
Summary of the United States Government's 2007 Report to the U.N. Committee on the Elimination of Racial Discrimination

The United States ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1994. As one of its obligations under the Convention, the U.S. Government is required to submit periodic reports to the United Nations Committee on the Elimination of Racial Discrimination (Committee) on steps that the Government has taken to address racial discrimination in the United States. The United States submitted its second such report in April 2007.

This document is intended to provide a summary of the 121-page 2007 U.S. Report. A full version of the Report can be found at: <http://hrpujc.org/CERDShadowReporting.html>.

For more information on CERD or the shadow reporting process, please visit our website at www.hrpujc.org.

Part I - General Information

In the first section of its Report, the U.S. Government provides general demographic and socio-economic information on the United States population.

- The Report provides general census data on the population of the United States, including information about population patterns of minorities in the U.S. by region, and the increasing number of non-English speaking homes in the U.S.
- It gives socio-economic data on American Indian, Alaska native, native Hawaiian, other Pacific Islander, and Arab-American populations, in response to the CERD Committee's request for such information in 2001.
- It also includes information on existing political structures and legal framework and emphasizes the sufficiency of the U.S. Constitution in protecting against discrimination.
- The Report notes that state laws can, and sometimes do, afford the citizens of that state greater protections than the U.S. Constitution.
- It states that post the attacks of September 11, 2001, the Department of Homeland Security (DHS) was created and combines a number of other departments including the former Immigration and Naturalization Service. It mentions that DHS has an Office for Civil Rights and Civil Liberties, led by the DHS Officer for Civil Rights and Civil Liberties, which reports directly to the Secretary of Homeland Security.
- The Report claims that the Government distributes the Report and information on CERD widely, including to state government officials, state and local bar associations, and human rights organizations.
- It further states that there are currently two primary challenges in the area of race discrimination in the U.S.: 1) subtle bias crimes and discriminatory actions against persons perceived to be Muslim or of Arab, Middle Eastern or South Asian descent after 9-11, and 2) the changing demography caused by high rates of immigration into the U.S.

Part II, Articles 2-7

In this section of the 2007 U.S. Report, the Government addresses specific articles of CERD and identifies measures it has taken that give effect to those articles in the United States.

Article 2 of CERD

Calls for the use of all appropriate measures, including legislation and affirmative measures, to eliminate racial discrimination and ensure that all public actors conform to this obligation.

With respect to Article 2 of CERD, the Report provides the following information:

- The Report reiterates that the U.S. Constitution provides protections against discrimination, thus, it argues, satisfying the CERD requirement that racial discrimination must be prohibited throughout the country.
- It cites constitutional protections, federal statutes - including the Civil Rights Act of 1964, the Fair Housing Act, and the Equal Credit Opportunity Act - and a number of state and local laws as measures the United States has taken as part of its commitment under this article not to sponsor, defend or support racial discrimination.
- It also provides **examples of enforcement**, in particular in the areas of:
 - **Employment:**
 - The Report gives some examples of enforcing laws against discrimination in the workplace and states that the EEOC filed 371 lawsuits in 2006.
 - It cites suits that the Justice Department Civil Rights Division has brought, including a case involving a reading and writing test for employment with the Delaware State Police that was settled before trial. It also cites an on-going case against the NY Transit Authority for discriminating against Muslim, Sikh and other employees by not accommodating their religious beliefs in allowing them to wear their respective religious head coverings at work.
 - **Housing and Lending:**
 - The Report states that discrimination in the housing sales market has declined significantly since 1990, but has been more modest in the rental market for African Americans, and there was no change for Hispanics.
 - It discusses the “enforcement arm” of the HUD Fair Housing Office and states that there were 103 state or local government fair housing enforcement agencies in place in 37 states at the end of the 2005 fiscal year. It also cites a few cases brought by the HUD Fair Housing Office.
 - The Report further discusses testing programs conducted by the Civil Rights Division of the Department of Justice under the “major new civil rights initiative”, Operation Home Sweet Home, to ensure non-discriminatory access in housing, public accommodations and credit.
 - The Report mentions that in addition to defending the right of all Americans to obtain housing, the Civil Rights Division of the DOJ has also brought suits related to financing for the purchase of homes, citing a case brought against Centier Bank for refusing to provide its lending services to residents in minority neighborhoods.

