

# BRIEF OVERVIEW OF THE 2007 US STATE REPORT ON CERD

Human Rights Project  
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## SUBMISSION TO COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

*Not many people in the United States are familiar with the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**, and fewer still are familiar with the United Nations Committee on the Elimination of Racial Discrimination (Committee) set up to oversee its implementation. CERD is an international law that requires countries that have ratified (formally agreed to) it to take pro-active steps to eliminate all forms of racial discrimination. In 1994, the United States signed onto CERD, thus adopting one of the few international legal tools that we now have to expose and address racism in America.*

A complete version of the United States Report to CERD can be accessed at  
<http://hrpujc.org/documents/USReporttoCERD.pdf>

## WHAT IS THE UNITED STATES REPORT TO CERD?

As one of its obligations under CERD, the United States Government is required to submit a periodic report 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 2007 Report to the Committee in April.** This is only the second time the United States has submitted a report since it ratified (formally agreed to) CERD in 1994. Its initial report was submitted to the Committee in September 2000, and oral presentations were made to the Committee in August 2001.

## WHAT IS A SHADOW REPORT?

The United States submission of its second report presents a rare opportunity for racial justice activists to expose the hypocrisy surrounding race in the United States to the world. In addition to the United States Government's Report, the Committee is also accepting reports from activists to supplement the information that the Government presented in its Report. The reports submitted by activists are called "**shadow reports**". The Committee depends on the information provided by activists to guide its questioning of the United States when it makes oral presentations.

## HRP'S BRIEF NOTES ON THE US REPORT TO CERD

The purpose of the following outline is to provide organizers with a quick overview of the Report that the Government submitted. While it is by no means exhaustive, we hope this overview will inspire many to read the full report, or at least sections that are of interest. More importantly, we hope you fill in any gaps you identify in the information provided in the Report, by participating in the shadow reporting process.

### HOW IS THE UNITED STATES REPORT ORGANIZED?

The Report responds to specific articles of CERD, as well as to comments and recommendations made by the Committee in response to the Government's 2001 report. The Report also has three attachments: Annex I provides examples of State Civil Rights programs. Annex II provides the government's take on the Western Shoshone case. Annex III provides information on various domestic laws that the United States claims implement CERD. Annex summaries are not included in this brief overview.

## PART I ► LEGAL STRUCTURES AFFECTING IMPLEMENTATION

In Part I of its Report, the Government provides general information about the population of the United States, including socio-economic data on various ethnic groups, statistics on high school and college attendance rates and information about the political structure of the United States. The Government makes a number of claims in Part I of its Report, including the following:

- The Constitution and other United States laws are sufficient measures to address discrimination.
- The Office of Civil Rights and Civil Liberties, a section of the Department of Homeland Security (DHS), is one of the domestic institutions that protects against racial discrimination. *Please note that if you have had any contact with this office, now would be a good time to provide information on your experience.*
- The main factor affecting implementation of CERD is subtle discrimination against Muslims or persons of Arab, Middle Eastern or South Asian descent post the attacks of 9-11. *There is oddly no mention of our legacy of slavery and Jim Crow laws, nor the recent backlash against immigrants of color including vigilante groups like the minute men.*

## PART II ► ARTICLES 2-7

**Article 2 of CERD** - *Calls for the use of all appropriate measures including legislation to eliminate racial discrimination and ensure that all public actors conform to this obligation, among other things.* In response to this Article in its Report, the Government offers some examples of lawsuits it has initiated to protect people against discrimination in the areas of:

- **Employment**, including lawsuits investigating patterns and practices of employment discrimination such as the use of unnecessary reading and writing tests that have the effect of disqualifying people of color from some jobs.
- **Education**, and cites the No Child Left Behind Act as a measure to bring an end to racial disparities in education achievement, noting its requirement of free translation services. *The Government also mentions a number of open school desegregation cases—many of which are decades old—but does not give any explanation for why they have been inactive or closed.*
- **Affirmative measures to promote racial equality**, mentioning the Grutter v. Bollinger and Gratz v. Bollinger cases at the University of Michigan Law School. *Ironically, it makes no mention of the administrations efforts to fight these cases.*
- **Healthcare**, citing the Minority Health and Health Disparities Research and Education Act as addressing continued racial disparities in the burden of illness and death, and
- **Housing**

**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.* In response to this Article in its Report, the Government reports that such practices are not permitted in the United States.

