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Committee on the Elimination of Racial Discrimination**Concluding observations on the combined tenth to twelfth reports of the United States of America***

1. The Committee considered the combined tenth to twelfth periodic reports of the United States of America,¹ submitted in one document and presented by the State party during its fourth appearance before the Committee, at its 2899th and 2900th meetings,² held on 11 and 12 August 2022. At its 2916th meeting, held on 24 August 2022, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined tenth to twelfth periodic reports of the State party. It also welcomes the constructive dialogue with the State party's large and high-level delegation and thanks the delegation for the information provided during the consideration of the report and for the additional written information submitted after the dialogue.

B. Positive aspects

3. The Committee welcomes legislative and policy measures taken by the State party, including the following:

(a) Executive Order 14074 on Advancing effective, accountable policing and criminal justice practices to enhance public trust and public safety, of 25 May 2022;

(b) Executive Order 13985 on Advancing racial equity and support for underserved communities through the Federal Government, of 20 January 2021;

(c) Proclamation 10141 on Ending discriminatory bans on entry to the United States, of 20 January 2021;

(d) Executive Order 14019 on Promoting Access to Voting, of 7 March 2021;

(e) COVID-19 Hate Crimes Act, of 20 May 2021;

(f) Executive Order 14053, on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People, of 15 November 2021;

(g) The Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act (First Step Act), of 21 December 2018.

* Adopted by the Committee at its 107th session (8 – 30 August 2022).

¹ CERD/C/USA/10-12

² See CERD/C/SR.2899 and CERD/C/SR.2900.

C. Concerns and recommendations

Convention in the domestic legal order

4. The Committee remains concerned at the absence of specific legislation implementing the provisions of the Convention in the domestic legal order and that the Convention is absent from the main and recent policies related to the elimination of racial discrimination and the resulting equity plans. While noting the applicability of the disparate impact doctrine in certain fields of life, the Committee remains concerned at its limited scope and applicability and that it is not encompassed comprehensively on a legal level, including the Constitution, and that accordingly, indirect discrimination can oftentimes not be addressed in court. In this regard, the Committee reiterates its concern that the definition of racial discrimination used in federal and state legislation and in court practice, is not always in line with article 1, paragraph 1, of the Convention. While taking note of the information provided in the State party's periodic report on the implementation of the Convention in American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and Wake Island,³ the Committee regrets the lack of sufficient information on how persons residing in these territories enjoy their rights under the Convention, without discrimination and on equal footing with those residing in the mainland, taking into account the special status of these territories (art. 1).

5. The Committee reiterates its recommendation that the State party undertake all necessary measures to ensure the consistent application of the provisions of the Convention at the federal, state and local levels, including by adopting specific legislation implementing the Convention.⁴ The Committee also reiterates its recommendation that the State party prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life, and ensure effective protection against any form of racial discrimination and any unjustifiably disparate impact, in accordance with the Convention and general recommendation No. 14 (1993).⁵ The Committee draws the attention of the State party to its obligation under article 1, paragraph 1, of the Convention to undertake to prohibit and to eliminate racial discrimination in all its forms, including with regard to legislation and practices that may not be discriminatory in purpose, but in effect. The Committee requests the State party to provide, in its next periodic report, more comprehensive information on the implementation of the provisions of the Convention in the territories referred to in paragraph 4.

6. While noting the information provided in the State party's report,⁶ the Committee remains concerned about the wide scope of its reservation to article 2 of the Convention with respect to discriminatory acts perpetrated by private individuals, groups or organisations (art 2).⁷

7. The Committee reiterates its recommendation 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 law against all discriminatory acts perpetrated by private individuals, groups or organizations.⁸

Special measures

8. The Committee takes note of the information provided by the State party concerning the adoption of special measures in higher education and in access to government contracting, such as the 8(a) Business Development Program. However, the Committee remains concerned about legislative and other measures adopted at the state level banning or restricting the use of affirmative action measures to address persistent disparities affecting

³ CERD/USA/10-12, para. 136.

⁴ A/56/18, para. 390.

⁵ CERD/C/USA/CO/7-9, para. 5; A/56/18, para. 393.

⁶ CERD/C/USA/10-12, paras. 2 and 11.

⁷ CERD/C/USA/CO/7-9, para. 5.

⁸ CERD/C/USA/CO/7-9, para. 5.

racial or ethnic groups in the enjoyment of human rights and fundamental freedoms (art. 1(4) and 2(2)).

9. The Committee reiterates its recommendation that the State party adopt and strengthen the use of special measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms by racial or ethnic minorities or individuals belonging to them.⁹ The Committee recalls that, in accordance with its general recommendation No. 32 (2009), federal authorities are responsible for designing a framework for the consistent application of special measures in all parts of the State and that these measures should be designed and implemented on the basis of prior consultation with, and the active participation of, affected communities.

Institutional framework and national action plan to combat racial discrimination

10. The Committee regrets again the lack of progress on the establishment of an institutionalized coordinating mechanism with a mandate to ensure the effective implementation of the Convention at the federal, state and local levels. Reiterating the role that an independent national human rights institution can play in that regard, the Committee remains concerned that such an institution does not exist in the State party. In this regard, the Committee notes with appreciation the indication of the State party's delegation that a recommendation on the establishment of a national human rights institution is taken under advisement to the extent that it can be executed under the executive authority of the President (art. 2).