- **Education:**
 - The Report discusses school desegregation cases, but admits that many of them are decades old and that some have been inactive for years.
 - It discusses case reviews initiated by the Civil Rights Division, including a case initiated in the 1980s in Chicago and an even older case brought in North Carolina in the 1960s that was only resolved in 2005.
- **Enforcement of Anti-Discrimination Laws**
 - The Report briefly mentions a few racial and ethnic discrimination cases brought in U.S. territories.
 - When discussing state and local laws, the Report emphasizes that most states have civil rights or human rights commissions, and those that do not, administer their civil rights laws through their Attorney General's Offices.
 - The Report describes a "typical" civil rights process at the state level. It states that intake of inquiries and complaints is the first step, followed by investigation of complaints, mediation of disputes in some states, and if that is not successful, then conciliation. At this point either the case is settled or, if not, the case may go to a formal hearing, at which point the hearing officer, administrative law judge or commissioner renders a decision. Decisions can usually be appealed.
 - It provides statistics from eleven states on how many inquiries were received, how many charges filed, and what percentage of the cases involved employment discrimination, housing, or public accommodation complaints.
- **Enforcement Against Private Entities:**
 - The Report reiterates the reservation that the U.S. Government submitted upon ratifying CERD that its undertakings under the Convention are limited by the reach of constitutional and statutory protections under U.S. law, especially when it comes to enforcement against private entities. Specifically, the reservation states that "to the extent...that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures...with respect to private conduct except as mandated by the Constitution and laws of the United States."
 - The Report nonetheless claims that U.S. laws do prohibit private actors from engaging in racial discrimination in many circumstances, citing housing laws and using as an example a Kentucky law prohibiting discrimination in proprietary schools and private clubs.
- The Report then addresses its obligations to take measures to review **governmental, national and local policies** and to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination wherever it exists. In particular:
 - The Report states that President Bush has renewed several initiatives with the goal of promoting racial and ethnic equality, and cites the creation of the President's Board of Advisors on Historically Black Colleges and Universities and the Executive Order on Tribal Colleges and Universities.
 - The Report then addresses several Executive Branch departments, including:

- The Department of Justice – The Report discusses the Initiative to Combat Post 9/11 Discriminatory Backlash and policy guidance issued to ban federal law enforcement agents from engaging in racial profiling.
 - Equal Employment Opportunity Commission (EEOC) – The Report simply mentions an EEOC taskforce created to recommend improvements in the area of systemic discrimination cases.
 - Department of Homeland Security (DHS) – The Report asserts that there is consistent treatment and care for detainees that are in ICE custody.
 - Department of Housing and Urban Development (HUD) – The Report mentions that an Office of Systemic Investigations was established in 2005 to identify and resolve complaints of systemic discrimination in housing.
 - Department of Labor – Again, the Report mentions efforts to end systemic discrimination cases (which, in employment, are those that involve ten or more employees) but provides no examples or results of their efforts.
- The Report then addresses **specific initiatives and legislation** enacted since 2000 to increase and strengthen U.S. laws and programs in the areas of racial, ethnic and national origin discrimination. In particular, it addresses the areas of:
 - **Education:**
 - The Report cites the No Child Left Behind Act as a means of serving Hispanic students through translation services for parents.
 - It also mentions (again) the President’s Board of Advisors on Historically Black Colleges and Universities and the Executive Order on Tribal Colleges and Universities.
 - The Report also cites the No Child Left Behind Act as providing “an important framework” for improving the performance of all students.
 - It further mentions the D.C. Choice Incentive Program, which allows parents to apply for scholarships for their children to attend private and/or religious schools.
 - **Economic Incentives:**
 - The Government states that it has initiated a number of programs to support economic development and job competitiveness for minorities, and gives as an example the White House Initiative on Asian Americans and Pacific Islanders, among other programs.
 - The Government cites an outreach, education and coalition-building program to help educate America’s workforce and deter discrimination under the Freedom to Compete initiative.
 - **Health:**
 - The Report cites the Minority Health and Health Disparities Research and Education Act as addressing continued disparities in the rates of illness and death.
 - The Ryan White CARE Act is also mentioned for its provision of grants for treatment and prevention of AIDS.
 - The Minority AIDS Initiative is cited to increase resources targeted for minority HIV/AIDS prevention and treatment.

