



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

107th session

8–30 August 2022

Item 4 of the provisional agenda

**Consideration of reports, comments and information submitted  
by States parties under article 9 of the Convention**

### List of themes in relation to the combined tenth to twelfth reports of the United States of America

#### Note by the Country Rapporteur\*

1. The Committee on the Elimination of Racial Discrimination decided at its seventy-sixth session<sup>1</sup> that the Country Rapporteur would send to the State party concerned a short list of themes with a view to guiding and focusing the dialogue between the State party's delegation and the Committee during the consideration of the State party's report. The present document contains a list of such themes. It is not an exhaustive list; other issues may also be raised in the course of the dialogue. No written replies are required.

#### The Convention in domestic law and the institutional and policy framework for its implementation (arts. 1, 2 and 6)

2. Measures to prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life, in accordance with article 1 of the Convention.<sup>2</sup> Steps to withdraw the reservation to article 2 of the Convention and to prohibit acts of racial discrimination perpetrated by private actors.<sup>3</sup> Measures to combat all forms of racial discrimination according to article 1 of the Convention intersecting with discrimination based on other grounds such as religion, gender, age, disability and sexual orientation.

3. Steps to establish an independent national human rights institution at the federal level, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Measures to ensure the implementation of the Convention at the federal, state and local levels, and the non-autonomous territories administered by the State party, including through the establishment of a permanent coordinating mechanism.<sup>4</sup>

4. Information on the effective implementation of current special measures and on the adoption of additional measures, at the federal and state levels, to eliminate persistent disparities based on race or ethnic origin in the enjoyment of human rights and fundamental freedoms, including actions to strengthen the use of these measures in light of increasing de

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

<sup>1</sup> A/65/18, para. 85.

<sup>2</sup> CERD/C/USA/CO/7-9, para. 5; and CERD/C/USA/10-12, paras. 5–10.

<sup>3</sup> CERD/C/USA/CO/7-9, para. 5; and CERD/C/USA/10-12, paras. 2 and 11.

<sup>4</sup> CERD/C/USA/CO/7-9, paras. 6 and 26; and CERD/C/USA/10-12, paras. 12 and 136.



jure and de facto restrictions on their use. Updated information on recent judgments by the Supreme Court and pending cases challenging the application of special measures.<sup>5</sup>

5. Updated information on legislative initiatives aimed at prohibiting racial profiling, including through the use of artificial intelligence, and other measures to end the practice of profiling racial or ethnic minorities and illegal surveillance by federal, state and local law enforcement officials.<sup>6</sup> Measures to revise the 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity, particularly with regard to racial profiling in border areas, “mapping” of racial, ethnic and religious communities, and applicability to state and local law enforcement agencies. Steps to discontinue the Immigration and Nationality Act section 287 (g) programme.<sup>7</sup>

6. Further measures to improve inequalities in access to public legal aid, exacerbated by the coronavirus disease (COVID-19) pandemic, and to ensure effective access to legal representation for non-citizens and indigent persons belonging to racial and ethnic minorities in criminal and civil proceedings. Concrete actions to effectively implement the presidential memorandum to expand access to legal representation and the courts of 18 May 2021 and to ensure that public legal aid systems are adequately funded.<sup>8</sup>

#### **Racist hate speech and hate crimes (arts. 2 and 4)**

7. Measures envisaged to withdraw the reservation to article 4 of the Convention.<sup>9</sup> Measures to prevent and combat racist hate speech, including in the media and on other public platforms such as the Internet, and by politicians and public figures, in particular against people of African and Asian descent, ethnic or ethno-religious minorities, indigenous peoples and migrants, in light of the rise of ideas based on racial superiority or hatred, including white supremacy.<sup>10</sup> Statistics on trends in instances of racist hate speech.<sup>11</sup>

8. Further efforts to prevent and combat racist hate crimes, including mass shootings, in light of the increase of these crimes directed against ethnic minorities, in particular people of African and Asian descent and those of Hispanic/Latino origin.<sup>12</sup> Further measures to ensure that all reported cases of racist hate crimes are duly investigated, that those found responsible are prosecuted and punished with sanctions commensurate with the gravity of such crimes and that victims are provided with effective remedies.<sup>13</sup> Additional efforts to increase the reporting of hate crimes and to improve the Federal Bureau of Investigations data collection on these crimes, including by making police data reporting at the state and local levels mandatory.<sup>14</sup>

#### **Situation of people of African descent, Hispanic/Latino origin and other ethnic minorities (arts. 2–5)**

9. Updated information on measures to address the disparate impact of gun violence on individuals belonging to ethnic minorities and indigenous peoples. Steps to review the “Stand Your Ground” laws and efforts to repeal the Tiahrt Amendments.<sup>15</sup> Updated statistical data on the firearm homicide rate in recent years, disaggregated by race and ethnicity of the victims.

