

**QUESTIONS PUT BY THE RAPPORTEUR IN CONNECTION WITH THE  
CONSIDERATION OF THE COMBINED FOURTH, FIFTH AND SIXTH  
PERIODIC REPORTS OF THE UNITED STATES OF AMERICA  
(CERD/C/USA/6)**

**Population**

1. In addition to the information provided in the report, please provide additional socio-economic data – disaggregated by race, ethnic or national origin, gender, and documented/undocumented status – on the non-citizen population living within the jurisdiction of the State party. (CERD/C/USA/6, paras. 14-16)

**General legal framework**

2. Please provide detailed information on the extent to which the legislative, judicial, administrative and other measures adopted by the State party to give effect to the Convention provisions apply to non-citizens, bearing in mind the Committee’s General Recommendation No. 30 (2004) on discrimination against non-citizens.

**Definition of racial discrimination**

3. According to information received, claims of racial discrimination under civil rights statutes must be accompanied by proof of intentional discrimination. Please comment on the consistency of this approach with the definition of racial discrimination provided in article 1, paragraph 1 of the Convention, which covers “any distinction, exclusion, restriction or preference (...) which has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms...”. (CERD/C/USA/6, paras. 317-323)

**Article 2**

4. Taking into account the declaration entered at the time of ratification that the provisions of the Convention are not self-executing, please provide detailed information on the specific measures adopted by the State party pursuant to the recommendation contained in paragraph 390 of the Committee’s previous concluding observations to ensure the effective implementation of the Convention at the federal, state and local levels. (CERD/C/USA/6, paras. 58-134 and 310-311)

5. According to the State party report, various executive departments and independent agencies have responsibilities concerning the elimination of racial discrimination in the political, economic, social and cultural spheres. Please provide more detailed information about the mandate of, and the resources allocated to, these bodies, as well as on the mechanisms in place, if any, to ensure a co-ordinated approach towards the implementation of the Convention at the federal and state levels. (CERD/C/USA/6, paras. 44, 46, 47, 60, 62, 64-66, 67-70, 72-76, 87, 89, 118-123, 189-191, 238-239, 268 and 352-353)

6. Please provide detailed information on the implementation of the measures adopted at the federal and state levels to combat racial profiling, including recent statistical data disaggregated by race, ethnic origin and nationality on persons subjected to stops, questioning, searches, arrests and other law enforcement investigative procedures. Has the End Racial Profiling Act, or similar federal legislation, been enacted? (CERD/C/USA/6, paras. 86, 111-113, and 156)

7. Please provide additional information on the use of “pattern and practice” investigations in addressing systematic discrimination cases, including patterns of racial discrimination. (CERD/C/USA/6, para. 62-63, 87, 111 and 173)

8. Please provide additional information on the way in which civil rights law statutes adopted at the federal and state levels have been used to prevent private actors from engaging in acts of racial discrimination. (CERD/C/USA/6, paras. 77-80)

9. Please comment on the consistency of recent Supreme Court decisions, such as *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*, with the obligation undertaken by the State party under article 2, paragraph 2 of the Convention to adopt special measures, when the circumstances so warrant, to secure the adequate development and protection of certain racial, ethnic or national groups. (CERD/C/USA/6, paras. 126-134 and 334)

### **Article 3**

10. According to information received, persons belonging to racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by substandard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. Please provide detailed information on the measures adopted by the State party to reduce residential segregation based on racial and national origin, as well as its negative consequences for the persons concerned.

11. Please provide information on the measures adopted by the State party to address the alleged phenomenon of racial re-segregation of public schools, especially in the southern and western states. Please also indicate which specific measures school districts can use to advance integration and equal educational opportunities in racially segregated and/or re-segregated schools and school districts in the light of recent Supreme Court decisions, such as *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*. (CERD/C/USA/6, para. 267)

#### **Article 4**

12. In addition to the information provided in the report, and as recommended in paragraph 391 of the previous concluding observations, please provide further information on the measures – legislative or otherwise – adopted by the State party at the federal and state levels to prohibit and punish racially motivated crimes in accordance with article 4 of the Convention. Please also provide information on the number of prosecutions and convictions, and on the sanctions imposed, under the criminal statutes referred to in paragraph 140 of the report with regard to criminal offences relating to racial discrimination. (CERD/C/USA/6, paras. 136-146)

#### **Article 5**

13. Please provide further information on the extent to which the systemic inadequacies in the indigent defense systems existing in several U.S. states – including the lack of adequate funding and the failure to monitor and oversee its effective functioning – disproportionately affect racial, ethnic and national minorities, and indicate which measures the State party has adopted to improve the quality of legal representation provided to indigent defendants and ensure that public legal aid systems are adequately funded and supervised. (CERD/C/USA/6, para. 152)

14. Please provide updated information on the measures adopted by the State party to eliminate the racial disparities existing in the criminal justice system of the State party, and to ensure that such disparities are not due to a harsher treatment that defendants belonging to racial, ethnic and national minorities, especially African American persons, allegedly receive at various stages of criminal proceedings, from investigation to sentencing, with respect to both juveniles and adults. (CERD/C/USA/6, paras. 162-167 and 327-329)

15. Please provide detailed information on the measures adopted by the State party pursuant to the recommendation, contained in paragraph 396 of the Committee's previous concluding observations, to address racial bias in the application of death penalty. Please also comment on the Supreme Court decision *McCleskey v. Kemp*, which allegedly limits the capacity of defendants to challenge the death sentence pronounced against them on the basis of racial discrimination in sentencing. (CERD/C/USA/6, paras. 166-170 and 328-329)

