

UNITED STATES OF AMERICA

CERD A/56/18 (2001)

380. The Committee considered the initial, second and third periodic reports of the United States of America (CERD/C/351/Add.1), submitted as one document, which were due on 20 November 1995, 1997 and 1999 respectively, at its 1474th, 1475th and 1476th meetings (CERD/C/SR.1474-1476), on 3 and 6 August 2001. At its 1486th meeting (CERD/C/SR.1486), on 13 August 2001, it adopted the following concluding observations.

A. Introduction

381. The Committee welcomes the opportunity to initiate its dialogue with the State party. The Committee was encouraged by the attendance of a high-level delegation and the professionalism and constructiveness characterizing the dialogue.

382. The Committee welcomes the detailed, frank and comprehensive report submitted by the State party, the contents of which correspond with the Committee's revised reporting guidelines, and the fact that the report was prepared in consultation with non-governmental organizations and other public interest groups. The additional substantive and comprehensive oral information provided by the delegation by way of introduction and in response to the wide range of questions asked by Committee members is also appreciated.

383. In view of the dialogue held, the Committee wishes to emphasize that irrespective of the relationship between the federal authorities, on the one hand, and the States, which have extensive jurisdiction and legislative powers, on the other, with regard to its obligation under the Convention, the Federal Government has the responsibility to ensure its implementation on its entire territory.

B. Factors and difficulties impeding the implementation of the Convention

384. The Committee notes the persistence of the discriminatory effects of the legacy of slavery, segregation, and destructive policies with regard to Native Americans.

C. Positive aspects

385. The Committee notes the acknowledgement by the State party of the multi-ethnic, multiracial and multicultural nature of American society.

386. The Committee notes that the State party in recent years has ratified or acceded to certain international human rights treaties, including the Convention, and encourages this development. It further notes Executive Order 13107 of 10 December 1998 on the Implementation of Human Rights Treaties, which provides that "it shall be the policy and practice of the Government of the United States fully to respect and implement its obligations under the international human rights treaties to which it is a party", including the Convention.

387. The Committee notes the extensive constitutional and legislative framework for the effective protection of civil rights in general provided by the Bill of Rights and federal laws.

388. The Committee welcomes recent measures, including the launching in 1997 of the “Initiative on Race”, the establishment of the Minority Business Development Agency under the Department of Commerce in order to redress racial and ethnic discrimination in the industrial market, as well as the efforts made to eliminate the practice of racial profiling, and encourages the continuation of such initiatives.

389. The Committee notes as positive the continuous increase in the number of persons belonging to, in particular, the African-American and Hispanic communities in fields of employment previously predominantly occupied by Whites. The Committee particularly welcomes efforts made to promote the employment of persons from minority groups within the police force.

D. Concerns and recommendations

390. The Committee, concerned by the absence of specific legislation implementing the provisions of the Convention in domestic laws, recommends that the State party undertake the necessary measures to ensure the consistent application of the provisions of the Convention at all levels of government.

391. The Committee emphasizes its concern about the State party’s far-reaching reservations, understandings and declarations entered at the time of ratification of the Convention. The Committee is particularly concerned about the implication of the State party’s reservation on the implementation of article 4 of the Convention. In this regard the Committee recalls its general recommendations VII and XV, according to which the prohibition of dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression, given that a citizen’s exercise of this right carries special duties and responsibilities, among which is the obligation not to disseminate racist ideas. The Committee recommends that the State party review its legislation in view of the new requirements of preventing and combating racial discrimination, and adopt regulations extending the protection against acts of racial discrimination, in accordance with article 4 of the Convention.

392. The Committee also notes with concern the position of the State party with regard to its obligation under article 2, paragraph 1 (c) and (d), to bring to an end all racial discrimination by any person, group or organization, that the prohibition and punishment of purely private conduct lie beyond the scope of governmental regulation, even in situations where the personal freedom is exercised in a discriminatory manner. The Committee recommends that the State party review its legislation so as to render liable to criminal sanctions the largest possible sphere of private conduct which is discriminatory on racial or ethnic grounds.