- **Other:**
 - The Report mentions efforts in the form of guidance from the EEOC on national origin discrimination, in particular in job hiring practices.
 - It also discusses various guidelines and policies that were issued to combat racial profiling by law enforcement officials but it makes no mention of enforcement mechanisms to ensure that racial profiling is punished.
 - The Report also mentions efforts to hold agencies accountable for violations of anti-discrimination and whistleblower protection laws.
- In addition, the Report addresses the measures taken to meet the CERD obligation to encourage integrationist multi-racial organizations and movements and **other means of eliminating barriers between races**, and to discourage anything that tends to strengthen racial division.
 - The Report mentions non-governmental organizations such as the Association of Multiethnic Americans (AMEA), the Anti-Defamation League, the National Conference for Community and Justice and the NAACP, among others.
 - It discusses many initiatives taken on by the federal Department of Justice Community Relations Service (CRS) as well, and in particular points out its information, outreach and conflict resolution services initiated after 9-11.
 - The Report also mentions the Bush Administration’s Faith Based and Community Initiative because it gives grants to religious organizations to help underserved populations.
- Finally, the Report provides information on measures taken to meet their obligations under CERD to take **special and concrete measures in the social, economic, cultural and other fields**, to ensure the adequate development and protection of certain racial groups or individuals that belong to them, to guarantee them the full and equal enjoyment of human rights and fundamental freedoms.
 - The Report emphasizes that there are many existing federal ameliorative (affirmative-action) measures that meet this requirement.
 - The Report mentions the Supreme Court decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger*, which upheld the University of Michigan Law School’s limited policy of considering race in its admissions process in order to create a diverse student body but struck down the undergraduate program’s admission policies that automatically awarded points to an applicant’s diversity score depending on the applicant’s race. The Report makes no mention of the Bush Administration’s efforts to fight both of these policies.
 - The Report also mentions that there is continuing debate over reverse discrimination in the United States.

Article 3 of CERD
Directs countries to condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

With respect to Article 3, the U.S. Government Report:

- States that racial segregation and apartheid are not permitted in the United States.

Article 4 of CERD

Requires countries to condemn and penalize all dissemination of propaganda and organizations that are based on ideas of superiority of one race or ethnic origin, or which incite racial hatred or violence.

With respect to article 4:

- The Report first claims that the American people reject all theories of superiority of one race or group of persons, as well as theories that attempt to justify or promote racial hatred and discrimination.
- The Report reiterates that the United States' ability to give effect to **the requirements of CERD in this respect are circumscribed by the protections provided by the U.S. Constitution for individual freedom of speech, expression or association**. It mentions that in the United States, speech intended to cause imminent violence may be constitutionally restricted, but even then, only under certain narrow circumstances.
- The Report states, however, that the U.S. has enacted statutes that prohibit acts of violence or intimidation (hate crimes) motivated by racial, ethnic or religious hatred. It also references examples of cases brought for hate crimes committed on the internet.
- It cites cases involving threats to bomb Islamic centers that drew sentences of two and three-year probations.
- In addition, the Report cites penal laws, including the laws against intimidation or injury based on race, and damage to religious property.

Article 5 of CERD

Mandates countries to prohibit and eliminate racial discrimination in the enjoyment of the rights, including political and civil rights and economic, social and cultural rights, among other things.