10. Additional measures to address systemic racism in law enforcement and to prevent excessive use of force and other human rights violations by law enforcement officials and Customs and Border Protection officers against persons belonging to ethnic minorities and

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<sup>5</sup> CERD/C/USA/CO/7-9, para. 7; and CERD/C/USA/10-12, paras. 13–14.

<sup>6</sup> CERD/C/USA/CO/7-9, para. 8; and CERD/C/USA/10-12, para. 15.

<sup>7</sup> CERD/C/USA/CO/7-9, para. 8; and CERD/C/USA/10-12, para. 19.

<sup>8</sup> CERD/C/USA/CO/7-9, para. 23; and CERD/C/USA/10-12, paras. 123–127.

<sup>9</sup> CERD/C/USA/CO/7-9, para. 9; and CERD/C/USA/10-12, paras. 2 and 22.

<sup>10</sup> CERD/C/USA/CO/7-9, para. 9; and Committee decision 1 (93) (A/73/18, p. 6).

<sup>11</sup> CERD/C/USA/CO/7-9, para. 9.

<sup>12</sup> CERD/C/USA/10-12, paras. 23, 26–27 and 30–31.

<sup>13</sup> Ibid., paras. 24–25 and 30–31.

<sup>14</sup> CERD/C/USA/CO/7-9, para. 9; and CERD/C/USA/10-12, paras. 29–30.

<sup>15</sup> CERD/C/USA/CO/7-9, para. 16; and CERD/C/USA/10-12, paras. 73–76.

undocumented migrants, including unarmed individuals, leading to disproportionately recurrent killings of unarmed individuals of African descent.<sup>16</sup> Further information, comprising statistics, on reported cases of excessive use of force by the police, Customs and Border Protection officers and other law enforcement officials; investigations; sanctions against the perpetrators; remedies and other kinds of support provided to victims or their families, including those that resulted in killings of individuals belonging to racial or ethnic minority groups and undocumented migrants.<sup>17</sup> Updated information on the investigations, proceedings and outcomes of recent killings of individuals of African and Asian descent, Hispanic/Latino origin, indigenous peoples and other ethnic minorities by police officers.<sup>18</sup>

11. Updated information on measures to prevent the implementation of state and local regulations restricting voting rights, which have a discriminatory impact on people of African descent, Hispanic/Latino communities, other ethnic minorities and indigenous peoples, including voter identification laws, district gerrymandering, closing or moving polling locations and felon disenfranchisement laws.<sup>19</sup> Implementation and impact of Executive Order 14019 on Promoting Access to Voting of 7 March 2021.<sup>20</sup> Measures to secure effective and equitable participation and representation of persons belonging to ethnic minorities and indigenous peoples, in particular women and young people, at all levels of government, especially in institutions responsible for developing policies that affect them. Statistics on the representation of racial and ethnic minorities and indigenous peoples, in particular women, in the judiciary.

12. Measures to guarantee the exercise of the right to freedom of peaceful assembly of individuals belonging to racial and ethnic minorities, in light of reports of increasing legislative initiatives adopted in some states that are aimed at restricting and criminalizing protest activities, following anti-racism protests in recent years, as well as allegations of the disproportionate use of force during anti-racism protests, more permissive treatment towards counter-protests and militarized responses to some of these protests. Measures to prevent and investigate allegations of harassment, surveillance and threats to the safety, including online, of human rights defenders of African descent and other ethnic minorities.

13. Further measures to eliminate racial disparities at all stages of the criminal justice system, notably with regard to overrepresentation of racial and ethnic minorities, in particular people of African descent and Hispanic/Latino communities, who continue to be disproportionately arrested, incarcerated, subjected to harsher sentences, including life imprisonment without parole and the death penalty, and impacted by collateral consequences, such as felon disenfranchisement and welfare bans, especially in the context of the enforcement of minimum drug-offence sentencing policies.<sup>21</sup> Updated statistics on the ethnic composition of the prison population, including persons sentenced to the death penalty.

14. Further efforts to address racial disparities at all levels in the juvenile justice system, including overrepresentation of racial and ethnic minorities, in particular people of African descent, indigenous peoples and Hispanic/Latino communities, who continue to be disproportionately arrested in schools and referred to the criminal justice system. Statistical data on juveniles from racial and ethnic minorities sentenced to life imprisonment without parole in recent years, disaggregated by race and ethnicity.<sup>22</sup>

15. Information on the impact of the COVID-19 pandemic on racial and ethnic minorities, indigenous peoples and non-citizens, and on measures to mitigate the socioeconomic consequences of the pandemic on these groups. Concrete measures to implement the support expressed for waiving intellectual property protections for COVID-19 vaccines as a measure to address the higher rates of COVID-19 morbidity and mortality worldwide among persons and groups most exposed to racial discrimination.

