



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9  
OF THE CONVENTION**

**Sixth periodic reports of States parties due in 2005**

**Addendum**

**UNITED STATES OF AMERICA \* \*\* \*\*\***

[24 April 2007]

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\* This document contains the fourth, fifth and sixth periodic reports of the United States of America, due on 20 November 2003 and 2005, submitted in one document.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\*\* Annexes can be consulted in the files of the secretariat.

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## **Introduction**

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Elimination of Racial Discrimination on measures giving effect to its undertakings under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), pursuant to article 9 thereof. This document constitutes the fourth, fifth, and sixth periodic reports of the United States. Its organization follows the General Guidelines regarding the form and contents of periodic reports to be submitted by States parties, adopted by the Committee in August 2000 (CERD/C/70/Rev.5) and the guidelines for Initial Parts of State Party Reports (“Core Documents”) (HRI/GEN/2/Rev 3) of 8 May 2006.
2. This report was prepared by the U.S. Department of State with extensive assistance from the White House, the Civil Rights Division of the U.S. Department of Justice, the Equal Employment Opportunity Commission, and other relevant departments and agencies of the federal government and of the states. Contributions were also solicited and received from interested members of the numerous non-governmental organizations and other public interest groups active in the area of civil rights, civil liberties, and human rights in the United States.
3. The United States submitted its initial, second, and third periodic reports as a single document to the Committee on the Elimination of Racial Discrimination in September 2000, hereinafter “Initial U.S. Report” or “Initial Report.” A copy can be viewed at <http://www.state.gov/>. The United States made its oral presentation to the Committee on August 3 and 6, 2001. Accordingly, the purpose of this fourth, fifth, and sixth periodic report is to provide an update of relevant information since the submission of the Initial Report.
4. The legal and policy framework through which the United States gives effect to its Convention undertakings has not changed dramatically since the Initial Report. As described in that Report, the United States Constitution; the constitutions of the various states and territories; and federal, state, and territorial law and practice provide strong and effective protections against discrimination on the basis of race, color, ethnicity, and national origin in all fields of public endeavor and with regard to substantial private conduct as well. These protections, as administered through executive action and the judicial system, continue to apply.

### **I. GENERAL**

#### **A. Background**

5. The information provided in this report supplements that provided in the Initial U.S. Report filed in 2000 (CERD/C/351/Add.1). It also supplements the information provided by the U.S. delegation at the meetings of the Committee, which discussed the Initial U.S. Report on August 3 and 6, 2001 (CERD/C/SR/1474, 1475, 1476). The information provided herein takes into account the concluding observations of the Committee (CERD/A/56/18, paragraphs 380-407), published on August 14, 2001, as well as relevant general Committee recommendations and other Committee actions.
6. In this consolidated report, the United States has sought to respond to the Committee’s concerns as fully as possible. In this regard, the United States notes the discussion of U.S. reservations, understandings, and declarations to the Convention contained in paragraphs 145

through 173 of the Initial U.S. Report. The United States maintains its position with regard to these reservations, understandings, and declarations, and with respect to other issues as discussed in this report.

## **B. Land and people**

7. Neither the land area nor the basic federal-state organization of the United States has changed since submission of the Initial U.S. Report in 2000. Nor has there been change in the relationship between the United States and the outlying areas under U.S. jurisdiction - Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and several very small islands.

### **Update of general census data**

8. The population of the United States, which was 281.4 million at the time of the 2000 census, was estimated to be 296.4 million in July 1, 2005 - an increase of approximately 5.3 percent. By the year 2010, the population is projected to be 308.9 million - an increase of approximately 9.8 percent from 2000; and by 2050, the population is projected to have increased by 49.2 percent from the 2000 figure, to 419.9 million.

9. The U.S. is a multi-racial, multi-ethnic, and multi-cultural society in which racial and ethnic diversity is ever increasing. Virtually every national, racial, ethnic, cultural, and religious group in the world is represented in the U.S. population. As described in the Initial U.S. Report, the racial and ethnic categories used since 1997 in the U.S. census are: White; Black or African American; American Indian and Alaska Native (AIAN); Asian; and Native Hawaiian and Other Pacific Islander (NHPI). Members of these racial categories are also classified separately as belonging to one of two ethnic categories: Hispanic or Latino origin, or non-Hispanic or Latino origin.<sup>1</sup>

10. In the 2000 census, 97.6 percent of all respondents reported only one race. The group reporting White alone accounted for 75 percent of the population, down from about 80 percent in 1990. The Black or African American alone population represented just over 12 percent of the total, approximately the same as in 1990. Just under 1 percent of all respondents indicated American Indian and Alaska Native only, also approximately the same as in 1990. About 4 percent indicated Asian alone, up from about 3 percent in 1990. The smallest racial group was the Native Hawaiian and Other Pacific Islander alone population, representing 0.1 percent of the total. The remainder of the "one race" respondents - 5.5 percent of all respondents - indicated only the "some other race alone" category, which consisted predominately of persons of

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<sup>1</sup> For reasons of simplicity, this report generally uses the single terms "African American" and "Hispanic" to refer to the respective categories of persons, rather than the terms "Black or African American" and "Hispanic or Latino" employed by the Census Bureau. On occasion, however, the terms "Black" or "Latino" are used, depending on the context and the source. Also, on occasion the report uses the single term "American Indian" rather than the full Census term "American Indian and Alaska Native."

Hispanic origin. This percentage was up from approximately 4 percent in 1990. Two and fourth tenths of a percent of all respondents reported two or more races, and 0.02 percent reported four or more races.

11. Looking at ethnicity, although the U.S. population remains primarily White non-Hispanic, the proportion of the population falling into that category is decreasing. Census projections from March, 2004 show that the White non-Hispanic portion of the population declined from 75.7 percent in 1990 to 69.4 percent in 2000, and is projected to decline further to 65.1 percent by 2010 and to 50.1 percent by 2050. Although the number of White non-Hispanic persons in the United States is projected to grow by 2.8 percent from 2000 to 2010, the growth rate for this group is projected to be much lower than the growth rates for other racial and ethnic categories. For example, during the 2000 to 2010 period, the Hispanic (of any race) population is projected to grow by 34.1 percent, the African American population to grow by 12.9 percent, the Asian population to grow by 33.3 percent, and the other races category (American Indian and Alaska Native alone, Native Hawaiian and Other Pacific Islander alone, and two or more races) to grow by 30.7 percent. In addition, in 2000 1.2 million people reported Arab ancestry, up from 610,000 in 1980. This represents a 41 percent rate of growth during the 1980s and a 38 percent growth in the 1990s. The table below contains census data on the projected population of the United States by race and Hispanic origin from 2000 to 2050.

**Table 1a**

**Projected population of the United States, by race and Hispanic origin: 2000 to 2050  
(in thousands except as indicated. As of July 1. Resident population)**

Population or percent and race or Hispanic origin	2000	2010	2020	2030	2040	2050
<b>Population</b>						
Total	282 125	308 936	335 805	363 584	391 946	419 854
White alone	228 548	244 995	260 629	275 731	289 690	302 626
Black alone	35 818	40 454	45 365	50 442	55 876	61 361
Asian alone	10 684	14 241	17 988	22 580	27 992	33 430
All other races <sup>1</sup>	7 075	9 246	11 822	14 831	18 388	22 437
Hispanic (of any race)	35 622	47 756	59 756	73 055	87 585	102 560
White alone, not Hispanic	195 729	201 112	205 936	209 176	210 331	210 283
<b>Percent of total population</b>						
Total	100.0	100.0	100.0	100.0	100.0	100.0
White alone	81.0	79.3	77.6	75.8	73.9	72.1
Black alone	12.7	13.1	13.5	13.9	14.3	14.6
Asian alone	3.8	4.6	5.4	6.2	7.1	8.0
All other races <sup>1</sup>	2.5	3.0	3.5	4.1	4.7	5.3
Hispanic (of any race)	12.6	15.5	17.8	20.1	22.3	24.4
White alone, not Hispanic	69.4	65.1	61.3	57.5	53.7	50.1

*Source:* U.S. Census Bureau, 2004, "U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin," <http://www.census.gov/ipc/www/usinterimproj/>.

<sup>1</sup> Includes American Indian and Alaska Native alone, Native Hawaiian and Other Pacific Islander alone, and two or more races.

12. The distribution of the U.S. population by urban vs. rural residence and region of the country varied considerably by race and ethnicity in 2000. African Americans, Hispanics, and Asian Americans were more likely to live in urban areas (defined as areas with populations of 50,000 or more) than were non-Hispanic Whites. For example, in 2000, although African Americans alone represented only 12.3 percent of the population overall, they constituted 14.6 percent of the persons living in urban areas. Likewise, although Hispanics made up only 12.5 percent of the population overall, they represented 15.5 percent of urban inhabitants. Asian Americans alone represented 5 percent of urban inhabitants, compared to only 3.6 percent of the population overall. By contrast, non-Hispanic Whites composed 62.7 percent of urban dwellers compared to 69.1 percent of the population overall.

13. Of the total population in 2000, 19 percent lived in the Northeast; 23 percent in the Midwest; 36 percent in the South; and 22 percent in the West. However, over half of the African American population (54 percent) lived in the South, including 54.8 percent of those indicating African American alone, and 53.6 percent of the African American alone or in combination population. Other minority groups were concentrated in the West, including 43 percent of American Indians and Alaska Natives alone or in combination; 49 percent of Asians alone or in combination; 73 percent of Native Hawaiian and Other Pacific Islanders alone or in combination; and 43.5 percent of Hispanics.

14. According to the U.S. Census American Community Survey (ACS), in 2004 the foreign-born population was estimated to be 34.3 million (12 percent of the total U.S. household population). This represented an increase of 73 percent from 1990. The foreign-born population was located throughout the United States.

15. Within the foreign-born population, 42 percent were naturalized U.S. citizens. Of the foreign-born population, about one-in-five had entered the United States since 2000. The foreign-born population comes to the United States from throughout the world: 54.8 percent were born in the Americas (9.2 percent in the Caribbean, 36.3 percent in Central America, 6.7 percent in South America, and 2.4 percent in North America); 27 percent in Asia; 14.3 percent in Europe; 3.3 percent in Africa; and 0.6 percent in Oceania.

16. Although direct estimates of the unauthorized population are not available, recent efforts have yielded estimates of a residual population that includes unauthorized as well as “quasi-legal” migrants - persons who are legally present in the United States, but who have not obtained legal permanent resident (LPR) status. This residual foreign-born population was estimated to be about 3.8 million in 1990 and about 8.7 million in 2000. Of the residual foreign born population, about 27 percent were from Mexico in 1990 and about 47 percent were from Mexico in 2000.

17. Although English is the predominant language of the United States, in 2004 approximately 50 million (19 percent) of the 266 million people aged 5 and above spoke a language other than English at home. Thirty-one million people spoke Spanish, and 7.6 million spoke an Asian or Pacific Island language. French and German were the next most common languages spoken. In 2004, twenty-two million people (8.4 percent of the total population) indicated that they did not speak English “very well.” The highest percentages of non-English speakers were found in the states of California, New Mexico, and Texas.

### **Socio-economic data on American Indian and Alaska native populations and native Hawaiian and other Pacific Islander populations**

18. In its comments and recommendations of August 14, 2001, the Committee requested additional socio-economic data on, in particular: (a) the indigenous and Arab American population; and (b) the populations of the States of Alaska and Hawaii. That information is included in this and the following sub-sections.

19. There are 561 federally-recognized American Indian Tribes and Alaska Native tribal governments in the United States. Each tribe generally has its own language, culture, and tribal political and governmental system. Numerous groups are also petitioning through an established federal process to have their tribal status determined. In 2000, 74 percent of all AIAN respondents reported a specific tribal affiliation. The tribal groupings that included 100,000 or more persons were Cherokee, Navajo, Latin American Indian, Choctaw, Sioux, and Chippewa.<sup>2</sup>

20. Of the total United States population, 2.5 million people (0.9 percent) reported AIAN alone, and an additional 1.6 million reported AIAN and at least one other race. The AIAN population grew at a greater rate than the general population from 1990 to 2000, increasing between 26 percent and 110 percent, depending on whether AIAN alone or AIAN in combination with other races was measured. Forty-three percent of this population lived in the west, and 31 percent lived in the south. The AIAN population has a slightly higher ratio of males to females than does the population as a whole: the AIAN alone population had 99.4 males for every 100 females, and the AIAN alone or in combination population had 97.5 males for every 100 females; by contrast, the total population had 96.1 males for every 100 females. The AIAN population also tends to be somewhat younger than the U.S. population: 33.3 percent were under 19, as compared to 25.6 percent for the nation as a whole.

21. In 2000, 874,000 persons (0.3 percent of the population) identified as Native Hawaiian and Other Pacific Islander. Of these, approximately 46 percent said they were NHPI alone, and 54 percent identified as NHPI in combination with other races. The most common combination was NHPI and Asian. The NHPI category includes diverse populations differing in language and culture, with Polynesian, Micronesian, and Melanesian cultural backgrounds. The NHPI category is unique in that it is the only racial category for which the number of respondents reporting two or more races was higher than the number reporting only one race. The NHPI population increased at a rate between 9 and 140 percent from 1990 to 2000, depending on whether NHPI alone or in combination with other races was measured. About three-quarters of this group lived in the west, and over half lived in Hawaii and California (although the 50 percent figure was a reduction from 1990). Native Hawaiian was the largest group, followed by Samoans, and Guamanians or Chamorros. Together these groups constituted 74 percent of the persons reporting NHPI alone, and 71 percent of the NHPI in combination group.

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<sup>2</sup> Note that the term “tribe” or “tribal” as used in this report means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

22. The AIAN population tends to have lower school attendance and rates of educational attainment than the U.S. population as a whole, although these rates are improving. The same is also true for the NHPI population, although the NHPI percentages are closer to the national average. For the U.S. population in general, the high school dropout rate (the percentage of 16-19 year olds not enrolled in high school and not high school graduates) was 9.8 percent in 2000, down from 11.2 percent in 1990. By contrast, 16.1 percent of AIAN alone students had dropped out of high school, down from 18.1 percent in 1990. The dropout rate for NHPI alone students was 11 percent for both 2000 and 1990. Likewise, college attendance for both groups was below the national average. Overall, 34 percent of young adults (18 to 24 years old) in the U.S. attended college in 2000, compared to 21 percent for the corresponding AIAN alone population and 30 percent for the corresponding NHPI alone population. These patterns were reflected in overall educational attainment for persons more than 25 years old:

Overall educational attainment	AIAN alone %	NHPI alone %	Overall %
High school graduate or more	70.9	78.3	80.4
Some college or more	41.7	44.6	51.8
BA or more	11.5	13.8	24.4
Advanced degree	3.9	4.1	8.9

(Source: Census 2000: Educational Attainment of the Population 25 Years and Over by Age, Sex, Race, and Hispanic or Latino Origin.)

23. Lower educational attainment, in turn, is reflected in the statistics concerning employment, occupation, and income. The 2004 American Community Survey showed that unemployment was higher for the AIAN alone (14 percent) and NHPI alone (9.9 percent) populations than for the population as a whole (7.2 percent). Those who were working tended to work less in management and more in jobs such as construction and transportation. For example, while 33.6 percent of the overall population worked in management and professional positions, 24.3 percent of the AIAN alone and 23.3 percent of the NHPI alone populations worked in those professions. American Indians and Alaska Natives alone tended to work more heavily in production, transportation and material moving (16.8 percent compared to 14.6 percent overall), construction (12.9 percent compared to 9.4 percent overall), and farming, fishing and forestry (1.3 percent compared to 0.7 percent overall). Likewise, Native Hawaiians and Other Pacific Islanders alone tended to work more heavily in the service professions (20.8 percent compared to 14.9 percent overall) and in transportation and material moving (16.5 percent compared to 14.6 percent overall).

24. In 1999, household income for these two groups was also less than the national average. Compared to a mean household income of \$56,644 for the population overall, the mean for the AIAN alone population was \$40,135, and that for the NHPI alone group was \$53,096. The 2004 American Community Survey showed poverty rates of 24.7 percent for the AIAN population and 18.1 percent for the NHPI group, compared to 13.3 percent overall. For families, the figures were 10.1 percent for all families, contrasted with 20.5 percent for AIAN families and 15.1 percent for NHPI families. Monthly housing costs were among the lowest for AIAN alone inhabitants - \$879 compared to the national median of \$1,088 for units with a mortgage, and

\$216 compared to \$295 for units without a mortgage. On the other hand, monthly housing costs for NHPI alone members were higher than the national median for units with a mortgage (\$1,261) and close to the median for non-mortgage units. This may be because NHPI persons are concentrated in California and Hawaii, two states with very high homeowner costs and housing values.

### **Socio-economic data on the Arab-American population**

25. Census 2000 was the first U.S. census to analyze data and produce reports specifically on U.S. persons of Arab ancestry. In 1997, when the U.S. Census Bureau revised the federal standards for classification of race and ethnicity, it noted a lack of consensus on the definition of an Arab ethnic category, and recommended further research. The reports from the 2000 census are contributing to this ongoing research, and are being analyzed in consultation and collaboration with experts in the Arab community. Persons considered as being of Arab ancestry for purposes of the census reports were those who indicated ancestries originating from Arabic-speaking countries or areas of the world - persons who reported being Arab, Egyptian, Iraqi, Jordanian, Lebanese, Middle Eastern, Moroccan, North African, Palestinian, Syrian, etc. As many as two ancestries were tabulated per respondent and, if either fell into the definition of Arab, the person was considered to be "of Arab ancestry" for purposes of analysis.

26. In 2000, 1.2 million people reported Arab ancestry - up from 860,000 in 1990 and 610,000 in 1980. This represents a 41 percent increase in the 1980s and 38 percent increase in the 1990s. Approximately 850,000 of these 1.2 million persons reported only Arab ancestry (either one Arab ancestry or two ancestries both of which were Arab). In addition, more than a quarter of the Arab population (28 percent) also reported a second, non-Arab ancestry; among those, 14.7 percent reported Irish, 13.6 percent Italian, and 13.5 percent German. Lebanese, Syrian, and Egyptian ancestry accounted for about three-fifths of the Arab ancestries reported: 37 percent indicated Lebanese ancestry, 12 percent Syrian, and 12 percent Egyptian. The next highest was Palestinian, at 6 percent. A substantial portion of the Arab population (20 percent) identified themselves as having general Arab ancestries, such as Arab, Arabic, Middle Eastern, or North African. Those who described their ancestry in general terms as "Arab," "Arabic," or some other generalized term were most likely to be under 18, while those who made specific designations, such as "Syrian" or "Lebanese," were more likely to be older.

27. The population indicating solely Arab ancestry also tended to be more heavily male than the U.S. population overall - 57 percent compared to 49 percent population wide. The median age of the male Arab population was 33 years - two years below the median age for the total U.S. population of males, which was 35 years. The female Arab population tended to be most highly concentrated in the 0-9 and 20-35 age ranges.

28. The Arab population was fairly evenly distributed among the four regions of the United States, with about half of that population concentrated in five states: California, Florida, Michigan, New Jersey, and New York. Michigan had the highest proportion of Arabs in its population, and six of the ten largest cities in the United States were among the ten places with the largest Arab populations (New York, Los Angeles, Chicago, Houston, Detroit, and San Diego).

29. The socio-economic data below describe persons of sole Arab ancestry, i.e., those indicating only one Arab ancestry or two ancestries both of which were Arab. Almost half of the residents of sole Arab ancestry (46 percent) were born in the United States or born abroad to U.S. citizen parents, compared to 89 percent for the U.S. as a whole. Of the 54 percent who were foreign born, approximately half had arrived during the 1990s, and over half had become naturalized citizens by 2000 - a higher proportion than for the U.S. foreign-born population as a whole.

30. Persons of sole Arab ancestry tended to be more highly educated than the U.S. population as a whole. More than 40 percent of Arab Americans 25 years of age or older had college degrees or higher, as compared to 24 percent for the population as a whole. Likewise, the proportion of Arabs 25 years or older with high school diplomas or higher (84 percent) exceeds that for the population as a whole (80 percent). The population of sole Arab ancestry also tended to live in married households at a greater rate than the population as a whole - 60 percent compared to 53 percent. Female family householders with no husband present were less common among Arab households than among U.S. households as a whole - 6 percent as compared to 12 percent. Similar relationships are seen when comparing the Arab population as a whole (including those with two ancestries one of which was not Arab) to the total U.S. population. Although 69 percent of Arabs of sole Arab ancestry spoke a language other than English at home, 65 percent of those indicated that they spoke English "very well" - representing 44 percent of overall Arabs aged five and older.

31. Persons of sole Arab ancestry tended to work in management, professional, and related occupations at a higher rate than the population as a whole; approximately 42 percent of Arabs aged 16 and above worked in those occupations, compared with 34 percent for the U.S. overall. Likewise, a higher proportion of persons of sole Arab ancestry tended to work in sales and office occupations than the population as a whole (30 percent compared to 27 percent), while the proportion of the sole Arab population working in construction, extraction, and maintenance jobs was lower (5.4 percent compared to 9.4 percent), as was the proportion working in production, transportation, and material moving (10.7 percent compared to 14.6 percent). Men of Arab descent were more likely, and women less likely, to be in the labor force than their counterparts in the total population.

32. Median earnings for the sole Arab population were also higher than those for the U.S. population overall (for men, \$41,700 compared to a national median of \$37,100, and for women \$31,800 compared to a national median of \$27,200). This was also true for Arab families, which had higher median incomes than U.S. families in general (\$52,300 compared to \$50,000). Nevertheless, a higher percentage of persons of sole Arab ancestry fell into the poverty range (17 percent compared to 12 percent). Poverty rates were highest among those younger than 18 years.

### **Socio-economic data on the populations of the States of Alaska and Hawaii**

33. Alaska is the largest state in the United States in land area, but has one of the smallest populations - only 626,932 persons in 2000. In 2000, its population was more heavily male and slightly younger than the national average. For persons listing one race, Alaska's population was

much more heavily American Indian and Alaska Native than the national average - 15.6 percent as opposed to 0.09 percent. By contrast, its African American alone population was smaller (3.5 percent as opposed to 12.3 percent), and its White population was also smaller (69.3 percent as opposed to 75.1 percent) than the national average. Its Asian population was slightly above the national average (4 percent as opposed to 3.6 percent). The percentage of the Alaska population listing Hispanic ethnicity was considerably below the national average (4.1 percent as opposed to 12.5 percent). Persons listing two or more races were also elevated in Alaska - 5.4 percent as opposed to 2.4 percent nationally. Alaska had a considerably lower percentage of foreign born residents than the nation as a whole (5.9 percent as opposed to 11.1 percent nationally).

34. Alaska's population was somewhat more educated than the national average. Of the population 25 years and over, 88.3 percent of Alaskans were high school graduates or higher, contrasted with 80.4 percent nationally; and 24.7 percent of Alaskans had a college degree or higher, compared to 24.4 percent nationally. In Alaska, 14.3 percent of the population spoke a language other than English at home, as compared to 17.9 percent of the population in general.

35. A higher proportion of Alaska's 16 years and older population was in the workforce than was true nationally (71.3 percent as opposed to 63.9 percent). Likewise, fewer Alaskan families and individuals fell below the poverty level than was true nationally (6.7 percent compared to 9.2 percent for families, and 9.4 percent compared to 12.4 percent for individuals).

36. By contrast, the population of Hawaii in 2000 was 1,211,537, about twice that of Alaska. Also in contrast to Alaska, Hawaii's population was slightly older than the national average; for example, 13.3 percent of Hawaiians were 65 years and older, compared to 12.4 percent nationally. Hawaii was closer to the national average in its male-female ratio - 50.2 percent were male (compared to 49.1 percent nationally), and 49.8 percent were female (compared to 50.9 percent nationally). An unusually large proportion of Hawaiians described themselves as being of two or more races (21.4 percent compared to 2.4 percent nationally). Of those indicating only one race, Native Hawaiian and Other Pacific Islanders constituted 9.4 percent of the population, as opposed to 0.1 percent nationally. Asians also constituted an extremely high percentage of the population - 41.6 percent as opposed to 3.6 percent nationally. Conversely, the proportion of Whites was considerably lower - 24.3 percent, as compared to 75.1 percent nationally. In addition, African Americans and persons of Hispanic origin were less prevalent in Hawaii than in the nation as a whole. African Americans alone constituted only 1.8 percent of the population, compared to 12.3 percent nationally, while persons of Hispanic ethnicity made up only 7.2 percent of the Hawaiian population, compared to 12.5 percent nationally.

37. Like Alaska, the people of Hawaii tended to have higher levels of education than the national average. Eighty four point six percent of Hawaiians age 25 and older were high school graduates or higher, compared to 80.4 percent of the U.S. population overall. Twenty-six point two percent of Hawaiians had college degrees or higher, compared to 24.4 percent nationally. A considerably greater proportion of Hawaiians said that they spoke a language other than English at home - 26.6 percent compared to 17.9 percent nationally.

38. The proportion of Hawaiians in the labor force was slightly higher than the national average (64.5 percent compared to 63.9 percent), and Hawaiian individuals and families tended to fall below the poverty level at a lower rate than the total U.S. population (7.6 percent compared to 9.2 percent for families, and 10.7 percent compared to 12.4 percent for individuals).

### **C. General political structure**

39. Since the Initial U.S. Report in 2000, there have been no changes in the political structure of the United States, or its basic relationships with United States territories, or with the AIAN or NHPI populations. The Office of Hawaiian Relations within the Department of the Interior was established in the fall of 2005 to “preserve and promote Hawaii’s natural and historic resources and the Native Hawaiian culture.”

40. The issue of the federal government relationship with Native Hawaiians continues to be under discussion. The Initial U.S. Report noted that, in response to a U.S. Supreme Court case, Rice v. Cayetano, 528 U.S. 495 (2000), which cast doubt on the authority of Congress to legislate in a manner that grants Native Hawaiian preferences, the Departments of Interior and Justice were in the process of preparing a report on a reconciliation process between the federal government and Native Hawaiians. The final report, which encompassed the results of meetings and consultations with the Native Hawaiian community, was issued in October 2000. Based on meetings and consultations with the Native Hawaiian community, the report called for the federal government to honor the unique relationships with Native Hawaiians and to respond to their needs for more local control within the framework of Federal law. A version of the Native Hawaiian Government Reorganization Act has been introduced in every Congress since the 106th (in 2000). When the Native Hawaiian Government Reorganization Act of 2005 was introduced in both chambers of the U.S. Congress, it would have formed a governing entity of and for Native Hawaiians, and extended to it federal recognition similar to the recognition extended to American Indian tribes. Specifically, it would have authorized the U.S. Government to enter into negotiations with this governing entity to address specified matters. The bill was thoroughly debated in a number of public forums, including the U.S. Civil Rights Commission, but failed to reach the floor for a vote in the United States Senate in 2005 or 2006. The Administration opposed the bill on the ground that it would “divide people by their race” and would raise serious and difficult constitutional questions regarding the permissibility of “race-based qualifications for participation in government entities and programs.” The Administration also questioned the authority of Congress to grant tribal status to Native Hawaiians. The U.S. Civil Rights Commission advised that this bill risked “further subdivid[ing] the American people into discrete subgroups accorded varying degrees of privilege.”

### **D. General legal framework**

41. The basic Constitutional and legal framework through which U.S. obligations under the Convention are implemented remains the same. The Constitution provides for equal protection of the laws and establishes a carefully balanced governmental structure to administer those protections. Among other factors:

- Under the Fifth and Fourteenth Amendments, all persons are equal before the law and are equally entitled to constitutional protection. All states are equal, and none may receive special treatment from the federal government. Within the limits of the

Constitution, each state must give “full faith and credit” to the public acts, records, and judicial proceedings of every other state. State governments, like the federal government, must be republican in form, with final authority resting with the people;

- The Constitution stands above all other laws, executive acts, and regulations, including treaties;
- Powers not granted to the federal government are reserved to the states or the people.

42. In addition to the civil rights protections of the federal Constitution, laws, and courts - state constitutions, laws, and courts play an important role in civil rights protections. In this regard, state constitutions and laws must, at a minimum, meet the basic guarantees of the U.S. Constitution. Moreover, in keeping with the federal system of government, in many cases state laws actually afford their citizens greater protections than the federal Constitution requires. See, e.g., Locke v. Davey, 540 U.S. 712, 724 n. 8 (2004) (noting that, “at least in some respects,” Washington State’s constitution provides greater protections than the Federal Free Exercise Clause).

43. Day-to-day administration and enforcement of federal laws rests in the hands of various executive departments and independent agencies. Since 2000, there have been only a few changes in the division of responsibilities described in that Report. Except for the changes noted in this report, the governmental structure in place to deal with discrimination remains basically as it was described in 2000.

44. Department of Homeland Security. As a result of the events of 11 September 2001 (hereinafter 9/11), Congress created a new Department of Homeland Security (DHS) in 2003. This Department combines a number of other departments, agencies, and portions of departments, such as the Coast Guard, the Transportation Security Administration, the Federal Emergency Management Agency, and the former Immigration and Naturalization Service. Within DHS, Congress established an Office for Civil Rights and Civil Liberties, led by the DHS Officer for Civil Rights and Civil Liberties who reports directly to the Secretary of Homeland Security. The Office is charged with investigating allegations of abuses of civil rights, civil liberties, and discrimination on the basis of race, ethnicity, and religion by employees or officials of the Department of Homeland Security. In addition, it assists the senior leadership in developing policies and initiatives that are mindful of fundamental rights and liberties and provides leadership to DHS’s Equal Employment Opportunity Program. The Office leads the Department’s civic engagement efforts and conducts outreach to non-governmental organizations and others, including the Arab American and Muslim American communities.

45. As part of the creation of the Department of Homeland Security, the Immigration and Naturalization Service (INS) ceased to exist as an independent agency within the Department of Justice. The functions of the former INS were transferred to three bureaus of the new DHS: U.S. Citizenship and Immigration Services (CIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). The Executive Office for Immigration Review and Board of Immigration Appeals, however, remained within the Department of Justice. See Homeland Security Act of 2002, 116 Stat. 2135, 2178, 2192, Nov. 25, 2002.

46. Department of Defense. Within the Department of Defense, the former Deputy Assistant Secretary for Equal Opportunity has now been changed to a Deputy Under Secretary for Equal Opportunity. This position remains responsible for implementing and monitoring the Department's civilian and military equal opportunity/affirmative action plan goals and objectives. The Department of Defense has numerous policies and programs designed to ensure equal opportunity in the military. The nature and scope of these programs are generally as described in the Initial U.S. report.