11. The Committee reiterates its recommendation that the State party create a permanent and effective coordinating mechanism, such as a national human rights institution established in accordance with the Paris Principles, with the mandate to ensure implementation of the Convention and monitor compliance with its provisions throughout the State party and the territories under its control.¹⁰

12. While noting the information provided by the State party on the adoption of a whole-of-government equity agenda and resulting equity action plans by more than ninety federal agencies, the Committee reiterates its regret regarding the absence of a national action plan to combat systemic and structural discrimination (arts. 2 and 7).

13. The Committee reiterates the recommendation that the State party adopt a national action plan to combat systemic racism and structural racial discrimination in a coherent and comprehensive manner.¹¹ The Committee also recommends that the State party launch a process of consultation with all relevant stakeholders with a view to preparing such a national plan, in particular with individuals and groups of society affected by racial discrimination.

Racist hate crimes and hate speech

14. The Committee takes note of the establishment of the White House Task Force to Address Online Harassment and Abuse in June 2022. The Committee is, however, concerned about reports indicating a significant increase of hate crimes, including mass shootings, against racial and ethnic minorities and non-citizens, in particular people of African descent, Indigenous Peoples, persons of Hispanic/Latino origin and Asian descent, and ethno-religious communities, as well as of hate speech incidents, including on the Internet and social media, and by politicians and public figures. The Committee is also concerned about reports of increased racially or ethnically motivated activities promoted by violent groups, including white supremacist organizations. In this context, the Committee remains concerned about: a) the wide scope of the reservations to article 4 of the Convention and the lack of prohibition of racist hate speech, except for instances amounting to "true threats", which undermine an effective fight against racist hate speech; b) the absence of statistical information regarding racist hate speech; c) the underreporting of instances of hate crimes by

⁹ CERD/C/USA/CO/7-9, para. 7.

¹⁰ CERD/C/USA/CO/7-9, para. 6.

¹¹ CERD/C/USA/CO/7-9, para. 25.

law enforcement officials to the FBI, due to the voluntary nature of such reporting; and, d) the lack of prohibition of organizations that promote and incite racial hatred as required by the Convention (art. 4).

15. The Committee recommends that the State party strengthen its efforts to combat racist hate crimes and hate speech effectively, including by:

(a) Considering withdrawing or narrowing its reservation to article 4 of the Convention and adopting all necessary measures to prevent, condemn and combat racist hate speech, including on the Internet and social media, and by politicians and public figures;

(b) Setting up a comprehensive data-collection system on racist hate speech incidents so as to assess the magnitude of the problem and the impact of the measures adopted by the State party;

(c) Intensifying its actions to tackle the prevalence of racist hate speech on the Internet and social media, in close cooperation with Internet service providers and social networking platforms and the groups most affected by racist hate speech;

(d) Making the racist hate crime reporting to the FBI mandatory for all law enforcement agencies or conditioning the granting of federal funds to such reporting;

(e) Continuing to provide mandatory training on preventing and combatting racist hate speech and hate crimes to law enforcement officials at all levels;

(f) Declaring illegal and prohibiting organizations that promote and incite racial hatred.

Gun violence

16. While noting the measures adopted to address gun violence, including the comprehensive strategy to reduce gun crime of 23 June 2021 and the Bipartisan Safer Communities Act of 25 June 2022, the Committee remains concerned at the substantial increase of gun-related deaths and injuries, which disproportionately affects racial and ethnic minorities, particularly people of African descent, Indigenous Peoples and persons of Hispanic/Latino origin and Asian descent (art. 5).

17. The Committee urges the State party to strengthen its legislative and policy measures, as well as their implementation, in order to prevent and reduce gun violence and fulfil its obligation to protect the right to life and the security of person, including by expanding background checks for all private firearm transfers; banning assault weapons and high-capacity magazines; prohibiting the practice of carrying concealed handguns in public venues; increasing transparency concerning gun use in crime and illegal gun sales, including by repealing the Tiahrt Amendments; and reviewing the “stand your ground” laws to ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.

Racial profiling

18. The Committee welcomes the acknowledgement by the delegation of the State party that racial profiling is illegal, not effective and has no place in law enforcement. However, the Committee remains concerned at the persistence of the practice of racial profiling by law enforcement officials, including from the Customs and Border Protection and the Immigration and Customs Enforcement, and at the lack of legislation explicitly prohibiting that practice (arts 2, 4, 5 and 6).

19. Recalling its general recommendation No. 36 (2020), the Committee reiterates the recommendation that the State party intensify efforts to effectively combat and end the practice of racial profiling by law enforcement officials at all levels of government, including by:¹²

¹² CERD/C/USA/CO/7-9, para. 8.