The Report reiterates that several economic social and cultural rights are not explicitly recognized as legally enforceable rights under U.S. law. It also states that U.S. law prohibits discrimination in the enjoyment of rights, to the extent they are provided in domestic law. The Report then addresses the following aspects of Article 5 of CERD:

- **The Right to Equal Treatment before the Tribunals and All Other Organs Administering Justice:**
 - With respect to equal treatment before tribunals, the Report cites the equal protection clause of the 14th Amendment of the U.S. Constitution as sufficient for protecting this right.
 - The Report cites the 6th Amendment of the Constitution as granting the right to counsel in federal criminal prosecutions. It does note, however, that defendants represented by publicly financed attorneys are incarcerated at a higher rate than those who paid for their own legal representation (88% compared to 77% in federal court and 71% compared to 54% in the most populous counties).
 - With respect to **discrimination by law enforcement**, the Report reiterates that the U.S. Constitution and federal statutes prohibit racially discriminatory actions. It states that private litigants may sue law enforcement agencies, but that the burden is on the plaintiff to demonstrate that the challenged police action had a discriminatory intent and that it was motivated by a discriminatory purpose.

- The Report mentions training given to DHS employees, including with respect to cultural awareness regarding Arabs and Muslims.
- While admitting that African Americans are disproportionately represented in the criminal justice system, the Report emphasizes that the rate of growth for African Americans in jail or prison is below that of whites and Hispanics.
- It cites statistics on **disparities in incarceration rates** of various ethnic groups from the Bureau of Justice Statistics. The Report cites two law review articles that conclude that such disparities are related primarily to differential involvement in crime (with some unexplained disparities, in particular related to drug use and enforcement) rather than to differential handling of persons in the criminal justice system.
- The Report addresses **disparities in sentencing** by discussing mandatory minimum sentencing guidelines, including for drug-related offences. It cites the *U.S. v Booker* Supreme Court case, which held that the federal sentencing guidelines could be advisory for judges, but not mandatory.
- With respect to **capital punishment**, the Report notes only that the number of death sentences has declined since 2000 and the categories of defendants against whom the death penalty may be applied has narrowed as a result of *Roper v. Simmons* (juvenile defendants) and *Atkins v. Virginia* (mentally retarded criminal defendants).
- The Report provides statistics noting the disproportionate representation of African Americans under the sentence of death, but gives no explanation for why or any indication of concern or what it plans to do about this.
- The Report emphasizes the use of the Civil Rights of Institutionalized Persons Act (CRIPA) to prosecute constitutional abuses, including allegations of torture, cruel, inhuman, and degrading treatment or punishment, or other abuse and provides some data on how many investigations have been initiated.
- **The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution:**
 - The Report focuses on the incidence and prosecution of racially-motivated **hate crimes** carried out by private individuals. It barely mentions police brutality.
 - The Report discusses community outreach programs to educate and provide information and resources on racial and cultural conflict issues between law enforcement and Arab, Muslim and Sikh Americans.
 - The Report gives some indication that the number of hate crimes has increased in recent years in certain states while it has decreased in others.
- **Political Rights and Other Civil Rights:**
 - With respect to political rights, including voting rights, and information on the means to guaranteeing these rights, the Report cites the Help America Vote Act (HAVA) as seeking to improve the administration of elections.
 - It also mentions the increased number of federal Justice Department **election monitors** in the 2004 and 2006 elections.
 - The Report says that the Civil Rights Division brought lawsuits challenging **racially discriminatory election systems** in Osceola County, FL, Euclid, OH, and Post Chester, NY, but it largely ignores the irregularities in Florida and Ohio in the 2004 elections.
 - On the topic of **disenfranchisement of convicted criminals**, the Report asserts that criminal disenfranchisement is allowed by the 14th Amendment of the Constitution and is valid because the suspension of voting rights does not stem from a person's membership in a racial group, but rather on the basis of criminal acts perpetrated by

the individual. It does not discuss how this translates into a disproportionate impact on African-American men in particular.