**Article 4** - 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 this Article, the Government insists that, consistent with the limitations of the Constitution regarding individual freedom of speech, expression and association, the United States has enacted laws that prohibit violence or intimidation motivated by racial, ethnic or religious hatred. The Government also states the speech intended to cause imminent violence may constitutionally be restricted, but only under certain narrow circumstances.

The Government's claim here seems odd, given that speech protesting the war and president have been restricted regularly in the past few years.

**Article 5** - 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.

In the part of its Report that responds to this Article, the Government makes the point that United States law prohibits discrimination in the enjoyment of rights recognized under law. Specifically, the Government reports that:

- People who claim discrimination by law enforcement agents may sue but must demonstrate that the challenged police action had a discriminatory effect and was motivated by a discriminatory purpose. **In other words, the burden of proof is on the victim. The report does not mention any recent cases of police brutality including the Sean Bell shooting, and focuses mainly on racially motivated crimes by private actors.**
- African Americans are disproportionately represented in incarceration and on death row. **The Government provides no analysis, explanation or concern for this, nor any plans for resolving it.**
  - The report mentions that criminal disenfranchisement is allowed by the Constitution and is not based on race but rather criminal activity. **However, no analysis is provided for the disproportionate disenfranchisement of people of color.**
  - The poverty rate for African-Americans and Hispanics has decreased slightly since 1998, but does not address disproportionate representation of blacks and Hispanics in poverty (24.9 and 21.8 respectively)
  - Notes that United States law guarantees all persons equal rights to form and join trade unions, **but makes no mention of affirmative actions the government has taken to stop union busting at big corporations like Walmart.**
- The report claims that the right to housing and mortgage financing without discrimination are enjoyed in practice throughout the US, and where violations of these rights occur, federal and state authorities prosecute the offenders.
- Discusses the creation of a Minority Housing Initiative at HUD with a mandate to vigorously enforce against predatory lending, **but gives no examples of how this has been done.**
- Notes that Native American experience some of the worst housing conditions in the nation and refers to the enactment of the Native American Housing Enhancement Act of 2005 to address this problem.
- 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 Government reiterates that several economic, social and cultural rights are not explicitly recognized as legally enforceable rights under US law.

Katrina is mentioned once in the whole 121 page document. Where the Katrina disaster is mentioned, the Report only suggests that post-Katrina problems are a result of poverty rather than racial discrimination, but notes an overlap between poverty and race. It offers Operation Home Sweet Home as its effort to combat these problems and mentions that HUD has a number of efforts to enforce against discrimination in relocation housing. There is no mention of the need to classify internally displaced persons by Katrina, and efforts to aid their return, nor is there any mention of the effects of gentrification in displacing people from their communities & homes.

**Article 6** - 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.

*In its response to this Article in its Report, the Government makes no mention of recent court decisions that have scaled back the ability to enforce one's rights particularly against state governments e.g. Alexander v. Sandoval.*

**Article 7** - 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.

As a response to fulfilling its obligation to adopt immediate and effective measures, particularly in the fields of teaching, culture, and information, with a view to promoting understanding and tolerance, the Report claims that:

- Schools have implemented human rights curriculum with the help of Amnesty International.
- Racial and ethnic prejudice has been the focus of attention in the media, and cites the movie "Crash" as an example of this.

**Grasping for straws??** Why does the Government cite the movie "Crash" in its report?

### PART III ► COMMITTEE COMMENTS AND RECOMMENDATIONS FROM 2001

The Committee took note that the U.S. must ensure that practices and legislation that were discriminatory in effect, if not in purpose, were eliminated. *The Report responds to this recommendation by stating that claims of 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.* The committee noted concern regarding the high incarceration rates of African Americans and Hispanics and urged 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. *With respect to special measures to ensure equality in enjoyment of the right to housing, education, and healthcare, the Government reiterates that these are not rights explicitly recognized as legally enforceable but nonetheless offers that special measures are provided for education, business development, and contracting.*