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

(b) **Promptly revising policies insofar as they permit or enable racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity;**

(c) **Ending immigration enforcement programmes and policies which indirectly promote racial profiling, such as the Immigration and Nationality Act 287(g) programme;**

(d) **Undertaking prompt, thorough and impartial investigations into all allegations of racial profiling, surveillance, monitoring and illegal intelligence gathering; holding those responsible accountable; and providing effective remedies to the victims;**

(e) **Putting in place a comprehensive data-collection system for all incidents, complaints and investigations of racial profiling by law enforcement officials.**

Excessive use of force by law enforcement officials

20. The Committee notes the efforts made by the State party to combat systemic racism in the context of law enforcement, including Executive Order 14074 of 25 May 2022. However, it remains concerned at the brutality and use of excessive or deadly force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on people of African descent, Indigenous Peoples, persons of Hispanic/Latino origin and Asian descent, and undocumented migrants. Despite the measures taken by the State party, the Committee also remains concerned that impunity for abuses by police and Customs and Border Protection officers continues to be a widespread problem (arts. 2, 4, 5 and 6).

21. The Committee urges the State party to:

(a) **Adopt or review federal and state legislation regulating the use of lethal force by law enforcement officials, ensuring that they are in line with international law and international standards, and condition the granting of federal funds to the adoption of such laws;**

(b) **Improve reporting of cases involving excessive use of force and ensure that reported cases are promptly and effectively investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation;**

(c) **Create or strengthen independent oversight bodies to ensure accountability of law enforcement officials for inappropriate use of force;**

(d) **Provide adequate and continuous training to law enforcement officials, including on de-escalation techniques and on relevant international standards such as the Code of Conduct for Law Enforcement Officials, the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(e) **Ensure that data collection and reporting of cases of excessive or deadly use of force by law enforcement officials to the FBI database is mandatory, public, and that it is disaggregated by age, sex, race and ethnicity of the perpetrators and the victims.**

Peaceful assembly

22. The Committee is concerned about reports of increasing legislative measures and initiatives at the state level that unduly restrict the right to peaceful assembly following anti-racism protests in recent years, such as the HB1 Combating Public Disorder law in Florida.

The Committee is also concerned about allegations of excessive use of force by law enforcement officers and private security companies against members of racial and ethnic minorities, particularly people of African descent during anti-racism protests and Indigenous Peoples when protesting in defence of their rights. The Committee is further concerned about allegations of harassment and surveillance by law enforcement officials, including online, against human rights defenders belonging to racial and ethnic minorities (art. 5).

23. The Committee recommends that the State party take all necessary measures to ensure the exercise of the right to peaceful assembly without any discrimination on the grounds of race, colour, descent, or national or ethnic origin. The Committee also recommends that the State party investigate allegations of excessive use of force during peaceful protests and of harassment, surveillance and threats against human rights defenders of racial and ethnic minorities by law enforcement officers. The Committee further recommends that the State party develop and adopt legislation and strengthen its measures to protect human rights defenders, including those working on the rights of racial and ethnic minorities, Indigenous Peoples, and non-citizens.

Voting rights

24. The Committee notes the measures adopted by the State party to ensure equal access to vote such as Executive Order 14019 of 7 March 2021. However, the Committee is concerned about the increase in legislative measures and practices that effectively constrain the exercise of the right to vote with a disproportionate impact on people of African descent, Indigenous Peoples, persons of Hispanic/Latino origin and other ethnic minorities, such as burdensome voter identification requirements; substantial restrictions on early voting, voting by mail, or by absentee ballots; criminalization of ballot collection; district gerrymandering; limited access to language assistance other than English; and felon disenfranchisement laws at the state level. The Committee is further concerned by Supreme Court decisions that have weakened procedural safeguards to effectively protect the right to vote and have particular discriminatory impact on racial and ethnic minorities, such as *Brnovich v. Democratic National Committee* (2021) and *Shelby County v. Holder* (2013). The Committee reiterates its concern that residents of the District of Columbia (D.C.), the majority of whom belong to racial and ethnic minorities, are denied the right to vote for and elect voting representatives to the US Senate and House of Representatives (art. 2 and 5).

25. The Committee recommends that the State party:

(a) Adopt all necessary measures, including federal legislation, to facilitate access to voting and eliminates unreasonable restrictions to the exercise of the right to vote, particularly those affecting ethnic and racial minorities and Indigenous Peoples;

(b) Fully restore the Voting Rights Act and increase funding and other resources for federal agencies to enforce federal voting rights legislation and to take all necessary measures to ensure that every person can effectively exercise their right to vote;

(c) Ensure that all states reinstate voting rights for persons convicted of felony who have served their sentences or are on parole; provide inmates with information about voting restoration options; and review automatic denial of the right to vote to imprisoned felons;

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

Criminal justice system and juvenile justice system

26. The Committee takes note of the adoption by the State party of the First Step Act in December 2018 to address racial disparities in the criminal justice system, which has resulted in the reduction of the Federal prison population. The Committee, however, remains concerned that persons belonging to racial and ethnic minorities, including women, are overrepresented in the criminal justice system; disproportionately arrested, incarcerated, held in solitary confinement for very long periods; subjected to the use of chemical agents as pepper spray; and subjected to harsher sentences, including life imprisonment without parole and the death penalty. The Committee is also concerned about reports indicating that the

overrepresentation of racial and ethnic minorities in prison results in high proportions of convicted inmates from these minorities to be subjected to prison labour without just and favourable remuneration and other basic labour protections. It also takes note of the disparate impact of collateral consequences of incarceration on racial and ethnic minorities, for example with regard to access to housing and employment, welfare bans and the risk of deportation (arts 2, 5 and 6).