- The Report briefly addresses the issue of voting rights for residents of the District of Columbia by allowing that there is debate and that any change would require a constitutional amendment.
- The Report gives some statistics about **the number of elected officials and judges that are minorities**. It noted an increase in the number of minorities in these positions, though does not address the fact that the increases are modest for most minority groups.
- With respect to the other rights, including the right to freedom of movement and residence, the Report simply states that these rights are guaranteed to all persons in the United States. It makes no mention of Hurricane Katrina and the denial of many of these rights for all affected (who were disproportionately African American).
- **The Right to Work:**
 - The Report gives overall poverty rates disaggregated by race. However, it only gives such rates on gender for Hispanics and African Americans in making the point that women of these minority groups had a higher representation in management and professional positions than men of the same groups.
 - The Report states that the **unemployment rates** were highest for African Americans, followed by Hispanics. Asians had a lower unemployment rate than non-Hispanic Whites.
 - It states that the poverty rate for African Americans and Hispanics has lowered slightly since 1998, while the rate for non-Hispanic Whites rose from 8.2 to 8.6. It does not address disproportionate representation of black and Hispanics in poverty (24.9 and 21.8 respectively).
 - The Report points to the EEOC, Justice Department, individual states, and Department of Labor as enforcing **employment discrimination** laws. It gives the number of claims filed in 2006 and the amount of awards granted by courts in such cases. It notes that race discrimination accounted for 36 percent of all charges.
 - The Report cites a Gallop poll conducted in 2005, the results of which showed that 15 percent of all workers perceived that they had been subjected to some sort of discriminatory or unfair treatment.
 - The Report touts the fact that **minority-owned businesses** represent the fastest-growing segment of the nation's economy.
 - In terms of **protection of U.S. citizens and legal immigrants from employment discrimination on the basis of national origin**, the Report cites the Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) and reports on the settlements it has reached in recent years, the amount of money it gave to non-profit groups and its grant programs to fund public education programs.
 - The Report also mentions that in 2005 the jobless rate among immigrants fell below that of U.S.-born workers.
- **The Right to Join Trade Unions:**
 - The Report states that the right to form and join trade unions is protected by the U.S. Constitution and by statute, but it does not mention the fact that the Government has not taken any affirmative actions to stop union busting (such as at Wal-Mart).

- **The Right to Housing:**
 - The Report again states that federal and state law guarantee a right to equal opportunities in housing and prohibit discriminatory practices in the sale and rental of housing, as well as mortgage lending and insurance markets.
 - The Report claims that the right to housing and mortgage financing without discrimination are enjoyed in practice throughout the U.S., and where violations of these rights occur, federal and state authorities prosecute the offenders.
 - It discusses the creation of a Minority Housing Initiative at HUD with a mandate to vigorously enforce against predatory lending but doesn't give examples on how this has been done.
 - It mentions funds that HUD uses to investigate allegations of **housing discrimination**, to educate the public and housing industry concerning housing discrimination laws and to work to promote fair housing.
 - The Report also mentions HUD's newly-established Office of System Investigations (OSI) to investigate discriminatory practices that have potentially nationwide impact or otherwise affect large numbers of people.
 - It further discusses the Administration's 2003 **homeless assistance fund** but mentions that it is not aimed specifically at racial or ethnic minorities.
 - It also cites a HUD initiative to improve access to housing services for persons with limited English proficiency but does not give any specifics about what has actually been done.
 - The Report notes that **Native Americans** experience some of the worst housing conditions in the nation and mentions the enactment of the Native American Housing Enhancement Act of 2005 to address this problem.
 - A few other HUD programs are mentioned, including the Fair Housing Assistance Program (FHAP), HOME, which provides block grants to state and local governments for construction or rehabilitation of rental units or housing for ownership, among other things, and the Housing Choice Voucher Program.
 - **Hurricane Katrina** is mentioned briefly in this section when the Report acknowledges the disparate effect it had on housing for minority residents in New Orleans.
 - It suggests that post-Katrina problems are a result of poverty rather than racial discrimination but notes overlap between poverty and race.
 - It cites Operation Home Sweet Home as an effort to combat these problems in New Orleans and mentions that HUD has a number of efforts to enforce against discrimination in relocation housing.
- **The Right to Public Health, Medical Care, Social Security and Social Services:**
 - The new Medicare Modernization Act is touted as potentially reducing racial disparities, as it covers preventive care including screening for heart disease, cancer, depression and diabetes that disproportionately affect people of color.
 - The Report mentions **disparities** in the prevalence of diabetes in American Indians and Alaska Natives, the death rate for cancer among African-Americans, and the infant mortality rate in African-American communities as compared to White communities.
 - The Report mentions commissioning the Institute of Medicine (IOM) to understand racial disparities in health, and states that the HHS Secretary Michael O. Leavitt has moved forward on implementing some of the study's recommendations. It would be