47. Other Agencies. Since 2000, several other agencies have also created new bureaus, offices, or training entities to work on issues related to racial and ethnic discrimination or to work specifically with various racial or ethnic groups. For example, the Department of the Interior (DOI) established the Office of Hawaiian Relations in 2005. In 2006, DOI set up a new bureau and office specifically to assist American Indians and Alaska Natives. DOI established: (1) the Bureau of Indian Education to improve academic achievement of Indian students served in the 184 schools on 63 Indian reservations in 23 states; and (2) the Office of Indian Energy and Economic Development, to bring new jobs, businesses, and funds to American Indian and Native Alaska communities. The Department of Housing and Urban Development (HUD) also formed several offices to address problems of discrimination in housing: (1) the Office of Systemic Investigations (OSI) to investigate cases with significant impact on population groups or geographic locations; (2) the Office of Education and Outreach (OEO) to increase public awareness of federal fair housing laws and HUD's role in enforcing them; and (3) the National Fair Housing Training Academy to train housing discrimination investigators at local, state, and federal levels. The Agriculture Department also established the Office of Minority and Socially Disadvantaged Farmers. Finally, the United States Information Agency - which handles outreach to other nations - has been moved into the Department of State.

### **E. Information and publicity**

48. Information about human rights is readily available in the United States. As a general matter, persons are well informed about their civil and political rights, including the rights of equal protection, due process, and non-discrimination. The scope and meaning of - and issues concerning enforcement of - individual rights are openly and vigorously discussed in the media, freely debated within the various political parties and representative institutions, and litigated before the courts at all levels.

49. The expansion of internet services and the ever-increasing availability of internet access in the years since 2000 have made information concerning human rights and racial and ethnic discrimination even more readily accessible to the U.S. public. Virtually every federal and state agency has a website on which information about the agency structure and programs - including those of agency offices of civil rights - can be found. Many of these websites include relevant information in languages other than English, which increases dissemination both to persons with limited English proficiency within the U.S. as well as to persons outside the U.S. who may be interested in the civil rights protections that the U.S. affords its citizens and residents.

50. Information concerning the work of the UN Committee on Elimination of Racial Discrimination is likewise readily available on the internet in the United States, as are all U.S. reports to the Committee. As part of our public outreach, this periodic report will be published

and made available to the public through the U.S. Government Printing Office and the depository library system. Copies of the report and the Convention will also be widely distributed within the executive branch of the U.S. Government, to federal judicial authorities, to relevant members of Congress and their staffs, and to relevant state officials, state and local bar associations, and non-government human rights organizations. The report and the Convention will also be available on the Department of State website at <http://www.state.gov>.

51. Specific examples of publicity and outreach programs undertaken since the Initial U.S. Report are described below in the discussion of article 5.

#### **F. Factors affecting implementation**

52. As noted in the Initial U.S. Report, the United States has made significant progress in the improvement of race relations over the past half-century. Due in part to the extensive constitutional and legislative framework that provides for effective civil rights protections, overt discrimination is far less pervasive than it was in the early years of the second half of the Twentieth Century. As the United States continues to become an increasingly multi-ethnic, multi-racial, and multi-cultural society, many racial and ethnic minorities have made strides in civic participation, employment, education, and other areas.

53. Nonetheless, significant challenges still exist. Subtle, and in some cases overt, forms of discrimination against minority individuals and groups continue to plague American society, reflecting attitudes that persist from a legacy of segregation, ignorant stereotyping, and disparities in opportunity and achievement. Such problems are compounded by factors such as inadequate understanding by the public of the problem of racial discrimination, lack of awareness of the government-funded programs and activities designed to address it, lack of resources for enforcement, and other factors.

54. In addition, two subjects of concern have been particularly acute in the years since 2000. The first involves the increase in bias crimes and related discriminatory actions against persons perceived to be Muslim, or of Arab, Middle Eastern, or South Asian descent, after the terrorist attacks of 9/11. The second involves the impacts of the changing demographic caused by high rates of immigration into the United States - both legal and illegal. The continuing legacies described above, in addition to these more recent issues, create on-going challenges for the institutions in the United States that are charged with the elimination of discrimination. Thus, despite significant progress, numerous challenges still exist, and the United States recognizes that a great deal of work remains to be done.

## **II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION**

55. The United States is a vibrant, multi-racial, multi-ethnic, and multi-cultural democracy in which individuals have the right to be protected against discrimination based, *inter alia*, on race, color, and national origin in virtually every aspect of social and economic life. The U.S. Constitution and federal law prohibit discrimination in a broad array of areas, including education, employment, public accommodation, transportation, voting, housing and mortgage

credit access, as well as in the military, and in programs receiving federal financial assistance. In addition, nondiscrimination obligations are imposed on federal contractors and subcontractors by Executive Order. The federal government has established a wide-ranging set of enforcement procedures to administer these laws and Executive Orders, with the U.S. Department of Justice exercising a major coordination and leadership role on most critical enforcement issues. State and local governments also have complementary legislation and enforcement mechanisms to further these goals. At both the federal and state levels, enforcement agencies have worked, and continue to work, to improve enforcement of civil rights laws and to promote education, training, and technical assistance.

56. As noted in the Initial U.S. Report, although the definition used in article 1 (1) of the Convention contains two specific terms (“descent” and “ethnic origin”) not typically used in U.S. federal civil rights legislation and practice, no indication exists in the negotiating history of the Convention that those terms encompass characteristics not already subsumed in the terms “race,” “color,” and “national origin” as those terms are used in existing U.S. law. *See, e.g., Saint Frances College v. Al-Khazraji*, 481 U.S. 604 (1987); *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987); *Roach v. Dresser Industrial Valve*, 494 F. Supp. 215 (W.D. La. 1980). The United States thus interprets its undertakings and intends to carry out its obligations under the Convention on that basis.

57. The United States collects its census data in a manner that allows analysis and assessment by racial, ethnic, gender, and other characteristics. In addition, in the 2000 census, information was also collected on Americans of Arab ancestry. Census information relevant to this periodic report was presented in Part I and will be referenced, as appropriate, in this section.

## A. Article 2

### 1. Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 2, paragraph 1, of the Convention

**Measures taken to give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation**

58. As required by article 2 (1) (a), racial discrimination by the government is prohibited throughout the United States. The Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution guarantee that no public authority may engage in any act or practice of racial discrimination against persons, groups of persons, or institutions. These prohibitions apply with equal force at the federal, state, and local levels, and all public authorities and institutions must comply. U.S. law extends this prohibition to private organizations, institutions, and employers under many circumstances. Examples of enforcement actions against both public and private institutions are set forth in subsection 2 below and throughout this report.

## **Measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations**

59. As required by article 2 (1) (b), the U.S. Government does not sponsor, defend, or support discrimination. The U.S. Constitution prohibits discrimination on the basis of race at every level of government - federal, state, and local. A number of federal statutes, including the Civil Rights Act of 1964, prohibit discrimination by state or local governments; private entities in the areas of employment, housing, transportation, and public accommodation; and private entities that receive federal financial assistance. The federal government is actively engaged in the enforcement of anti-discrimination statutes against public and private entities in the areas of employment, housing and housing finance, access to public accommodations, and education. In addition, most states and some localities also have laws prohibiting similar types of activity, and in many cases state and federal authorities have entered into work sharing arrangements to ensure effective handling of cases where state and federal jurisdiction overlap. Examples of federal employment, housing, and education cases, as well as state enforcement in these areas, are set forth in this section. Numerous other examples in areas such as public accommodations, police conduct, prisoner rights, voting rights, hate crimes, and others are described in other sections of the report.

### **Examples of enforcement actions: employment**

60. The Equal Employment Opportunity Commission (EEOC) is charged with enforcing federal civil rights laws with regard to discrimination in public and private sector workplaces. The Department of Justice also brings employment cases, and the Department of Labor's Office of Federal Contract Compliance Programs ensures that federal contractors and subcontractors do not discriminate in employment. Since 2000, the EEOC has received and handled approximately 80,000 charges a year, with well over that number in 2003. This is approximately the same annual rate as in the 1990s, with the exception of 1995, when the number was unusually elevated. In 2006, however, the agency received only 75,768 charges. These charges included 113,765 instances of discrimination in private and public sector workplaces. In 2006, 62 percent of all charges alleged race or gender discrimination, or retaliation in violation of Title VII of the Civil Rights Act of 1964. The Commission filed 371 lawsuits, recovered \$44.3 million through litigation, plus \$229.9 million in settlement, conciliation, and other closures, bringing the total to \$274.2 million. The amounts obtained through settlement in fiscal year 2006 included \$61.4 million in settlement, conciliation, and other closures of 5,232 race discrimination charges; \$21.2 million in settlement, conciliation, and other closures of 1,666 national origin discrimination charges; and \$5.7 million in settlement, conciliation, and other closures of 499 religion discrimination charges. Settlements and court decisions also included non-monetary elements to assist in ensuring that offending behavior does not recur.

61. Examples of cases brought since 2000 by the EEOC, the Department of Justice Civil Rights Division, and the Department of Labor Office of Federal Contract Compliance Programs follow. Others are described in other sections of the report. Enforcement cases that go to court often take a number of years from beginning to end. Thus, cases brought since 2000 that have not been settled may still have been proceeding through the courts at the time this report was written.

- In June 2006, the Commission settled a case involving allegations that a homebuilder had disciplined an African American supervisor and discharged him from his position because of his race. Of the employer's 70 employees, this supervisor was the only African American. During his employment, the supervisor complained about racial hostility on the part of some of the subcontractors (e.g., using racial epithets, refusing to communicate directly with him, completing tasks for him more slowly than for White construction superintendents), but the defendant downplayed the concerns and told him to deal with the problems himself. The supervisor was eventually disciplined and discharged for incidents for which similarly-situated Whites were not disciplined. The parties resolved the case through a two-year consent decree under which the employee will receive \$46,000 in compensatory damages. The decree enjoins defendant from racial discrimination, racial harassment, and other discrimination prohibited under Title VII. The decree also prohibits defendant from engaging in reprisal or retaliation. EEOC v. Bob Ward New Homes, No. JFM-05CV2728 (D. Md. June 27, 2006).
- In June 2005, the Commission, Ford Motor Co., and the United Auto Workers (UAW) union resolved, through a consent order, thirteen charges concerning a written test for skilled trades apprentice positions that had a disparate impact on African American applicants. The order provides that Ford and the UAW will use a validated apprenticeship selection test. The settlement also provides that the company will select 280 class members for apprentice positions, consisting of current and former employees of African descent who took the prior test over an eight-year period but were not placed on an apprenticeship eligibility list. The thirteen charging parties each received \$30,000, and the approximately 3,400 additional class members received \$2,400 each, for a total recovery of approximately \$8.55 million. EEOC v. Ford Motor Co. and United Automobile Workers of America, No. 1:04-CV-00854 (S.D. Ohio 2005).
- In another 2005 case, the Commission found evidence that an employment agency coded and referred applicants based on their race and sex, and that some of the agency's client-employers made requests for individuals of a particular race or gender. Under a consent decree, the employment agency paid \$285,000 into a Claim Fund to be distributed among qualified claimants identified by the Commission, and three agency clients paid \$50,000 in administrative costs. The agreement also included specific requirements to prevent the recurrence of race- and sex-based exclusion of applicants and to open up employment opportunities for African American and female applicants, including appointment of an outside contractor to provide annual training regarding lawful interviewing, screening, and hiring procedures. EEOC v. EGW Temps., Inc., No. 00 CIV 833S (W.D.N.Y. 2005).
- An employer with an all-White workforce relied heavily on word-of-mouth recruiting to fill vacancies. The Commission alleged that the company denied employment to African American applicants because of their race. The case arose out of a Commissioner's Charge and included discriminatory practices going as far back as 1991. Despite receiving applications from many African American workers, the company relied on referrals from its current employees, many of whom were Eastern European immigrants who were not likely to refer African Americans.

The case was resolved by a consent decree providing \$2.5 million in damages for approximately 325 claimants. The company was enjoined from using race or sex in hiring and job assignments, and is required to fill production positions during the three-year term of the decree by alternating hires between interested claimants and other applicants. EEOC v. Carl Buddig & Co. (N.D. Ill. 2004).

62. In addition to filing individual claims, the Justice Department Civil Rights Division is also charged with authority to investigate and challenge patterns or practices of employment discrimination. Such suits are complex, time consuming, and resource-intensive. As a result, the Division has historically managed only one case per year. In 2004, however, the Department prevailed in one major pattern or practice trial and filed four additional lawsuits. It filed two in 2005, and had filed three in 2006 as of October.

- One such case involved a suit against the State of Delaware, the State Department of Public Safety, and the Division of State Police for violation of Title VII of the Civil Rights Act in hiring police. The case alleged that use of a multiple-choice reading comprehension and writing test called “Alert” to screen applicants for employment in the Police Department had created a disparate, negative impact on African American applicants. The Court found no intention to discriminate in using the test; nor did it consider the test itself to be offensive. Nonetheless, it found that the cut-off score set by the state was too high and had discriminated against African American applicants. Thus, the Court held the State of Delaware’s administration of the test to be unlawful under Title VII. U.S. v. State of Delaware, 2004 WL 609331 (D. Del. 2004).
- A second case alleged that the New York Transit Authority had engaged in a “pattern or practice” of discrimination against Muslim, Sikh, and similarly situated employees who wear religious head coverings by not reasonably accommodating their religious observances, practices, and beliefs through selective enforcement of its uniform policies. United States v. New York Transit Authority, No. \_\_\_\_ (E.D.N.Y.). This case is still being litigated before the United States District Court for the Eastern District of New York.
- The Department of Justice sued the University of Guam, alleging that it had discriminated against eleven individuals formerly employed in administrative and faculty positions on the basis of their national origin or race and/or in retaliation for complaints made by them. By virtue of a settlement agreement, the individuals - Filipino American, African American, American Indian, and Caucasian - received monetary payments totaling \$775,000. The agreement also required the University to issue a new written policy prohibiting employment discrimination and to provide anti-discrimination training to all management level and supervisory employees. United States v. University of Guam, No. \_\_\_\_ (D. Guam, 2004).
- The Department of Justice sued the City of Virginia Beach for its use of a written test that disproportionately excluded African Americans and Hispanics in violation of Title VII. United States v. City of Virginia Beach, Virginia, No. \_\_\_\_ (E.D.Va.). The case, which was resolved through the entry of a consent decree, focused on the city’s

use of a mathematics examination as a selection device for choosing new police officer hires. The Justice Department alleged that in addition to disproportionately excluding African Americans and Hispanics, the test was not valid in that it did not test for skills needed to be an entry-level Virginia Beach Police Officer. Title VII prohibits tests that have a disparate impact on the basis of race or national origin and that cannot be shown to be related to the job in question.

- In March 2004, the Community Relations Service of the U.S. Department of Justice became involved in a 1980s education desegregation case in Roanoke, Alabama that involved, among other factors, the hiring of minority teachers and administrators. CRS was asked to mediate an agreement between the Roanoke school system and the African American community to reduce racial conflicts and tension plaguing the school district. The tensions derived from multiple issues, including allegations that the school system: (1) lacked minority teachers and administrators; (2) had a racially disparate disciplinary policy for minority students; and (3) failed to provide appropriate curriculum containing such subjects as African American history. CRS held mediation sessions with school district officials and African American community leaders for several months to discuss the issues in the case and prepare for formal mediation. As a result of CRS's services: (1) a workable relationship and open lines of communication were established; (2) the parties collaborated and implemented the goals of the agreements; and (3) a capacity-building mechanism was put in place for resolving future tensions. More specifically, the school district has worked with minority community leaders to recruit and retain minority teachers and administrators. The school district also agreed to review disciplinary policies in the school system and reviewed the school curriculum to ensure that appropriate subjects such as African American history are taught in the classrooms. CRS has continued to assist the parties.

63. The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) ensures that employers doing business with the federal government comply with the laws and regulations requiring non-discrimination in employment. The program enforces its mandate by detecting and remedying systemic discrimination and by providing compliance assistance to employers. In fiscal year 2005 (October 1, 2004 to September 30, 2005), OFCCP recovered a record \$45,156,462 for 14,761 American workers who had been subjected to unlawful discrimination. Of that recovery, 97 percent was collected in cases of systemic discrimination, defined as those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The fiscal year 2005 results represent a 42 percent increase over the recoveries in fiscal year 2000 and a 56 percent increase over fiscal year 2001. Examples of these cases follow:

- In 2003, DOL filed an Administrative Complaint alleging that INA Bearing, a ball bearing manufacturer, engaged in hiring discrimination based on race, and assignment discrimination based on gender, with respect to machine operators. OFCCP found that 613 minority individuals had not been hired due to discriminatory practices. In addition 62 female employees were hired but were improperly channeled into low-paying jobs. In 2005 the company agreed to a \$1.1 million settlement. The settlement included \$900,000 in back pay, interest, and benefits (including \$30,000

in lieu of retroactive seniority); it also included \$200,000 in training for new hires and promoted females that was required to be spent over a two year period. INA also agreed to hire 30 minority applicants from the affected class over a 24-month period and to offer promotions to 27 females from the affected class over a 12-month period.

- In fiscal year 2005, an OFCCP compliance review of American Trans Air, Inc. found that the company discriminated against African Americans and Hispanics in hiring. OFCCP's compliance evaluation was closed after the company agreed to a conciliation agreement that provided for significant back pay as well as job offers to 84 victims of discrimination. The total value of the conciliation agreement, including annualized salaries of those offered employment, was \$2,867,840.
- Also in fiscal year 2005, OFCCP signed a conciliation agreement with Benchcraft-Blue Mountain Upholstery after a compliance evaluation found that the company's selection practices were racially discriminatory. The company agreed to provide back pay, to offer positions to 178 of the affected class members, and to train managers and others involved with the hiring process. The total value of the conciliation agreement, including annualized salaries for those offered employment, was \$6,283,345.

### **Examples of enforcement actions: fair housing and lending**

64. Ensuring equal opportunity in housing is one of the strategic goals of the U.S. Department of Housing and Urban Development (HUD). HUD's Office of Fair Housing and Equal Opportunity (FHEO) carries out this strategic goal by administering laws that prohibit discrimination on the bases of race, color, religion, sex, national origin, disability, and familial status. In addition, FHEO educates lenders, housing providers, developers, architects, home-seekers, landlords, and tenants about their rights and obligations under the law. Working with national, state, and local partners - as well as the private and nonprofit sectors - FHEO is involved in a cooperative effort to increase access to the nation's housing stock so that more Americans can obtain housing of their choice. The laws implemented by FHEO include the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968, as amended in 1988; and other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and Section 3 of the Housing and Urban Development Act of 1968.

65. Since the initial U.S. report, HUD's Office of Policy Development and Research has published several volumes estimating the national level of racial and ethnic housing discrimination against African Americans, Hispanics, and Asian Americans and Pacific Islanders. In addition, statewide estimates were drawn up for Native Americans and Alaska Natives in three states. The methodology involved matched pairs of testers who sought housing in the sales or rental market; one tester was a non-Hispanic White, and the second was of a minority race or ethnicity. The reports showed that discrimination in the sales market had declined significantly in the decade prior to the report's issuance. However, the decline was more modest in the rental market for African Americans, and there was no change at all for Hispanics. The findings also generally indicated that the treatment shown to the non-Hispanic White tester remained more favorable than that shown to the minority tester, further indicting that the problem of housing discrimination persists in many parts of the nation.

66. The HUD Fair Housing Office includes an enforcement arm that receives complaints and investigates cases. In many regions of the U.S., HUD, through FHEO, also funds state or local government fair housing enforcement agencies to receive complaints and to investigate them, as long as the state or local government can show that it enforces a fair housing law that provides rights, remedies, procedures, and opportunities for judicial review that are substantially equivalent to those provided in the Fair Housing Act. By the end of fiscal year 2005, there were 103 such agencies in 37 states and the District of Columbia. In fiscal year 2005, HUD and the 103 state, county, and city Fair Housing Assistance Program agencies that partner with HUD received 9,254 complaints or cases. Of those complaints, 3,472 were based on race and 860 were based on national origin discrimination against Hispanics. Examples of cases investigated and managed by HUD's Fair Housing Office are set forth below:

- An African American couple, Mr. and Mrs. Benton, made a full-price offer on a home in Scott, Arkansas. The seller's agent, however, advised the buyer's agent that the offer was not acceptable, and inquired if the buyers were African American. Instead, the seller, Mr. Arnett, accepted a lower offer, contingent on financing, from the neighbors, who were White. The neighbors did not apply for financing and, several months later, the house was sold to White buyers for nearly \$10,000 less than the original offer. On October 26, 2004, HUD issued a charge of discrimination against the sellers, who agreed to settle the case. Under the terms of the settlement, Mr. Arnett will pay the Bentons \$15,000 and will attend fair housing training. Benton, et al. v. Arnett et al.
- Ms. Puerto and her husband, a Hispanic couple, sought to purchase a home in Pflugerville, Texas. A couple of days before closing, the owner of Capital Funding Group - the couple's brokers and loan processors - informed them that the interest rate was being raised from 9 to 10 percent and that the down payment was being raised from \$5,000 to \$12,000. Ms. Puerto terminated the transaction and demanded a refund of her \$1,030 deposit. Instead, the broker demanded an additional \$300. During the investigation, a former employee of Capital Funding Group admitted that the owners of Capital Funding Group had targeted Hispanics and mistreated them because they felt Hispanics would often sign documents that they did not (or were unable to) read. On July 12, 2005, HUD charged Capital Funding Group with discrimination on the basis of national origin in violation of the Fair Housing Act in this case and three others. On August 8, 2005, an election was made to have the case tried in federal court, where it remains in litigation. Puerto v. Capital Funding Group, et. al.
- Ms. Jones, a young White female with a bi-racial daughter rented a house in Saraland, Alabama, but was made to feel so uncomfortable by her landlord (once the landlord had seen the daughter) that she and her daughter moved out. She contacted the Mobile Fair Housing Center, which sent two tester families to the housing development - one a family with an African American husband, White wife and bi-racial child, and the other a White family. After the first family was told no houses were available, and the second family was offered three possible homes, HUD then charged the landlord with discrimination on the basis of race in violation of the Fair Housing Act. On April 21, 2005, the parties elected to have the case heard in federal court where it remains in litigation, Jones v. Stevens.

67. The Civil Rights Division of the Justice Department is also charged with ensuring non-discriminatory access to housing, public accommodations, and credit. During fiscal year 2006 (October 2005 through September 2006), the Housing Section filed 31 lawsuits, including 19 pattern or practice cases. One of the programs used aggressively by the Civil Rights Division is its Fair Housing Testing Program, in which persons with different characteristics pose as potential tenants seeking to rent apartments in the same facility at approximately the same time. On February 15, 2006, the Attorney General announced a major new civil rights initiative: Operation Home Sweet Home. He made a public commitment that over the next two years the Division would conduct a record-high number of fair housing tests in order to expose housing providers who are discriminating against people trying to rent or buy homes. During fiscal year 2006, the Civil Rights Division increased the number of fair housing tests conducted by 38 percent compared to fiscal year 2005. Examples of recent cases are described here, including a case involving evidence developed by the Fair Housing Testing Program.

- On January 18, 2005, the Division filed the lawsuit United States v. Dawson Development Co., L.L.C., No. 4:05-cv-0095-CLS (N.D. Ala.), alleging that the defendants - the owner and manager of Park Place Apartments in Boaz, Alabama - discriminated against African Americans in the rental of apartments at Park Place. In testing conducted by the Fair Housing Testing Program, the manager told the African American testers that there were no apartments available, but told the White testers who visited the apartments the same day that apartments were available. The manager also failed to call the African American testers when apartments became available, but left messages with the White testers encouraging them to rent apartments at Park Place. The Division entered into a Consent Order with the owner of the complex, enjoining it from further race discrimination, requiring it to adopt uniform non-discriminatory rental and application procedures, and requiring it to pay \$32,700-\$49,700 for victims of the defendants' discrimination in addition to a \$17,000 civil penalty. The Division then won its trial against the property manager, after which the court imposed a \$10,000 civil penalty against that defendant.
- On August 29, 2006, the Court approved and entered a Consent Decree in United States v. Kreisler, Jr., a/k/a/ Bob Peterson, No. 03-cv-3599 (D. Minn.). The Division's pattern or practice complaint, filed in 2003, alleged that Kreisler violated the Fair Housing Act when he discriminated against African American tenants at two apartment complexes he owned and managed by: evicting African Americans while not evicting similarly situated non-African Americans, requiring African American tenants to vacate their apartments permanently due to "renovation work" while not requiring non-African American tenants to do so, and failing to provide necessary and requested maintenance to African American tenants while providing such maintenance to non-African American tenants. Under the terms of the Consent Decree, the defendants must pay \$525,000 to 19 households, hire an independent management company to operate the rental properties, post and publish a nondiscrimination policy, and correct the rental records of several former tenants against whom defendants filed unlawful detainer actions. The defendants will also pay a \$50,000 civil penalty.

- On August 7, 2006, the Division filed a complaint in United States v. Sterling, No. CV 06-4885-PJW (C.D. Cal.), a pattern or practice case alleging discrimination on the basis of race, national origin, and familial status. The complaint alleges that the defendants refused to rent to non-Korean prospective tenants, misrepresented the availability of apartment units to non-Korean prospective tenants, and provided inferior treatment to non-Korean tenants in the Koreatown section of Los Angeles.

68. Lawsuits brought by the Civil Rights Division have not only defended the rights of Americans to obtain housing, but also to obtain the financing necessary to purchase homes. While a lender may legitimately take into account a broad range of factors in considering whether to make a loan, race has no place in determining creditworthiness. “Redlining” is the term employed to describe a lender’s refusal to lend in certain areas based on the race of the area’s residents. In 2006, the Division filed and resolved a major redlining case under the Fair Housing Act and the Equal Credit Opportunity Act (ECOA).

- On October 13, 2006, the Justice Department filed a complaint alleging that Centier Bank discriminated on the basis of race and national origin by refusing to provide its lending services to residents of minority neighborhoods in the Gary, Indiana, metropolitan area, in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The Division successfully resolved the suit with a consent decree, under which Centier will open new offices and expand existing operations in the previously excluded areas, invest \$3.5 million in a special financing program, and spend at least \$875,000 for consumer financial education, outreach to potential customers, and promotion of its products and services in these previously excluded areas. United States v. Centier Bank, No. 2:06-CV-344 (N.D. Ind.).

### **Examples of enforcement action: education**

69. The mainstay of the Justice Department Civil Rights Division’s work in the area of education is a substantial docket of open desegregation cases under which school districts remain under court orders. Some of the cases are decades old. Although most of these cases have been inactive for years, each represents an as-of-yet unfilled mandate to root out the vestiges of segregation and return control of constitutionally compliant public school systems to local officials.

70. To promote compliance by school districts, the Division initiates case reviews to monitor issues such as student assignment, faculty assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources. In 2004, the Civil Rights Division initiated 44 case reviews - the largest number in any given year. In addition, during that year the Division obtained additional relief through a combination of litigation, consent decrees, and out of court settlements in 23 cases. In 2006, the Division initiated 38 case reviews. Since 2000 the Division has initiated more than 228 reviews, which have resulted in the return of local control in more than 126 school districts.

- United States v. Chicago Board of Education is a longstanding case, initiated in 1980, involving the failure of the third largest school district in the United States to comply with an earlier court order covering student and faculty assignments and the funding of certain educational programs. In 2004, the court entered a consent decree requiring that

many minority students be given the choice to transfer to racially integrated schools. The consent decree also addressed the district's failure to fund adequately certain minority schools and to provide appropriate services to English Language Learners. In 2006, a Second Amended Consent Decree was entered to ensure further opportunities for English Language Learners.

- In a case brought in the 1960s, the Bertie County Board of Education in North Carolina was ordered to develop a school desegregation plan to eliminate a racially-segregated dual system of schools in the county. In 2002, the Department of Justice sought further relief, alleging that Askewville Elementary School in Bertie County was operating as a racially-identifiable White school, based on its school population, faculty, and staff composition. In 2004, the Court granted the Justice Department's motion for further relief. In 2005, the Justice Department reached an agreement with the school district that resulted in the closing of Askewville Elementary, as well as J.P. Law Elementary, a predominantly Black school with dilapidated facilities. U.S. v. Bertie County Board of Education.
- In a case in McComb County, Mississippi, the Civil Rights Division has challenged in federal court the school district's classroom assignment practices that segregate students by assigning or clustering a disproportionate number of White students to classrooms in this predominantly minority district as well as its practice of granting certain student awards on the basis of race. The case was heard in 2006 and the Division is awaiting a decision from the court. U.S. v. McComb County Board of Education.
- In another case, the Covington County Board of Education in Alabama, with support from the United States Government, filed a motion to terminate an ongoing case from 1963. Holding that Covington County was now in compliance with anti-discrimination laws, the court dismissed the case. Lee v. Covington County Board of Education, 2006 WL 269942 (M.D. Ala. 2006). This case was part of a project started by the court in the Middle District of Alabama to move the cases toward closure and a return to local control.

### **Enforcement of anti-discrimination laws in the territories**

71. Claims of racial and ethnic discrimination are also actively pursued in U.S. territories. Since 2000, the Virgin Islands has experienced a larger volume of cases than the U.S. territories in the Pacific. Two cases in the courts in the Virgin Islands are: (1) Petersen v. Budget Marine V I, Inc., 2004 WL 3237537 (D. V.I. 2004) in which the plaintiff contends he was let go from his employment and replaced by a White male from the continental United States; and (2) Frurup-Alie v. V. I. Housing Finance Authority, 2004 WL 1092317 (D. V.I. 2004), involving a claim of discrimination based on race (African American) and national origin (native Virgin Islander). The plaintiff claims that the Housing Finance Authority created a hostile working environment in which other employees yelled at her and talked about her in Spanish in her presence. A case involving employment discrimination by the University of Guam is described above. Additionally, the Civil Rights Division of the Department of Justice has prosecuted human trafficking cases and brought suits to protect prisoners' rights in the territories.

### **Enforcement of anti-discrimination laws by the states**

72. Most states have state civil rights or human rights commissions or offices that administer and enforce state laws prohibiting discrimination in areas such as employment, education, housing, and access to public accommodations. These offices generally investigate complaints and ensure, where appropriate, that charges are filed and cases are heard. They generally also have advisory and educational functions, informing residents of the state about enforcement of their civil rights. The few states that do not have designated civil rights or human rights offices or commissions administer their civil rights laws through their Attorney General's Offices. Some counties and cities also have commissions to administer their civil rights laws. For example, a complainant in Chicago may have four choices in bringing an employment claim - the federal Equal Employment Opportunity Commission, the Illinois Department of Human Rights, the Cook County Human Rights Commission, or the Chicago City Human Rights Commission. California also has a full system of civil rights agencies. In addition to three state entities - the California Department of Fair Employment and Housing, the California Department of Justice Civil Rights Enforcement Section, and the California Fair Employment and Housing Commission (a quasi-judicial administrative agency that hears cases and is also involved in regulatory, legislative, and outreach activities), complainants can also contact 13 county civil rights commissions and more than 50 city civil rights bodies. For a full discussion of the human rights/civil rights programs in four states (Illinois, New Mexico, Oregon, and South Carolina) with populations of varying racial and ethnic composition, see Annex I to this report.

73. Most state entities have work sharing agreements with the EEOC and the Department of Housing and Urban Development (HUD) to ensure that complainants' rights are protected under both state and federal law, regardless of where they choose to bring their complaints. Under these agreements, the state civil rights entity and the federal entity (EEOC or HUD) each designate the other as its agent for purpose of receiving and drafting charges. Thus, the state may act as the agent of the EEOC or HUD, receiving, filing, and investigating charges that may fall within federal statutes. Charges can also be transferred from one agency to the other in accordance with the terms of the agreement. For employment cases, state agencies generally adhere to the procedures in the EEOC's state and local handbook. In the employment area, many state laws apply to a wider range of businesses than are covered by the federal law, which applies only to employers with 15 or more employees.