27. The Committee remains concerned at the overrepresentation of racial and ethnic minorities, particularly children of African descent and Indigenous children, in the juvenile justice system. It also remains concerned at the disproportionate rate at which youths from racial and ethnic minorities are prosecuted as adults and sentenced to life imprisonment without parole in some states (arts 2, 5 and 6).

28. Recalling its General Recommendation No. 31 (2005), the Committee urges the State party to take concrete and effective measures to eliminate racial disparities at all stages of the criminal justice system and the juvenile justice system, by, *inter alia*:

(a) **Amending laws and policies leading to racially disparate impacts, such as mandatory minimum drug-offence sentencing policies, and repealing existing racially biased laws and policies in the criminal justice system;**

(b) **Reducing unnecessary criminal justice interactions, including by avoiding overpolicing and advancing alternatives to arrest and incarcerations for minor offences;**

(c) **Imposing strict restrictions on the use of solitary confinement and the use of chemical agents as pepper spray and ensuring that its use does not have a disproportionate impact on racial and ethnic minorities, and ensuring as well that the practices of the State party are in conformity with international law and international standards, including the Standard Minimum Rules for the Treatment of Prisoners;**

(d) **Adopting additional measures to the Attorney General's Memorandum of 1 July 2021 imposing a moratorium on all federal executions, and taking concrete steps towards completely abolishing the death penalty;**

(e) **Pursuing a comprehensive review of domestic laws, policies and practices regarding prison labour, with a view to bringing them into full compliance with the Convention and other international obligations and standards, including the Standard Minimum Rules for the Treatment of Prisoners;**

(f) **Addressing the disparate impact of collateral consequences of the criminal justice system on racial and ethnic minorities;**

(g) **Guaranteeing that juveniles are not prosecuted as adults, and prohibiting and abolishing life imprisonment without parole for juveniles and other disproportionate sentences, taking in consideration the disparate impact that these practices have on juveniles from racial and ethnic minorities.**

Impact of the COVID-19 pandemic

29. While taking note of the measures adopted by the State party, the Committee is concerned that persons from racial and ethnic minority communities, Indigenous Peoples and non-citizens in the State party have been more vulnerable to and disproportionately affected by the COVID-19 pandemic, both in terms of infection and death rates as well as with regard to its socio-economic impact (art. 5).

30. The Committee recommends that the State party develop and implement further measures to protect racial and ethnic minorities from the COVID-19 pandemic and its socio-economic impact, in consultation with the communities most affected by the pandemic.

Education

31. The Committee welcomes the measures taken by the State party to address inequality in the education system, such as the White House initiatives on advancing educational equity

for Black Americans, Hispanic Americans and Native Americans. However, the Committee remains concerned at the persistent racial and socio-economic school segregation; the inequitable school funding system and the impact of “private school voucher programs”, which reinforce school segregation; as well as by the racial disparities in academic achievement, all of which have disproportionately affect students belonging to racial and ethnic minorities and Indigenous Peoples. The Committee also remains concerned that Indigenous students and students of racial and ethnic minorities disproportionately receive harsher disciplinary sanctions, and are disproportionately arrested in schools for minor non-violent offenses and referred to the juvenile and the criminal justice system (“school to prison pipeline”) (arts. 3 and 5).

32. The Committee reiterates its recommendation that the State party intensify its efforts to ensure equal access to education¹³ by, *inter alia*:

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

(b) Promoting that states analyse and rectify funding disparities to public schools and reduce the disproportionate impact on low-income communities;

(c) Expanding federal funding for programmes and policies that promote racial integration in public schools;

(d) Adopting appropriate measures to address racial discrimination in the administration of student discipline, including school-based arrests leading to referrals to the juvenile and criminal justice system for minor non-violent offenses.

Right to health

33. The Committee welcomes the adoption of the American Rescue Plan that has facilitated access to affordable care to people with lower and moderate income, including persons of racial and ethnic minorities. However, the Committee remains concerned at: a) the high number of persons belonging to ethnic and racial minorities who do not have access to affordable and quality health care because they live in states that have not adopted the Medicaid expansion programme; and b) the exclusion of undocumented migrants from coverage under the Affordable Care Act and the limited coverage under Medicaid for migrants residing in the country for less than five years. While taking note of the increase of funding, the Committee is still concerned at the lack of adequate resources provided to the Indian Health Service (IHS) and the lack of medical facilities within reasonable distances for Indigenous Peoples (art. 5).

34. The Committee recommends that the State party adopt all necessary measures, including legislation to expand coverage for existing health care programs, to ensure that all individuals, in particular those belonging to racial and ethnic minorities, Indigenous Peoples, and non-citizens have effective access to affordable and adequate health care services.