helpful to know how much was allocated to this issue as compared to other efforts such as the war on drugs.

- The Report also mentions the National Leadership Summit for Eliminating Racial and Ethnic Disparities in Health held in January 2006.
- **Environmental Justice:**
 - The Report mentions that federal agencies continue to address issues concerning the environmental impacts of activities such as the locating of transportation projects and hazardous waste clean-up projects on certain population groups, but it provides no examples.
 - Moreover, the examples that are given of where the National Environmental Policy Act (NEPA) has addressed “environmental justice” do not seem to be race-related.
 - The Report cites the controversy over the U.S. Navy’s former bombing of Vieques Island in Puerto Rico and its subsequent termination.
- **The Right to Education and Training:**
 - The Report states that racial segregation in education has been illegal in the U.S. since *Brown v. Board of Education*, and that the Department of Justice Civil Rights Division continues to monitor compliance.
 - The Report also cites the Office for Civil Rights (OCR) within the Department of Education as being the primary federal agency (along with the DOJ) responsible for enforcing the anti-discrimination laws in the context of education.
 - The **No Child Left Behind Act** is cited as designed to close achievement gaps between students of different races.
 - The Report states that data from the 2005 National Assessment of Education Progress report shows that although achievement gaps between White and minority students continue to exist for all groups except Asians and Pacific Islanders, the gaps are beginning to narrow, even as student populations are becoming more diverse.
 - The Report mentions that the No Child Left Behind Act requires states to develop English language proficiency standards and carry out annual assessments of students learning English as a second language.
 - There is no mention of disparities in school disciplinary policies.
- **The Right to Equal Participation in Cultural Activities and the Right to Access to Places of Service:**
 - The Report states that the rich and diverse cultural heritage of the U.S. has become even broader and deeper as the U.S. has become increasingly multi-racial and multi-cultural. It mentions that the U.S. Government has supported the building of two cultural museums.
 - The Report cites a few public accommodations cases since 2000, including one against Cracker Barrel that was settled in 2004.

Article 6 of CERD

Mandates countries to provide effective institutional protections and remedies against any acts of racial discrimination and to seek just and adequate reparation, including financial compensation, for any damage suffered as a result of discrimination.

With respect to Article 6 of CERD:

- The Report explains that there are remedies for discrimination claims through private and civil suits, as well as criminal prosecution and administrative proceedings. It also cites the Office for Civil Rights in the Department of Education, the EEOC and HUD as institutions that provide policy oversight.

Article 7 of CERD

Requires countries to adopt measures that combat prejudices that lead to racial discrimination; promote racial understanding and tolerance; and teach the principles embodied in the Universal Declaration of Human Rights and other human rights conventions.

With respect to Article 7 of CERD:

- The Report states that “many” schools in the United States feature **human rights education** as an important part of their curricula and that a number of NGOs have assisted schools in providing appropriate human right coursework.
- The Report also mentions that the No FEAR law enacted in 2002 requires that all federal managers receive **diversity training**, and that law enforcement officers receive regular diversity training. The Report states that the amount and scope of such trainings has increased significantly since 9-11.
- The Report mentions that various Departments and agencies have put together fact sheets and other **documents and publications** designed to ensure that the issue of discrimination is kept in the consciousness of the American public.
- It also mentions the movie “Crash” as an example of how racial and ethnic prejudice have been the focus of attention in the media.
- When addressing how the U.S. Government promotes understanding, tolerance and friendship among nations, the Report mentions the Voice of America, Radio Free Europe and Radio Liberty, among others, as means of broadcasting information on rule of law, tolerance and other topics related to combating racism and promoting tolerance abroad. It also mentions study abroad programs and the Fulbright Program as promoting these goals.