74. Although the processes for handling discrimination complaints differ from state to state, a typical state civil rights process involves several steps. The first is intake of inquiries and complaints. Second is investigation of complaints. Prior to or during this phase, many states offer mediation of disputes at no cost or minimal cost to complainants in order to attempt to resolve issues prior to a formal hearing process. If mediation is not successful, some states also offer conciliation. Third, if the complaint is not settled by mediation or conciliation, and if investigation indicates a possible violation of the law, the case may go to a formal hearing before a hearing officer, an administrative law judge, or a commissioner. The hearing officer, administrative law judge, or commissioner in turn renders a determination or decision - a decision that in some cases must be approved by the entire commission. Decisions may normally be appealed to an appellate authority - usually a state appellate court. In many cases, they may also be enforced in state court through writ of mandamus (ordering the defendant to take action) or injunction (prohibiting the defendant from taking certain actions).

75. Most states also provide for removal of cases directly to state court or to federal courts or agencies during the investigation process. As noted above, under work sharing agreements, cases that fall within federal jurisdiction are sometimes transferred to the EEOC or HUD for further action. In addition, most states offer complainants the option of taking cases to state or federal court if the cases meet jurisdictional guidelines - in some cases by filing directly with the court, and in other cases by requesting a right to sue letter from the state civil rights entity that is processing the claim.

76. A large number of complaints are received and investigated by state authorities. For example:

- During 2005, the Illinois Department of Human Rights and Illinois Human Rights Commission received 15,748 inquiries, which led to the filing of 4,055 charges. During that time, the staff also settled 1,238 cases, and 503 complaints were withdrawn. During that year, of the cases docketed, 90 percent were employment cases, 7 percent were housing cases, and 3 percent were public accommodation cases. Race, national origin/ancestry, and color were the bases of discrimination in 32 percent of the employment cases, 47 percent of the housing cases, and 62 percent of the public accommodation cases.
- During 2005, the Civil Rights Division of the Arizona State Attorney General's Office investigated 10,512 new and pending charges and resolved 1,052 cases. Almost 11 percent were resolved through voluntary settlement agreements between parties, generating more than \$200,000 for victims of discrimination. The litigation section resolved 16 lawsuits, the conflict resolution program staff and mediators mediated 234 cases (reaching agreement in 73 percent of them), and the compliance section resolved more than 400 employment discrimination cases. In 2004, the staff also made outreach presentations to more than 3,300 farm workers and trained more than 3,500 persons in law enforcement groups, universities, community groups, businesses, and other organizations. An example of a case from Arizona is Heredia et al. v. Hacienda San Luis - a group of six cases that involved allegations of housing discrimination and redlining. The defendant was alleged to have taken advantage of the vulnerable status of non-English speaking farm workers. These cases were settled in favor of the complainants.
- In fiscal year 2003-04, the Tennessee Human Rights Commission pursued 840 employment cases, of which 234 (28 percent) were based on race, and 140 housing discrimination cases, of which 47 percent (66) were based on race. In fiscal year 2004-05, the Commission pursued 915 employment cases of which 237 (26 percent) were based on race, and 67 housing cases of which 30 (45 percent) were based on race. The Commission also reached approximately 1.5 million Tennessee residents with outreach activities concerning pursuit of civil rights.
- The New Mexico Human Rights Act of 1969 established two human rights bodies in the state - the Human Rights Division in the New Mexico Department of Labor, which investigates complaints and provides training and public education, and the

New Mexico Human Rights Commission, which hears discrimination cases. The Human Rights Division investigates an average of 600-800 cases per year; in fiscal year 2006, the number was 635. In the same year, the Division mediated 194 cases, of which 149 were successfully settled. Of the 1,304 complaints filed in fiscal year 2006, 170 (13 percent) were based on national origin, 109 (8 percent) on race, and 283 (22 percent) on retaliation. Of the 635 cases investigated and resolved, 135 (21 percent) were resolved through settlement, 404 (63.6 percent) led to findings of no probable cause, and 82 (13 percent) were resolved through the administrative hearing process. For cases resolved in favor of claimants, monetary awards totaled \$1,051,237.

- The South Carolina Human Affairs Commission (SCHAC), established by the 1972 South Carolina Human Affairs Law, investigates and hears complaints of discrimination in the areas of employment, housing, and public accommodation. In fiscal years 2005-06, there were 1,238 employment complaints filed and 1,218 final actions in such cases. Mediation was used for 162 cases, with a resolution rate of 70 percent. Fair housing complainants filed 88 complaints, and 86 cases were resolved that year; public accommodations complaint activity involved the filing of 66 complaints, with final resolution of 74 cases.
- During 2006, 1,488 complaints were filed with the Nevada Equal Rights Commission (NERC), resulting in 1,035 charges of discrimination. Under Nevada law, NERC's authority extends to discrimination in employment, public accommodations, and housing. In addition to the authority to hold hearings, NERC has the authority to hold informal settlement conferences and conciliations to resolve complaints prior to litigation. In 2006, the NERC held twenty-five conciliations, of which ten were successfully settled and fifteen were unsuccessful. The unsuccessful employment cases were referred to the federal EEOC for possible further action under the work sharing agreement between Nevada and the EEOC. The NERC also offers educational outreach programs, primarily in the area of employment law.
- The Civil Rights Division of the Oregon Bureau of Labor and Industry administers Oregon's civil rights laws. The Civil Rights Division receives approximately 30,000 inquiries per year, of which approximately 2,000 to 2,500 result in the filing of formal discrimination complaints each year. Approximately 98 percent of the complaints relate to employment, one percent to housing, and one percent to discrimination with regard to public accommodations. In turn, approximately 22 percent of the complaints are based on race, color, or national origin discrimination. The Division also has an active education and outreach program, providing information to employers and the public. On the average, 5,000 to 6,000 managers, supervisors, and employers are trained each year.
- Under Kentucky law, the Kentucky Commission on Human Rights, composed of eleven members appointed by the Governor, administers and enforces the civil rights laws of the Commonwealth of Kentucky. According to the reports of the Commission, in fiscal year 2004-05 there were 343 civil rights complaints filed, of which 160 (47 percent) were based on race, and in fiscal year 2005-06 there were 383 complaints filed, of which 164 (43 percent) were based on race. One recent case example is as follows: In

December 2004, the Kentucky Commission on Human Rights filed suit in state court, seeking civil damages against the perpetrators of a cross-burning in Boone County in Northern Kentucky in 2004. The perpetrators pled guilty to three federal counts of violation of civil rights, intimidation, and aiding and abetting. In addition, the civil suit alleged that the cross-burning violated the U.S. Fair Housing Act and Kentucky Civil Rights Act and sought actual and punitive damages for the victims. The Office of the Attorney General joined as an intervening plaintiff. The case was scheduled for trial in March 2007. The family left the neighborhood after the incident and intervened in the civil action in lieu of an administrative hearing before the Commission.

- Vermont has several laws aimed at protecting citizens against harassment, discrimination, and criminal acts based on race, ethnicity, color, and national origin. In 2004-05, 143 employment charges were filed and 171 cases were resolved, with benefits of \$647,459 for complainants. That same year, 50 housing charges were filed and 30 were resolved, with benefits of \$28,428 for complainants. Thirty-two public accommodation charges were filed in 2004-05, and 28 were resolved, providing benefits of \$5,250.
- During fiscal year 2004-05, the Hawaii Civil Rights Commission received over 6,500 inquiries. Of those, 784 intakes were completed and 612 complaints were actually filed. Three hundred and sixty-two of these cases originated with Hawaiian state investigators, and another 250 originated with the EEOC. The 612 cases included 530 employment cases, 30 public accommodations cases, 50 housing cases, and 2 cases involving the state and state-funded services. Race, national origin/ancestry, and color were the basis of approximately 21 percent of the employment cases and 33 percent of the public accommodations cases.
- During fiscal year 2005, the Maryland Human Relations commission received 943 complaints and completed 915 cases, obtaining over \$850,000 for victims of discrimination. The mediation unit held 177 mediations and reached agreement or closed 62 percent of those. The staff also provided training and outreach to more than 7,000 Maryland residents and 137 organizations. Examples of cases in Maryland are: MCHR v. Triangle Oil Company (employment discrimination based on race by reducing hours and wages and terminating the complainant from his job); Newkirk v. Chase Real Estate Company et al. (racial discrimination in rental of a house); and MCHR v. Elton Smith, Jr. (harassment of an interracial couple by an African American neighbor).

### **Enforcement against private entities: constitutional limitations and reservation**

77. As noted in the Initial U.S. Report, the definition of “racial discrimination” under article 1 (1) of the Convention, the obligation imposed in article 2 (1) (d) to bring to an end all racial discrimination “by any persons, group or organization,” and the specific requirements of paragraphs 2 (1) (c) and (d) and articles 3 and 5 may be read as imposing a requirement on States parties to take action to prohibit and punish purely private conduct of a nature generally held to lie beyond the proper scope of governmental regulation under current U.S. law. For this reason,

the United States indicated through formal reservation that U.S. undertakings are limited by the reach of constitutional and statutory protections under U.S. law as they may exist at any given time:

“[T]he Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in article 1 to fields of “public life” reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.”

That reservation remains in effect, and the specific delineation of current constitutional and statutory protections, as set forth in the Initial U.S. Report, has not changed.

78. Nonetheless, as seen in the enforcement actions described in this report, U.S. law does extend to private conduct in many instances. Basic United States civil rights laws (42 U.S.C. 1981, 1982) have been used to prohibit private actors from engaging in racial discrimination in activities such as the sale or rental of private property, admission to private schools, and access to public facilities. In addition, enforcement against private parties who engage in discrimination in public accommodations and employment may also be pursued under Titles II and VII of the 1964 Civil Rights Act, which are based on the commerce power of Congress. Executive Order 11246 provides a basis for public enforcement actions against federal contractors and subcontractors who engage in employment discrimination. The Fair Housing Act forms the basis for enforcement against private parties in the area of discrimination in housing. Finally, the spending powers of Congress form the basis for Title VI of the 1964 Civil Rights Act, which prohibits discrimination by both public and private institutions that receive federal funds.

79. States also enforce against private entities. For example, under Kentucky law, in addition to enforcing the Kentucky Civil Rights Act, the Kentucky Commission on Human Rights has a statutory role in addressing unlawful discrimination in proprietary schools and private clubs (KRS 165A.360(1) - proprietary schools), (KRS 141.010 (11) (d) and (13) (f) - private clubs). In the context of proprietary schools, the Commission has authority to block the licensure of schools that discriminate or tolerate discrimination on the basis of race, color, or creed. In the context of private clubs, the Commission has authority to block the availability of tax deductions for payments to clubs that discriminate or tolerate discrimination based on race, color, religion, national origin, or sex. On November 18, 2004, the Kentucky Supreme Court ruled that the Commission has the power to investigate private social clubs for discriminatory membership practices. Represented by staff counsel and the Office of the Attorney General,

the Commission asserted investigative authority over the Pendennis Club of Louisville, the Louisville Country Club, and the Idle Hour Country Club of Lexington. The private clubs had refused to provide their membership records for a determination regarding their racial and gender makeup. The Kentucky Supreme Court's decision in Commonwealth v. Pendennis Club, Inc., 153 S.W. 3d 784 (Ky. 2004) reversed lower court rulings.

80. A number of cases brought against private entities are set forth in the sections on employment and housing, above. Others are described in other sections of the report.

**Measures taken to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination wherever it exists**

81. Article 2 (1) (c) requires States parties to “take effective measures to review governmental, national and local policies . . . which have the effect of creating or perpetuating racial discrimination” and to “amend, rescind or nullify any laws and regulations” that have such effects.

82. The United States continues to satisfy these obligations through its ongoing legislative and administrative processes at all levels of government, as well as through court challenges brought by governmental and private litigants. Laws and regulations in the United States are under continuous legislative and administrative revision and judicial review.

**Executive review**

83. White House. President Bush has renewed several initiatives that involve review of existing laws and policies with the goal of promoting racial and ethnic equality in the areas, *inter alia*, of education, and economic competitiveness and prosperity. These include the President's Advisory Commission on Educational Excellence for Hispanic Americans (E.O. 13230, October 12, 2001); the President's Board of Advisors on Historically Black Colleges and Universities (E.O. 13256, February, 12, 2002); the Executive Order on Tribal Colleges and Universities (E.O. 13270, July 3, 2002); and the White House Initiative on Asian Americans and Pacific Islanders (E.O. 13339, May 15, 2004). President Bush also continued the Interagency Group on Insular Areas (E.O. 13299, May, 12, 2003). These Executive Orders involve review of existing laws and policies and consideration of recommendations for further action. In most cases, the President has appointed advisory committees for this purpose. The Advisory Committee on Educational Excellence for Hispanic Americans has completed its work and made recommendations, which are discussed in the next section.

84. A number of Executive Branch departments have also undergone legal and policy reviews since 2000.

85. Department of Justice. Shortly after 9/11, the Department of Justice Civil Rights Division reviewed and assessed existing laws and practices and spearheaded a special Initiative to Combat Post 9/11 Discriminatory Backlash. This initiative reflected a commitment by the U.S. government to combat violations of civil rights laws against Arab, Muslim, Sikh, and

South-Asian Americans by: (1) ensuring that processes were in place for individuals to report violations and that cases were handled expeditiously; (2) implementing proactive measures to identify cases involving bias crimes and discrimination being prosecuted at the state level that might merit federal action; (3) conducting outreach to affected communities to provide information on how to file complaints; (4) working with other offices and agencies to ensure accurate referral, effective outreach, and comprehensive provision of services to victims of civil rights violations; and (5) appointing two senior Department of Justice attorneys to focus on post 9/11 backlash issues - a Special Counsel for Post 9/11 National Origin Discrimination and a Special Counsel for Religious Discrimination. More in-depth descriptions of the programs carried out under this initiative appear under the discussion of article 5, Right to Security of Person and Protection by the State against Violence or Bodily Harm, below.

86. On June 17, 2003, the Department of Justice issued policy guidance to ban federal law enforcement officials from engaging in racial profiling. This guidance has also been adopted by DHS. It is described in more detail in the section on racial profiling under subsection 4 (below).

87. Equal Employment Opportunity Commission. In 2005, the EEOC set up a task force to recommend improvements to its investigation and litigation of systemic discrimination cases. Systemic cases are defined as pattern or practice, policy and/or class action cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic location. In April 2006, the EEOC accepted the recommendations of this task force and announced its decision to make the fight against systemic discrimination an agency-wide top priority. The new plan places responsibility for addressing systemic discrimination in EEOC district field offices and requires each district to develop a plan to ensure that systemic discrimination is being identified and investigated in a coordinated, strategic, and effective agency-wide manner. Such plans must specify the steps that will be taken to identify and investigate systemic discrimination and describe how the work will be accomplished. District plans should ensure a coordinated, national approach to combating systemic discrimination. For example, districts are to partner with one another, and staff with significant systemic experience should serve as team leaders, team members, or mentors on systemic charges being handled by other offices. EEOC will staff systemic lawsuits based on the needs of the case, rather than based on the office where the case arose. The EEOC plan also requires the Office of Information Technology to prepare an action plan addressing the issue of systemic discrimination in the area of technology.

88. Department of Homeland Security - U.S. Immigration and Customs Enforcement (ICE). Since November 2000, U.S. Immigration and Customs Enforcement (ICE) and its predecessor agency, the former Immigration and Naturalization Service (INS), have implemented National Detention Standards for facilities holding immigration detainees for over 72 hours. These standards were the result of extensive discussions among the former INS, the American Bar Association, and other organizations involved in *pro bono* representation and advocacy for immigration detainees. The National Detention Standards ensure consistent treatment and care for detainees that are in ICE custody anywhere in the country. Previously, each facility had adopted its own standards, generally in accordance with state regulations or recognized accrediting organizations such as the American Corrections Association. The standards provide that, subject to reasonable regulation: (1) detainees will have access to a law library and

supplies to prepare documents for legal proceedings; (2) facilities will permit authorized persons to make legal presentations to detainees to inform them of U.S. immigration law and procedures; (3) detainees will have access to telephones and correspondence and other mail; (4) facilities will permit authorized visits to detainees, including from legal counsel, family, and friends; (5) facilities will implement standard operating procedures that address detainee grievances; (6) detainees will be provided a detainee handbook containing necessary information about the rules and regulations governing the facility; (7) facilities will apply appropriate health standards for meal services; (8) facilities will provide medical services to promote detainee health and well-being, including initial medical screening, primary medical care and emergency care; and (9) facilities will accommodate religious observances of detainees, such as providing for meals after sundown for Muslims participating in the fast during Ramadan.

89. Department of Housing and Urban Development (HUD). In January of 2005, HUD established the Office of Systemic Investigations (OSI) for the purpose of identifying, investigating, and resolving complaints alleging systemic discriminatory practices or cases pertaining to housing. The issues raised in these complaints are often novel or complex and raise legal and policy issues of national importance. These cases include mortgage lending, homeowners insurance, zoning and land use, environmental justice, and design and construction. In some instances, the cases identified for systemic processing include those that affect large numbers of persons. The OSI utilizes various methods to identify persons who may not be aware that they have been victims of discrimination, and the OSI works to prevent future discriminatory acts by addressing systemic practices. In fiscal year 2005, HUD also created a new Division of Education and Outreach (OEO) to increase public awareness of federal fair housing laws and HUD's role in enforcing those laws; HUD also established a National Fair Housing Training Academy to train housing discrimination investigators at local, state, and federal levels.

90. Department of Labor. During the last five years, the Department of Labor Office of Federal Contract Compliance Programs (OFCCP) has refocused its efforts to better detect and remedy systemic discrimination. Systemic discrimination cases are defined as those involving ten or more employees. The shift is designed to: (1) prioritize agency resources to address the worst offenders, those who allow discrimination to be their "standard operating procedure;" (2) achieve maximum leverage of OFCCP resources to protect the greatest number of workers from discrimination; and (3) encourage employers to engage in self-audits by increasing the tangible consequences of not doing so.

### **Legislative and judicial review**

91. The U.S. Congress is constantly assessing the state of U.S. legislation and amending existing legislation or enacting new legislation where deemed necessary. New U.S. laws enacted since the Initial Report are set forth in the next section. In addition, legislation and executive branch actions are constantly being assessed by the judiciary for their consistency with the U.S. Constitution and laws. Examples of court cases since 2000 are set forth throughout this report. The same ongoing executive, legislative, and judicial review occurs in the states and territories of the U.S. with regard to their civil rights laws and enforcement activities.

**Measures taken to give effect to the undertaking to prohibit and bring to an end, by all appropriate means, including legislation as required by the circumstances, racial discrimination by any persons, group or organization**

92. Article 2 (1) (d) requires each State party to “prohibit and bring to an end, by all appropriate means, including legislation as required by the circumstances, racial discrimination by any persons, group or organization.” As indicated above, government policy at all levels reflects this undertaking, and numerous mechanisms, including programmatic initiatives, litigation, and legislation, exist to achieve this goal. This section describes a number of specific executive initiatives as well as legislation enacted since 2000 to increase and strengthen U.S. laws and programs in the areas of racial, ethnic, and national origin discrimination.

93. Education. Several Administration initiatives are in place to strengthen federal protections in the area of education. First, the President’s Advisory Commission on Educational Excellence for Hispanic Americans, E.O. 13230, established within the Department of Education, is designed to improve opportunities for Hispanic Americans to participate in and benefit from federal education programs, with the specific goal of closing the academic achievement gap. A board of advisors issued a report in 2003, finding, *inter alia*, that despite the high hopes of Hispanic parents, only one of three Hispanic students completed high school, and only one of ten completed college. To empower Hispanic parents and children with regard to education, the initiative includes programs to make Hispanic families aware of their rights and the services to which they are entitled under the No Child Left Behind Act of 2001 (20 U.S.C. 6301 et seq.), including free translation services for parents who do not speak English. It also encompasses a national network of public-private partnerships, denominated Partners for Hispanic Family Learning, to help equip communities and families with educational tools and information resources. Partners for Hispanic Family Learning includes over 200 public and private organizations such as the Hispanic Chamber of Commerce; MANA, a National Latina Organization; the Girl Scouts of the USA; the Parent Institute for Quality Education; State Farm Insurance; and others.

94. The President’s Board of Advisors on Historically Black Colleges and Universities (HBCUs), E.O. 13256, also administered by the Department of Education, is designed to strengthen and ensure the viability of the historically Black colleges and universities. The HBCUs, which are open to students of all races and ethnicities, form an important component of the overall United States higher education system, offering strong educational programs in smaller, challenging yet nurturing settings. The Board of Advisors issues an annual federal plan for assistance to HBCUs and makes recommendations to the Secretary of Education and the President. These recommendations address how to increase the private sector role in strengthening these institutions, with particular emphasis on enhancing institutional infrastructure, facility planning and development, and use of new technologies.

95. The Executive Order on Tribal Colleges and Universities, E.O. 13270 is also administered within the Department of Education. Offering high quality college education to students in some of the nation’s poorest rural areas, tribal colleges and universities seek to teach and maintain native languages and cultural traditions while providing education and job training that serve to enhance economic development in the communities they serve. The purpose of the

Executive Order is to strengthen the institutional capacity, viability, fiscal stability, and physical infrastructure of tribal colleges and universities so they can maintain high standards of educational achievement. The Executive Order also created a Board of Advisors that provides consultation on tribal colleges and relevant Federal and private sector activities, reports progress on these actions, and makes recommendations to the President for implementing the Executive Order to the fullest.

96. In 2002, Congress enacted the No Child Left Behind Act of 2001 (20 U.S.C. 6301 et seq.). This Act reauthorized the Elementary and Secondary Education Act of 1965, and is designed to promote high educational standards and accountability in public elementary and secondary schools, thus providing an important framework for improving the performance of all students. To enable officials to gauge the progress of various groups, the Act requires, as a condition of a state's receipt of federal funds, that the results of annual statewide testing be published and disaggregated at the school, school district, and state levels, by poverty, race, ethnicity, gender, migrant status, disability status, and limited English proficiency (LEP). Each state is required to establish academic content and achievement standards, to define adequate yearly progress for the state as a whole and for schools and school districts, and to work toward ensuring that all students meet these standards by 2013-2014. Adequate yearly progress must include measurable annual objectives for continuous and substantial improvement for all public elementary and secondary students, and for the achievement of economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and LEP students. If a school or school district fails to make adequate yearly progress, the school or district is subject to a sequence of steps to address the situation, moving from improvement, to corrective action, to restructuring measures designed to improve performance to meet state standards. The Act also focuses on reading in the early grades, and includes programs for LEP students.

97. In 2004, the U.S. Department of Education also began administering the D.C. Choice Incentive Program. The purpose of this \$14 million, five-year demonstration program is to give the parents of school children in the District of Columbia the opportunity to exercise greater choice in the education of their children by providing eligible low-income District of Columbia school children scholarships to attend private schools, including private religious schools. This initiative is one of a number of choice programs administered by the Department of Education.

98. Economic Initiatives. The Administration has also initiated a number of programs to support economic development and job competitiveness of American minority populations. In 2004, President Bush established, within the Department of Commerce, the White House Initiative on Asian Americans and Pacific Islanders, E.O. 13339. This Initiative is designed to increase business participation and improve economic and community development for Asian Americans and Pacific Islanders by ensuring equal opportunity to participate in federal programs and public-sector, private-sector partnerships. The Initiative also called for the creation of the President's Advisory Commission on Asian Americans and Pacific Islanders and the Interagency Working Group composed of Secretaries and Administrators from participating federal agencies. As a result of this initiative, a number of federal agencies, such as the Environmental Protection Agency and the National Science Foundation, have made specific efforts to increase the involvement of Asian Americans and Pacific Islanders in their programs.

99. In 2006, Secretary of the Interior Dirk Kempthorne realigned the Native American and Native Alaskan economic development programs within the Department of the Interior to form the Office of Indian Energy and Economic Development. The Office is organized and sharply focused on the goals of bringing new jobs, new businesses, and new money to American Indian and Alaska Native communities. Secretary Kempthorne tasked the Department to develop innovative, collaborative, and increasingly modern approaches to improve economic development opportunities for Native Americans.

100. Under the leadership of Secretary Elaine L. Chao, the first Asian American woman appointed to a President's cabinet, the Labor Department has contributed to the advancement of the Asian Pacific American community and other American racial and ethnic communities through its partnership activities, targeted compliance assistance, human capital development, and enhanced enforcement of labor laws. Examples of the Department's programs and activities include outreach in appropriate languages; direct enforcement activities in low-wage industries; grants for senior citizen work programs and for training of high-risk youth; and establishment of an internship program that has benefited young Asian Pacific Americans among others. Created in 2001, the Department's annual Asian Pacific American Federal Career Advancement Summit is a free one-day training conference to prepare Asian Pacific Americans for career and leadership opportunities in the federal government. Since 2003, the Labor Department has also sponsored the annual Opportunity Conference to promote economic development in, and access to, government resources by the Asian Pacific, Hispanic, and African American communities.

101. In 2002, former EEOC Chair, Cari M. Dominguez, announced the Administration's Freedom to Compete Initiative. Freedom to Compete is an outreach, education, and coalition-building program designed to help educate America's workforce, deter potential discrimination, and promote compliance and sound employment practices. It complements the agency's enforcement and litigation responsibilities. Since launching the initiative, the EEOC has engaged a cross-section of stakeholders in a dialogue concerning 21<sup>st</sup> century workplace needs and established alliances with new organization partners, such as trade and professional groups. It has also held a series of panel discussions to educate and inform employers and employees about workplace and marketplace trends and challenges affecting segments of the nation's changing population - specifically highlighting Hispanic, American Indian and Alaska Native, African American, and Asian American and Pacific Islander perspectives. As part of this initiative, the Commission also created the annual Freedom to Compete Awards. These awards are presented to employers, organizations, and other entities that have demonstrated results through best practices in promoting fair and open competition in the workplace. Recipients have included large multi-national employers, small and independent businesses, federal and state agencies, and non-profit organizations. Each recipient has demonstrated a commitment to ensuring that all persons have the freedom to compete and advance in the workplace.

102. Agriculture. The claims process established under the Pigford v. Johanns Consent Decree continues to be administered. The Consent Decree was a settlement of the Pigford v. Johanns (D.D.C. 1997) class action brought by African American farmers alleging discrimination in farm credit and non-credit benefit programs. As of November 13, 2006, over 22,000 class members had received more than \$921 million in damages and debt relief. In addition, USDA has developed several other initiatives to assist minority and socially disadvantaged farmers,

including an Office of Minority and Socially Disadvantaged Farmers, a Minority Farm Register to assist in outreach, and new guidelines for improving minority participation in county committee elections.

103. Insular Areas. Recognizing the needs of people inhabiting U.S. insular areas, in May 2003 President Bush re-established the Interagency Group on Insular Areas (IGIA) within the Department of the Interior, E.O. 13299. In consultation with the governors and elected representatives of American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the IGIA has provided a forum for important accomplishments in the areas of health care, taxation, immigration, and other matters of concern to the Insular Areas. The group's mission is to address unique problems of the insular areas - such as their remote locations and dependence on air travel - in order to promote economic development, health, education, and other basic needs of the population of those areas. Specific accomplishments of the IGIA include: (1) development of an all-jurisdiction health vital statistics project, in conjunction with the Department of Health and Human Services; and (2) establishment of a governmental forum to discuss issues confronting the Territorial governments, such as a report required by the Energy Policy Act of 2005, support for rural telemedicine projects, and a variety of other issues, such as taxation and immigration.

104. National Origin Discrimination. In 2005 the EEOC issued guidance on national origin discrimination. The guidance is designed to protect against national origin discrimination in American workplaces at a time when issues of discrimination are particularly sensitive in view of America's increasing diversity and the challenges of post 9/11 national origin discrimination. The new guidance explains the prohibition against national origin discrimination and lays out best practices to foster work environments free of national origin bias - including guidance on hiring decisions, harassment, and language issues. It is accompanied by a fact sheet describing some of the national origin issues faced by small employers in today's multi-ethnic American society. In 2006, the Commission received 8,327 charges alleging national origin discrimination, resolved 8,181 charges, and recovered \$21.2 million.

105. In view of the increase in bias experienced by Arab, Muslim, Sikh, South Asian Americans, and others in the wake of 9/11, the administration has also placed a high priority on outreach to these communities and enforcement against discrimination involving such bias.<sup>3</sup> Examples of such activities are set forth in the section on article 5, below.

106. Health. The Minority Health and Health Disparities Research and Education Act, P. L. 106-525, was enacted in November of 2000 to address the fact that, despite progress in overall health in the nation, continuing disparities exist in the burden of illness and death experienced by some minority groups, compared to the U.S. population as a whole. Although

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<sup>3</sup> While the Convention on the Elimination of All Forms of Racial Discrimination does not encompass anti-Muslim or anti-Sikh religious discrimination, it does encompass discrimination based on other factors at issue in these cases, such as ethnicity and national origin. Therefore, the U.S. has included broad descriptions of its initiatives in this area.

a higher number of non-Hispanic White residents fall in the medically underserved category, higher proportions of racial and ethnic minorities are represented among that group. The law establishes a National Center on Minority Health and Health Disparities in the National Institutes of Health (NIH) within the U.S. Department of Health and Human Services (HHS). The Center is to oversee basic and applied research on health disparities, and to provide grants to Centers of Excellence for Research, Education, and Training to train members of minority health-disparity populations as professionals in biomedical and/or behavior research. The act also requires the Agency for Healthcare Research and Quality (AHRQ) in HHS to conduct research to:

(1) identify populations for which there are significant disparities in quality, outcomes, cost, or use of healthcare services; (2) identify causes of and barriers to reducing healthcare disparities, by taking into account such factors as socioeconomic status, attitudes toward health, language spoken, extent of education, area and community of residence, and other factors; and (3) conduct research and run demonstration projects to identify, test, and evaluate strategies for reducing or eliminating health disparities. Finally, the act calls for a national campaign to inform the public and health-care professionals about health disparities, with specific focus on minority and underserved communities.

107. In response to Congressional mandate, HHS/AHRQ published two annual reports, the *National Healthcare Quality Report (NHQR)* and the *National Healthcare Disparities Report (NHDR)*. Together, the NHQR and NHDR assess the quality of, and existing disparities in, care provided to the American people. The reports have led to on-line state forums, where states can identify the strengths and weaknesses of their health systems over time, and compare their performance on selected measures with other states, regionally, and nationally. The NHQR and NHDR track performance on a number of measures and operate as tools to improve the quality of future health care. Providing a benchmark of health-care performance helps policy makers at all levels target their resources to improve the status of health care, and to diminish disparities of care in minority and vulnerable populations.

108. The HHS Health Resources and Services Administration's Health Center Program, which has been a major component of its health-care safety net for U.S. indigent populations for more than 40 years, is leading initiatives to increase health-care access in the most needy communities. The underserved health center patients include migrant and seasonal farm workers; homeless individuals; people living in rural areas; large numbers of unemployed persons; and substance abusers, among others. Approximately two-thirds of the patients are minorities.