Maternal mortality and sexual and reproductive health

35. The Committee takes note of the measures adopted by the State party to address the high maternal mortality rates and to improve access to sexual and reproductive health services, such as the White House Blueprint for addressing the maternal health crisis of 22 June 2022; Executive Order 14076 on Protecting access to reproductive healthcare services of 8 July 2022; and Executive Order 14079 on Securing Access to Reproductive and Other Healthcare Services of 3 August 2022. However, the Committee is concerned that systemic racism along with intersecting factors such as gender, race, ethnicity and migration status have a profound impact on the ability of women and girls to access the full range of sexual and reproductive health services in the State party without discrimination. It is also concerned about the limited availability of culturally sensitive and respectful maternal health care, including midwifery care for low-income, rural and people of African descent and Indigenous

¹³ CERD/C/USA/CO/7-9, para. 14.

communities. It further notes with concern that racial and ethnic minorities are disproportionately impacted by higher rates of maternal mortality and morbidity; higher risk of unwanted pregnancies and lack of means to overcome socioeconomic and other barriers to access safe abortion. In this context, the Committee is deeply concerned at the Supreme Court's ruling in *Dobbs v JWHO* of 24 June 2022, which overturned nearly fifty years of protection of women's access to safe and legal abortion in the State party, and the consequent profound disparate impact on the sexual and reproductive health and rights of racial and ethnic minorities, in particular those with low incomes; as well as at the disparate impact of legislation and other measures at the state level restricting access to safe and legal abortion or criminalizing abortion (art. 5).

36. The Committee recommends that the State party take further steps to eliminate racial and ethnic disparities in the field of sexual and reproductive health and rights, while integrating an intersectional and culturally respectful approach in, for instance, policies and programs aimed at removing barriers to access comprehensive sexual and reproductive health services; and, at reducing the high rates of maternal mortality and morbidity affecting racial and ethnic minorities, including through midwifery care. The Committee also recommends that the State party adopt all necessary measures, at the Federal and state level, to address the profound disparate impact of *Dobbs v JWHO* on women of racial and ethnic minorities, Indigenous women and those with low incomes, and to provide safe, legal and effective access to abortion in line with the international human rights obligations of the State party. It further recommends that the State party take all necessary measures to mitigate the risks faced by women seeking an abortion and by health providers assisting them, and to ensure that they are not subjected to criminal penalties. In that respect, the Committee draws the State party's attention to the WHO abortion care guidelines.

Discrimination and segregation in housing

37. The Committee welcomes the adoption of the Presidential Memorandum on Redressing our nation's and the Federal Government's History of discriminatory housing practices and policies of 26 January 2021. Nevertheless, the Committee remains concerned at the high degree of residential racial segregation; the persistence of discrimination in access to housing on the grounds of race, colour, or national or ethnic origin, and the intersection with disability and gender identity; discriminatory mortgage lending and redlining practices by private actors, and criminal records policies which can lead to homelessness. It is also concerned about exclusionary zoning and land use laws and policies that perpetuates racial segregation (arts. 3 and 5).

38. The Committee reiterates its recommendation¹⁴ that the State party strengthen the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act; ensure the availability of affordable and adequate housing for all, including by effectively implementing the rules under the Fair Housing Act related to affirmatively furthering fair housing and protection against discriminatory effects ; and undertake prompt, independent and thorough investigation into cases of discriminatory mortgage lending and redlining practices by private actors, holding those responsible accountable and providing effective remedies for the people affected. The Committee also recommends that the State party adopt all necessary measures to eliminate residential segregation, including by addressing the impact of exclusionary zoning and land use laws and practices that disproportionately affect racial and ethnic minorities.

Homelessness

39. The Committee takes note of the measures adopted by the State party to prevent and end homelessness, such as the federal strategic plan "Home, Together". However, it remains concerned at the increasing number of state and local laws that criminalize homelessness and at the disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness, in particular people of African descent, Indigenous Peoples and persons of Hispanic/Latino origin, including women and LGBT persons (art. 2 and 5).

¹⁴ CERD/C/USA/CO/7-9, para. 13.

40. The Committee reiterates its recommendation¹⁵ that the State party abolish laws and policies that criminalize homelessness; implement strong financial and legal incentives to decriminalize homelessness, including by conditioning or withdrawing funding from state and local authorities that criminalize homelessness and encourage them to redirecting funding from criminal justice responses to adequate housing and shelter programs, in particular for persons belonging to racial and ethnic minorities most affected by homelessness.

Right to food

41. The Committee is concerned at the disproportionate impact of food insecurity on racial and ethnic minorities and Indigenous Peoples, in particular persons of African descent and of Hispanic/Latino origin, and particularly women and children from these communities, due to, among other factors, the disparate poverty and unemployment rates among these communities; racial wage disparities; and legislation and practices with a discriminatory effect on the tenure and use of land (art. 5).

