. The State party should take further steps to secure the rights of all indigenous peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.

38. The Committee sets 1st August 2010 as the date for the submission of the fourth periodic report of the United States of America. It requests that the State party's second and third periodic reports and the present concluding observations be published and widely disseminated in the State party, to the general public as well as to the judicial, legislative and administrative authorities, and that the fourth periodic report be circulated for the attention of the non-governmental organizations operating in the country.

39. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 12, 13, 14, 16, 20 and 26 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole, as well as about the practical implementation of the Covenant, the difficulties encountered in this regard, and the implementation of the Covenant at state level. The State party is also encouraged to provide more detailed information on the adoption of effective mechanisms to ensure that new and existing legislation, at federal and at state level, is in compliance with the Covenant, and about mechanisms adopted to ensure proper follow-up of the Committee's concluding observations.

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

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OF RACIAL DISCRIMINATION
Seventy-second session
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

UNITED STATES OF AMERICA

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 reauthorisation, in 2005, of the Violence Against Women Act of 1994 (VAWA).
6. The Committee also welcomes the reauthorisation, in 2006, of the Voting Rights Act of 1965 (VRA).
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 creation, in 2007, of the National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations, 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. 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 (art.1 (1)).

The Committee recommends that the State party 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.

11. 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 (art. 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 organizations.

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

The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles.

13. 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 coordinated approach towards the implementation of the Convention at the federal, state and local levels (art. 2).

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

14. 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 11 September 2001 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 (arts. 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.

15. 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 (art. 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 upon 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.

16. 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 (art. 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.**

17. 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 (arts. (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 desegregation 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.

18. 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 (art. 4).

The Committee draws the attention of the State party to its general recommendations No. 7 (1985) and 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 on 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.

19. 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) (art.5).

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

20. 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 (art.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.

21. 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 (art. 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.

22. While welcoming the recent initiatives undertaken by the State party to improve the quality of criminal defence 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 recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities (art. 5 (a)).

The Committee recommends that the State party adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defence 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.

23. 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)¹ (art. 5 (a)).

Taking into account 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 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.

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

¹ American Bar Association, "State Death Penalty Assessments: Key Findings," 29 October 2007, <http://www.abanet.org/moratorium/assessmentproject/keyfindings.doc>.

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 requests 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.

25. 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 (arts. 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.

26. 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 (arts. 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;

- (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.

27. 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 (art. 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.

28. 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 (arts. 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.

29. 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 (arts. 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 procedure, – 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 recognize 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.

30. 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 (arts. 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.

31. The Committee, while noting the efforts undertaken by the State party and civil society organizations 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 (art. 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 upon 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.

32. 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 (art. 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.

33. 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 (art. 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.

34. 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 dropout rate and the referral to the justice system of students belonging to racial, ethnic or national minorities (art.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 upon 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.

35. 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 (arts. 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.

36. 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 (art.7).

The Committee recommends that the State party organize 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.

37. 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 (arts. 5 (b), 5 (e) (iv) and 6).

38. 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 (art. 7).

39. 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 a process has for the achievement of the goals of the Convention, it calls upon the State party to consider participating in the preparatory process as well as in the Durban Review Conference itself.

40. 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.

41. 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 General Assembly resolution 47/111. In this connection, the Committee cites General Assembly resolution 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.
42. 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.
43. The Committee recommends that the State party, in connection with the preparation of the next periodic report, consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination.
44. 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).
45. 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.
46. 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.