109. Maternal and Child Health Block Grants deliver health care to pregnant women and to children, including children with special health-care needs. The funds support vital immunizations and newborn screening services, and also pay for transportation and case management to help families access care. These legislated responsibilities are consistent with the current emphasis of HHS on reducing racial differences, building capacity and infrastructure for child health, and ensuring quality care.

110. The Ryan White CARE Act, enacted in 1990, provides for grants for treatment and prevention of AIDS as well as AIDS training and education centers. In 1999, Congress established a Minority AIDS Initiative to increase resources targeted for minority HIV/AIDS prevention and treatment. An Organ Transplant Program also supports national efforts to

increase the numbers of organs made available for transplantation and a national network to facilitate the effective allocation of these scarce life-saving and life-enhancing resources to patients. HHS is making directed efforts to increase minority participation in both donation and usage of organs for transplantation.

111. Racial Profiling. The mission of the Justice Department Civil Rights Division includes combating racial profiling. The current Administration was the first to issue racial profiling guidelines for federal law enforcement officers and remains committed to the elimination of unlawful racial profiling by law enforcement agencies. *See Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*. Specifically, racial profiling is the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures, based on the erroneous assumption that a particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. Specifically, the Civil Rights Division enforces the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d, and Title VI of the Civil Rights Act, 42 U.S.C. 2000d. The Civil Rights Division receives and investigates allegations of patterns or practice of racial profiling by law enforcement agencies. If a pattern or practice of unconstitutional policing is detected, the Division will typically seek to work with the local agency to revise its policies, procedures, and training protocols to ensure conformity with the Constitution and federal laws.

112. As noted above, in June of 2003 the Department of Justice issued policy guidance to federal law enforcement officials concerning racial profiling. The guidance bars federal law enforcement officials from engaging in racial profiling, even in some instances where such profiling would otherwise be permitted by the Constitution and laws. Federal law enforcement officers may continue to rely on specific descriptions of the physical appearance of criminal suspects, if a specific suspect description exists in that particular case. However, when conducting investigations of specific crimes, federal law enforcement officials are prohibited from relying on generalized racial or ethnic stereotypes. Under the new policy, a federal law enforcement agent may use race or ethnicity only in extremely narrow circumstances - when there is trustworthy information, relevant to the locality or time frame at issue, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. In the national and border security context, race and ethnicity may be used, but only to the extent permitted by the applicable laws and the Constitution. On June 1, 2004, then-DHS Secretary Tom Ridge formally adopted the DOJ June 2003 guidance and directed all DHS components to develop agency-specific racial profiling training materials, in concert with the DHS Office for Civil Rights and Civil Liberties. That Office is responsible for implementing the DOJ guidance on racial profiling and continues to work with all DHS components to update and strengthen racial profiling training of law enforcement personnel.

113. Under section 1906 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, P. L. 109-59, a new grant program was established to strengthen prohibitions on racial profiling by state and local authorities. The grants are administered by the Department of Transportation. A state may qualify for a section 1906 grant in one of two ways: (1) by enacting and enforcing a law that prohibits the use of racial profiling in the enforcement of state laws regulating the use of federal-aid highways, and making available

statistical information on the race and ethnicity of drivers and passengers for each motor vehicle stop on such highways (a “Law State”); or (2) by providing satisfactory assurances that the state is undertaking activities to prohibit racial profiling and to maintain and provide public access to data on the race and ethnicity of drivers and passengers (an “Assurances State”). A state may qualify for a grant as an Assurances State for no more than two years.

114. Government Accountability and Training. In 2002, Congress enacted the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (NoFEARAct), P. L. 107-174. This act makes federal agencies directly accountable for violations of anti-discrimination and whistleblower protection laws. Under the Act, agencies must pay out of their own budgets for settlements, awards, or judgments against them in whistleblower and discrimination cases. In addition, they must provide the following outreach and training:

- Notify employees and applicants for employment about their rights concerning discrimination and whistleblower laws;
- Post statistical data relating to Federal sector equal employment complaints on their websites;
- Ensure that their managers have adequate training in the management of diverse workforces, in early and alternative conflict resolution, and in good communications skills;
- Conduct studies on the trends and causes of complaints of discrimination;
- Implement new measures to improve the complaint process and environment;
- Initiate timely and appropriate discipline against employees who engage in misconduct related to discrimination or reprisal;
- Produce annual reports of status and progress for the Congress, the Attorney General, and the EEOC.

115. Other Legislation. Additional examples of recent legislation are discussed in other sections of the report, below. These include: (1) The Help America Vote Act, discussed under article 5 - Political Rights; (2) The Native American Housing Enhancement Act of 2005, discussed under article 5 - The Right to Housing; and (3) The Crime Victims’ Rights Act, discussed under article 6 - General Recommendation XXVI.

**Measures taken to give effect to the undertaking to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything that tends to strengthen racial division**

116. Article 2 (1) (e) requires each State party to “encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.” Due to its ever-increasing multi-racial, ethnic, and cultural nature and to the open nature of its society, the

United States has a plethora of integrationist organizations and movements that promote ethnic and racial tolerance and coexistence. Many such organizations exist in the non-governmental sector. For example, the Association of Multiethnic Americans (AMEA, [www.ameasite.org](http://www.ameasite.org)) - a nationwide confederation of local multiethnic/interracial groups - was founded in November of 1988 by representatives of local multiethnic/multiracial organizations from across the United States. Members of local groups come from all walks of life and include people from many racial/ethnic backgrounds and mixtures. AMEA's primary goal is to promote positive awareness of interracial and multiethnic identity for interracial persons and for the society as a whole. Some of its component multi-racial and multi-ethnic organizations deal with specific racial or ethnic groups (for example, Asian Americans), while others seek to bring together people of all races and ethnicities.

117. Other non-governmental organizations focus less specifically on multi-racial issues, and more on addressing racial and ethnic bias and promoting understanding and tolerance. Examples of such organizations are: Teaching Tolerance (seeking to create a national community committed to human rights); the National Coalition Building Institute (NCBI) (leadership training organization working to eliminate prejudice and inter-group conflict in communities); the Anti-Defamation League (ADL) (combating hate crimes and promoting inter-group cooperation and understanding); Educators for Social Responsibility (promoting character education, violence prevention, and inter-group relations); the National Conference for Community and Justice (NCCJ) (developing young leaders from different racial, ethnic, and religious groups to address prejudice and intolerance); and Facing History and Ourselves (teacher training organization that encourages middle and high school students to examine racism and prejudice and promote a more tolerant society). Some organizations, such as the American-Arab Anti-Discrimination Committee (ADC), the National Association for the Advancement of Colored People (NAACP), and the American Jewish Committee promote tolerance with reference to particular groups of the population.

118. Entities that promote tolerance and understanding also exist in federal, state, and local governments. Within the federal government, for example, the Department of Justice Community Relations Service (CRS) provides conflict resolution services, which include mediation, technical assistance, and training throughout the United States to assist communities in avoiding racial and ethnic conflict. CRS deploys highly skilled professional mediators with experience and cultural awareness to enable affected parties to develop and implement their own solutions to racial and ethnic conflict, tension, and concerns. CRS services are confidential, neutral, and free of charge. In contrast to earlier years when CRS's work dealt mainly with issues concerning the African American population, today its work involves the panoply of racial and ethnic groups in the United States, including new immigrants, Native Americans and Alaska Natives, Hispanic Americans, Asians, South Asians, Somalians, Ethiopians, Arab Americans, and others.

119. After the events of 9/11, CRS conducted an aggressive information, outreach, and conflict resolution effort with Arab American, Muslim, and Sikh communities. First, throughout the remainder of 2001, CRS officials sought guidance from leaders of the national Arab American, Muslim, and Sikh communities. CRS focused its work in cities and states where people of Middle Eastern origin are heavily concentrated and places where hate incidents had occurred

against the Middle Eastern communities - in particular the states of California, Michigan, Illinois, New Jersey, New York, Texas, Virginia, Florida, Pennsylvania, Ohio, Massachusetts, Maryland, and the District of Columbia.

120. Based on guidance from the relevant communities, CRS's program goals included: (1) conducting hate crimes training for police departments and school administrators in areas with major Muslim and Arab American populations; (2) helping state and local federal officials establish working groups focusing on 9/11 backlash issues; (3) encouraging municipalities, police departments, schools and colleges, and universities with major Muslim and Arab American populations to plan and organize racial dialogues; (4) assisting local Human Rights Commissions and similar organizations to develop work plans that focus on outreach to the Arab and Muslim communities and strategies to bring about better relations between these communities and the broader community; and (5) convening superintendents of schools and principals to discuss "best practices" and other measures to address backlash affecting Muslim and Arab American students in their school systems.

121. Response to the events of 9/11 also included issuance of a November 19, 2001 "Joint Statement Against Workplace Bias in the Wake of September 11 Attacks." Issued by the EEOC and the Departments of Justice and Labor, this statement reaffirmed the federal government's commitment to upholding laws, regulations, and Executive Orders mandating workplace nondiscrimination. It also noted the government's focus on "preventing and redressing incidents of harassment, discrimination, and violence in the workplace, including such acts directed toward individuals who are, or are perceived to be, Arab, Muslim, Middle Eastern, South Asian, or Sikh." The Joint Statement is available on line at <http://www.eeoc.gov/press/11-19-01-js.html>. In response to concerns about housing security after 9/11, HUD's Fair Housing Office also issued a statement reviewing federal fair housing laws, setting forth answers to questions regarding housing discrimination, and notifying the public how to file fair housing complaints (<http://www.hud.gov/offices/fheo/library/sept11.cfm>).

122. In fiscal years 2005 (October 2004 through September 2005) and 2006 (October 2005 through September 2006), CRS's work continued to be connected to post-9/11 and hate incidents. CRS worked with local communities to mitigate post-9/11 tensions and conflicts by deploying mediators and providing cultural training to community leaders and law enforcement bodies. CRS also responded to specific hate crime incidents targeted toward Arab, Muslim, and Sikh residents, businesses, and houses of worship. In addition, CRS developed and made available on its website a multimedia Arab American and Muslim cultural awareness training video entitled "The First Three to Five Seconds." This police roll-call video, which is widely requested by law enforcement departments and organizations across the country, can be seen on the CRS website at [www.usdoj.gov/crs](http://www.usdoj.gov/crs).

123. In fiscal years 2005 and 2006, CRS responded, respectively, to approximately 757 and 851 community incidents and conflicts based on race, color, or national origin. CRS mediators continue to work with community, government, and law enforcement leaders to prevent or resolve racial tensions related to a wide range of issues, including administration of justice/police-community relations, anti-hate activities, protests and special events, post-9/11 concerns, immigrant community issues, Native American issues, conflicts in educational

institutions, and hate incidents (including vandalism and arson in houses of worship). Services requested include conciliation and mediation, contingency planning, policy training, technical and communication assistance, and partnership building.

124. Organizations promoting tolerance are also active at state and local levels. For example, the California Endowment - the state's largest health foundation - established a 9/11 Special Opportunities Fund, which made more than \$2.4 million in grants to tolerance organizations, Human Relations Commissions, non-governmental organizations, and others to promote understanding of Arab Americans and people of the Islamic faith within the state. Another example is found in Oregon, where the legislature has authorized a Commission on Black Affairs, a Commission on Asian Affairs, and a Commission on Hispanic Affairs, each of which works towards economic, social, political, and legal equality for its corresponding group.

125. The Bush Administration's Faith Based and Community Initiative is also designed to ensure that the nation's religious organizations can and are doing their part to provide social services to underserved populations, and to strengthen their involvement in promoting ethnic and racial tolerance and coexistence. This initiative helps religious organizations obtain grant funds for these purposes.

**2. Information on the special and concrete measures taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms, in accordance with article 2, paragraph 2, of the Convention**

126. Article 2 (2) provides that, when circumstances so warrant, States parties shall take "special and concrete measures" for the "adequate development and protection of certain racial groups or persons belonging to them, for the purpose of guaranteeing to them the full and equal enjoying of human rights and fundamental freedoms. "Article 1 (4) specifically excludes from the definition of "racial discrimination" "[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection" in order to provide equal enjoyment of human rights and fundamental freedoms. Such measures may not, however, lead to the maintenance of "unequal or separate rights for different racial groups" or "be continued after the objectives for which they were taken have been achieved."

127. The United States acknowledges that article 2 (2) requires States parties to take special measures "when circumstances so warrant" and, as described below, the United States has in place numerous such measures. The decision concerning when such measures are in fact warranted is left to the judgment and discretion of each State Party. The decision concerning what types of measures should be taken is also left to the judgment and discretion of each State Party, and the United States maintains its position that, consistent with the Convention, special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection may or may not in themselves be race-based. For example, a "special measure" might address the development or protection of a racial group without the measure itself applying on the basis of race (e.g., a measure might be directed at the neediest members of society without expressly drawing racial distinctions).

128. A substantial number of existing federal ameliorative measures could be considered “special and concrete measures” for the purposes of article 2 (2). These include the panoply of efforts designed to promote fair employment, statutory programs requiring affirmative action in federal contracting, race-conscious educational admission policies and scholarships, and direct support for historically Black colleges and universities, Hispanic-serving institutions, and Tribal colleges and universities. Some provisions are hortatory, such as statutory encouragement for recipients of federal funds to use minority-owned and women-owned banks. Others are mandatory; for example, the Community Reinvestment Act, 12 U.S.C. 2901, requires federally chartered financial institutions to conduct and record efforts to reach out to under-served communities, including, but not limited to, minority communities.

129. Statutory programs such as those described in the Initial U.S. Report continue to operate. They include, but are not limited to:

- Small Business Act requirement that federal agencies set goals for contracting with “small and disadvantaged businesses”;
- Small Business Administration (SBA) section 8 (a) Business Development Program and Small and Disadvantaged Business Certification and Eligibility Program;
- SBA Native American Tribal Business Information Centers;
- SBA HUBZone Contracting Program for small businesses in historically underutilized business zones;
- SBA section 7 (j) Small Business Development Assistance Grant Program, section 7(a) Small Business Loan Guaranty Program, and section 7(m) Microloan Program;
- Department of Agriculture programs designed for “socially disadvantaged” farmers and ranchers;
- Department of Education Gear Up discretionary grant program for high-poverty middle schools, colleges and universities, community organizations, and businesses;
- Department of Education and state and local efforts to help students overcome language barriers that impede equal participation in educational programs;
- Treasury Department Minority Bank Deposit Program, Federal Deposit Insurance Corporation (FDIC) Minority Deposit Institutions Program, and Department of Energy Bank Deposit Financial Assistance Program; and
- Department of Transportation preferences for small businesses owned and controlled by socially and economically disadvantaged individuals in DOT-assisted contracts.

130. In general, the proper goal of affirmative action programs, such as those noted above, is to remedy the effects of past and present discrimination. Affirmative action measures may not

create any form of “quotas” or “numerical straightjackets;” nor may they give preference to unqualified individuals, place undue burdens on persons not beneficiaries of the affirmative action programs, or continue to exist or operate after their purposes have been achieved.

131. Any affirmative action plan that incorporates racial classifications must be narrowly tailored to further a compelling government interest, see, e.g., Adarand Constructors, Inc., v. Pena, 515 U.S. 200 (1995). The United States Supreme Court recently addressed the use of racial classifications in university admissions. In Grutter v. Bollinger, 539 U.S. 306 (2003), and Gratz v. Bollinger, 539 U.S. 244 (2003), the Court recognized a compelling interest that permits the limited consideration of race to attain a genuinely diverse student body, including a critical mass of minority students, at universities and graduate schools. Specifically, the Court held that the University of Michigan Law School’s interest in “assembling a class that is . . . broadly diverse” is compelling because “attaining a diverse student body is at the heart of [a law school’s] proper institutional mission.” Grutter, 539 U.S. at 329. In so doing, the Court deferred to the Law School’s educational judgment that student-body diversity was essential to its educational mission. In Grutter, the Court further found the Law School’s program to be narrowly tailored to achieve this mission because it applied a flexible goal rather than a quota, because it involved a holistic individual review of each applicant’s file, and because it did not “unduly burden” individuals who were not members of the favored racial and ethnic groups. The Court also held that “race-conscious admissions policies must be limited in time,” and expressed an expectation that “25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” Id. At 342-43. At the same time, however, in Gratz v. Bollinger, the Court struck down the admissions policies of the University of Michigan’s undergraduate program, which automatically awarded points to an applicant’s diversity score depending on the applicant’s race, because it operated as a mechanical quota that was not “narrowly tailored” to meet the university’s objective. See id. at 270.

132. To date, the Court has not recognized the goal of achieving broad diversity as compelling outside of the educational setting. Moreover, whether the goal of achieving simple racial diversity is a compelling interest that would permit the use of racial classifications in an education setting has yet to be determined. In its current term, the Supreme Court is expected to decide whether elementary and secondary schools may use race as a deciding factor in making student assignment decisions in order to achieve (or maintain) racially diverse schools. See Parents Involved in Community Schools v. Seattle School District No. 1, 05-908; Meredith v. Jefferson County Board of Education, 06-915.

133. Debate concerning reverse discrimination (i.e., that racial preference programs are unfair to persons who do not benefit from them) continues. A number of recent lawsuits allege reverse discrimination, and the courts have articulated the standards described above to define which programs do and do not meet constitutional requirements. It continues to be the view of the United States that, consistent with its obligations under the Convention, the United States may adopt and implement appropriately formulated special measures consistent with U.S. constitutional and statutory provisions, and that the Convention gives the State party broad discretion to determine both when circumstances warrant the taking of special measures and how, in such cases, it shall fashion such special measures.

134. Based on the Equal Educational Opportunities Act of 1974 (EEOA) and Title VI of the Civil Rights Act of 1964, courts have also continued to uphold the responsibility of states and local school districts to take affirmative steps to rectify the language deficiency of children with limited English proficiency, as required by the landmark decision of Lau v. Nichols, 414 U.S. 563 (1974). For example, in Flores v. Arizona, 405 F. Supp. 2d 1112 (D. Ariz. 2005), the federal district court in Arizona, pursuant to the EEOA, found the State of Arizona's funding of its limited English Proficiency (LEP) programs so inadequate that it enjoined the state from requiring LEP students to pass a particular standardized test as a requirement for graduation from high school until funding was restored to an adequate level.

### **B. Article 3**

135. Article 3 requires States parties to condemn racial segregation and apartheid and to undertake to prevent, prohibit, and eradicate "all practices of this nature" in territories under their jurisdiction. The Initial U.S. Report described the response of the United States Government, state and local governments, and private institutions to governments and institutions that supported or tolerated apartheid. No such policies or practices are permitted in U.S. territories, and it remains the United States position that such practices should be condemned and eradicated wherever they are found.

### **C. Article 4**

#### **1. Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 4 of the Convention, in particular measures taken to give effect to the undertaking to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination**

136. These include, in particular, measures 1. To declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; 2. To declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law; and 3. Not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination. The American people reject all theories of the superiority of one race or group of persons of one color or ethnic origin, as well as theories that attempt to justify or promote racial hatred and discrimination. It is government policy to condemn such theories, and none is espoused at any level of government. The Convention, however, also requires that States parties "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination" as specified in articles 4 (a), (b) and (c). The Committee has stressed the importance with which it views these obligations, as reflected, for example, in General Recommendation VII (1985), General Recommendation XV (1993), and in the Committee's Concluding Observations on the Initial U.S. Report (A/56/18, para. 391).

137. The United States reiterates that, for the reasons described in paragraphs 147 through 156 of the Initial U.S. Report, its ability to give effect to these requirements is circumscribed by the protections provided in the United States Constitution for individual freedom of speech, expression, and association. Accordingly, at the time it became a State party to the Convention, the United States took a formal reservation to article 4, and to the corresponding provisions of article 7, to make clear that it could not accept any obligation that would restrict the constitutional rights of freedom of speech, expression, and association, through the adoption of legislation or any other measures, to the extent that doing so would violate the Constitution and laws of the United States. That reservation remains in effect and reflects fundamental human rights protections accorded to persons under the United States Constitution.

138. In the United States, speech intended to cause imminent violence may constitutionally be restricted, but only under certain narrow circumstances. In 1992, the U.S. Supreme Court struck down a municipal ordinance making it a misdemeanor to “place on public or private property a symbol, object, appellation, characterization, or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender” on the grounds that it unconstitutionally restricted freedom of speech on the basis of its content, R.A.V. v. City of St. Paul, 505 U.S. 377 (1992). A more recent Supreme Court decision, however, upheld a statute that prohibited cross-burning with the intent of intimidating any person or group of persons, Virginia v. Black, 538 U.S. 343 (2003). Although the Virginia Supreme Court had struck down the statute as unconstitutional on the basis that it singled out a type of speech based on content and viewpoint, the U.S. Supreme Court held that the protections of the first amendment are not absolute, and that cross-burning with the intent to intimidate is in the nature of a true threat - a type of speech that may be banned without infringing the First Amendment, whether or not the person uttering the threat actually intends to carry it out, see Watts v. United States, 394 U.S. 705 (1969). In the Court’s view, because cross-burning is such a particularly virulent form of intimidation, the First Amendment permits Virginia to outlaw cross-burning with the intent to intimidate.

139. Thus, consistent with the limitations of the U.S. Constitution, the United States can, and does, give effect to article 4 in numerous areas. For example:

140. Hate Crimes. The Civil Rights Division of the U.S. Department of Justice enforces several criminal statutes that prohibit acts of violence or intimidation motivated by racial, ethnic, or religious hatred and directed against participation in certain activities. Those crimes include: 18 U.S.C. 241 (conspiracy against rights); 18 U.S.C. 245 (interference with federally protected activities); 18 U.S.C. 247(c) (damage to religious property); 42 U.S.C. 3631 (criminal interference with right to fair housing); and 42 U.S.C. 1973 (criminal interference with voting rights). In addition, 47 of the 50 U.S. states enforce state laws prohibiting hate crimes, and organizations to combat hate crimes exist in a number of states.

141. Enforcement against hate crimes - including particular efforts devoted to prosecution of post 9/11 hate crimes targeting Arab Americans and Muslim Americans - is a high priority. Statistics concerning the breakdown of racial and ethnic groups involved in hate crimes cases, as well as specific examples of cases, are set forth in the section on article 5, Security of Person, below.

142. Hate Crimes on the Internet. The U.S. Supreme Court has made it clear that communications on the internet receive the same constitutional protections under the First Amendment that communications in other media enjoy, Reno v. ACLU, 521 U.S. 844 (1997). Nonetheless, when speech contains a direct, credible threat against an identifiable individual, organization, or institution, it crosses the line to criminal conduct and loses that constitutional protection. See, e.g., Planned Parenthood of the Colombia/Willamette, Inc. v. American Coalition of Life Activists, 290 F. 3d 1058 (9<sup>th</sup> Cir. 2002), cert denied, 539 U.S. 958 (2003); see also Virginia v. Black, 538 U.S. 343 (2003).

143. Because of the difficulties in identifying internet hate crimes and tracking down perpetrators, criminal cases have to date been relatively few in number. As one step in addressing the problem, in 2003 the new Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice, in partnership with Partners Against Hate (a collaboration of the Anti-Defamation League, the Leadership Conference on Civil Rights Education Fund, and the Center for the Prevention of Hate Violence) and the Safe and Drug-Free Schools Program of the U.S. Department of Education published a manual entitled “Investigating Hate Crimes on the Internet.” This manual, which can be found at [www.partnersagainsthate.org/publications/investigating\\_hc.pdf](http://www.partnersagainsthate.org/publications/investigating_hc.pdf), is designed to assist law enforcement and related personnel in their efforts to address criminal internet behavior.

144. The Civil Rights Division of the Department of Justice has prosecuted several internet threats cases. In U.S. v. Razani (C.D. Cal.), the defendant sent threatening e-mail, including a death threat, to an Arab American woman. The defendant pled guilty to violating 18 U.S.C. 874 (c) and was sentenced to six months home detention and three years probation on April 3, 2006. In U.S. v. Middleman (D.C.), the defendant pled guilty to violating 18 U.S.C. 875 for sending threatening e-mail to the president of the Arab American Institute. This defendant was sentenced to ten months in prison on October 14, 2005. In U.S. v. Oakley (D.C.), the defendant sent e-mail threatening to bomb the headquarters of the Council on American Islamic Relations. This defendant pled guilty to violating 18 U.S.C. 844 (e), and was sentenced to three years probation. In U.S. v. Bratisax (E.D. Mich.), the defendant sent threatening e-mails to the Islamic Center of America. This defendant plead guilty to violating 18 U.S.C. 247 and was sentenced on March 13, 2006 to two years probation.

145. States also actively prosecute such cases. For example, in 1998, a white supremacist and his organization were charged under the Pennsylvania Ethnic Intimidation Law with terroristic threats, harassment, and harassment by communication in connection with material on a website. The complaint was filed against the White supremacist, Ryan Wilson and his organization, Alpha HQ, as well as against Bluelantern, Inc. and Stormfront, Inc., the internet hosts of the website. The site included threats against two specific local and state civil rights enforcement employees, along with a statement that “traitors” like this should beware because they would be “hung from the neck from nearest tree or lamp post.” It also depicted a bomb destroying the office of one of these employees who regularly organized anti-hate activities. Upon the filing of the complaint, the defendants agreed to remove the site from the internet. Thus, the matter was resolved without going to court. Commonwealth of Pennsylvania v. ALPHA HQ.

**2. Information on appropriate measures taken to give effect to general recommendations I, VII and XV, on article 4 of the Convention**

146. As noted above, the United States implementation of article 4 (a) and (b) is limited by its constitutional guarantees of freedom of speech, expression, and association. However, the U.S. Department of Justice does enforce a number of criminal statutes that prohibit acts of violence or threats of force motivated by racial, ethnic, or religious hatred and directed against participation in certain activities. In addition, as also noted above, 47 of the 50 states also enforce their own hate crimes laws. United States federal and state laws currently provide adequate legal basis for prosecuting racially and ethnically motivated crimes consistent with the Constitution, and the U.S. Congress and state legislatures are seized with the responsibility to consider new legal authorities if warranted.

**3. Information in response to Decision 3 (VII) adopted by the Committee on 4 May 1973**

147. In the United States, existing penal laws, as applied by the courts, implement U.S. obligations under article 4 (a) and (b) consistent with the U.S. Constitution. These laws include:

- 18 U.S.C. 241 - Conspiracy Against Rights - This law makes it unlawful for two or more persons to agree to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised such rights. Unlike most conspiracy statutes, this section does not require that one of the conspirators commit an overt act prior to the conspiracy's becoming a crime. The offense is punishable by a range of imprisonment up to a life term or the death penalty, depending on the circumstances of the crime and the resulting injury, if any.
- 18 U.S.C. 245 (b) (2) - Federally Protected Activities - This law makes it unlawful to willfully injure, intimidate, or interfere with any person, or attempt to do so, by force or threat of force, because of that person's race, color, religion, or national origin and because he or she is or has been (A) enrolling in or attending any public school or public college; (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by any state or subdivision thereof; (C) applying for or enjoying employment by any private employer or any agency of any state or subdivision thereof, or joining or using the services of any labor organization, hiring hall, or employment agency; (D) serving, or attending upon any court of any state in connection with possible service as a juror; (E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air; or (F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other

establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments. The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending on the circumstances of the crime and the resulting injury, if any.

- 18 U.S.C. 247 (c) - Damage to Religious Property - This law prohibits anyone from intentionally defacing, damaging, or destroying religious real property, or attempting to do so, because of the race, color, or ethnic characteristics of any individual associated with the property, regardless of any connection to interstate or foreign commerce. The offense is punishable by a range of imprisonment up to a life term or the death penalty, depending on the circumstances of the crime and the resulting injury, if any.
- 42 U.S.C. 3631 - Fair Housing Act criminal provisions - This law makes it illegal for an individual to use force or threaten to use force to injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with, any person's housing rights because of that person's race, color, religion, sex, handicap, familial status, or national origin. Among the housing rights enumerated in the statute are: the sale, purchase, or rental of a dwelling; the occupation of a dwelling; the financing of a dwelling; contracting or negotiating for any of the rights enumerated above; applying for or participating in any service, organization, or facility relating to the sale or rental of dwellings. The statute also makes it illegal to use force or threaten to use force to injure, intimidate, or interfere with any person who is assisting an individual or class of persons in the exercise of housing rights. The offense is punishable by imprisonment up to a life term, depending on the circumstances of the crime and the resulting injury, if any.
- 42 U.S.C. 1973 - Voting Act criminal provisions - Among other aspects, this law makes it illegal to deny or abridge the right of any citizen of the United States to vote on the basis of race, color, or membership in a language minority group. The offense is punishable by monetary fines, or imprisonment of not more than five years, or both.

Copies of these laws are being made available to the Secretary-General in English.

#### **D. Article 5**

**Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 5 of the Convention, taking into consideration general recommendations XX and XXII , in particular, measures taken to prohibit racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law notably in the enjoyment of the rights listed**

148. Article 5 obligates States parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, without distinction as

to race, color, or national or ethnic origin. The protections of the U.S. Constitution meet this fundamental requirement, as do laws, policies, and objectives of government at all levels. Article 5 specifically requires States parties to guarantee equality and non-discrimination in the enjoyment of certain enumerated rights. As noted in the Initial U.S. Report, some of these enumerated rights, which may be characterized as economic, social, and cultural rights, are not explicitly recognized as legally enforceable “rights” under U.S. law. However, article 5 does not affirmatively require States parties to provide or to ensure observance of each of the listed rights themselves, but rather to prohibit discrimination in the enjoyment of those rights to the extent they are provided in domestic law. In this respect, U.S. law fully complies with the requirements of the Convention. The U.S. continues to work to achieve the desired goals with regard to non-discrimination in each of the enumerated areas.

### **1. The right to equal treatment before the tribunals and all other organs administering justice**

149. The right to equal treatment before courts in the United States is provided through the operation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. This provision is binding on all governmental entities at all levels throughout the United States. The constitutional provision has not changed since 2000.

150. In the United States, potential jurors may not be excluded from a jury solely on account of their race in criminal trials, Batson v. Kentucky, 476 U.S. 79 (1986), or civil cases, Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991). Courts have also generally treated ethnicity and national origin as improper criteria in the selection of jurors. Although the Supreme Court has not squarely decided the issue, it has on two occasions treated Batson as extending to ethnic origin. See, e.g., Hernandez v. New York, 500 U.S. 352 (1991) (assuming without discussion that Batson applies to Hispanic jurors); U.S. v. Martinez-Salazar, 528 U.S. 304 (2000) (stating that “[u]nder the Equal Protection Clause, a defendant may not exercise a peremptory challenge to remove a potential juror solely on the basis of the juror’s gender, ethnic origin, or race”). Lower courts have also applied this principle in specific cases. See, e.g., Rico v. Leftridge-Byrd, 340 F. 3d 178 (3<sup>rd</sup> Cir. 2003) (holding it not objectively unreasonable for a state court to apply Batson to peremptory challenges of Italian American jurors); U.S. v. Bin Laden, 91 F. Supp. 2d 600 (S.D.N.Y. 2000) (holding that U.S. citizens cannot be excluded from jury selection based on their nationality because “it is well settled that equal protection principles forbid discriminatory exclusions from jury service on the basis of factors such as race and national origin”).