42. The Committee recommends that the State party take all necessary measures to guarantee the right to adequate food, to strengthen its efforts to combat hunger and food insecurity, which disproportionately affects racial and ethnic minorities, and especially women and children, including by strengthening the institutional framework and adopting a comprehensive and rights-based national plan to end hunger. The Committee encourages the State party to take effective measures against hunger, in consultation with all relevant stakeholders, including members of the communities most affected by food insecurity, including through the White House Conference on Hunger that will take place in September 2022.

Child welfare system

43. While welcoming the acknowledgement by the State party that racial disparities occur at almost every stage of the decision-making process in the child welfare system, the Committee is concerned at the disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care, in particular children of African descent and Indigenous children. It is also concerned that families of racial and ethnic minorities are subjected to disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children (arts. 2 and 5).

44. The Committee recommends that the State party take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices that have a disparate impact on families of racial and ethnic minorities, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act. The Committee encourages the State party to hold hearings, including Congressional hearings, to hear from families who are affected by the child welfare system.

Environmental pollution and climate change

45. The Committee notes the measures adopted by the State party to address the longstanding effects of pollution and climate change on disadvantaged communities, including racial and ethnic groups, such as Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad and the suspension of oil and gas leases for the Arctic National Wildlife Refuge on 1 June 2021. However, the Committee remains concerned at the disproportionate health, socio-economic and cultural impact of pollution, climate change and natural disasters on racial and ethnic minorities and Indigenous Peoples, caused by extractive and manufacturing industries, such as petrochemical facilities and methanol complexes, as for instance in the case of “Cancer Alley” in Louisiana, and by radioactive and toxic waste. It also remains concerned at the adverse effects of economic activities by transnational corporations registered in the State party on the rights and way of life of minority groups and Indigenous Peoples in other countries (arts. 2 and 5).

¹⁵ CERD/C/USA/CO/7-9, para. 12.

46. The Committee reiterates its recommendation¹⁶ that the State party guarantee that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels; clean up remaining radioactive and toxic waste, in particular in areas inhabited by racial and ethnic minorities and Indigenous Peoples that have been neglected to date; consider adopting moratoriums on the authorization of new heavy industry facilities and expansion of existing ones, such as on petrochemical plants; and undertake prompt, independent and thorough investigations into cases of environmental polluting activities affecting the rights of racial and ethnic minorities and Indigenous Peoples, holding those responsible accountable and providing effective remedies for the victims. It further recommends that the State party protect historical sites of cultural significance for these communities from harm by extractive and manufacturing industries. The Committee reiterates its recommendation that the State party take appropriate measures to prevent adverse effects of economic activities by transnational corporations registered in the State party on the rights and way of life of minority groups and Indigenous Peoples in other countries.

Violence against women

47. The Committee notes the measures adopted by the State party to reduce the incidence of violence against women, such as Executive Order 13898 on Establishing the Task Force on missing and murdered American Indians and Alaska Natives. Nevertheless, the Committee remains concerned at the persistent disproportionate number of women from racial and ethnic minorities, particularly Indigenous women, migrant women, and women of African descent, who are victims of violence, including sexual violence. In light of the Supreme Court's decision in *Oklahoma v. Castro-Huerta* of 29 June 2022, the Committee reiterates its concern that Indigenous women are denied the right to access to justice and obtain reparation due to, among other factors, the failure to prosecute perpetrators at the state and federal levels as tribes lack full jurisdiction in particular over non-indigenous perpetrators. The Committee is further concerned at reports of lack of adequate shelters and services for victims, such as unavailability of post-rape care kits and trained staff at Indian Health Service facilities (arts. 5 and 6).

48. Recalling its General Recommendation No. 25 (2000), the Committee reiterates its recommendation¹⁷ that the State party redouble its efforts to prevent and combat violence against women, particularly Indigenous women, migrant women, and women of African descent, and ensure that all cases of violence against women are effectively investigated, perpetrators are sanctioned, and victims are provided with adequate remedies. It also recommends that the State party ensure effective access to justice for all indigenous women who are victims of violence as well as access to adequate services for victims, including shelters and access to health care and to post-rape care kits. It further recommends that the State party recognize tribal jurisdiction over all offenders who commit crimes on tribal lands, and increase funding and specific training for those working within the criminal justice system.

Indigenous Peoples

49. The Committee notes the steps taken by the State party with regard to the rights of Indigenous Peoples, including the adoption of Executive Order 13647 on Establishing the White House Council on Native American Affairs of June 2013, which affirms that restoring tribal lands through appropriate means helps foster tribal self-determination, as well as the President's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships of 26 January 2021 highlighting respect for Tribal sovereignty and self-governance, including a commitment to fulfil treaty responsibilities to Tribal Nations, and emphasizing the need for consultations with Tribal Nations. However, the Committee is concerned at:

¹⁶ CERD/C/USA/CO/7-9, para. 10.

¹⁷ CERD/C/USA/CO/7-9, para. 19.