<sup>16</sup> CERD/C/USA/CO/7-9, para. 17; and CERD/C/USA/10-12, paras. 77–83.

<sup>17</sup> CERD/C/USA/CO/7-9, para. 17; and CERD/C/USA/10-12, para. 77.

<sup>18</sup> CERD/C/USA/CO/7-9, para. 17; and CERD/C/USA/10-12, para. 78.

<sup>19</sup> CERD/C/USA/CO/7-9, para. 11; and CERD/C/USA/10-12, paras. 42–44.

<sup>20</sup> CERD/C/USA/10-12, para. 43.

<sup>21</sup> CERD/C/USA/CO/7-9, para. 20; and CERD/C/USA/10-12, paras. 114–116.

<sup>22</sup> CERD/C/USA/CO/7-9, para. 21; and CERD/C/USA/10-12, paras. 117–120.

16. Situation of racial segregation in schools, including in early childhood education, and steps taken to adopt a comprehensive plan to address school segregation.<sup>23</sup> Efforts to address funding gaps in public education disparately affecting districts consisting predominately of people of African descent, Hispanic/Latino communities, indigenous peoples and other ethnic minority students.

17. Further measures to eliminate racial discrimination in access to housing and residential segregation based on race, colour, ethnicity or national origin. Efforts to strengthen the implementation of the Fair Housing Act and Title VIII of the Civil Rights Act of 1968. Measures to prevent and sanction discriminatory mortgage lending and redlining practices by private actors.<sup>24</sup> Additional measures to reduce homelessness and to abolish laws and policies criminalizing homelessness, which disproportionately affect racial and ethnic minorities, including people of African descent, Hispanic/Latino communities and indigenous peoples.<sup>25</sup> Efforts to address the disproportionate racial impact of the lifting of the COVID-19 federal eviction moratorium.

18. Measures to ensure that all individuals, including those belonging to racial and ethnic minorities, indigenous peoples and migrants, have effective access to affordable and adequate health-care services. Further measures to address the persistence of high maternal and infant mortality rates among racial and ethnic minorities and to ensure access to health and reproductive health services without discrimination. Efforts to address restrictive legislation in the field of sexual and reproductive health and their disproportionate impact on women belonging to racial and ethnic minorities, including with regard to voluntary termination of pregnancy.<sup>26</sup>

19. Impact of the measures adopted and further efforts to address the disproportionate effects of environmental pollution caused by extractive and manufacturing industries, radioactive and toxic waste, climate and natural disasters on racial and ethnic minorities and indigenous peoples, including in non-autonomous territories.<sup>27</sup> Efforts to address racial disparities in access to adequate food and the disproportionate impact of food insecurity on racial and ethnic minorities and indigenous peoples.

20. Measures to combat multiple and intersectional discrimination against women of African descent, women of Hispanic/Latino origin, indigenous women and women of other ethnic minorities, especially with regard to their access to an adequate standard of living, work, education, health services and justice. Further efforts to prevent and combat violence against women and girls from racial and ethnic minorities, particularly women of African descent and indigenous and immigrant women and girls.<sup>28</sup>

21. Measures to address racial discrimination and unequal treatment in all stages of the child welfare system, and the disproportionate number of children of racial and ethnic minorities removed from their families, in particular children of African descent and indigenous children.<sup>29</sup>

#### **Situation of indigenous peoples (arts. 5 and 6)**

22. Measures to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policymaking and decisions that affect them. Updated information on the implementation of presidential memorandum on tribal consultation and strengthening nation-to-nation relationships of 26 January 2021 and on other efforts to fulfil treaty responsibilities to Tribal Nations.<sup>30</sup>

23. Measures to protect the rights of indigenous peoples, their lands, territories, sacred sites and way of life from the adverse effects of extractive industries, infrastructure projects

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<sup>23</sup> CERD/C/USA/CO/7-9, para. 14; and CERD/C/USA/10-12, para. 64.

<sup>24</sup> CERD/C/USA/CO/7-9, para. 13; and CERD/C/USA/10-12, paras. 50–54.

<sup>25</sup> CERD/C/USA/CO/7-9, para. 12; and CERD/C/USA/10-12, paras. 45–49.

<sup>26</sup> CERD/C/USA/CO/7-9, para. 15; and CERD/C/USA/10-12, paras. 67–72.

<sup>27</sup> CERD/C/USA/CO/7-9, para. 10; and CERD/C/USA/10-12, paras. 32–40.

<sup>28</sup> CERD/C/USA/CO/7-9, para. 19; and CERD/C/USA/10-12, paras. 101–113.

<sup>29</sup> CERD/C/USA/CO/7-9, para. 24; and CERD/C/USA/10-12, para. 132.