393. The Committee draws the attention of the State party to its obligations under the Convention and, in particular, to article 1, paragraph 1, and general recommendation XIV, to undertake to prohibit and to eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect. The Committee recommends that the State party take all appropriate measures to review existing legislation and federal, State and local policies to

ensure effective protection against any form of racial discrimination and any unjustifiably disparate impact.

394. The Committee notes with concern the incidents of police violence and brutality, including cases of deaths as a result of excessive use of force by law enforcement officials, which particularly affect minority groups and foreigners. The Committee recommends that the State party take immediate and effective measures to ensure the appropriate training of the police force with a view to combating prejudices which may lead to racial discrimination and ultimately to a violation of the right to security of persons. The Committee further recommends that firm action be taken to punish racially motivated violence and ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such actions.

395. The Committee notes with concern that the majority of federal, state and local prison and jail inmates in the State party are members of ethnic or national minorities, and that the incarceration rate is particularly high with regard to African-Americans and Hispanics. The Committee recommends that the State party take firm action to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before the courts and all other organs administering justice. Noting the socio-economic marginalization of a significant part of the African-American, Hispanic and Arab populations, it is further recommended that the State party ensure that the high incarceration rate is not a result of the economically, socially and educationally disadvantaged position of these groups.

396. The Committee notes with concern that, according to the Special Rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas. The Committee urges the State party to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.

397. The Committee is concerned about the political disenfranchisement of a large segment of the ethnic minority population who are denied the right to vote by disenfranchising laws and practices based on the commission of more than a certain number of criminal offences, and also sometimes by preventing them from voting even after the completion of their sentences. The Committee recalls that the right of everyone to vote on a non-discriminatory basis is a right contained in article 5 of the Convention.

398. While noting the numerous laws, institutions and measures designed to eradicate racial discrimination affecting the equal enjoyment of economic, social and cultural rights, the Committee is concerned about persistent disparities in the enjoyment of, in particular, the right to adequate housing, equal opportunities for education and employment, and access to public and private health care. The Committee recommends that the State party take all appropriate measures, including special measures according to article 2, paragraph 2, of the Convention, to ensure the right of everyone, without discrimination as to race, colour, or national or ethnic origin, to the enjoyment of the rights contained in article 5 of the Convention.

399. With regard to affirmative action, the Committee notes with concern the position taken by the State party that the provisions of the Convention permit, but do not require States parties to adopt affirmative action measures to ensure the adequate development and protection of certain racial, ethnic or national groups. The Committee emphasizes that the adoption of special measures by States parties when the circumstances so warrant, such as in the case of persistent disparities, is an obligation stemming from article 2, paragraph 2, of the Convention.

400. The Committee notes with concern that treaties signed by the Government and Indian tribes, described as “domestic dependent nations” under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government. It further expresses concern with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The Committee recommends that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and draws the attention of the State party to general recommendation XXIII on indigenous peoples which stresses the importance of securing the “informed consent” of indigenous communities and calls, *inter alia*, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

401. Noting the absence of data regarding racial discrimination in federal and State prisons and jails, the Committee invites the State party to provide, in its next report, information and statistics on complaints and subsequent action taken in this field.

402. Having noted the establishment under Executive Order 13107 of 10 December 1998 of the Interagency Working Group with the task of raising the awareness of United States federal agencies about the rights and obligations provided by the Convention, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, the Committee invites the State party to provide in its next report further information on the powers of the Working Group and the impact of its activities. In this context, the Committee also notes that the present State party report primarily focuses on the implementation of the Convention at the federal level and recommends that the next periodic report contain comprehensive information on its implementation of the State and local levels and in all territories under United States jurisdiction, including Puerto Rico, the Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

403. The Committee further recommends that the next State party report contain socio-economic data, disaggregated by race, ethnic origin and gender, on, in particular: (a) the indigenous and Arab-American population; and (b) the populations of the States of Alaska and Hawaii.

404. It is noted that the State party has not made the optional declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of such a declaration be considered.

405. The Committee recommends that the State party ratify the amendments to article 8, paragraph

6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

406. The Committee recommends that the State party's reports continue to be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

407. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth periodic report, due on 20 November 2003, and that it address all points raised in the present observations.