151. In addition, with regard to court access, several federal courts have barred discovery concerning the immigration status of plaintiffs in lawsuits alleging employment discrimination under Title VII of the Civil Rights Act, as well as under other federal laws. See, e.g., Rivera v. NIBCO, Inc., 364 F.3d 1057 (9<sup>th</sup> Cir. 2004), cert. denied, 544 U.S. 905 (2005) (Title VII); EEOC v. Restaurant Co., 448 F. Supp. 2d 1085 (D. Minn. 2006) (Title VII); Zeng Liu v. Donna Karan Intern, Inc., 207 F. Supp. 2d 191 (S.D.N.Y. 2002) (Fair Labor Standards Act); Topo v. Dhir, 210 F.R.D. 76 (S.D.N.Y. 2002) (Alien Tort Claims Act).

152. The Sixth Amendment to the U.S. Constitution provides for the right to counsel in Federal criminal prosecutions. Through a series of landmark decisions by the U.S. Supreme Court, the right to counsel has been extended to all criminal prosecutions - state or federal, felony or misdemeanor - that carry a sentence of imprisonment. By law, counsel for indigent defendants is provided without discrimination based on race, color, ethnicity, and other factors. States and localities use a variety of methods for delivering indigent criminal defense services, including public defender programs, assigned counsel programs, and contract attorneys. The federal system also uses similar types of programs. In addition, in many states counsel is available in some civil cases through state bar *pro bono* attorney programs, and legal aid programs. For example, several organizations in Nevada assist those of limited means in obtaining legal services in civil matters. These include Nevada Legal Services, Clark County Legal Services, and "We the People." The 2000 Bureau of Justice Statistics report "Defense Counsel in Criminal Cases" used data from the Administrative Office of the U.S. Courts, the 1999 National Survey of Indigent Defense Systems, the National Survey of State Court Prosecutors, and State Court Processing Statistics to compare indigent felony defendants in federal and state courts. Among other factors, that study found that conviction rates for indigent defendants and those with their own lawyers were about the same in both federal and state courts. Of those found guilty, defendants represented by publicly financed attorneys were incarcerated at a higher rate than those who paid for their own legal representation (88 percent compared to 77 percent in federal courts and 71 percent compared to 54 percent in the most populous counties), but on average, sentence lengths were shorter for those with publicly-financed attorneys than those who hired counsel.

153. Discrimination by Law Enforcement. The U.S. Constitution and federal statutes prohibit racially discriminatory actions by law enforcement agencies. Where such actions do occur, the Justice Department Civil Rights Division institutes civil actions for equitable and declaratory relief under the Pattern or Practice of Police Misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d. Those statutes prohibit law enforcement agencies from engaging in a pattern or practice of violation of civil rights.

154. Since January 2001, the Civil Rights Division has reached 14 settlements with law enforcement agencies under these provisions. These settlements cover police departments in Villa Rica, Georgia; Prince George's County, Maryland; Detroit, Michigan; Cincinnati and Cleveland, Ohio; Los Angeles, California; Washington, D.C.; Mount Prospect, Illinois; the State of New Jersey; and others. Many of these cases involve allegations of excessive use of force, and some also involve allegations of discrimination in conducting stops, detention, and other police activities. For example, a provision in the June 2001 Consent Decree with Los Angeles and the Los Angeles, California Police Department specifically prohibits the use of race, color, ethnicity, or national origin in conducting stops or detention or activities following stops or detentions. As of February 2007, the Division was engaged in ongoing investigations of ten law enforcement agencies, plus monitoring and oversight of ten police settlement agreements involving eight agencies (available on the Justice Department website at [www.usdoj.gov/crt/split/index.html](http://www.usdoj.gov/crt/split/index.html)).

155. Pursuant to 42 U.S.C. 14141, the Civil Rights Division also investigates and provides technical assistance to law enforcement agencies where there are alleged constitutional violations related to use of force. During these investigations, the Division provides on-going technical assistance to advise law enforcement agencies of best practices and how to conform their policies and practices to constitutional standards. Specifically, by utilizing nationally recognized police practices consultants, the Division provides technical assistance in the areas of uses of force, searches and seizures, non-discriminatory policing, misconduct investigations, early warning systems, citizen complaint intake and follow-up, supervisory review of line officer actions, and in several other areas of policy and practice. Additionally, although section 14141 does not require the Division to issue findings letters or provide the technical assistance noted above to law enforcement agencies, the Division adopts both mechanisms, where appropriate, to identify misconduct and to help agencies improve their policing practices. Since January 2001, the Division has issued 3 findings letters and 19 technical assistance letters.

156. As noted above in the section addressing article 2 (1) (d), the Administration has also taken action to curb discrimination by law enforcement through DOJ's issuance of racial profiling guidelines for federal law enforcement officers. These guidelines, in turn, have been adopted by the Department of Homeland Security.

157. In addition to the above, private litigants may also sue law enforcement agencies based on allegations of racially discriminatory police activities. See, e.g., Bennett v. City of Eastpointe, 410 F.3d 810 (6<sup>th</sup> Cir. 2005) (upholding summary judgment but outlining requirements of private cause of action pursuant to 42 U.S.C. 1983 for discriminatory policing in violation of Fourteenth Amendment); Farm Labor Org. Comm. V. Ohio State Highway Patrol, 308 F.3d 523 (6<sup>th</sup> Cir. 2002) (applying same Fourteenth Amendment calculus to racial profiling claims in a class action); see also, United States v. Avery, 137 F.3d 343, 352 (6<sup>th</sup> Cir. 1997) (holding that “[i]t is axiomatic that the Equal Protection Clause of the Fourteenth Amendment protects citizens from police action that is based on race.”); Bennett v. City of Eastpointe, 410 F.3d 810, 818 (6<sup>th</sup> Cir. 2005) (to establish claim of selective law enforcement, plaintiff must demonstrate that the challenged police action “had a discriminatory effect and that it was motivated by a discriminatory purpose”). To show discriminatory purpose, a plaintiff can proffer “evidence that an official chose to prosecute or engage in some other action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group. King, 86 Fed.Appx. at 802 (citing Wayte v. U.S., 470 U.S. 598 at 610 (1985)).

158. In 2000, there were approximately 800,000 full-time, sworn law enforcement officers in the United States. The Department of Justice, the Department of Homeland Security's Federal Law Enforcement Training Center, and state and local agencies and training academies are heavily involved in training for such officers, including diversity training, and training in defusing racially and ethnically tense situations. Law enforcement officers receive periodic training on these issues during their careers. The Community Relations Service established the Law Enforcement Mediation (LEM) Program, which is designed to equip law enforcement officers with basic knowledge of mediation and conflict resolution skills as they apply directly to law enforcement. The program focuses on the officers' need to respond to any given conflict

or dispute, especially those relating to race and ethnic based issues, in a minimum of time and with the maximum effectiveness. In many states, the program is certified for police officers' continuing education credit.

159. In specific circumstances, targeted training efforts are initiated. For example, in the aftermath of 9/11 the Department of Justice Community Relations Service was active in establishing dialogue between government officials and the Arab and Muslim communities. Among other activities, CRS immediately released two publications entitled "Twenty Plus Things Law Enforcement Agencies Can Do to Prevent or Respond to Hate Incidents Against Arab Americans, Muslims, and Sikhs" and "Twenty Plus Things Schools Can Do to Prevent or Respond to Hate Incidents Against Arab Americans, Muslims, and Sikhs." These publications were made widely available and posted on the CRS website to provide immediate information and assistance in an effort to calm immediate tensions, fears, and misunderstandings. As noted above, CRS also created a law enforcement roll call video entitled "The First Three to Five Seconds," which seeks to enhance law enforcement and government officials' outreach capabilities to target communities by addressing cultural behaviors and sensitivities, stereotypes, and expectations encountered in interactions and communications with Arab, Muslim, and Sikh communities. The video can be found at [http://www.usdoj.gov/crs/training\\_video/3to5\\_lan/transcript.html](http://www.usdoj.gov/crs/training_video/3to5_lan/transcript.html).

160. The Department of Homeland Security (DHS), one of the largest federal law enforcement agencies in the United States, has emphasized training for its employees, and its Office for Civil Rights and Civil Liberties is developing an online "Civil Liberties University" to provide training on a variety of human rights topics, including cultural awareness regarding Arabs and Muslims. In September 2002, the Law Enforcement Bulletin, a magazine published by the Federal Bureau of Investigation (FBI) and distributed to local law enforcement officers throughout the United States, also published an article entitled "Interacting with Arabs and Muslims," which provided information regarding Arab and Muslim culture to assist law enforcement officers to be sensitive to unique and important cultural issues. This article can be found at <http://www.fbi.gov/publications/leb/2002/sept02/leb.pdf>.

161. Many law enforcement agencies have partnered with NGOs to provide training to their officers. For example, the Islamic Networks Group and the Sikh American Legal Defense and Education Fund have trained hundreds of police agencies, sheriff's departments and prosecutors' offices. The American-Arab Anti-Discrimination Committee also offers a Law Enforcement Outreach Program that has been used by numerous federal law enforcement agencies, including the FBI, DHS, and the U.S. Park Police.

162. Representation in the Criminal Justice System. At yearend 2004, 3.2 percent of African American males, 1.2 percent of Hispanic males, and 0.5 percent of White males in the U.S. were incarcerated in state or federal prisons. Distributions were similar among the female population - the rate for African American females was more than 2 times higher than the rate for Hispanic females and 4 times higher than the rate for white females. Overall, the prison population was estimated to be 41 percent African American, 34 percent White, 19 percent Hispanic, and 6 percent other or two or more races.

163. Jail and prison populations have increased between 1995 and 2005, and changes in the composition of jail and prison populations during that time suggest that the rate of growth for African Americans in both of these incarceration settings has been below that for White Non-Hispanics and Hispanics.

From 1995 to 2005, the composition of the jail population changed as follows:

	1995 %	2005 %
White Non Hispanic	40.1	44.3
Black Non Hispanic	43.5	38.9
Hispanic	14.7	15.0
Other races	1.7	1.7
Two or more races	N.A.	0.1

(Source: "Prison and Jail Inmates at Midyear 2005," Bureau of Justice Statistics, p. 8).

The change in composition for prisons from 1995 to 2005 was as follows:

	1995 %	2005 %
White Non Hispanic	33.5	34.6
Black Non Hispanic	45.7	39.5
Hispanic	17.6	20.2
Other races	3.2	2.7
Two or more races	N.A.	3.0

(Source: "Prisoners in 2005," Bureau of Justice Statistics, p. 8).

164. Thus, for persons in jail, the population of White Non-Hispanic inmates has grown at a greater rate than the overall jail population, while the African American Non-Hispanic population has grown at a lower rate than the population overall. The Hispanic population has basically mirrored the overall growth. For prisons, on the other hand, the White Non-Hispanic population has grown at about the same rate as the overall population; while the Black Non-Hispanic population grew at a slower rate than the population overall.<sup>4</sup> The Hispanic rate of growth, however, was greater than the overall growth rate.

165. The reasons for the disparities in incarceration rates are complex. Numerous scholars have looked at what aspects of crime, social structure, and the criminal justice system might explain such differential rates. Research by Alfred Blumstein of Carnegie Mellon University and Michael Tonry at the University of Minnesota suggests that the disparities are related primarily to differential involvement in crime by the various groups (with some unexplained disparities

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<sup>4</sup> Some, but not all, of this decrease might be attributable to a change in the classification system that allowed inmates to list two or more races.

particularly related to drug use and enforcement), rather than to differential handling of persons in the criminal justice system.<sup>5</sup> Discussion and debate concerning the reasons for the disparities remains active in the judicial and academic communities.

166. Disparities in Sentencing. The Initial U.S. Report discussed the implications on sentencing of the mandatory minimum sentencing guidelines imposed by the Sentencing Reform Act of 1984 for federal courts, including issues related to sentencing for drug-related offenses. Since 2000, the federal mandatory sentencing guidelines have been held unconstitutional by the U.S. Supreme Court, United States v. Booker, 543 U.S. 220 (2005) (holding the guidelines incompatible with the requirement of the Sixth Amendment to the U.S. Constitution that a jury find certain facts related to sentencing). The Court instructed lower courts to consider the guidelines, but to tailor sentences in light of other statutory concerns. It also instructed appellate courts to review the sentences imposed by trial courts to determine their reasonableness. As revised sentencing procedures begin to take effect in the federal courts, the United States Sentencing Commission is reviewing the impact of such procedures on federal sentencing, including the implications for persons of different races, education levels, and other factors, see, e.g., “Report on the Impact of United States v. Booker on Federal Sentencing,” United States Sentencing Commission, March 2006. While the 2006 report found relatively little change in overall sentencing patterns in the short time since the Supreme Court’s decision, the Commission cautioned that the statistics are only very preliminary and that it will be important to continue assessing these matters in future years.

167. Capital Punishment. At the time of the Initial U.S. Report, the federal government and 38 states imposed capital punishment for crimes of murder or felony murder, generally only when aggravating circumstances were present, such as multiple victims, rape of the victim, or murder-for-hire. However, since 2000, the law in New York has been declared unconstitutional under the state constitution, and executions in Illinois and New Jersey have been suspended. Kansas’s law was also declared unconstitutional, but that decision was overturned by the U.S. Supreme Court, Kansas v. Marsh, 126 S. Ct. 2516 (2006). All criminal defendants in the United States, especially those in potential capital cases, enjoy numerous procedural guarantees, which are respected and enforced by the courts. These include, among others: the right to a fair hearing by an independent tribunal; the presumption of innocence; the right against self-incrimination; the right to access all evidence used against the defendant; the right to challenge and seek exclusion of evidence; the right to review by a higher tribunal, often with a publicly funded lawyer; the right to trial by jury; and the right to challenge the makeup of the jury.

168. Two major Supreme Court decisions since 2000 have narrowed the categories of defendants against whom the death penalty may be applied. In Roper v. Simmons, 543 U.S. 551 (2005), the Court held that the execution of persons who were under the age of eighteen when their capital crimes were committed violates the Eighth and Fourteenth Amendments. Atkins v. Virginia, 536 U.S. 304 (2002), held that the execution of mentally

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<sup>5</sup> Blumstein, Alfred, “Racial Disproportionality of US Prison Populations Revisited,” *University of Colorado Law Review*, Vol. 64 (1993); Tonry, Michael, “Racial Disproportion in US Prisons,” *British Journal of Criminology*, Vol. 34, Special Issue (1994).

retarded criminal defendants constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The Supreme Court has repeatedly refused to consider the contention that a long delay between conviction and execution constitutes cruel and unusual punishment under the Eighth Amendment, *see, e.g., Foster v. Florida*, 537 U.S. 990 (2002), leaving in place numerous decisions by lower federal courts rejecting such a claim, *see, e.g., Knight v. Florida*, 528 U.S. 990 (1999) (Thomas, J., concurring in denial of certiorari). However, in June of 2006 the Supreme Court decided that death row inmates may, under civil rights laws, challenge the manner in which death by lethal injection is carried out, *Hill v. McDonough*, 126 S. Ct. 2096 (2006). The underlying constitutional question - whether lethal injection violates the Eighth Amendment prohibition on cruel and unusual punishment - was not addressed by the Supreme Court, but will be decided in the first instance by lower courts in specific cases. In June of 2006, the Supreme Court also ruled that new evidence, including DNA evidence concerning a crime committed long ago, raised sufficient doubt about who had committed the crime to merit a new hearing in federal court for a prisoner who had been on death row in Tennessee for 20 years, *House v. Bell*, 126 S. Ct. 2064 (2006). Five states have authorized the death penalty for sexual assault of a child - Louisiana, Florida, Montana, Oklahoma, and South Carolina, with the last two doing so in 2006. The courts have not yet ruled on the constitutionality of these laws.

169. Both the number of prisoners under sentence of death and the number of executions have declined since 2000. In 2000, 37 states and the federal government held 3,601 prisoners under death sentence. By the end of 2005, this number had decreased to 3,254 - a reduction of 9.6 percent. Likewise, while there were 85 executions in 2000, the number of executions fell to 53 in 2006. In 2004, the number of inmates who were put on death row (128) was the lowest since 1973. This was the third consecutive year such admissions had declined. Of the inmates in prison under sentence of death, 56 percent were white and 42 percent were African American. Of the inmates whose ethnicity was known, 13 percent were Hispanic.

170. Since 2000, three federal offenders have been executed: Timothy McVeigh in 2001 (for multiple offenses arising out of the 19 April 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and the resulting deaths of 168 victims); Juan Raul Garza in 2001 (for numerous offenses, including three murders while engaged in and in furtherance of a continuing criminal enterprise); and Louis Jones in 2003 (for kidnapping and killing a 19 year old private in the United States Army). In 2006, 53 executions were carried out by the states, as follows: Texas executed 24 inmates; Ohio executed five; Florida, North Carolina, Oklahoma and Virginia executed four each; and Indiana, Alabama, Mississippi, South Carolina, Tennessee, California, Montana, and Nevada executed one each.

171. Prisons. The Bureau of Prisons (BOP) operates 114 federal correctional facilities throughout the United States, including 21 penitentiaries, 68 correctional institutions, 6 independent prison camps, 12 detention centers, and 6 medical referral centers. Under U.S. regulations, 28 C.F.R., Part 551.90, federal inmates may not be discriminated against on the basis of race, religious, nationality, sex, disability, or political belief. When problems arise or allegations are raised regarding misconduct, several responses may ensue. First, the Attorney General may initiate an investigation, conducted by the DOJ Office of Inspector General (OIG). In addition, the BOP may investigate allegations of staff misconduct internally through its Office

of Internal Affairs, and a separate branch of the Department of Justice may become involved if there is reason to believe that prisoners' rights are being violated. The U.S. Congress may also initiate an investigation of BOP operations where problems are brought to their attention, and federal courts may also be called on to resolve problems.

172. For example, in December 2003, the OIG issued a report concerning allegations that some correctional officers at the BOP Metropolitan Detention (MDC) in Brooklyn, New York, had physically and verbally abused individuals detained after the 9/11 attacks. The report concluded that the evidence substantiated allegations of abuse by some MDC officers of some detainees, and the OIG recommended that the BOP discipline certain employees. The report found evidence that some officers had slammed detainees against the wall, twisted their arms and hands in painful ways, stepped on their leg restraint chains, punished them by keeping them restrained for long periods, and verbally abused some detainees. In addition, in some cases, MDC videotaped detainees' meetings with their attorneys, violating federal regulation and BOP policy. As a result of the OIG's findings, the BOP initiated an investigation, which sustained many of the OIG's findings and resulted in disciplinary action, including removal of two employees, demotion of three employees, and suspensions of various lengths of eight employees.

173. In addition to BOP oversight of federal prisons, the Department of Justice has jurisdiction to investigate institutional conditions and to bring civil lawsuits against state and local governments for a pattern or practice of egregious or flagrant unlawful conditions in state and local prison facilities, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997. The Civil Rights Division also investigates conditions in state prisons and local jail facilities pursuant to CRIPA, and investigates conditions in state and local juvenile detention facilities pursuant to either CRIPA and/or Section 14141. These statutes allow the Department to bring legal actions for declaratory or equitable relief for a pattern or practice of unconstitutional conditions of confinement.

174. When the Civil Rights Division uncovers unconstitutional conditions at prisons, jails, or juvenile detention facilities, it works with local and state authorities to remedy these conditions. Specifically, the Department of Justice utilizes subject matter consultants to develop remedial measures tailored to the identified problems and particularities of the facility. The remedies, often memorialized in negotiated settlement agreements, represent constitutional remedies. Once the reforms are agreed to by the facility (assuming agreement is reachable), the Department will often work cooperatively with the jurisdiction to jointly select a monitor to ensure implementation. A hallmark of the Department's approach is transparency. For instance, the Civil Rights Division ensures that the jurisdiction is fully apprised of problems through the use of exit interviews during each on-site visit and, when appropriate, immediate notification to the jurisdictions of life-threatening conditions.

175. Since the Initial U.S. Report, the Civil Rights Division has used CRIPA and other statutes to prosecute allegations of torture, cruel, inhuman, and degrading treatment or punishment, or other abuse. In particular, since January 20, 2001, the Division has opened 69 CRIPA investigations, issued 53 findings letters, filed 22 cases, and obtained 53 settlement agreements. (These figures cover institutions including nursing homes, mental health facilities, facilities for persons with developmental disabilities, jails, prisons, and juvenile justice facilities.) In fiscal

year 2006 alone, the Civil Rights Division conducted over 123 investigatory and compliance tours and handled CRIPA matters and cases involving over 175 facilities in 34 states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. In addition, the Civil Rights Division continued its investigations of 77 facilities and monitored the implementation of consent decrees, settlement agreements, memoranda of understanding, and court orders involving 99 facilities.

176. The monitoring of compliance with CRIPA settlement agreements concerning juvenile facilities included: 30 facilities in Georgia, one in New Jersey, 13 in Puerto Rico, one in the Commonwealth of the Northern Mariana Islands, one in Louisiana, one in Arkansas, three in California, two in Mississippi, one in Hawaii, two in Indiana, one in Nevada, one in Michigan, and two in Arizona. The Division's monitoring of compliance with regard to jails included: four in the Northern Mariana Islands, two in Guam, two in Mississippi, two in Georgia, one in Tennessee, one in Kentucky, one in Oklahoma, one in New Mexico, one in New York, eight in Los Angeles, California and one in Maryland. Finally, monitoring with regard to prisons included one in Guam, one in the Virgin Islands, one in the Northern Mariana Islands, and two in Arkansas. As a result of the Division's CRIPA efforts, institutionalized persons who were living in dire, often life-threatening conditions now receive adequate care and services.

177. In undertaking CRIPA investigations, the Department of Justice receives and acts on complaints from numerous sources. During 2006, for example, it received 4,841 CRIPA-related citizen letters and hundreds of CRIPA-related telephone complaints from sources such as: individuals who live at the facilities and their relatives, former staff of facilities, advocates, concerned citizens, media reports, and referrals from within the Division and other federal agencies. In addition, in 2006 the Division responded to approximately 81 CRIPA-related inquiries from Congress and the White House.

178. As noted above, CRIPA also gives the Department of Justice jurisdiction to investigate institutional conditions and to bring civil lawsuits against state and local governments for a pattern or practice of egregious or flagrant unlawful conditions - including allegations of discriminatory inmate segregation or housing policies. In this vein, the Department has recently reviewed the policies and procedures of one state department of correction in which it was alleged that inmates were being segregated based purely on race, and had little or no chance of being housed with inmates of a different race. The Civil Rights Division provided expert technical assistance to the jurisdiction by reviewing the policies and procedures at issue, and is in the process of working with the jurisdiction to develop a housing assignment policy that is more consistent with the mandates announced in Johnson v. California, 543 U.S. 499 (2005) (holding that racial segregation of prison inmates is a form of racial classification that must be judged by the rigorous constitutional standard of "strict scrutiny," i.e., that prison systems must prove that such policies are designed to further a compelling governmental interest and that they are narrowly tailored to meet that interest).

179. New employees working in the field at correctional facilities receive Institution Familiarization (IF) Training, as well as training through the Staff Training Academy (STA), located at the Federal Law Enforcement Training Center. In IF training, emphasis is placed on treating inmates with respect and in a fair, consistent, and appropriate manner. STA provides

entry level knowledge and skills to new correctional staff through a three-week course. Attendance at this course is required for all new institution employees within 60 days of employment. Annual refresher training includes discussions regarding ethics and standards of conduct, the importance of diversity management to the Bureau's mission, and other safety and security issues. The Bureau also trains private contractors on matters such as diversity management, respect for inmate rights and privacy, appropriate communication and interaction, and in some cases, the employee code of conduct. The Director has taken an active role in such training. Where correctional facilities are privately operated, such contractors are required to develop and implement comprehensive training programs for their staffs to be provided during employee orientation and then on an annual basis as part of the facility's in-service training plan.

**2. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution**

180. Article 5 (b) obligates States parties to provide equal protection against violence and bodily harm, whether inflicted by governmental officials or by individuals, groups, or institutions. The United States Constitution and laws provide such protection through statutes such as the Violent Crime Control and Law Enforcement Act of 1994, the Civil Rights Acts, and Federal "hate crimes" laws. The law in this area has not changed since 2000. In addition, 47 U.S. states also administer state laws prohibiting similar activity.

181. Racially motivated Crimes. Through its Uniform Crime Reporting Program, the Federal Bureau of Investigation (FBI) collects hate crimes statistics including both federal and state crimes. In 2005, the most recent year for which statistics are available, 2,037 law enforcement agencies reported the occurrence of 7,163 hate crime incidents involving 8,380 offenses. These included 7,160 single-bias incidents (54.7 percent motivated by racial bias and 13.2 percent motivated by ethnicity/national origin bias). Of the offenses involved in these incidents, 68.2 percent resulted from anti-African American bias, and 19.9 percent were due to anti-White bias. Slightly less than 5 percent of racially motivated offenses were driven by anti-Asian or Pacific Islander bias, 2 percent involved bias against American Indians or Alaskan Natives, and 4.9 percent were directed at groups of individuals in which more than one race was represented.

182. Law enforcement agencies classify hate crimes motivated by ethnic or national origin bias into one of two categories - anti-Hispanic or anti-other ethnicity/national origin. In 2005, agencies reported 1,144 offenses involving single-bias incidents motivated by ethnicity or national origin. Of these offenses, 57.7 percent were motivated by anti-Hispanic bias, and 42.3 percent were directed against other ethnicities or national origins.

183. While the highest proportion of hate crime offenses involved intimidation, destruction, damage, or vandalism, a number of more serious offenses, such as murders, rapes, robberies, and arsons were also represented. Of the six reported bias-motivated murders, three resulted from racial bias - one anti-White and two anti-African American. Of the three forcible rapes, one was anti-African American. Of the 127 bias-motivated robberies, 61 involved racial bias, and 29 involved bias against ethnicity or national origin.

184. An examination of racially-motivated crimes by victim type shows that nearly 68 percent of the victims were the object of anti-African American bias. Slightly less than 20 percent were victims of anti-White bias, 4.9 percent were victims of anti-Asian or Pacific Islander bias, and 1.9 percent were victims of anti-American Indian or Alaska Native bias. Ethnically motivated crimes break down as follows: 58.7 percent of the victims were victimized because of anti-Hispanic bias, while 41.2 percent were victimized because of bias against other ethnicities or national origins.

185. In 2005, the states with the highest numbers of hate crimes were California (19.2 percent of total); New Jersey (9 percent); Michigan (8.8 percent); Massachusetts (5.4 percent), and Texas (3.7 percent).

186. Prosecution of hate crimes is a high priority for the Department of Justice. Since 2000, approximately 240 defendants have been charged by federal authorities in connection with crimes such as cross-burnings, arson, vandalism, shootings, and assault for interfering with various federally-protected rights (e.g., housing, employment, education, and public accommodation) of African American, Hispanic, Asian, Native American, and Jewish victims. Since 1993, virtually all defendants charged in these cases have been convicted.

187. After 9/11, bias crimes against those perceived to be Muslim or Arab rose sharply. In the three months after 9/11, there were more than 300 such crimes. In 2002 through 2004 there was an average of 100 such crimes per year. Since 2004, however, the number of such crimes has steadily decreased, with 83 in 2005 and 46 in 2006. While such crimes have thus decreased significantly since immediately after 9/11, they are still above pre-9/11 levels.

188. Overall, since 2000 the Department of Justice has investigated more than 700 such crimes, resulting in more than 150 state and local prosecutions, as well as the conviction of 32 defendants. Several experienced attorneys in the Civil Rights Division's Criminal Section have been tasked to review all new allegations involving crimes against Arab Americans and those believed to be of Arab ancestry, and to monitor or participate in investigations to ensure uniform decision-making. A few examples of the types of federal prosecutions brought for crimes against Arab Americans and others are provided here. The defendants charged in these bias crimes have received lengthy prison sentences. For example, in U.S. v. Irving (C.D. Cal.), the defendant plotted to bomb a mosque in Los Angeles, California, and the offices of the Muslim Public Affairs Council. The defendant pled guilty to violations of 18 U.S.C. 241 and 18 U.S.C. 844; he was sentenced to 20 years in prison on September 22, 2005. In U.S. v. Burdick (E.D. Cal.), the defendant shot a Sikh postal carrier with a pellet gun, and pled guilty to violating 18 U.S.C. 111(a) (1). The defendant was sentenced to 70 months in prison on September 17, 2003. Other examples are U.S. v. Goldstein (M.D. Fla.) (defendant conspired to destroy mosques and Islamic centers, and was sentenced to 151 months in prison); U.S. v. Nunez-Flores (W.D. Tex) (defendant threw a Molotov cocktail at the Islamic Center of El Paso, Texas, and was sentenced to 171 months in prison); and U.S. v. Cunningham (W.D. Wash.) (defendant tried to set fire to cars in a mosque parking lot and fired at worshippers, and was sentenced to 78 months in prison).

189. The Community Relations Service (CRS) of the U.S. Department of Justice is available to state and local jurisdictions to help prevent and resolve racial and ethnic conflict and violence, including hate crimes. From years of experience on a wide range of cases, CRS has developed a set of “best practices” to assist localities in preventing hate crimes and restoring harmony in communities. A few specific examples of CRS hate crimes cases follow:

- In Anchorage, Alaska, after White youths videotaped themselves shooting Alaska Natives with paint balls, CRS worked with community groups, citizens, and state and local officials to calm community concerns. CRS trained Anchorage Police Department Academy recruits to increase their sensitivity when interacting with people of color, and provided officers with conflict resolution skills. Participants were also provided strategies to strengthen government-minority community relations and methods to prevent and reduce racial tensions;
- In Modesto, California, an interracial couple reported a firebomb thrown through their bedroom window. At the request of educators, public officials, law enforcement officers, and community leaders, CRS assisted in developing a community response mechanism for responding to hate crimes to address community concerns;
- With regard to church burnings, CRS staff members have worked directly with hundreds of rural, suburban, and urban governments to help eliminate racial distrust and polarization, promote multiracial programs, conduct race relations training for community leaders and law enforcement officers, conduct community dialogues, and provide assistance to bring together law enforcement agencies and members of minority neighborhoods.

190. Immediately following the 9/11 attacks, the Community Relations Service began assessing community racial and ethnic tensions in communities with concentrations of Arab, Muslim, and South Asian populations. CRS contacted local police departments, school districts, colleges and universities, city and state governments, Muslim and Arab American groups, and civil rights organizations. As reports of violence against Arabs, Muslims, and Sikhs in the U.S. intensified, CRS deployed its staff to promote tolerance. Many forums were held for Arab, Muslim, and Sikh community members to provide information, education, and resources, and to identify and discuss the various laws and enforcement agencies that serve their communities and how each could be of assistance. Among CRS’s activities was the presentation of the Arab, Muslim, and Sikh Awareness and Protocol Seminar - a series of educational law enforcement protocols for federal, state, and local officials addressing racial and cultural conflict issues between law enforcement and Arab American, Muslim American, and Sikh American communities. As noted above, CRS also created a law enforcement roll-call video entitled “The First Three to Five Seconds,” which has helped police officers reduce tension by differentiating between threats and cultural norms in non-crisis situations involving Arabs, Muslims, and Sikhs.

