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Poverty & Race Research Action Council

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Comments on the United States response to the Recommendations of the 2011 Universal Periodic Review: acknowledging slow progress in addressing racial and economic segregation in housing and schools and the need to restore a Title VI private right of action for CERD enforcement

UPR Consultation with Civil Society – Focus on Discrimination
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Lack of progress on housing and school segregation

The U.N. Committee on the Elimination of Racial Discrimination, in its 2008 "Concluding Observations," was highly critical of the continuing segregation of low income families of color in high poverty, low opportunity neighborhoods and in segregated, low performing schools (the relevant paragraphs from the 2008 CERD Concluding Observations are copied below). The CERD Committee also made recommendations to the U.S. Government on the types of policy actions that would be needed to show progress in reducing levels of housing and school segregation.

In spite of positive statements of commitment to racial and economic integration by the Secretaries of HUD and the Department of Education, and renewed civil rights enforcement by both agencies, very little progress has been made in reforming federal housing and education programs to respond to these recommendations (the Treasury Department is also running a large housing development program, the Low Income Housing Tax Credit, which perpetuates segregated residential patterns).

Each of these federal agencies has proposed policies and regulations under development which are capable of being implemented in 2011, but unless the State Department strongly urges these federal agencies to show concrete results soon, we are going to be returning to Geneva in 2012 with little to show in response to the Committee's conclusions and recommendations. At the very least, we urge the State Department not to adopt a defensive approach but rather to acknowledge slow progress and use the CERD process to make concrete pledges to the CERD Committee about future policy implementation.

Loss of enforceability of CERD standards

In 1994, when CERD was ratified by the U.S. Senate, a judicial remedy was available through Title VI of the Civil Rights Act of 1964 to challenge policies of state and local governments and other federal grantees that have a disparate racial impact, consistent with the CERD treaty's emphasis on combating systemic racial discrimination embedded in facially neutral policies and practices. The availability of this enforcement mechanism was the basis, in part, for the Senate's reservation indicating that the CERD treaty was not to be self executing.

However, in 2001, the Supreme Court held in *Alexander v. Sandoval*, that "disparate impact" liability claims under the Title VI regulations could no longer be filed in court. This limitation undermines the Senate's 1994 reservation and prevents the U.S. from meeting its obligations as a state party to CERD in a broad range of policy areas, including health, education and environmental justice.

The *Sandoval*, opinion, reversing longstanding precedent, was based on statutory interpretation, and could be addressed through the statutory amendments included in the "Civil Rights Act of 2009," endorsed by the Leadership Conference on Civil and Human Rights and many other groups. We urge the Administration to renew and support this important bill to restore judicial enforceability to the CERD treaty.

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Excerpts from the Concluding Observations of the U.N. Committee on the Elimination of Racial Discrimination (March, 2008)

16. The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. (Article 3)

> **The Committee urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups. In particular, the Committee recommends that the State party:**
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> **(i) support the development of public housing complexes outside poor, racially segregated areas;**
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> **(ii) eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and**
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> **(iii) ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of "steering" and other discriminatory practices carried out by private actors.**

17. The Committee remains concerned about the persistence of *de facto* racial segregation in public schools. In this regard, the Committee notes with particular concern that the recent U.S. Supreme Court decisions in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and *Meredith v. Jefferson County Board of Education* (2007) have rolled back the progress made since the U.S. Supreme Court's landmark decision in *Brown v. Board of Education* (1954), and limited the ability of public school districts to address *de facto* segregation by prohibiting the use of race-conscious measures as a tool to promote integration. (Articles 2 (2), 3 and 5 (e) (v))

> **The Committee recommends that the State party undertake further studies to identify the underlying causes of *de facto* segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school de-segregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures – including the enactment of legislation – to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.**