- (a) Allegations indicating the lack of measures taken to honor the bilateral treaties entered into with Indigenous Peoples by the State party, and the lack of consultation on their implementation;
- (b) The obstacles to the recognition of Indigenous Peoples, including the high costs and burdensome procedures;
- (c) The restrictive interpretation of the principle of free, prior and informed consent, and the lack of timely and meaningful consultations with Indigenous Peoples;
- (d) The negative impact on Indigenous Peoples' rights and their way of life resulting from, *inter alia*, extractive industries, infrastructure projects, border walls and fences, as exemplified by the situations considered under the Committee's EWUAP regarding the situation of Western Shoshone, Native Hawaiians, Gwich'in and Anishinaabe Indigenous Peoples;
- (e) Lack of adequate measures and funding to address the missing and murdered Indigenous People crisis (arts. 5 and 6).

50. Drawing the attention of the State party to the UN Declaration on the Rights of Indigenous Peoples, and the acknowledgement by the Human Rights Council that the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that Indigenous Peoples were victims of colonialism and continue to be victims of its consequences,¹⁸ the Committee recommends that the State party:

- (a) Adopt further measures to honor the treaties entered into with Indigenous Peoples and significantly strengthen consultation mechanisms with Indigenous Peoples on the implementation of these treaties, also with a view to settle disputes concerning land rights;**
- (b) Eliminate undue obstacles to the recognition of Indigenous Peoples;**
- (c) Guarantee, in law and in practice, the principle of free, prior and informed consent, in accordance with the UN Declaration on the Rights of Indigenous Peoples and other relevant international standards, as well as the right of Indigenous Peoples to be consulted on any legislative or administrative measure that may affect their rights;**
- (d) Adopt measures to effectively protect the rights of Indigenous Peoples from adverse impact by extractive industries and infrastructure projects, and specifically address the situations that were considered under the Committee's EWUAP;**
- (e) Take additional measures and provide adequate funding to implement statutes and policies that address the missing and murdered Indigenous People crisis.**

Migrants, refugees, asylum-seekers and stateless persons

51. While noting the measures adopted by the State party to facilitate the reception and integration of refugees fleeing the conflict in Ukraine, as well as other refugees, the Committee is concerned at:

- (a) The practice of mandatory detention of non-citizens without due process or access to legal representation, and in detention centers without adequate conditions, which have a disparate impact on asylum seekers of African and Caribbean descent;
- (b) Reports of excessive use of force by Customs and Border Protection and Immigration and Customs Enforcement officers, resulting in instances of killings of undocumented migrants, in particular of non-citizens of African and Caribbean descent, such as nationals from Cameroon and Haiti;
- (c) The disparate impact of asylum-related policies on migrants of African descent and of Hispanic/Latino origin, such as criminal prosecutions for irregular entry and expulsions under Title 42 health order and the Migrant Protection Protocols;

¹⁸ A/HRC/RES/48/7.

- (d) The lack of official and comprehensive data on immigration detention and asylum procedures and outcomes;
- (e) The dangerous conditions that children face while working in the agricultural sector under unsafe and unhealthy conditions, which disproportionately harm children from ethnic and racial minorities, particularly Hispanic-Latino children;
- (f) Non-citizens that continue to be arbitrarily detained at the Guantanamo Bay facility, without effective and equal access to the ordinary criminal justice system, and reports of the lack of adequate medical assistance and torture rehabilitation;
- (g) The lack of a statelessness determinations system (arts. 2, 5 and 6).

52. The Committee recommends that the State party:

- (a) End mandatory detention and ensure due process for all non-citizens detained, without discrimination, including access to legal counsel;**
- (b) Reinforce measures to prevent any excessive use of force and undertake prompt, independent and thorough investigations into all allegations of excessive use of force and killings by Customs and Border Protection and Immigration and Customs Enforcement officers, hold those responsible accountable, and provide effective remedies for the victims and their families;**
- (c) Discontinue criminal prosecutions of non-citizens for irregular entry, including asylum seekers; redouble efforts to swiftly end Title 42 and the Migrant Protection Protocols; and provide all non-citizens with sufficient procedural guarantees to consider their applications for international protection;**
- (d) Set up a comprehensive data-collection system on immigration, disaggregated by ethnicity, nationality, gender and other relevant indicators, including information on, *inter alia*, detained non-citizens, asylum procedures and their outcomes and incidents of excessive use of force;**
- (e) Enact legislation to protect children working in agriculture, including by raising the minimum age for harvesting and hazardous work in the agricultural sector, in line with international labour standards, and collect comprehensive data on child farmworkers and on their exposure to toxic pesticides and other health risks;**
- (f) Ensure the closure of the Guantanamo Bay facility and return the detainees to their homes or transfer them to safe third countries without further delay and in accordance with international law;**
- (g) Take additional measures to develop and adopt a statelessness determination system.**

Access to legal aid

53. The Committee notes the measures adopted by the State party to close the gap between the need for and the availability of legal assistance, such as the Presidential Memorandum on Restoring the Department of Justice's Access-to-Justice Function and reinvigorating the White House Legal Aid Interagency Roundtable of 18 May 2021. It also notes the right-to-counsel initiatives adopted at the local level to ensure that litigants have equal access to justice in civil proceedings, regardless of income, such as in New Orleans, New York and San Francisco, among other localities. Despite these efforts, the Committee remains concerned at the challenges faced by indigent persons belonging to racial and ethnic minorities with regard to effective access to legal counsel in criminal proceedings. It also remains concerned at the lack of a generally recognized right to counsel in civil proceedings, which disproportionately affects indigent persons belonging to racial and ethnic minorities, when seeking effective remedies in matters such as evictions, foreclosures, discrimination in employment, domestic violence, loss of child custody, termination of subsistence income or medical assistance, and deportation (art. 6).