Conclusion

- The Report concludes by saying that the United States Government is aware of the challenges brought about by the historical legacy of racial discrimination and more recent challenges, but it continues to work towards the goals of eliminating discrimination.

Committee Comments and Recommendations

This section of the Report attempts to respond to the CERD Committee’s concerns and recommendations set forth in its concluding observations to the 2001 Initial U.S. Report:

- The Committee expressed concern about the absence of any specific legislation that implements the provisions of CERD in U.S. domestic law. The U.S. Government responds in the Report that “measures” to implement the Convention have been and continue to be taken even though no specific legislation has been adopted.
- The Committee expressed concern about the far-reaching reservations that the U.S. submitted at the time it signed onto CERD, and in particular one reservation about Article 4

of the Convention, which requires that countries prohibit the dissemination of all ideas based upon racial superiority or hatred. In response, the Government reiterates that the U.S. Constitution's protection of **free speech** serves to "preserve an uninhibited marketplace of ideas where truth will ultimately prevail". It mentions Supreme Court decisions upholding the suppression of free speech when it is particularly hateful and dangerous.

- The Committee reminded the United States about the need to ensure that practices and legislation that were discriminatory in effect, if not in purpose, were eliminated. The U.S. Government responds by stating that claims that seemingly neutral laws have a **disparate impact** can be brought under the Voting Rights Act of 1965, Title VII of the 1964 Civil Rights Act, and the federal regulations implementing Title VI of the 1964 Civil Rights Act. It cites cases on facially neutral employment practices as evidence of this. However, there is no mention of drug laws, the death penalty, etc., which have clear discriminatory effects.
- The Committee also noted the incidents of **police violence and brutality** against minority groups and foreigners. To this, the Report states that the U.S. Government has stepped up training of law enforcement with a view to combating prejudice that may lead to violence.
- The Committee also noted concern regarding the **high incarceration rates** of African Americans and Hispanics and urges the Government to ensure that the socio-economic marginalization of these populations does not result in these high incarceration rates. To this, the Government responds that the assumption that the existence of differing incarceration rates is due to a failure to grant equal treatment before the courts is inaccurate.
- The Committee expressed concern about the correlation between the race of the victim and defendants in criminal cases in terms of the **imposition of the death penalty**. The Government does not respond to this concern, other than to say that capital punishment is only imposed in the most egregious cases.
- The Committee further expressed concern about the persistent disparities in the ability of people to enjoy the **right to housing, education, and healthcare** in the United States. The Government responds to this concern by reiterating that these are not rights explicitly recognized as legally enforceable but nonetheless offers that special measures are provided for education, business development, and contracting.
- The Committee expressed concern about treaties signed between the Government and **Native American Indian tribes**, and in particular the ability of Congress to unilaterally abrogate them. The Government responds by providing a history of the increased property rights given to Indian tribes and an explanation of the Shoshone claims briefly in this section of the Report and in more detail in its Annex II.

Annexes I, II and III

In addition to its 121-page Report, the U.S. Government submitted three annexes, providing examples of state civil rights programs (Annex I), background on the claims brought by Shoshone descendants (Annex II) and some examples of relevant domestic legislation that has been passed since the 2001 Initial U.S. Report (Annex III).

- Annex I to the Report describes state civil rights laws and programs in four states (apparently chosen at random): Illinois, New Mexico, Oregon and South Carolina. Notably, it does not address states in the Deep South, which face some of the most severe race

issues, nor does it discuss states with large immigrant populations like Texas or California. Finally, it does not mention any of the states primarily affected by Hurricane Katrina.

- Annex II provides background information on the dispute over land title and use questions brought by descendants of the Western Shoshone. It explains the U.S. Government's view that the issues surrounding the case do not implicate its obligations under CERD.
- In Annex III, the U.S. Government cites laws that have been recently adopted, but does not discuss what is missing in domestic law.