191. CRS has also responded to reports of vandalism and arson involving mosques and Sikh gurdwaras. For example, on July 14, 2003, CRS responded to televised news reports of a fire at a mosque in Elizabeth, New Jersey. While the police reported that the fire was not arson, it resulted in increased fears among the local Muslim community. CRS provided assistance to

the community and the media to address rumors that the fire was a bias incident. CRS helped local Islamic leaders plan a community forum, which allowed community members to express their concerns and receive reassurance from their local community leaders and officials.

192. State Activity Concerning Hate Crimes. As noted above, 47 states have hate crimes laws. In addition, organizations to combat such crimes exist in a number of states - for example, the Oregon Coalition against Hate Crimes, the North Carolina Hate Violence Information Network (HAVIN), the North Florida Hate Crimes Working Group, the Michigan Alliance against Hate Crimes, the Illinois Governor's Commission on Discrimination and Hate Crimes, the Pennsylvania Inter-Agency Task Force on Civil Tension, and the Kentucky Hate Crimes Advisory Group. The Michigan Alliance against Hate Crimes (a partnership between the Michigan Civil Rights Commission and Department, and the U.S. Attorneys for Michigan) brings together a coalition of more than 70 federal, state and local law enforcement agencies, civil and human rights organizations, community and faith-based groups, educators, victims support groups, and anti-violence advocates to ensure complete and effective response to hate crimes and bias incidents.

193. In Maryland, which publishes statistics on state hate crimes, there were 374 hate incident cases in fiscal year 2005, including 32 race-related incidents in the Maryland public school system, and six race-related incidents in colleges and universities. Race and ethnicity accounted for over 70 percent of the hate crimes cases processed during the year. In one Maryland civil case, MCHR v. Elton Smith, Jr., an African American defendant, who harassed an interracial couple in the neighborhood, was ordered to pay damages of more than \$3,500 and a civil penalty of \$5,000, plus interest.

194. In Illinois, which also publishes statistics, there were 272 hate incidents in 2003, compared to 230 in the preceding year. Approximately 55 percent of the hate incidents were motivated by racial bias.

195. Pennsylvania's Human Relations Commission compiles a Bias Incident Data Base for use in both preventing and responding to civil tension. That data base, which is compiled by bias-motivation, is quite detailed, including information on the nature and location of each incident as well as on the parties involved. For the year 2006, the data base shows 162 bias incidents - 66 anti-African American, 29 anti-Hispanic, 3 anti-Asian-Pacific Islander, 6 anti-Arab American, 2 anti-White, and 56 multi-racial. The data base is shared with and used by the member agencies of the Pennsylvania Inter-Agency Task Force on Civil Tension ([www.stopbias.org](http://www.stopbias.org)). The Task Force is convened monthly by the Human Relations Commission to review bias-related incidents reported in the previous month. It has both short-term and longer term responsibilities. For example, it develops and assists local communities in implementing strategies for both prevention and response. It also participates in the development and presentation of numerous training initiatives for law enforcement officers, municipal officials and community leaders; enhances public awareness and effective enforcement of Pennsylvania's hate crime statute (the Ethnic Intimidation and Institutional Vandalism Act); establishes the standardized system for identifying and reporting bias-related incidents; and evaluates and recommends legislative changes. For quick response to incidents, a sub-group of the Task Force, called the Inter-Governmental Response Team, provides rapid response to schools and communities that are experiencing severe inter-group tension.

196. The Kentucky Hate Crimes Advisory Group, which includes representatives from the Office of the Attorney General, the U.S. Attorney for the Eastern and Western Districts of Kentucky, federal and state law enforcement officials, and public justice organizations, is charged with researching reported anecdotal incidents of hate violence, as well as reporting and making recommendations to the Kentucky Commission on Human Rights. In addition to local, state, and federal criminal investigations, the Commission is reviewing a recent 2006 cross-burning incident.

197. Vermont's hate crimes statutes enhance penalties for hate-motivated crimes and provide injunctive relief protection for hate crime victims. Conduct that is maliciously motivated by the victim's actual or perceived race, color, religion, national origin, and other factors is penalized based on the severity of the crime. In 2003-04, there were 56 recorded hate crimes in Vermont, of which 35 were race, ethnicity, or national origin-based. In 2004-05, there were 34 recorded hate crimes, of which 14 were race, ethnicity, or national origin-based. Vermont-certified police officers receive mandatory training on the hate crimes statute, and the Attorney General's Civil Rights Unit and the Vermont Human Rights Commission conduct public education through school and community programs that explore diversity acceptance and awareness. In 2003, the Vermont legislature substantially amended the law regarding harassment and hazing policies for Vermont education institutions. The law prohibits harassment and hazing, and requires schools to have in place policies and procedures to address complaints in a timely manner and provide remediation. Racial harassment is defined as "conduct directed at the characteristics of a student's or a student's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, circulation of written or visual material, taunts on manner of speech, or negative references to racial customs" (16 V.S.A. 11 (26) (B) (II) (ii)).

198. Measures to address excessive use of force by law enforcement authorities in a discriminatory manner are discussed above under article 5 - Discrimination by Law Enforcement.

### **3. Political rights - information on the means for guaranteeing these rights, and on their enjoyment in practice**

199. U.S. law guarantees the right to participate equally in elections, to vote and stand for election on the basis of universal and equal suffrage, to take part in the conduct of public affairs, and to have equal access to public service. Under the Voting Rights Act, the Department of Justice brings suits in federal court to challenge voting practices or procedures that have the purpose or effect of denying equal opportunity to minority voters to elect their candidates of choice. The Department also reviews changes with respect to voting in certain specially covered jurisdictions. In July of 2006, Congress extended the Voting Rights Act for another 25-year period.

200. Voting. To address problems with balloting in the 2000 election, Congress passed the Help America Vote Act of 2000 (HAVA), Pub. L. No. 107-252. That legislation seeks to improve the administration of elections in the United States in three ways: (1) creation of a new federal agency, the Election Assistance Commission, to serve as a clearinghouse for election administration information; (2) provision of funds to states to improve election administration

and replace outdated voting systems; and (3) creation of minimum standards for states to follow in several key areas of election administration. The Attorney General enforces the nationwide standards and requirements established by Section III of the Act. These include, for example, standards for voting systems, including alternative language accessibility; availability of provisional voting; standards for provisional voting; requirements for each state to create a single, interactive, computerized statewide voter registration list; and standards for absentee balloting.

201. The Department of Justice has pursued its enforcement responsibilities through litigation and non-litigation guidance. In 2003, after enactment of the Act, the Attorney General sent letters to the chief election officials, governors, and attorney generals in each of the 50 states, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and Puerto Rico describing the requirements and required timelines for compliance under HAVA and offered the Civil Rights Division's assistance in efforts to comply with the requirements of Title III. Each year, the Justice Department has also advised specific states and territories on actions needed to meet the Act's standards. In early 2004, the Justice Department sent informal advisories to six states raising specific concerns about their ability to comply with HAVA in time for the 2004 federal elections. After that round of elections in February and March of 2004, Justice also conducted a state-by-state analysis of compliance and wrote to three states raising compliance concerns noted by monitors. In 2004 and 2005, respectively, the Justice Department filed the first HAVA lawsuits against San Benito County, California and Westchester County, New York. Both suits involved the failure of poll officials to post required voter information. San Benito County also failed to have a system allowing provisional voters to find out whether their ballots were accepted and counted. Consent agreements were reached in both cases. In 2006, the Department filed lawsuits against the States of Alabama, Maine, New Jersey, and New York, and Cochise County, Arizona. As of March 2007, the Justice Department had filed one HAVA lawsuit, against Cibola County, New Mexico.

202. In addition to enforcement of HAVA, the Justice Department continues to enforce other voting legislation, including the Voting Rights Act of 1965, as amended, the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA), and the National Voter Registration Act of 1993. The Civil Rights Division enforces the civil provisions of these laws, while the Public Integrity Section of the Criminal Division enforces the criminal misconduct and anti-fraud prohibitions. In 2006, for example, the Department announced an agreement to protect the rights of military and overseas citizens to vote in the federal primary elections in Alabama, North Carolina, and South Carolina, and obtained emergency relief in a consent decree with the State of Connecticut to ensure that UOCAVA voters could have their ballots counted for the federal primary election.

203. In 2004, the Justice Department identified election monitoring as a high priority and requested a number of monitors greatly in excess of prior election-year totals. Those monitors received training in election-related civil rights laws including, for the first time, laws relating to protection of the rights of voters with disabilities. For the 2004 elections, the Justice Department sent 802 monitors and observers to 75 elections in 20 states (as compared with 340 monitors and observers deployed to 21 elections in 11 states pre-election in 2000). On election day itself, Justice deployed an additional 1,073 monitors and observers to watch 87 elections in 25 states (as compared with 363 monitors and observers in 20 elections

in 10 states on election day in 2000). In selecting the jurisdictions to be monitored, the Department first identified 14 jurisdictions in nine states that were operating under federal court orders or decrees. The Voting Section then identified 58 additional jurisdictions for monitoring, often through outreach to minority advocates. Finally, Justice received written requests from civil rights and election organizations requesting monitoring personnel for 15 additional jurisdictions, most of which were also assigned monitors or observers. Another record was set in 2006 for the mid-term elections, with 470 federal observers and 358 Department personnel sent to monitor polling places in 69 jurisdictions in 22 states on election day. The Department again targeted jurisdictions operating under court orders or consent decrees (15 in 9 states). Another 54 jurisdictions were selected for monitoring relying, in part, on information provided by civil rights groups. In addition to the November 7 general election, the Justice Department in 2006 sent another 496 federal observers and 217 Department personnel to monitor 50 elections in 46 jurisdictions in 17 states.

204. Section 203 of the Voting Rights Act requires that all election materials and information available in English must also be available in the applicable minority language for those who need it in states and political subdivisions with specified language minority populations. This section, which is designed to ensure that citizens not only have the opportunity to vote, but also to cast informed votes, applies to ballots, instructions, and other materials. Since 2002, the Civil Rights Division has filed approximately 60 percent of all cases ever filed under these provisions in the history of the Act, including the first cases ever filed on behalf of Filipino and Vietnamese voters. Enforcement actions have involved cities and counties across the United States, including the states of Arizona, California, Florida, Massachusetts, New Mexico, New York, Pennsylvania, Texas, and Washington. Often accompanying these lawsuits have been cases under Section 208 of the Act to assure that voters who need assistance in voting have the right to receive such assistance, and to choose any person they wish - other than their employer or union official - to provide that assistance. Since 2002, the Civil Rights Division has filed over 75 percent of the cases under Section 208 ever filed in the history of the Act.

205. The Election Assistance Commission's 2005 Report to Congress on election reform progress in 2004 listed some of the changes that have occurred since the enactment of HAVA:

- 17 states have used provisional ballots for the first time;
- 1.5 million voters cast provisional ballots, and over 1 million of those were counted (68 percent);
- At least 25 percent of voters have used new voting equipment, with another 30 percent scheduled to use new equipment by 2006;
- At least nine states have developed and used a statewide voter registration database to help increase access to the polls.

206. Under section 2 of the Voting Rights Act, 42 USC 1973(b), it is unlawful to re-draw voting districts for purposes of federal elections if the re-districting results in political processes that are not as equally open to members of a racial group as they are to other members of the electorate. In League of United Latin American Citizens v. Perry, 126 S. Ct. 2594 (2006), the United States

Supreme Court found a violation of the Voting Rights Act in one Texas congressional district, district 23, but found no violations of the Constitution or the Voting Rights Act in the remaining 31 of the state's 32 congressional districts. The Court's decision left the Texas redistricting plan largely intact and left it to the state to determine how to remedy the problem identified as to congressional district 23. The majority's decision as to district 23 was founded on a new principle, under Section 2 of the Voting Rights Act, that the creation of an offsetting majority-minority district may not remedy the loss of a majority-minority district in the same part of the state, if the new district is not compact enough to preserve communities of interest.

207. The Civil Rights Division recently has brought lawsuits challenging racially discriminatory election systems in Osceola County, Florida; Euclid, Ohio; and Port Chester, New York. The Division prevailed in the suit against Osceola County, and the other two cases remain in litigation. Other recent Section 2 lawsuits have focused on discrimination at the polls themselves. In 2005, the Justice Department filed and successfully resolved a suit against the City of Boston, Massachusetts, based on the city's discriminatory treatment of Hispanic, Chinese, and Vietnamese voters. Such treatment included denying voters needed assistance, taking voters' ballots and marking them contrary to, or without regard for, the voters' wishes, rude and abusive treatment, and denial of provisional ballots. The Division also recently brought and successfully resolved a lawsuit under Section 2 to protect Hispanic voters from having their right to vote challenged on racial grounds in United States v. Long County, Georgia.

208. Disenfranchisement of Convicted Criminals. The Fourteenth Amendment to the U.S. Constitution explicitly recognizes the right of states to bar an individual from voting "for participation in rebellion, or other crime." Accordingly, most states deny voting rights to persons who have been convicted of certain serious crimes. The standards and procedures for criminal disenfranchisement vary from state to state. In most states, this disability is terminated by the end of a term of incarceration or by the granting of pardon or restoration of rights. In all cases, the loss of voting rights does not stem from a person's membership in a racial group or on the basis of race, color, descent, or national or ethnic origin, but is based on the criminal acts perpetrated by the individual for which he or she has been duly convicted by a court of law pursuant to due process of law.

209. Criminal disenfranchisement is a matter of continuing scrutiny in the states of the United States, and changes have occurred in a number of states since 2000. In 2001, New Mexico repealed the state's lifetime voting ban for persons with felony convictions. In 2003, Alabama enacted a law that permits most felons to apply for a certificate of eligibility to register to vote after completing their sentences. In March 2005, the Nebraska legislature repealed the lifetime ban on all felons and replaced it with a two-year-post-sentence ban. In 2006, Iowa (by Executive Order) restored voting rights to persons who have completed felony sentences, and voters in Rhode Island approved a ballot measure restoring voting rights to persons released from prison on probation or parole. Policy changes that lower barriers to voting for ex-felons have also been enacted in Connecticut, Delaware, Kentucky, Maryland, Nevada, Pennsylvania, Virginia, Wyoming, and Washington.

210. In September 2005, the National Commission on Federal Election Reform, chaired by former Presidents Carter and Ford, recommended that all states restore voting rights to citizens who have fully served their sentences. While there is a lively debate within the United States on

the question of voting rights for persons convicted of serious crimes pursuant to due process of law, the longstanding practice of states within the United States does not violate U.S. obligations under the Convention.

211. District of Columbia. The U.S. Constitution gives Congress exclusive jurisdiction over the “Seat of Government of the United States,” which is the District of Columbia (D.C.). U.S. Const., art. 1 sec. 8. Because the United States was founded as a federation of formerly sovereign states, this provision was designed to avoid placing the nation’s capital under the jurisdiction of any one state. Thus, the reason for this provision was governmental structure, not racial. In any case, the earliest Census population figures for the District indicate that in 1800, ten years after its legislative authorization, the District had 8,144 residents, 69.6 percent of whom were White.

212. The right of the District of Columbia to vote in elections for the President and Vice President is granted by the Twenty-third Amendment to the U.S. Constitution. D.C. residents have no representation in the Senate, but are represented in the House of Representatives by a non-voting Delegate, who sits on committees and participates in debate, but cannot vote. The issue of voting rights for the District of Columbia has been under active discussion during the last several years and is currently under consideration by Congress. In light of the requirement in Article 1, section 2 of the Constitution that the members of the House of Representatives be chosen by the people of the “States,” the Administration has taken the position that congressional representation for the District would require a constitutional amendment.

213. Public office. Public office is open to U.S. persons without regard to race or ethnicity, and significant numbers of minorities hold positions in public office in the United States.

214. According to the 3rd edition of the American Bar Association Directory of Minority Judges in the United States, published in 2001, of the nearly 60,000 judges and judicial officers in state, federal, and tribal courts in the United States (including Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands), 4,051 (approximately 6.75 percent) were members of racial or ethnic minority groups. This represents a modest increase from the number of 3,610 (6 percent) in 1997. Of the 4,051 minority judges and judicial officers, 1,798 were African American, 1,523 were Hispanic, 324 were Asian, 56 were Native American (in state or federal courts), and 350 were serving in Native American tribal courts.

215. With respect to federal elected officials, of the 535 members of the 109th Congress, 41 were African American (8 percent), 24 were Hispanic (4 percent), and 7 were Asian (1 percent). These percentages show modest growth from the levels set forth in the Initial U.S. Report. Of the state and territorial governors, as of January of 2007, six were racial minorities - two Black (Massachusetts and U.S. Virgin Islands); two Hispanic (New Mexico and Puerto Rico); and two Asian and Pacific Islander (American Samoa and Guam).

216. In 2002, the Joint Center for Political and Economic Studies in Washington, D.C. released its year 2000 statistical summary of Black Elected Officials (BEOs). This report encompasses federal, state, municipal, and local officials, including those in law enforcement and education. The report shows a six-fold increase in Black elected officials from approximately 1,500 in 1970

to 9,040 in 2000. It also highlights key trends that are shaping the future of Black political leadership. First, Black women accounted for all of the growth in the number of BEOs for two years prior to 2000 and constituted 34.5 percent of the total figure. Second, younger Black Americans, who often have different views and experiences from their older counterparts, are increasingly being elected. Finally, an increasing number of Black mayors are being elected in large cities (over 50,000) where the majority of the population is not African American. According to the National Conference of Black Mayors, there were 542 Black mayors in the U.S. in 2005, including 47 Black mayors of cities with populations greater than 50,000. The Joint Center BEO report indicates that the five states with the largest number of BEOs were Mississippi (897), Alabama (731), Louisiana (701), Illinois (621), and Georgia (582).

217. In 2004, the size of the non-postal federal workforce was 1,270,366. Of this number, 31.4 percent were minority – approximately 17 percent African American (just slightly less than in 2000), 7.3 percent Hispanic (up from 6.6 percent in 2000), 5.0 percent Asian and Pacific Islander (up from 4.5 percent in 2000), and 2.1 percent American Indian and Alaska Native (slightly less than in 2000). At the highest level of the federal workforce, approximately 14 percent of members of the Senior Executive Service were minority. Likewise, of 2,786 political appointees (generally high level officials) 13 percent were minorities and 37 percent were women. As of June 2006, the President's Cabinet, which is composed of the Vice President and the heads of 15 executive departments, included two Hispanics, two African Americans, and two Asian Americans.

#### **4. Other civil rights**

218. Article 5 (d) obligates States parties to ensure equality of enjoyment of a number of human rights and fundamental freedoms, including freedom of movement and residence; the right to leave and return to one's country; the right to a nationality; the right to marriage and choice of spouse; the right to own property alone as well as in association with others; the right to inherit; the right to freedom of thought, conscience, and religion; the right to freedom of expression; and the right to freedom of peaceful assembly and association. These rights are guaranteed to all persons in the United States in accordance with various constitutional and statutory provisions, and interference with them may be criminally prosecutable under a number of statutes. The constitutional and legal guarantees of these rights without regard to race, ethnicity, or national origin have not changed since the filing of the Initial U.S. Report in 2000.

#### **5. Economic, social and cultural rights**

##### **The right to work, and the right to form and join trade unions**

219. Article 5 (e) (i) guarantees equality before the law and non-discrimination based on race, color, and national or ethnic origin, with regard to the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favorable remuneration. United States laws and regulations meet this requirement. Progress has been made, although disparities of results continue to exist in some areas. The sources of such disparities are complex and depend on a number of economic and social factors.

220. As of January 2007, the Bureau of Labor Statistics reported the following rates of participation in the labor force: Whites - 66.6 percent; African Americans - 64.7 percent, and Hispanics - 69.4 percent. Unemployment rates were highest for African Americans at 8.0 percent, and lowest for Asian Americans at 3.2 percent. White Americans were unemployed at the rate of 4.1 percent, and Hispanics at the rate of 5.7 percent. The overall unemployment rate was 4.6 percent. The 1998 unemployment rates as shown in the Initial U.S. Report were 4.5 percent overall and 8.9 percent for African Americans. The Initial U.S. Report did not report 1998 statistics for the other groups.

221. The overall poverty rate in 2005 was 12.6 percent for individuals and 9.9 percent for families. The poverty rate for non-Hispanic Whites was 8.6 percent - higher than the rate of 8.2 percent reported in 1998. By contrast, the poverty rates for African Americans alone (24.9 percent) and Hispanics (21.8 percent) were slightly lower than the 1998 rates described in the Initial U.S. Report (26.1 percent for African Americans and 25.6 percent for Hispanics). The poverty rate for Asians alone was 11.1 percent, down from 14.1 percent in 1989. Using three-year average data (which are often used for smaller groups to improve the variance), the poverty rate for American Indians in 2002-2004 was 19.2 percent for the AIAN alone or in combination population and 24.3 percent for the AIAN alone population, down from 27.6 for the AIAN population in 1989. In making the comparisons to 1989, however, it should be noted that the race groups are not exactly comparable, because in earlier years respondents were instructed to report only one race, whereas after 2003 respondents could report more or more races. Thus, caution is important in viewing these comparisons.

222. According to the 2000 Census, Asian Americans who reported no other race had the highest percentage of workers employed in management, professional, and related occupations (44.6 percent). Non-Hispanic Whites had the second highest percentage of workers in this occupational group (36.6 percent). They were followed by African Americans alone (25.2 percent), American Indian and Alaska Natives alone (23.3 percent), and Native Hawaiian and other Pacific Islanders alone (23.3 percent). About 18.1 percent of Hispanics were employed in management, professional, and related occupations.

223. Twenty-two percent of African Americans alone were employed in service professions, followed by 20.8 percent of Native Hawaiian and Pacific Islanders alone, and 20.6 percent of American Indian and Alaska Natives alone. The figure for Hispanics was 21.8 percent. White non-Hispanic individuals were less represented, with only 12.8 percent of that group employed in service professions, as were Asians with a rate of 14.1 percent.

224. About 18.6 percent of African Americans reported employment in the production, transportation and material moving occupations. This percentage was higher than for people reporting any other race except the "some other race" category. Approximately one fifth (21.2 percent) of Hispanics were employed in production, transportation, and material moving occupations. By contrast, only 13.2 percent of non-Hispanic Whites were in production, transportation, and material moving.

225. Proportionately more Hispanic women than Hispanic men held managerial or professional jobs. Twenty-three percent of Hispanic women were employed in management and professional occupations, compared to 15 percent for Hispanic men. (Note that for the American population as a whole, women are also found in higher proportions in management and professional

positions - 36 percent for women compared to 31 percent for men.) A similar trend is seen for African Americans. In 2000, 30 percent of African American women and 20 percent of African American men were in management, professional, and related occupations. Conversely, a higher percentage of African American men (28 percent) than women (10 percent) held production, transportation, and material moving jobs.

226. The four regions of the United States did not differ greatly in distribution of occupations. In each region, the highest percentages of workers were in management, professional, and related occupations, followed by sales and office occupations. Construction, extraction, and maintenance occupations and farming, fishing, and forestry occupations had the lowest percentage of workers. The only regional differences involved service occupations and production, transportation, and material moving occupations. The percentage of workers in service occupations in the Northeast and West was higher than the percentage for production, transportation, and material moving occupations, while in the Midwest and the South, the opposite was true. The District of Columbia and Maryland had the highest percentage (51.1 percent and 41.3 percent respectively) of workers in management, professional, and related occupations, reflecting the large federal workforce and support occupations. Nevada and Hawaii - two states with large tourist industries - led all states in the percentage of workers in service occupations.

**Selected occupational groups by race and Hispanic origin  
for the United States: 2000**

(Data based on a sample. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see [www.census.gov/prod/cen2000/doc/sf3/pdf](http://www.census.gov/prod/cen2000/doc/sf3/pdf))

Race and Hispanic or Latino Origin	Occupational groups						
	Employed civilian population 16 years and over	Management, professional, and related occupations	Service	Sales and office	Farming, fishing, and forestry	Construction, extraction, and maintenance	Production, transportation, and material moving
Total	129 721 512	33.6	14.9	26.7	0.7	9.4	14.6
White alone	102 324 962	35.6	13.4	27.0	0.6	9.8	13.6
Black or African American alone	13 001 795	25.2	22.0	27.3	0.4	6.5	18.6
American Indian and Alaska Native alone	914 484	24.3	20.6	24.0	1.3	12.9	16.8
Asian alone	4 786 782	44.6	14.1	24.0	0.3	3.6	13.4
Native Hawaiian and Other Pacific Islander alone	157 119	23.3	20.8	28.8	0.9	9.6	16.5
Some other race	5 886 427	14.2	22.7	21.7	3.5	14.0	24.0
Two or more races	2 649 943	26.7	19.8	27.1	0.9	9.8	15.7
Hispanic or Latino (of any race)	13 347 876	18.1	21.8	23.1	2.7	13.1	21.2
White alone, not Hispanic or Latino	95 834 018	36.6	12.8	27.2	0.5	9.6	13.2

U.S. Census Bureau, Census 2000, Sample Edited Detail File.

227. Employment Discrimination. As noted in the section concerning article 2 (1) (b) above, the United States has strong legal protections safeguarding the right to free choice of employment and just and fair conditions of employment. Where discrimination is reported, federal and state authorities enforce these protections in areas such as training, promotion, tenure and layoff policies, and treatment in the work environment. In 2006, the EEOC received 75,768 charges. In addition, for the fiscal year 2001 to fiscal year 2006 time period, 357,087 charges were received by state and local fair employment practice agencies. This figure, however, covers only complaints that fall within both state and EEOC jurisdiction - i.e., charges of discrimination based on race, color, national origin, religion, gender, age, disability, and retaliation filed against employers with at least 15 (or 20 for age discrimination) employees. Various state and local laws cover additional bases and/or smaller employers - charges that are not included in the above total.

228. Of the discrimination complaints filed with the EEOC in 2006, 61 percent were filed under Title VII of the Civil Rights Act, which covers discrimination based on race, color, gender, religion, and national origin; 21 percent were filed under the Americans with Disabilities Act; and 18 percent were filed under the Age Discrimination in Employment Act. Race discrimination accounted for 36 percent of all charges - following a historical trend. National origin discrimination accounted for about 11 percent of all charges. Gender discrimination accounted for 31 percent of Title VII charges.

229. Specific examples of employment discrimination cases brought by the EEOC, the Department of Justice Civil Rights Division, and the Department of Labor's Office of Federal Contract Compliance Programs are described under the discussion of article 2 (1) (b) above. As noted, in 2006 the EEOC filed 371 lawsuits against alleged offenders and also settled a large number of complaints without going to trial. EEOC's work on these complaints obtained approximately \$274.2 million for the victims of employment discrimination. Equally important is the fact that the consent agreements and court decisions resolving these cases require changes in future behavior by the offending employers. The Department of Justice's experience with respect to the resolution of complaints is similar to that of the EEOC. The majority of the cases filed by the Department of Justice are resolved through the entry of consent decrees or through other settlement before a trial on the merits is held. As with the EEOC, the Department of Justice's consent decrees normally require prospective relief in the form of modifications to an employer's employment practices, as well as monetary relief to victims of the discriminatory practice. In 2005, the Department of Labor's enforcement efforts resulted in over \$45 million in remedies, offers of employment to thousands of victims of discrimination, and training designed to ensure that American employers practice equal employment opportunity in the future.

230. In April of 2006, the EEOC issued a major new Compliance Manual section updating guidance on Title VII prohibitions on discrimination in employment based on race and color. The Manual will assist employers, employees, and EEOC staff in understanding specifically how Title VII applies to a wide range of contemporary discrimination issues. It contains specific information - including examples - concerning: what constitutes race, color, and national origin discrimination; how to evaluate employment decisions; what constitutes racial disparate treatment, including how to recognize motive and cases of pattern or practice discrimination; how to assess cases of racial disparate impact; how to ensure equal access to jobs in recruiting, hiring and promotion, diversity and affirmative action; how to ensure equal opportunity for job

success, including material on racial harassment and racial bias in the workplace; retaliation; remedies; and protective prevention. This new guidance reflects the strong interest of the Equal Employment Opportunity Commission in proactive prevention and best practices. A copy of the Manual section can be found at [www.eeoc.gov](http://www.eeoc.gov) under Race/Color Discrimination.

231. In addition to enforcement by the EEOC, Justice, and the states, the Department of Labor enforces laws that prohibit federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, national origin, or status as a protected veteran or qualified individual with a disability. The Department employs several strategies, including civil rights enforcement, public education, and strategic partnerships. The Labor Department also promotes training of workers with limited English proficiency.

232. As noted above, most states also enforce state fair employment laws through their state civil rights commissions or Attorney General's offices. In most states, the great majority of discrimination complaints involve employment discrimination, many of which are filed in accordance with state-EEOC work sharing agreements. For example, Oregon enforces laws granting job seekers and employees equal access to jobs, career schools, promotions, and a work environment free from discrimination and harassment. Oregon state law also ensures workers protection when they report worksite safety violations, use family leave provisions, or use the workers compensation system. Of an average of 2,100 discrimination complaints filed annually in Oregon, approximately 98 percent allege unfair employment practices. Likewise, in Florida, 91 percent of the case inventory for the Florida Commission on Human Relations and 88 percent of the complaints received in fiscal year 2004-05 involved employment discrimination. Finally, many U.S. counties and cities also have fair employment practice agencies that receive and process charges of discrimination under work sharing agreements with the EEOC.

233. In December of 2005, the Gallup organization released a national poll on discrimination in the contemporary workplace, conducted in conjunction with the 40th anniversary of the EEOC. That poll suggested that while much progress has been made in fulfilling the promise of equal opportunity, more remains to be done. The survey sampled American workers of varying racial and ethnic backgrounds, asking them about their perceptions of discrimination at work and the effect those perceptions had on performance and retention. Results showed that 15 percent of all workers perceived that they had been subjected to some sort of discriminatory or unfair treatment. When broken down into sub-groups, 31 percent of Asians surveyed reported incidents of discrimination - the largest percentage of any ethnic group. This contrasts markedly with the fact that only about 3 percent of claims were brought by Asians - suggesting that a number of Asian persons who perceive discrimination nonetheless do not choose to file complaints. African Americans constituted the second largest group, with 26 percent of African Americans saying they had perceived discrimination. The Gallup survey also indicated that promotion and pay were the most frequently mentioned discriminatory actions, although the overwhelming number of charges filed with the EEOC allege discriminatory discharge.