54. The Committee reiterates its recommendation¹⁹ that the State party adopt all necessary measures to address the disproportionate impact that systemic inadequacies in criminal defence programmes for indigent persons have on defendants belonging to racial and ethnic minorities, including by improving the quality of legal representation and ensuring that public legal aid systems are adequately funded and supervised. It also reiterates the recommendation that the State party adopt measures to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, with particular regard to proceedings that have serious consequences for their security and stability, such as evictions, foreclosures, discrimination in employment, domestic violence, loss of child custody, termination of subsistence income or medical assistance, and deportation, including by allocating sufficient resources to the Legal Services Corporation.

Redress for legacies of the past

55. The Committee takes note of the acknowledgement by the State party's delegation during the dialogue that the displacement of Native Americans and the enslavement of Africans, and their lingering legacy, are contributing factors to the racial disparities and inequities that the State party faces today. The Committee also takes note of initiatives at the state level to address the legacy of slavery and past wrongs, such as the Maryland Lynching Truth and Reconciliation Commission, established by House Bill 307 of 18 April 2019, and the California Task Force to Study and Develop Reparation Proposals for African Americans, established by Assembly Bill No. 3121 of 30 September 2020. The Committee further notes with interest that resolution H.R. 40 on the Commission to Study and Develop Reparation Proposals for African Americans is currently before the House of Representatives. The Committee also takes note of the information provided by the State party that the President supports a study of reparations and the continuing impacts of slavery. While noting these initiatives, the Committee is concerned that the lingering legacies of colonialism and slavery continue to fuel racism and racial discrimination in the State party undermining the full enjoyment of all human rights and fundamental freedoms by all individuals and communities in the State party (art. 5 and 6).

56. In light of the Committee's General Recommendation No 34 (2011), and endorsing the mission report by the Working Group of Experts on People of African Descent²⁰ encouraging the State party to pass H.R. 40 on the Commission to Study and Develop Reparation Proposals for African Americans, the Committee recommends that the State party take the appropriate measures towards the establishment of such a commission to study and develop reparation proposals for people of African Descent, including by issuing an executive order, in close consultation with relevant stakeholders, in particular people of African descent.

Education to combat racial discrimination

57. The Committee notes the initiatives to promote human rights education and training, such as the National Center for Civil and Human Rights in Atlanta. However, the Committee is concerned at the increase of legislation and legislative proposals that expressly prohibit public school instruction about racism, unconscious bias, discrimination, privilege and oppression. The Committee is also concerned about the adoption of laws or regulations at the state level banning books that deal with matters of race from classrooms and school libraries. The Committee is further concerned that teachers, school administrators and board members increasingly face harassment, threats, intimidation and violence from people who oppose teaching about matters of race in the history of the State party (art. 7).

58. The Committee recalls the importance of education to combat prejudices that lead to racial discrimination and to promote understanding, tolerance and friendship among nations and racial or ethnical groups, as established in article 7 of the Convention. In this regard, the Committee recommends that the State party:

¹⁹ CERD/C/USA/CO/7-9, para. 23.

²⁰ A/HRC/33/61/Add.2 of 18 August 2016.

(a) Adopt all necessary measures to ensure that human rights education, including on the fight against racism and racial discrimination Indigenous Peoples' history, culture and languages, as well as on respect for diversity and the promotion of equal treatment, is part of the curriculum at all school levels;

(b) Take further measures to ensure that the history of colonialism and slavery and their legacies is part of the school curriculum at all levels, including by adopting federal national standards or guidelines in this regard;

(c) Undertake additional efforts to effectively protect teachers and school personnel from harassment, threats, intimidation and violence in this context.

D. Other recommendations

Ratification of other treaties

59. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance. The Committee encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Amendment to article 8 of the Convention

60. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Declaration under article 14 of the Convention

61. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Follow-up to the Durban Declaration and Programme of Action

62. In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

63. In light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and

peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

64. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, including organizations representative of the groups most exposed to racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

65. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly made available to all State entities and territories as well as bodies entrusted with the implementation of the Convention at the federal, state and local levels, and publicized on the website of the Department of State in the official and other commonly used languages, as appropriate.

Follow-up to the present concluding observations

66. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 36 (maternal mortality and sexual and reproductive health), 50 (e) (Indigenous Peoples) and 52 (a) (migrants, refugee, asylum-seekers and stateless persons) above.

Paragraphs of particular importance

67. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 17 (gun violence), 26 (criminal justice system and juvenile justice system), 50 (Indigenous Peoples) and 52 (migrants, refugee, asylum-seekers and stateless persons) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

68. The Committee recommends that the State party submit its combined thirteenth to fifteenth periodic reports, as a single document, by 20 November 2025, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.