16. In addition to the information provided in the report, and as requested in paragraph 394 of the previous concluding observations, please provide further information on the measures – legislative or otherwise – adopted by the State

party to punish police brutality against persons belonging to racial, ethnic or national minorities and ensure the access of victims to effective legal remedies and just and adequate reparation. Please also provide recent statistical data, if any, disaggregated by race, ethnic origin and nationality, on prosecutions launched and sanctions imposed on law enforcement officials, as well as information on reparation awarded to victims of racially-motivated violence. (CERD/C/USA/6, paras. 153-161 and 324-326)

17. In addition to the information provided in the report, and bearing in mind the Committee's Statement on racial discrimination and measures to combat terrorism of 8 March 2002 (A/57/18), please provide further information on the outcome of the various measures adopted by the State party in the wake of the 9/11 attack to prevent and punish all forms of discrimination against Arabs, Muslims and South Asians, as well as persons perceived to be Arab or Muslim. (CERD/C/USA/6, paras. 85, 121, 159-160, 187-188, 295, 300, and 325)

18. Please provide information on the measures adopted by the State party to prevent and punish various forms of ill-treatment against undocumented migrants crossing the borders between Mexico and the United States of America, allegedly perpetrated by border patrol agents and private vigilante groups.

19. Bearing in mind the Committee's General Recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, please provide detailed information on the measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic or national minorities, with particular regard to Native American and Alaska Native American women, migrant workers and domestic workers.

20. Please provide explanations on the specific requirements imposed on nationals of some countries by the federal legislation on immigration, such as the USA Patriot Act and the National Entry and Exit Registration System, as well as more information on the measures adopted by the State party to ensure that its legislation in this field does not discriminate against nationals of such countries on the basis of race, ethnic or national origin.

21. Please provide further information on the measures adopted by the State party – including special measures adopted pursuant to article 2, paragraph 2 of the Convention – to ensure the equal and effective enjoyment by persons belonging to the American Indian and Alaska Native (AIAN) and Native Hawaiian and

Other Pacific Islander (NHPI) populations of their rights under article 5 (e) of the Convention. (CERD/C/USA/6, paras. 18-24)

22. Please provide information on the measures adopted by the State party – including special measures adopted pursuant to article 2, paragraph 2 of the Convention – to eliminate discrimination in access to certain professions, such as the legal profession and public accounting, across the State party and in particular states such as California.

23. Please provide more information on the measures adopted at the federal and state levels to assist those displaced by Hurricane Katrina – most of whom are African American residents – to return to their homes, where feasible, or to have access to adequate and affordable social housing in the place of habitual residence. (CERD/C/USA/6, para. 255)

24. Please provide further information on the implementation of the measures described in the report, such as the Medicare Modernisation Act and the National Action Agenda to Eliminate Racial and Ethnic Disparities in Health, to ensure that low-income persons belonging to racial, ethnic and national minorities have equal access to health insurance and adequate health care and services. (CERD/C/USA/6, paras. 106-110 and 256-263)

25. Please provide more information on the measures adopted by the State party to address existing racial disparities in the field of sexual and reproductive health, with particular regard to (i) reducing the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans; (ii) improving access to family planning, prenatal and post-partum care for economically disadvantaged women; and (iii) addressing the increasing feminisation of HIV/AIDS and the growing disparities in HIV infection rates for minority women. (CERD/C/USA/6, para. 258)

26. Please provide further information on the implementation of the “No Child Left Behind Act” of 2001, with particular regard to measures adopted by the State party to reduce high drop-out rates of students belonging to racial, ethnic or national minorities and the significant disparities in educational outcomes between them and white students. Please also provide information on the measures the State party has undertaken to address the phenomenon of the “school-to-prison pipeline”, which seems to have an unjustifiable disparate impact on minority students. (CERD/C/USA/6, paras. 96 and 269-272)

27. Pursuant to the concerns raised by the Committee in paragraph 400 of its previous concluding observations, please provide further information as to whether treaties signed by the Government and Indian tribes can be abrogated unilaterally by Congress. Furthermore, please explain whether there exists a general doctrine of 'encroachment' in the law of the State party as a justification for diminishing or extinguishing indigenous claims to land, including the legal basis for its application to Western Shoshone lands. (CERD/C/USA/6, para. 343 and Annex II, para. 11)

28. Please provide updated information on the measures adopted by the State party to ensure that activities - such as nuclear testing, toxic and dangerous waste storage or mining - carried out on areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment by indigenous peoples of their rights under the Convention.

#### **Article 6**

29. According to information received, the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 deprive foreign detainees held as "enemy combatants" of their right to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violation. Please comment on the compatibility of these Acts with the Convention, and in particular with article 5 (a) and 6.

30. Taking into account the decision of the Supreme Court in the case *Hoffman Plastic Compounds, Inc. v. NLRB*, please provide detailed information on the extent to which undocumented migrant workers may have access to court and be entitled to back pay or other legal remedies under labour or employment-related statutes, including Title VII of the Civil Rights Act, the Fair Labour Standards Act and common-law tort law.

31. Please provide information on whether the legislation of the State party provide for the sharing in the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin, so that once a person has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.

#### **Article 7**

32. Please provide information on specific training programmes and courses, if any, for members of the judiciary, law enforcement officials, teachers, social workers

and other public officials on the provisions of the Convention and their application. (CERD/C/USA/6, paras. 295 and 304)