234. While African American women and men reported that they had experienced almost identical levels of discrimination according to the poll (27 percent and 26 percent respectively), a large discrepancy existed between the perceptions of discrimination of White women (22 percent) versus White men (3 percent). The overall rate of perceived discrimination for persons identified as Hispanic was 18 percent, with Hispanic men more likely to perceive

discrimination (20 percent) when compared with Hispanic women (15 percent). Commenting on the contrast between the Gallup findings and the number of discrimination complaints made to the EEOC, former EEOC Chair Cari Dominguez noted: “When you compare our most recent EEOC charge statistics with the Gallup data, we find that a far greater percentage of Hispanics and Asians perceive themselves to be discriminated against than actually file charges. Through the continuation of strong enforcement and targeted outreach and education, the EEOC is striving to ensure that the promise of the Civil Rights Act of 40 years ago will continue to be fulfilled for succeeding generations of American workers.”

235. Minority-owned Businesses. According to the Small Business Administration’s advocacy office, minority-owned firms represent the fastest-growing segment of the nation’s economy. Asians are the largest sector of minority business owners in terms of both number of businesses and employees. However, Hispanics and African Americans are starting businesses at higher rates. For example, a recent report issued by the U.S. Census Bureau indicates that Hispanics in the United States are opening businesses at a rate three times the national average. From 1997 to 2002, the number of Hispanic-owned firms grew by 31.1 percent, compared to a 10.3 percent growth rate for U.S. firms overall.

236. African American-owned businesses in the United States grew even faster, at more than four times the national rate. From 1997 to 2002, African American-owned firms grew by 45 percent, from 823,499 to nearly 1.2 million. Growth was seen in all states except Wyoming, North Dakota, South Dakota, and Oregon. Some metropolitan areas, such as those surrounding Washington, D.C., experienced levels of growth of well over 80 percent.

237. Private Sector Initiatives. Due to shortages of candidates for skilled technology jobs in the United States, a number of private entities have also initiated diversity outreach efforts. The Congressionally established Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development issued a report in September 2000 that found: “If women, underrepresented minorities, and persons with disabilities were represented in the U.S. science, engineering and technology workforce in parity with their percentages in the total workforce population, the shortage [of skilled technology workers] could largely be ameliorated.” One example of a private sector initiative in this area is the Professional Technical Diversity Network, a partnership formed by Microsoft, other corporations, and minority professional organizations that focuses on recruitment in technical disciplines. Among other programs, the partnership works with schools and organizations to increase technology training and educational opportunities for women and minorities. As announced in November of 2000, its efforts included:

- More than \$90 million in grants, software, and scholarships to colleges and universities serving African American, Hispanic, and Native American populations;
- \$6 million in grants to the Minority and Women’s Technical Scholarship program;
- Working Connections, a \$40 million effort to help disadvantaged persons prepare for information technology jobs at community colleges;
- The Able to Work Consortium, dedicated to increasing employment opportunities for people with disabilities.

238. Protection of U.S. Citizens and Legal Immigrants from Employment Discrimination on the Basis of National Origin. The Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) enforces the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. 1324b, which protects U.S. citizens and legal immigrants from employment discrimination based, among other things, on national origin; from unfair documentary practices relating to the employment eligibility verification process ("document abuse"); and from retaliation. Individuals may file charges of discrimination with OSC and the OSC may also commence investigations on its own initiative. The OSC investigates allegations of discrimination and obtains monetary, job, and injunctive relief through settlement or suit for discrimination, document abuse, and retaliation engaged in by employers of four or more employees. Its jurisdiction over national origin discrimination extends to employers with four to fourteen employees (larger employers are handled by the EEOC).

239. A few examples of recent OSC settlements include back pay totaling \$22,654 for four refugees, plus \$14,000 in civil penalties and injunctive relief to remedy document discrimination; \$12,000 in back pay for an asylee who was terminated because a company refused to accept valid documents he presented to re-verify his employment eligibility; and \$11,653 in back pay, plus a civil penalty and injunctive relief, for a permanent resident whose valid documents were unfairly rejected during the hiring process. Also, through its worker and employer hotlines, and OSC routinely brings early, cost-effective resolutions to employment disputes that might otherwise result in the filing of charges, the accumulation of back pay awards, and investigation and litigation expenses. In addition, OSC conducts outreach to educate employers and workers about their rights and responsibilities under the anti-discrimination provision. OSC's educational activities include its fully staffed hotlines; a grant program; distribution of free educational materials; presentations at conferences, seminars, and meetings; a website; and a newsletter. In fiscal year 2006, OSC awarded grants totaling nearly \$725,000 to eleven non-profit groups throughout the country. The grant program funds public education programs regarding workers' rights and employers' obligations under the anti-discrimination provision, and is open to public service groups, faith-based and community organizations, associations, and others providing information services to employers and/or potential victims of immigration-related employment discrimination.

240. In addition, the interagency Worker Exploitation Task Force described in the Initial U.S. Report has been expanded to become the Trafficking in Persons and Worker Exploitation Task Force (TPWETF). It continues its efforts to prevent trafficking in persons and worker exploitation throughout the United States, and to enforce laws enacted to combat human trafficking. The TPWETF is co-chaired by the Assistant Attorney General for Civil Rights and the Solicitor of the Department of Labor. Other participants include the Federal Bureau of Investigation, the U.S. Citizenship and Immigration Services, the Executive Office for United States Attorneys, the Justice Department Criminal Division, and the Office of Victims of Crime and the Violence against Women Office. The Task Force also works in coordination with the Department of State, the Department of Homeland Security, the EEOC, and various United States Attorneys Offices across the country.

241. Data released in 2006 show that in 2005 the jobless rate among immigrants fell below that of U.S.-born workers for the first time in at least a decade. Unemployment among immigrants was 4.6 percent in 2005, down from 5.5 percent in 2004, while the jobless rate

among native-born Americans was 5.2 percent, down from 5.5 percent. This contrasts with every other year since 1996, when joblessness among immigrants has been as high or higher than that of native-born Americans. The survey data, compiled by the Labor Department's Bureau of Labor Statistics, include immigrants who arrived in the United States both legally and illegally, and do not distinguish between the two.

242. Unions. As noted in the Initial U.S. Report, U.S. law guarantees all persons equal rights to form and join trade unions. The U.S. Department of Labor also enforces portions of the Labor-Management Reporting and Disclosure Act (LMRDA), which guarantees union members certain rights, such as the right to freedom of speech and assembly, the right to have democratically conducted elections, and the right to be free from violence or coercion while exercising any of their rights under the LMRDA. The LMRDA provides for a private right of action regarding freedom of speech and assembly. The right to form and join trade unions is protected by both the U.S. Constitution (First Amendment) and by statute (e.g., the National Labor Relations Act). In addition, some state constitutions and statutes also protect the right to freedom of association.

### **The right to housing**

243. Federal and state laws guarantee a right to equal opportunities in housing and prohibit discriminatory practices in the sale and rental of housing as well as in the mortgage lending and insurance markets related to housing. The rights to housing and mortgage financing without discrimination are enjoyed in practice throughout the United States, and where violations of these rights occur, federal and state authorities prosecute the offenders. A description of this enforcement, and examples of some of the cases brought by the Departments of Justice and HUD since 2000, are set forth in the section on article 2 (1) (b) above.

244. In 2000, approximately 66 percent of occupied housing units were owned by their occupants, while approximately 34 percent of housing units were rented. The home ownership rate for American Indian and Alaska Native alone-occupied housing units was 56 percent, and for Asian Americans alone, 53 percent. By contrast, African American alone, Native Hawaiian and Pacific Islander alone, and Hispanic householders were more likely than all householders to rent rather than own homes. Among these three groups, 46 percent lived in owner-occupied dwellings, while 54 percent lived in renter-occupied housing units.

245. In 2000 the median value for single-family homes in the United States overall was \$119,600. The median value for homes owned by Asian Americans alone was \$199,300 - more than 50 percent higher than the national median. A large number of these households (45 percent) were located in Hawaii or California - states that recorded the highest median home values. Native Hawaiian and Pacific Islander alone homeowners also had median home values considerably higher than the national estimate (\$160,500) - also likely due to concentration in areas of high home values. By contrast, homes owned by African Americans alone or American Indians and Alaska Natives alone had median values of about \$81,000 - one third below the national median. Median home value for the White non-Hispanic population was \$123,400 - just slightly above the national median; and median home value for the Hispanic population was \$105,600 - somewhat below the national median.

246. In addition to prosecution of cases concerning housing and mortgage discrimination, the Administration has a number of programs designed to improve housing availability to racial and ethnic minorities. Following up on President Bush's 2002 announcement that the Administration would work with Congress to achieve broader home ownership, especially among minorities, HUD announced a Minority Housing Initiative that includes: (1) preventing housing discrimination through education, outreach, and enforcement of fair housing laws; (2) promptly resolving housing complaints and reducing the backlog of cases; (3) unlocking the potential of faith-based community organizations to expand homeownership opportunities for low income minority persons; (4) directing resources and attention to unfair and discriminatory practices in the Colonias and farmworker communities; and (5) vigorously enforcing against predatory lenders. In addition, each year HUD provides grants to fair housing groups at state and local levels to assist in the fight against illegal housing discrimination. The funds are to be used to investigate allegations of housing discrimination, to educate the public and housing industry concerning housing discrimination laws, and to work to promote fair housing. Since 2000, these grants have normally been in the range of \$17 to \$20 million per year, and have been provided to approximately 100 state and local fair housing entities each year. Some of the grants are also designated for projects serving rural and immigrant populations in areas without a fair housing organization or that are otherwise under-served. HUD has also created the Fair Housing Initiatives Program Performance Based Funding Component (PBFC) to help support exceptional private organizations in conducting long-term investigations of the housing or lending market for evidence of systemic discrimination. This program offers three-year grants of up to \$275,000 per year, based on appropriations, to private organizations with proven records in addressing such problems.

247. In addition, in fiscal year 2005, HUD's newly-established Office of Systemic Investigations (OSI) conducted a number of investigations of discriminatory practices that have potentially nationwide impact or otherwise affect large numbers of persons. These included: (1) a Title VI compliance review of the Bay St. Louis Housing Authority in Mississippi in response to allegations of racial steering and segregation; (2) an investigation of a major insurance company in New York, in response to a complaint that the company offered different policies with lesser coverage to minority homeowners; and (3) an investigation of a nationwide management company, its owners, and the City of Gainesville, Florida in response to alleged discrimination in the maintenance of a federally-assisted property. Also during 2005, HUD's Office of Education and Outreach (OEO) conducted more than 400 outreach activities throughout the United States, and issued two publications: "Are you a Victim of Housing Discrimination" and "Equal Opportunity for All." These brochures are available in English, Spanish, Chinese, Vietnamese, Korean, and Arabic.

248. In 2003, the Bush Administration also announced \$1.27 billion in homeless assistance, to fund 3,700 local housing and service programs around the country. As part of this initiative, former HHS Secretary Tommy G. Thompson, then-Chair of the Interagency Council on Homelessness, awarded nearly \$35 million to help meet the goal of ending chronic homelessness within a decade. With the Secretary of HUD and the Secretary of the U.S. Department of Veterans Affairs (DVA) joined as co-sponsors, the initiative included investments of \$20 million from HUD, \$10 million from HHS, and \$5 million from the DVA. This initiative is a collaborative effort among 20 federal agencies and departments, aimed at helping local

communities address the special housing and service needs of homeless persons, many of whom have mental illness, substance dependence or abuse, and physical disabilities. While the initiative is not aimed specifically at racial or ethnic minorities, it will assist such persons who fall in the category of the chronically homeless.

249. HUD is also pursuing an initiative to improve access to housing services for persons with limited English proficiency (LEP) (see Executive Order 13166, issued August 11, 2000). This initiative recognizes that the federal government provides an array of services that could be made accessible to persons who are not proficient in the English language. The Executive Order calls on each federal agency to examine the services it provides and to develop and implement systems by which LEP persons can meaningfully access those services. Agencies are also to ensure that private recipients of federal financial assistance provide meaningful access to LEP recipients. Among other actions, HUD has published guidance to Federal Financial Assistance Recipients with regard to the Title VI prohibition against national origin discrimination affecting LEP persons.

250. Recognizing that Native Americans experience some of the worst housing conditions in the nation and that population growth among Native Americans has increased the need for federal housing services, Congress enacted the Native American Housing Enhancement Act of 2005, P.L. 109-136. The purpose of this act is to allow Indian tribes to leverage other federal and private funds to achieve better housing. Among other things, the act amends the law to permit Indian preference under existing housing acts, such as the Housing Act of 1949. It also makes available to Indians Youth Build grants for housing under the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. 12899f.

251. Most states also handle housing discrimination complaints. For example, in fiscal year 2005, 5 percent of the case inventory and 16 percent of the new complaints filed with the Florida Commission on Human Relations involved housing. In 2004, 5 percent of the charges docketed by the Illinois Department of Human Rights involved housing; and in 2005, 6.1 percent of the requests for service received by the Michigan Department of Civil Rights involved housing discrimination.

252. As noted above, a number of states, counties, and cities participate in HUD's Fair Housing Assistance Program (FHAP), under which HUD funds them to investigate and manage some complaints that involve violations of state and federal laws. In fiscal year 2005, HUD and the Fair Housing Assistance Program agencies, together, received 9,254 complaints - approximately the same number as in fiscal year 2004. Of these, the FHAP agencies investigated 70 percent. Race accounted for approximately 40 percent of the complaints, and national origin discrimination (primarily Hispanic) accounted for approximately 9 percent of the complaints. HUD's Fair Housing Initiatives Program (FHIP) includes an Asian and Pacific Islander Fair Housing Awareness Component, designed to educate Asian and Pacific Islander communities on their rights, and to carry out fair housing studies. It also includes a Minority Serving Institution Component, which furthers HUD's goal of establishing partnerships with Tribal Colleges and Universities, Historically Black Colleges and Universities, Hispanic-serving institutions, and Native Hawaiian and Alaska Native-serving institutions. This program funds curricula for students to pursue careers in fair housing law.

253. Examples of two cases managed by states under the Fair Housing Assistance Program are set forth below:

- In Lawrence, Kansas, Ms. Morales, who is Hispanic and Irish, found an apartment for rent for herself and her boyfriend, Mr. Jackson. Despite an enthusiastic reception on her initial visit, the reception was cold when Ms. Morales returned with her African American boyfriend. They were eventually informed that their application had been rejected because they were unmarried. Thereafter, they filed complaints of housing discrimination with the Lawrence County Human Relations Commission. During the investigation, the apartment complex claimed that its policy with regard to renting to unmarried couples had changed at about the time that Ms. Morales and Mr. Jackson were looking for housing. However, at about that time, the complex had rented two apartments to unmarried White couples and continued to permit an unmarried White couple to reside there. On May 12, 2005, a jury in Douglas County District Court determined that the defendants had intentionally engaged in racial discrimination. Ms. Morales and Mr. Jackson were awarded \$3,390 in actual damages and \$76,000 in punitive damages. In addition, the defendant was required to pay \$35,000 in attorney's fees to the Lawrence County Human Relations Commission. Morales v. Villa 26 and Jackson v. Villa 26;
- Ms. Nero and her sixteen-year-old granddaughter, who are African American, sought to rent an apartment at the Carriage House Apartments in Dallas, Texas. Over the phone, Ms. Nero was quoted a rent of \$625 and a security deposit of \$300. When she and her granddaughter visited the property, however, the manager raised the security deposit to \$650 and informed her that she would get it back if "she didn't destroy the property." Two days later when a White friend called about a similar apartment at Carriage House, he was quoted a deposit of \$300, which remained at \$300 even when he visited the property. The Dallas Fair Housing Office investigated the complaint and found cause to believe that discrimination had occurred. On November 3, 2005, the parties settled the complaint through a judicial consent order; Carriage House was required to pay Ms. Nero \$5,000, establish a written non-discriminatory policy covering rental rates and security deposits, and require all employees who accept applications, negotiate, or set terms of rental with prospective tenants to attend fair housing training. Nero v. Carriage House Apartments.

254. HUD also carries out several programs designed to provide affordable housing for low-income households. For example, the HOME program provides block grants to state and local governments for construction or rehabilitation of rental units or housing for ownership, direct financial assistance to first-time or other qualified homebuyers, and assistance to rehabilitate eligible owner-occupied properties. In fiscal year 2005, 39 percent of the funding for rental units went to African Americans, 18.5 to Hispanics, 2 percent to Asian Americans, and 0.3 percent to American Indians and Alaska Natives. In the homebuyer program, 29.4 percent went to African Americans, 30.7 percent to Hispanics, and 1.2 percent to Asian Americans. Another program is the Housing Choice Voucher Program, designed for low and very low income families to help them lease or purchase safe, decent, and affordable housing. The beneficiaries of this program in fiscal year 2005 were 47.8 percent African American, 18 percent Hispanic, 2.75 percent Asian and less than 1 percent American Indian and Alaska Native, and Native Hawaiian and Pacific Islander.

255. Concern has been expressed about the disparate effects of Hurricane Katrina on housing for minority residents of New Orleans. Recognizing the overlap between race and poverty in the United States, many commentators conclude nonetheless that the post-Katrina issues were the result of poverty (i.e., the inability of many of the poor to evacuate) rather than racial discrimination per se. In providing assistance as a result of Katrina, the federal government is committed to helping all victims, and in particular those who are in the greatest need. In that regard, on February 15, 2006, the Attorney General announced a major new civil rights initiative, Operation Home Sweet Home. This fair housing initiative was inspired by victims of Hurricane Katrina, who lost their homes and were seeking new places to live. The initiative is not limited to the areas hit by Hurricane Katrina but is nationwide in scope. The Attorney General made a public commitment that over the next two years the Division would conduct a record high number of fair housing tests in order to expose housing providers who are discriminating against people trying to rent or buy homes. During fiscal year 2006, the Civil Rights Division increased by 38 percent the number of fair housing tests compared to fiscal year 2005. In addition, in the aftermath of Katrina HUD has initiated a number of efforts to enforce against discrimination in relocation housing. Those included grants of \$1.2 million to Gulf Coast Fair Housing groups for outreach to evacuees and investigation of discrimination complaints. HHS has also dedicated substantial resources to help redesign and rebuild Louisiana's health-care system to enhance health care in Louisiana.

### **The right to public health, medical care, social security and social services**

256. Social Security. In the United States, social security retirement benefits are available, without regard to race or ethnicity, to all eligible persons who have worked at least 10 years. Age 65 is regarded as full retirement age for those born after 1938, although benefits may begin as early as age 62. Likewise, Medicare, a health insurance program for people age 65 or older (or under age 65 with certain disabilities) is also available without regard to race or ethnicity. In addition, Medicaid provides health insurance to low-income individuals and families of any age, also without regard to race or ethnic origin. Medicaid programs are administered by the states.

257. The new Medicare Modernization Act has significant potential to reduce racial and ethnic disparities among U.S. seniors, as Medicare will now cover preventive medicine, including screenings for heart disease, cancer, depression, and diabetes - conditions that disproportionately affect racial and ethnic minorities. Also, under the new benefits of Medicare, more than 7.8 million minority beneficiaries have access to a prescription drug benefit for the first time in Medicare's history. This program, which began in early 2006, makes available to Medicare recipients a number of plans to cut the costs of prescription drugs, and is designed to assist the elderly - particularly the elderly poor - in meeting health-care expenses. Overall, approximately 90 percent of all Medicare recipients enrolled to receive some type of prescription drug coverage. Minority populations with Medicare mirrored the overall results for coverage.

258. Health care. Notwithstanding the strong overall care provided by the U.S. health-care system, the Initial U.S. Report described a number of disparities in the prevalence of certain diseases and conditions among racial and ethnic groups, many of which continue to exist since 2000. For example, for American Indians and Alaska Natives, the prevalence of diabetes is more than twice that for all adults in the United States, and for African Americans, the age-adjusted death rate for cancer was approximately 25 percent higher than for White Americans in 2001.

Disparities are also seen in women's health issues, such as infant mortality and low birth weight. Although infant mortality decreased among all races during the 1980-2000 time period, the Black-White gap in infant mortality widened. During the same period, however, the Black-White gap with regard to low birth weight infants decreased.

259. To understand such disparities better, in 1999 Congress requested the Institute of Medicine (IOM) of the National Academy of Sciences to: (1) assess the extent of racial and ethnic disparities in health-care, assuming that access-related factors, such as insurance status and the ability to pay for care, are the same; (2) identify potential sources of these disparities, including the possibility that overt or subtle biases or prejudice on the part of health-care providers might affect the quality of care for minorities; and (3) suggest intervention strategies. The IOM issued its report in March of 2002. According to the report, the vast majority of studies indicated that minorities are less likely than Whites to receive needed care, including clinically necessary procedures, in certain types of treatment areas. Disparities were found in treatment for cancer, cardiovascular disease, HIV/AIDS, diabetes, and mental illness, and were also seen across a range of procedures, including routine treatments for common health problems.

260. The study looked at possible explanations for such disparities, including subtle differences in the way members of different racial and ethnic groups respond to treatment, variations in help-seeking behavior, racial differences in preferences for treatment, cultural or linguistic barriers, the fragmentation of health-care systems, and possible unintentional bias on the part of well-intentioned health-care workers. Based on the findings, the IOM recommended a comprehensive, multi-level strategy to eliminate disparities. This would include cross-cultural education and training; policy and regulatory changes to address fragmentation of health plans along socioeconomic lines; health-system interventions to promote the use of clinical-practice guidelines; language and cultural interpretation where needed; and the collection of further data to refine the understanding of the problem.

261. HHS Secretary Michael O. Leavitt has reaffirmed his Department's commitment to eliminating racial and ethnic disparities in health care, and the Department has moved forward on a number of IOM's recommendations, including initiatives to:

- Develop a communication strategy aimed at raising awareness of racial and ethnic disparities among consumers, providers, state and local governments, and community-based and other organizations;
- Promote the collection of health data and the strengthening of data infrastructure to enable the identification and monitoring of health status among U.S. racial and ethnic minorities;
- Emphasize the centrality of patient/provider communications;
- Strengthen U.S. capacity to prepare health professionals to serve minority populations and to increase the diversity of the health-related workforce; and
- Integrate cross-cultural education into the training of all current and future health professions.

262. HHS has also made elimination of health disparities affecting racial and ethnic minority populations, including women's health issues, a critical goal of Healthy People 2010, the nation's public-health agenda for the current decade. As part of this effort, in 2001, HHS and the ABC Radio Networks launched an initiative denominated "Closing the Health Gap." This educational campaign is designed to make health an important issue among racial and ethnic minority populations. Originally launched in African American communities, the campaign was expanded in 2003 to include Hispanic Americans, American Indians and Alaska Natives, Asian Americans, and Native Hawaiians and Pacific Islanders. As part of the campaign, all 240 of ABC Radio's Urban Advantage Network affiliates have aired detailed messages to emphasize specific steps listeners can take to adopt healthier lifestyles.

263. In January 2006, HHS hosted the second National Leadership Summit for Eliminating Racial and Ethnic Disparities in Health. The conference included over 2,000 participants and featured more than 96 workshops and special institutes on current and emerging health issues in the areas of: health-care access, utilization, and quality; health care and the public workforce; research, data, and evaluation; health information technology; health disparities across the lifespan; and culture, language, and health literacy. The Summit served as a vehicle for highlighting, promoting, and applying the knowledge experience and expertise of community-based organizations and other partners across the nation toward more strategic and effective actions. The Summit also served as a launching point for the creation of a national action agenda to eliminate racial and ethnic disparities in health. Scheduled for a 2007 launch, this national action agenda is built on three key tenets: (1) national leadership and community solutions; (2) effective communications; and (3) broad-based partnerships. This national action agenda is also responsive to the 2001 IOM recommendation to increase outreach and education to assist racial and ethnic minorities in taking charge of their health and adopting health behaviors.

264. Environmental Justice. Federal agencies continue to address issues concerning the environmental impacts of activities such as the locating of transportation projects and hazardous waste clean-up projects, on certain population groups, including minority and low income populations. As required by U.S. Executive Order 12898, and informed by the National Environmental Justice Advisory Council, the Environmental Protection Agency (EPA) and other federal agencies integrate environmental justice considerations into their day-to-day decision making processes, principally through environmental impact analysis under the National Environmental Policy Act (NEPA). EPA also runs three programs designed to address environmental justice concerns. The first is the Environmental Justice Collaborative Problem-Solving Cooperative Agreements Program, which provides financial assistance to eligible community-based organizations working to address local environmental or public health concerns in their communities. The second is the Environmental Small Grant Program, which provides small grants to eligible community-based organizations for education and training programs concerning local environmental or public health issues. Finally, the Environmental Justice Community Intern Program places students in local community organizations to experience environmental protection at the grassroots level. In addition, the Federal Interagency Working Group on Environmental Justice coordinates government-wide efforts through three task forces: (1) Health disparities; (2) Revitalization Demonstration Projects; and (3) Native American. The Native American group works to protect tribal cultural resources and sacred places.

265. Analyses under the National Environmental Policy Act (NEPA) commonly address “environmental justice” in analyzing the impacts of potential federal projects on the human environment, see 40 CFR 1508.14. A number of recent federal court cases have assessed whether environmental justice was appropriately considered in proposed federal projects. These include: Coliseum Square Ass’n v. HUD, No. 03-30875, No. 04-30522, 206 U.S. App. LEXIS 23726 (5th Cir. Sept. 18, 2006) (upholding Department of Housing and Urban Development’s consideration of environmental justice issues involving a housing development revitalization project); Communities against Runway Expansion Inc. v. F.A.A., 355 F.3d 678 (D.C. Cir. 2004) (upholding environmental justice analysis of construction of a new airport runway); Senville v Peters, 327 F. Supp. 2d 335 (D. Vt. 2004) (upholding environmental justice analysis prepared by Federal Highway Administration with regard to the effects of a new highway project on low income and minority persons); and Washington County v. Department of Navy, 317 F. Supp. 2d 626 (E.D.N.C. 2004) (preliminarily enjoining construction of aircraft landing field (inadequate environmental justice analysis alleged)).

266. The Initial U.S. Report noted the view expressed by some that the U.S. Navy’s use of Vieques Island in Puerto Rico as a bombing range was having negative environmental consequences on Puerto Ricans living on or near the island. In 2001, the Bush Administration pledged to end military activity on the island, and on May 1, 2003 the Navy withdrew from the island and transferred management of the bombing range to the U.S. Department of the Interior. After extensive clean-up, the U.S. Fish and Wildlife Service, an agency of the Department of the Interior, will turn the 6,000 hectare (15,000 acre) site into the largest wildlife refuge in Puerto Rico.

### **The right to education and training**

267. De jure racial segregation in education has been illegal in the United States since the landmark decision in Brown v. Board of Education, 347 U.S. 483 (1954). As a result of that decision, the Civil Rights Act of 1964, and later cases and statutes, schools became increasingly integrated. The Department of Justice Civil Rights Division continues to monitor compliance of school districts, and initiates case reviews where deemed necessary. Since 2000, it has initiated 228 case reviews and resolved 126 cases leading to declarations of unitary status and dismissal. The issues monitored by the Civil Rights Division include student assignments, faculty hiring and assignments, the availability of equitable facilities, and the distribution of resources. Examples of cases brought by the Civil Rights Division since 2000 are described in the section on article 2 (1) (b) above.

268. In addition to the Department of Justice, the Office for Civil Rights (OCR) within the Department of Education is the primary federal entity responsible for enforcing the federal anti-discrimination laws in the context of education. It enforces a number of laws prohibiting discrimination in institutions that receive federal financial assistance - a category that includes virtually all educational institutions in the nation, from elementary through graduate or professional schools. OCR’s primary objectives are to promptly investigate complainants’ allegations of discrimination, and to determine accurately whether the civil rights laws and regulations it enforces have been violated. OCR also initiates compliance reviews and other

proactive initiatives to focus on specific civil rights compliance problems in education that are particularly acute or national in scope. In addition, OCR pursues compliance by federal fund recipients by promulgating regulations implementing the civil rights laws; developing clear policy guidance interpreting those laws; broadly disseminating this information in many different media, including the Internet; and providing direct technical assistance to educational institutions, parents, students, and others.

269. Signed into law in 2002, the No Child Left Behind Act of 2001 (NCLB) was designed to bring all students up to grade level in reading and math, to close the achievement gaps between students of different races and ethnicities within a decade, and to hold schools accountable for results through annual assessments. Under NCLB, states administer assessments to students in grades three to eight annually, with one additional test administered in high school. The National Center for Education Statistics in the U.S. Department of Education administers the National Assessment of Educational Progress (NAEP) to students in each state in grades four and eight, which are published as the “Nation’s Report Card.” The NAEP serves as an external indicator for NCLB state results in grades four and eight and as a national indicator for twelfth grade. Data from 2005 show that although achievement gaps between White and minority students continue to exist for all groups except Asians and Pacific Islanders, the gaps are beginning to narrow, even as student populations are becoming more diverse:

- Overall, fourth-grade and eighth-grade math scores rose to all-time highs, and fourth-grade reading scores match the all-time high. (On a scale of 0-500, average fourth-grade math scores rose from 213 in 1990 to 238 in 2005, and average eighth-grade scores rose from 263 in 1990 to 279 in 2005.);
- In fourth-grade math, African American students’ scores rose 17 points from 2000 to 2005, reducing the achievement gap with White students by 5 points (from 31 to 26 points); likewise, scores for Hispanic students rose 18 points in the same period, reducing the gap between White and Hispanic students by 6 points (from 27 to 21 points). These were the smallest gaps since 1990. The gaps for White and American Indian students remained constant at 20 points between 2000 and 2005;
- In eighth-grade math, the achievement gap was likewise reduced by 6 points (from 40 points in 2000 to 34 points in 2005) between African American and White students, and also by four points (from 31 in 2000 to 27 points in 2005) between Hispanic and White students. Math scores for American Indian/Alaska Native students increased at the same rate as White students during the 2003 to 2005 timeframe, causing the gap to remain the same at 25 points;
- For both fourth-grade and eighth-grade math, Asian/Pacific Islander students performed better than White students by 4 points in 2000 and 6 points in 2005;
- In 2005, in fourth- and eighth-grade math, higher percentages of White, African American, Hispanic, and Asian/Pacific Islander students performed at or above “proficient” levels as defined by NAEP than in any previous year;

- In fourth-grade reading, African American students rose 10 points from 2000 to 2005, reducing the gap with White students by 5 points (from 34 to 29 points); scores for Hispanic students rose 13 points during that same time period, reducing the gap with White students by 9 points (from 35 to 26 points). The gap between White and American Indian/Alaska Native students decreased by two points in the 2003 to 2005 timeframe (from 27 to 25 points). Asian/Pacific Islander students performed approximately the same as White students in both 2000 and 2005;
- In eighth-grade reading, the gap between African American and White students increased by two points (26 to 28 points) in the 1998 to 2005 timeframe, while the gap with Hispanic students decreased by two points (from 27 to 25 points). Asian/Pacific Islander students reduced to zero a gap of 6 points that had existed in 1998. American Indian/Alaska Native students also improved by 3 points in the 2003 to 2005 timeframe, reducing the gap with White students by 4 points (from 26 to 22 points).

270. In 2004, President Bush signed Executive Order 13336, recognizing the “unique educational and culturally related academic needs of American Indian and Alaska Native students.” The Executive Order pledged to meet No Child Left Behind’s high standards “in a manner that is consistent with tribal traditions, languages and cultures.” To initiate work under this E.O., the Secretary of Education hosted a national conference on Indian education with more than 600 national, state, and tribal leaders and experts in April of 2005.