<sup>30</sup> CERD/C/USA/CO/7-9, para. 24; and CERD/C/USA/10-12, para. 128.

and the construction of border fences and walls, including preventive measures and effective redress and accountability mechanisms.<sup>31</sup> Updated information on the measures to address the situation of Western Shoshone peoples,<sup>32</sup> Native Hawaiians and Kanaka Maolihe indigenous peoples,<sup>33</sup> Gwich'in indigenous peoples<sup>34</sup> and Anishinaabe indigenous peoples,<sup>35</sup> considered under the Committee's early warning and urgent action procedure.

24. Measures to guarantee the exercise of the right to freedom of peaceful assembly of indigenous peoples in light of reports of excessive use of force by law enforcement officials and private security companies against indigenous individuals, including indigenous women, peacefully protesting for the protection of their rights.

25. Concrete measures to prevent overseas activities of transnational corporations registered in the State party that could have adverse effects on the enjoyment of human rights by local populations in other countries, especially indigenous peoples and minorities.<sup>36</sup>

#### **Situation of non-citizens, including migrants, refugees and asylum-seekers (arts. 5 and 6)**

26. Further measures to address the excessive use of force by Customs and Border Protection personnel, in particular cases leading to the killing of non-citizens, criminal prosecution for breaches of immigration law, mandatory detention of non-citizens for prolonged periods of time, deportation of undocumented non-citizens without access to justice and legal representation, and inadequate conditions and treatment in detention centres.<sup>37</sup> Updated information on the implementation of the measures to put an end to the zero-tolerance policy, and progress on the reunification of children migrants and their families.<sup>38</sup> Concrete measures to develop a statelessness determination system.

27. Measures to ensure access to fair and efficient asylum procedures without discrimination based on race, colour, descent, or national or ethnic origin, and to respect of the principle of non-refoulement. Efforts to address the collective expulsion of non-citizens, including asylum-seekers, and the allegations of systematic targeting of some racial and ethnic groups of non-citizens, in particular people of African descent. Steps to halt the Migrant Protection Protocols and Title 42 of the U.S. Code (42 U.S.C. § 265).

28. Further measures to strengthen its legislation to protect migrants, including undocumented migrants, from exploitative and abusive conditions of work; to provide adequate recourse against illegal behaviour; and to ensure access to social services, including affordable and adequate health-care services.<sup>39</sup> Efforts to address the situation of children, in particular Hispanic/Latino migrant children, employed in the agriculture industry and working under hazardous conditions while being under 18 years of age, including the impact on their health and high dropout rate from school. Concrete measures to raise the minimum age for hazardous work in the agriculture sector.<sup>40</sup>

<sup>31</sup> CERD/C/USA/CO/7-9, paras. 10 and 24; and CERD/C/USA/10-12, paras. 130–131.

<sup>32</sup> Committee decision 1 (68) (A/61/18, p. 7).

<sup>33</sup> See [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_8932\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8932_E.pdf) and [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_8933\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8933_E.pdf).

<sup>34</sup> See [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_9503\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9503_E.pdf).

<sup>35</sup> See [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_9558\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9558_E.pdf).

<sup>36</sup> CERD/C/USA/CO/7-9, para. 10; and CERD/C/USA/10-12, para. 41.

<sup>37</sup> CERD/C/USA/CO/7-9, para. 18; and CERD/C/USA/10-12, paras. 84–89.

<sup>38</sup> CERD/C/USA/10-12, para. 85.

<sup>39</sup> CERD/C/USA/CO/7-9, paras. 15 and 18; and CERD/C/USA/10-12, paras. 72 and 94–99.

<sup>40</sup> CERD/C/USA/CO/7-9, para. 18; and CERD/C/USA/10-12, paras. 92–93.

29. Updated information on measures to ensure the closure of the Guantanamo Bay facility, terminate administrative detention of non-citizens without charge or trial and guarantee the rights of detainees to a fair trial and equal access to the ordinary criminal justice system.<sup>41</sup>

**Education to combat prejudices and promote understanding (arts. 1, 2 and 6)**

30. Adoption of a national plan of action or strategy to combat structural racial discrimination and consultations held on this matter with relevant stakeholders, including civil society organizations, in particular organizations representative of the groups most exposed to racial discrimination.<sup>42</sup>

31. Information on additional efforts to incorporate the history and cultures of people of African descent, indigenous peoples and other ethnic minorities as well as human rights, racism and racial discrimination into the education system, including measures to add or to maintain these subjects in school curricula and textbooks.

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<sup>41</sup> CERD/C/USA/CO/7-9, para. 22; and CERD/C/USA/10-12, paras. 121–122.

<sup>42</sup> CERD/C/USA/CO/7-9, para. 10; and CERD/C/USA/10-12, para. 41.