271. At higher levels of education, overall educational attainment by all groups is improving; nonetheless, disparities continue to exist. In 2000, Asians alone were more likely than any other population to have completed a bachelor’s degree, at 44 percent. The figures for other populations were 27 percent for the White non-Hispanic population, 14 percent for African Americans alone, 14 percent for Native Hawaiians and Pacific Islanders alone, 11.5 percent for American Indians and Alaska Natives alone, and 10.4 percent for Hispanics of any race. These figures were all higher than those reported in the 1990 Census - 37 percent for Asians, 22 percent for Whites, 11 percent for African Americans, 9 percent for American Indians, Eskimos, and Aleuts, and 9 percent for Hispanics. At the high school level, in 2000, White non-Hispanic students were most likely to have received a high school diploma (85.5 percent), with Asian alone students close behind at 80.4 percent. The figures for other groups were African Americans alone, 72.3 percent; Native Hawaiian and Pacific Islanders alone, 78.3 percent; American Indian and Alaska Natives alone, 70.9 percent; and Hispanic of any race, 52.4 percent. These figures are uniformly higher than the figures reported in 1990, but they continue to show disparities similar to those in earlier years.

272. Title III of the No Child Left Behind Act of 2001 specifically requires states to develop and implement English language proficiency standards and to carry out annual assessments of English language learner (ELL) students. Based on data available from the states in 2005, there are approximately 5.1 million ELL students nationwide, compared to 2.8 million noted in Initial U.S. Report. All ELL students must, under Title VI of the Civil Rights Act of 1964, receive from their states and local educational agencies instructional services that are appropriate to their level of English proficiency. Title III of the NCLB law provides for grants to states for English language instruction programs that are estimated to be providing supplemental services to

approximately 4 million ELL students, or 80 percent of the overall limited English proficiency (LEP) student population. Once students are identified as ELL, they are recommended for placement in a language instruction educational program. States have the flexibility to use the programs they believe would be most effective in permitting their students to achieve the levels of success expected for all students at the appropriate grade level. Programs under Title III of NCLB are administered by the Office of English Acquisition Enhancement and Academic Achievement for Limited English Proficient Students (OELA) of the U.S. Department of Education. OELA also runs a National Clearinghouse for English Language Acquisition and Language Instruction Education Programs (NCELA) that collects, analyzes, and disseminates information about language instruction, educational programs for English language learners, and related programs.

273. The Department of Education's Office of Civil Rights (OCR) works with school districts on issues related to ELL students. For example, in one case, OCR resolved a complaint alleging that a school district did not meaningfully communicate school-related information to parents of national-origin minority students with limited English proficiency in a language they could understand, as required by Title VI. The district agreed to develop a plan for communicating with LEP parents, establish methods for notifying LEP parents of school-related activities, translate school documents into languages spoken by LEP parents, and recruit and hire interpreters to serve LEP parents.

### **The right to equal participation in cultural activities**

274. Article 5 (e) (vi) requires States parties to undertake to guarantee the right of everyone without distinction as to race, color, or national or ethnic origin, to equality before the law in participation in cultural activities. In the United States, this right is protected primarily through the First, Fifth, and Fourteenth Amendments of the Constitution. The Fourteenth Amendment prohibits the states from denying any person the equal protection of the laws. The Supreme Court has interpreted the Fifth Amendment to apply the same equal protection obligation on the federal government. See *Bolling v. Sharpe*, 347 U.S. 497, 498-500 (1954). The First Amendment protects the freedoms of speech, press, and peaceable assembly. These three amendments operate together to ensure that every person enjoys an equal right to participate in cultural activities.

275. The rich and diverse cultural heritage of the United States has become even broader and deeper as our nation has become increasingly multi-racial, multi-ethnic, and multi-cultural. The long tradition of cultural expression in the United States continues to be seen in the thousands of ethnic heritage events, ethnic and cultural clubs, and religious, theatrical, artistic, sports, and musical events that celebrate cultural diversity nationwide. In addition, the U.S. Congress and the U.S. Administration, through the Smithsonian Institution, have supported the initiation and building of two major cultural institutions. One celebrates the American Indian, Alaska Native, and Native Hawaiian cultures as well as Native cultures throughout the hemisphere; the other celebrates African American heritage and culture. In 2004, the National Museum of the American Indian, a Smithsonian Museum, opened on the National Mall in Washington, D.C. with a major cultural celebration involving over 25,000 indigenous representatives from throughout the United States, Latin America, and Canada. This Museum, which was authorized

by Congress in 1989 and funded with both public and private funds, showcases the living cultures of indigenous populations throughout North and South America. In turn, in 2003 Congress authorized the establishment, also within the Smithsonian, of the National Museum of African American History and Culture. That museum, which will also be located on the National Mall, will be built in the coming years.

### **The right of access to places of service**

276. Consistent with article 5 (f), U.S. law prohibits privately-owned facilities that offer food, lodging, transport, gasoline, and entertainment to the public from discriminating on the basis of race, color, religion, or national origin. State laws also prohibit such discrimination. In addition, public facilities, such as courthouses, jails, hospitals, parks, and other facilities owned and operated by state and local government entities cannot discriminate on the basis of race, color, religion, national origin, or disability.

277. The Department of Justice Civil Rights Division enforces laws guaranteeing the right of access to public accommodations without discrimination. Since 2000, the Division has filed 12 cases and settled 19 cases in this area. A few examples of public accommodations cases brought and/or settled since 2000 are presented below:

- In December 2006, the Justice Department settled a lawsuit alleging that employees of a nightclub in Milwaukee, Wisconsin told African Americans, but not similarly-situated Whites, that the nightclub was full or was being used for a private party, when that was not the case. Pursuant to the consent decree, the nightclub will adopt new entry procedures designed to prevent racial discrimination and will pay for periodic testing to assure that discrimination does not continue. It will also post a prominent sign at the entries advising that it does not discriminate on the basis of race or color, and will train its managers, send periodic reports to the Department, and adopt an objective dress code approved by the Department;
- In 2004, the Department of Justice settled a lawsuit alleging discrimination against African American customers by Cracker Barrel Old Country Store, Inc., a nationwide family restaurant chain. The complaint alleged that Cracker Barrel allowed White servers to refuse to wait on African-American customers, segregated customer seating by race, seated White customers before African American customers who arrived earlier, provided inferior service to African-American customers after they were seated, and treated African Americans who complained about the quality of Cracker Barrel's food or service less favorably than White customers who lodged similar complaints. Investigation had revealed evidence of such conduct in approximately 50 different Cracker Barrel restaurants in the states of Alabama, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia. The settlement order requires Cracker Barrel to adopt and implement effective nondiscrimination policies and procedures; implement new and enhanced training programs to ensure compliance; develop and implement an improved system for investigating, tracking, and resolving discrimination complaints; retain an outside contractor to test compliance; and publicize the company's nondiscrimination policies;

- In 2004, the Department of Justice settled a public accommodation discrimination lawsuit against the owners of a campground located in Concan, Texas. The lawsuit, filed in 2002, alleged that Camp Riverview and its owners denied lodging to Hispanic individuals, harassed Hispanic campground guests, and evicted Hispanic guests from the campground. Under the settlement, the campground and its owners will implement policies and procedures to ensure that all visitors, campers, and prospective campers receive equal treatment.

278. A number of states also handle cases concerning discrimination in public accommodations. For example, during fiscal year 2004-05, the Florida Commission on Human Relations closed 95 public accommodations complaints, of which 38 (40 percent) were based on race and 55 (58 percent) involved complaints of discrimination at food establishments. In fiscal year 2005, 9 percent of the complaints received by the Maryland Human Relations Commission involved discrimination at public accommodations. In Illinois, public accommodations cases represented approximately 3 percent of the charges docketed in 2005, and of those cases 62 percent charged discrimination on the basis of race, national origin, or color.

### E. Article 6

- 1. Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 6 of the Convention, in particular measures taken to assure to everyone effective protection and remedies, through competent national tribunals and other State institutions, against any acts of racial discrimination which violate his/her human rights and fundamental freedoms**

279. Article 6 requires States parties to assure persons within their jurisdictions effective protection and remedies, through tribunals and other institutions, for acts of racial discrimination that violate their human rights and fundamental freedoms contrary to the Convention, including the right to seek “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” U.S. law offers those affected by racial or ethnic discrimination a number of remedies, ranging from individual suits in the courts, to reliance on administrative procedures, to civil or criminal prosecution of offenders by appropriate governmental entities.

280. Private Suits. Federal statutes derived from the Civil Rights Act of 1866, including most of the laws dealing with discrimination by governments and their officials, give individuals the right to sue in federal court to correct the alleged discrimination. See, e.g., 42 U.S.C. 1981-1985. Individuals wishing to bring suits under these provisions are sometimes assisted by non-governmental organizations that promote civil rights. Many state laws also permit private suit.

281. Civil Suits. Under statutes such as the Voting Rights Act; the Fair Housing Act; Titles II, IV, VI and VII of the Civil Rights Act; the Equal Credit Opportunity Act; and others, the federal government is authorized to initiate suits to enforce these laws. The Department of Justice Civil Rights Division is normally the federal litigant in such cases. Under some of the laws, such as the Fair Housing Act or the Equal Employment Opportunity Act, agencies such as

the Department of Housing and Urban Development (HUD) and the EEOC may also initiate investigations and file complaints relating to cases of discrimination. Examples of such cases are set forth in various sections of this report. In addition, the EEOC and HUD have work sharing agreements with most states that permit states to investigate and sometimes to prosecute such cases. States also investigate and prosecute cases under state law even when the violations fall outside federal jurisdiction. The basic law in this area has not changed since the filing of the Initial U.S. Report.

282. Criminal Prosecution. The Department of Justice, acting through the Federal Bureau of Investigation, the Civil Rights Division, and the United States Attorney's Offices, initiates investigations into potential violations of federal criminal civil rights laws. If violations are found, the Civil Rights Division, usually acting jointly with the United States Attorney's Office for the particular district, prosecutes the cases in federal district court. States also pursue criminal prosecutions in cases involving violation of state criminal laws.

283. Administrative Proceedings. A number of administrative procedures are also available. For example, the EEOC provides administrative procedures, including mediation and conciliation, with regard to allegations of discrimination in the workplace; the Department of Labor's Office of Federal Contract Compliance Programs reviews the employment practices of Federal contractors and subcontractors to ensure that such employers practice equal employment opportunity in all aspects of employment; and the Department of Education Office for Civil Rights provides similar services with regard to allegations of discrimination in education. Most states also provide administrative procedures, including hearings before administrative tribunals as well as mediation and conciliation. The basic law in this area has not changed since the filing of the Initial U.S. Report.

284. Policy Oversight. In addition to enforcement, a number of federal Departments and offices provide policy oversight. For example, the Office for Civil Rights in the U.S. Department of Education provides guidance to school districts on federal law and policies concerning discrimination, on the requirements necessary to eliminate the vestiges of desegregation in formerly segregated systems, and on provision of effective educational opportunities to English language learner students. The EEOC provides similar legal and policy oversight with regard to discrimination in employment, as does HUD with regard to housing. The policy oversight responsibilities of all these agencies extend to activities in U.S. territories as well as within the 50 states. In addition, the U.S. Commission on Civil Rights conducts studies and makes recommendations concerning civil rights issues. The U.S. Commission receives input from 51 State Advisory Committees, comprising the 50 states and the District of Columbia.

285. Equal Opportunity Officers. Another method of protecting against discrimination and providing remedies to individuals is the requirement that many larger employers designate an "equal opportunity officer" within their organizations. These officers may consider complaints of discrimination, make recommendations to prevent discriminatory practices, and act as internal advocates within organizations for protection of the rights secured by U.S. law and the Convention. While not "enforcement" officers, they have been effective in helping organizations remain conscious of their responsibilities with regard to non-discrimination.

286. Legislation. In the United States, both state and federal laws are constantly under review and potential revision by federal, state, and territorial governments. New laws are also enacted where deemed necessary. Examples of legislative changes and new laws designed to protect civil rights are set forth throughout this report.

**2. Measures taken to assure to everyone the right to seek from such tribunals just and adequate reparation or satisfaction for any damage as a result of such discrimination**

287. The right of equal access to, and treatment before, tribunals administering justice in the United States is provided through the operation of the Equal Protection Clause of the U.S. Constitution. This provision binds all governmental entities at all levels throughout the United States. Measures in place to assure such access are discussed in the section on article 5, Equality before Tribunals, above.

**3. Information on the practice and decisions of courts and other judicial and administrative organs relating to cases of racial discrimination as defined under article 1 of the Convention**

288. In private suits, civil suits, and administrative proceedings, settlement may include a number of remedies, such as injunctive relief, requiring the defendant to cease or correct the offending discriminatory conduct; monetary relief, requiring the payment of damages; other requirements placed on the offending party, such as the requirement to develop and publicize new policies or the requirement for staff training; and in some cases payment of punitive damages. Criminal cases may lead to payment of criminal fines or to incarceration, or both. The basic law in this area has not changed since the filing of the Initial U.S. Report. Examples of the actual practice and decisions of courts in discrimination cases are provided throughout this report.

**4. Information in connection with general recommendation XXVI**

289. General recommendation XXVI suggests that to meet the needs of victims of discrimination, courts and other competent authorities should consider awarding financial compensation for damage - material or moral - to victims, when appropriate, rather than limiting remedies solely to punishment of the perpetrator. As noted above, remedies to assist victims are available in the United States in private suits, civil suits, and administrative proceedings. In those cases settlement may include monetary relief, punitive damages, injunctive relief (prohibiting the perpetrator from taking certain actions with regard to the victim), or mandamus (requiring the perpetrator to do something affirmative with regard to the victim). Furthermore, in 2004 Congress enacted the Crime Victims' Rights Act, P.L. 108-405, which provides a number of additional rights to the victims of criminal activity. The Department of Justice Office of Victims of Crime maintains a full program of grants and other activities designed to assist the victims of crime. Among other activities, this office provides funding to the National Victim Assistance Academy and to state victim's assistance academies, which conduct annual training sessions throughout the United States.

## F. Article 7

### **Information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 7 of the Convention, to general recommendation V and to Decision 2 (XXV)**

290. Article 7 requires States parties to undertake to adopt immediate and effective measures, particularly in the fields of teaching, culture, and information, with a view to combating prejudices that lead to racial discrimination and to promoting understanding, tolerance, and friendship among nations and racial or ethnic groups.

291. Teaching. A number of federal statutes prohibit discrimination in education: for example, Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c et seq. (prohibiting discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. (prohibiting discrimination by recipients of federal funds on the basis of race, color, and national origin) and the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701-1721 (prohibiting specific discriminatory conduct, including segregating students on the basis of race, color, or national origin; discrimination against faculty and staff; and the failure to take appropriate action to remove language barriers).

292. The Departments of Education and Justice play key roles in the implementation of these laws. The Department of Education's Office for Civil Rights (OCR) is charged with ensuring equal access to education and promoting educational excellence throughout the nation through vigorous enforcement of civil rights. One of OCR's responsibilities is to resolve discrimination complaints. Agency-initiated cases, typically called compliance reviews, permit OCR to target resources on compliance problems that appear particularly acute. OCR also provides technical assistance to help institutions voluntarily comply with civil rights. In addition, the Department of Education also provides funding to deal with prejudice and intolerance in some areas; for example, under section 4115 (b) (2) (E) (xiii) of the Safe and Drug Free Schools and Communities Act, the DOE provides funding that local educational agencies may use to address victimization associated with prejudice and intolerance, as part of their overall drug and violence prevention programs. In addition to the Department of Education, the Department of Justice Civil Rights Division prosecutes cases, and the Department of Justice Community Relations Service works with schools and communities to defuse racial and ethnic tensions and violence.

293. Many schools in the United States feature human rights education as an important part of their curricula. A number of NGOs have assisted schools in providing appropriate human rights coursework. For example, Amnesty International USA established a Human Rights Education program which provides resource materials as well as training and networking opportunities. Its teaching guides and lesson plans focus on ways to combat discrimination in school systems and promote a wider understanding of human rights worldwide. A "September 11th Crisis Response Guide" specifically focuses on the events of 9/11 and the immediate aftermath, placing them within a human rights context. The curriculum topics range from racism and discrimination to International Humanitarian Law. Another resource, "Speak Truth to Power: An Educational and Advocacy Package," explores key human rights issues through the eyes of human rights

defenders and the actions of local heroes. Amnesty USA's Rights in Sight initiative also helps teachers bring stronger human rights perspectives to their established curricula. Rights in Sight provides free training and professional development, assistance with curriculum design and implementation, printed resources, and access to an online education community.

294. Curricula at many U.S. higher education institutions also include courses on both civil rights and international human rights. Indeed, many U.S. colleges and universities have educational centers devoted to the study of human rights. For example, the Carr Center for Human Rights at the Harvard University's Kennedy School of Government brings human rights scholars from around the world to participate in discussions and to give lectures on human rights to all students. The University of Minnesota, the University of California at Berkeley, and Columbia University, among others, also have programs dedicated exclusively to the study of human rights. Amnesty International Educators Network provides topical human rights syllabi for college courses. In addition, the Education Caucus, a branch of the U.S. Human Rights Network, works to support and complement current human rights education and training models in schools, universities, and other educational settings.

295. Training of federal and state officials, law enforcement officers, and others in civil rights and racial and ethnic tolerance is widespread. As noted above, the No FEAR law, enacted in 2002, requires that all federal managers receive diversity training. Law enforcement officers also receive regular diversity training, including training on the handling of hate crimes. The amount and scope of such training has been increased substantially since the events of 9/11 as one measure taken in response to the subsequent increase in allegations of bias toward Arab, Muslim, Sikh, and South Asian Americans. For example, in addition to establishing the DHS Civil Liberties Universities, the DHS Office for Civil Rights and Civil Liberties recently released a training video for DHS employees on Arab and Muslim beliefs and culture.

296. Culture. The right to participate in cultural activities without discrimination is guaranteed by the First, Fifth, and Fourteenth Amendments of the U.S. Constitution. A long and rich tradition of cultural expression exists in the United States. For further description of cultural freedom in the United States, see the section on Cultural Activities under article 5, above.

297. Information. The year 2004 represented the 50th anniversary of the landmark Brown v. Board of Education decision. In celebration of this anniversary, Congress established a Brown v. Board of Education 50th Anniversary Commission, P.L. 107-41 (September 18, 2001). The distinguished members of that Commission developed plans and programs to celebrate racial and ethnic integration and to remind all Americans of the meaning and critical importance of the constitutional principle of equality. The 50th anniversary was celebrated throughout the year and throughout the nation. Events included writing contests, public lectures, a call for papers, a reunion in Washington, D.C. of the plaintiffs and attorneys involved in the case, a textbook summit, and a national celebration and opening of the Brown Historic Site in Topeka, Kansas. The work of this Commission was complemented by the American Bar Association (ABA), which appointed an ABA Commission on the 50th Anniversary of Brown v. Board of Education and developed a number of programs and resources, including a bibliography of books and articles, court cases, films and videos, and lessons for use with students. ABA outreach events were also held throughout the nation.

298. The Department of Justice, Department of Education, Department of Labor, EEOC, and other federal agencies concerned with discrimination have also put out publications and fact sheets designed to ensure that the issue of discrimination is kept in the consciousness of the American public. For example, the EEOC has published fact sheets on National Origin Discrimination and Race/Color Discrimination in a number of languages, including English, Arabic, Chinese, Spanish, Vietnamese, Hindi, Farsi, Urdu, and others. The EEOC also holds an annual nationwide Conference called EXCEL - Examining Conflicts in Employment Law; and the EEOC district, field, local, and area offices hold annual Technical Assistance Program Seminars (TAPS) around the country. The Department of Education's Office for Civil Rights has produced a number of outreach publications including "Achieving Diversity: Race Neutral Alternatives in American Education" (2004); "Case Resolution and Investigation Manual" (2004); and "How to File a Discrimination Complaint with the Office of Civil Rights" (2002). The Department of Justice Civil Rights Division has published Joint Statements with HUD on group homes, land use and the Fair Housing Act, reasonable accommodations under the Fair Housing Act, and a brochure entitled "Protecting the Religious Freedom of All Americans: Federal Protections Against National Origin Laws Against Religious Discrimination." HUD has published a booklet, "Fair Housing: Equal Opportunity for All," a "Fair Housing Act Design Manual," advertising guidance, and post 9/11 guidance for landlords. The Justice Department Civil Rights Division also provides information on its website specifically related to the civil rights of American Indians, and produces a pamphlet entitled "Protecting the Civil Rights of American Indians and Alaska Natives." In addition, the Department of Labor's website contains a variety of compliance assistance materials, including information about the discrimination complaint filing process and compliance guides for small businesses.

299. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) within the Civil Rights Division publishes numerous pamphlets, brochures, posters, and fact sheets, many of which are available in multiple languages, including English, Spanish, Vietnamese, Korean, and Chinese. Some publications focus on the rights of employees to be free from immigration-related employment discrimination, while others attempt to answer common employer questions. Most of OSC's educational materials are easily accessible online and are available to the public without cost. The Division's Voting Section publishes brochures related to voting rights in English, Spanish, Chinese, Japanese, Korean, and Tagalog. A Vietnamese version is available on the Section's website. Additionally, the Civil Rights Division has made efforts to translate materials on its website into Spanish. Publications by other agencies are also referenced throughout this report.

300. One of the most intense federal outreach activities since 2000 has involved the aftermath of the events of 9/11. Immediately after those terrorist attacks, the U.S. government anticipated the potential for a backlash against Arabs and Muslims in the United States. Within days, the President of the United States and heads of U.S. government agencies, including the Attorney General and the Director of the Federal Bureau of Investigation, publicly and strongly denounced violence and discrimination against Arabs and Muslims. Shortly after 9/11, the Civil Rights Division of the Justice Department spearheaded a special Initiative to Combat Post-9/11 Discriminatory Backlash. Based on consultations with Arab and Muslim leaders in the U.S., this outreach effort included issuance of informational documents in English and Arabic explaining

how the federal anti-discrimination laws apply to post-9/11 backlash discrimination and how to file claims. It also involved a national media campaign, resulting in numerous stories in the national media.

301. The EEOC also conducted outreach to Arab and Muslim organizations, appearing at Mosques, as well as business, labor, and civil rights groups. From September 2003 through 2006, the EEOC conducted 156 outreach activities aimed at the Arab/Middle Eastern community, reaching more than 9,400 individuals throughout the United States. It also conducted an additional 169 activities in partnership with religious groups, most of which were Muslim, reaching another 9,300 individuals. For example, the Houston office took steps to foster its relationship with the approximately 90 Mosques in the Houston area. In addition, the EEOC worked with the media to get its message out to the Arab and Muslim communities. For example, the District Director of the EEOC office in Detroit appeared on an Arab American radio show, broadcast throughout the Arab American community, answering questions about the EEOC, the laws enforced by the agency, case processing procedures, and examples of post 9/11 cases.

302. The Department Justice has also acted to ensure that schools are aware of their responsibilities to ensure that students throughout America can attend school in safe and secure environments free from physical threats and discrimination. In 2004, the Assistant Attorney General for the Civil Rights Division sent a letter to the head of the Departments of Education of each of the 50 states, which stated as follows: “As we approach the third anniversary of 11 September 2001, we must all recognize that our differences provide an invaluable opportunity for further education, and must not lead, rather, to a greater separation.”

303. The Department of Housing and Urban Development also clarified that landlords may not request additional paperwork or identification from applicants of Arab ancestry that are not required of other applicants, and must use the same standards in providing access to recreational facilities.

304. Finally, a number of steps have been taken to ensure respect for the rights of Arabs and Muslims among law enforcement officials. In many cases, law enforcement agencies have partnered with NGOs to provide effective training that addresses the concerns of the affected communities. Specific training efforts for law enforcement officials are described in the section on article 5 above.

305. Racial and ethnic prejudice have also been the focus of attention by both print media and other forms of public communication. Newspapers throughout the United States routinely publish articles on racial and ethnic issues. Moreover, the non-print media are also tackling these difficult issues. In 2005, the Oscar for best film of the year was awarded to “Crash,” a film addressing racial and ethnic stereotyping and prejudice in Los Angeles.

306. Promoting understanding, tolerance and friendship among nations and racial and ethnic groups. The United States promotes the goals of article 7 globally through the activities of the

Department of State. The Office of the Under Secretary for Public Diplomacy and Public Affairs has undertaken a number of initiatives to further this goal, including the Citizen Dialogue Program, which empowers American Muslims to tell their personal stories to key overseas audiences; an outreach program to American Muslims to promote interfaith dialogue and tolerance; and numerous public affairs and public information campaigns, including digital outreach, websites, web chats, and other information programs. In addition, the Broadcasting Board of Governors, through the Voice of America, the Middle East Broadcasting Networks, Radio Free Europe and Radio Liberty, and Radio Free Asia broadcast news and information programs on rule of law, tolerance, and other topics related to combating racism and promoting tolerance. These outlets give overseas audiences direct access to experts and policy makers in the United States responsible for issues related to racial and ethnic diversity. The United States also sends speakers and publications to overseas missions to foster discussion on issues important to multi-cultural societies.

307. The United States further promotes the goals of article 7 through professional and educational exchange programs that increase mutual understanding between Americans and people of other countries, under the Fulbright-Hays Act. Working in cooperation with U.S. non-profit partner organizations, the Department of State devotes substantial resources to a full spectrum of such programs. These include the Fulbright Program, which provides educational exchange and professional development opportunities to U.S. and foreign students, scholars, teachers, and professionals from 150 countries around the world through grants and fellowships; Gilman scholarships for American undergraduates representing the diversity of the U.S. to study abroad in all world regions; English teaching abroad, including programs for high school students from underserved sectors; support for study of foreign languages, including Arabic, the Turkic and Indic languages, and Chinese, by Americans; student leader institutes on U.S. college campuses for young people from the Middle East, South Asia, indigenous populations of Latin America, and other regions; educational advising to promote study by foreign students in the U.S.; the International Visitor Leadership Program, which brings journalists, government officials, clerics, lawyers, teachers, and other civil society leaders to the United States to meet and confer with their U.S. counterparts; professional and cultural exchanges supported through the Office of Citizen Exchanges, which promote diversity and tolerance through exchanges of journalists and religious community leaders; and a number of youth exchange programs, which fund academic-year and short-term exchanges for young people.

### **III. CONCLUSION**

308. The United States is aware of the challenges brought about by its historical legacy of racial and ethnic discrimination as well as other more recent challenges, and it continues to work toward the goal of eliminating discrimination based on race, ethnicity, or national origin. As a vibrant, multi-racial, multi-ethnic, and multi-cultural democracy, the United States, at all levels of government and civil society, continually re-examines and re-evaluates its successes and failures in this regard, recognizing that more work is to be done. The United States looks forward to discussing its experiences and this report with the Committee.

#### IV. COMMITTEE COMMENTS AND RECOMMENDATIONS

309. This section addresses the concerns and recommendations set forth in the Committee's concluding observations on the Initial U.S. Report, A/56/18, paras. 380-407.

**This 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 (para. 390).**

310. The United States has taken, and continues to take, necessary measures to ensure the application of the provisions of the Convention at all levels of government, consistent with the U.S. constitutional structure. This commitment is set out in the understanding adopted with respect to the Convention:

“[T]he United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.”

311. The ways in which the Convention is implemented by the federal government, by the respective state governments, and in U.S. territories are described throughout this report.

**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 (para. 391).**

312. The United States supports the goals of the Convention and believes that its reservations, understandings, and declarations are compatible with the objects and purposes thereof.

313. As the United States has previously noted, its Constitution contains extensive protections for individual freedoms of speech, expression, and association, which (absent a reservation, understanding, or declaration) might be construed in tension with articles 4 and 7. The United States believes that its constitutional protections are fully consistent with the goals of the Convention. The purpose of the First Amendment is to preserve an uninhibited

marketplace of ideas in which truth will ultimately prevail. See, e.g., Abrams v. United States, 250 U.S. 616 (1919) (dissenting opinion of Oliver Wendell Holmes, Jr., in which Justice Brandeis concurred). Through freedom of expression, ideas can be considered and allowed to stand or fall of their own weight. As the late Gerald Gunther, one of the foremost constitutional law scholars in the history of the United States, explained: “The lesson I have drawn from my childhood in Nazi Germany and my happier adult life in this country is the need to walk the sometimes difficult path of denouncing the bigot’s hateful ideas with all my power, yet at the same time challenging any community’s attempt to suppress hateful ideas by force of law.” See also Virginia v. Black, 538 U.S. 343, 367 (2003) (quoting Professor Gunther). To be sure, the Supreme Court has upheld the suppression of particularly hateful and dangerous speech under certain circumstances. See, e.g., id. (upholding a ban on cross-burning with intent to intimidate). In general, however, the United States believes that the goal of eliminating racial discrimination is, in fact, better served by application of the principles of freedom of expression and association than by the application of greater restrictions on those freedoms.

314. The Initial U.S. Report and the sections covering article 4 and article 5 (security of persons) in this report describe in greater detail the U.S. constitutional limitations on implementation of article 4, as well as the activities that may constitutionally be restricted. In addition, it should be noted that in cases such as hate crimes, the racial element of the crime may yield more severe punishment. The United States enforces against all such crimes to the fullest extent of the law, and numerous examples of such enforcement actions are described in this report.

**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 that is discriminatory on racial or ethnic grounds (para. 392).**

315. Although the civil rights protections of the Fourteenth Amendment of the U.S. Constitution reach only “state action,” private conduct may be regulated on several other constitutional bases. First, the Thirteenth Amendment’s prohibition against slavery and involuntary servitude encompasses both governmental and private action and serves as the basis for several civil rights statutes. See, e.g., 42 U.S.C. 1981, 1982. These statutes have been used to prohibit private actors from engaging in racial discrimination in activities such as the sale and/or rental of private property, the assignment of a lease, the grant of membership in a community swimming pool, the refusal of a private school to admit African American students, the making and enforcement of private contracts, and conspiracy to deprive African Americans of the right of interstate travel. In addition, the commerce power of Article 1 of the Constitution underlies Title II and Title VII of the 1964 Civil Rights Act, which prohibit private entities from discriminating in public accommodations and employment. The authority of Congress over commerce also serves as the

basis for the Fair Housing Act, which prohibits private parties from discrimination in housing. The spending powers of Article 1 as well as Section 5 of the Fourteenth Amendment serve as the basis for Title VI of the 1964 Civil Rights Act, which prohibits discrimination by public and private institutions that receive federal funds. This report sets forth numerous examples of enforcement action against private persons with regard to activities such as those noted above.

316. In the U.S. view, it is unclear whether the term “public life” in the definition of “racial discrimination” in the Convention is synonymous with the permissible sphere of governmental regulation under U.S. law. Thus, the United States felt it prudent in acceding to the Convention to indicate through a formal reservation that U.S. undertakings in this regard are limited by the reach of constitutional and statutory protections under U.S. law as they may exist at any given time:

“[T]he Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the convention by reference in article 1 to fields of “public life” reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.”

**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 (para. 393).**

317. The United States recognizes and supports the importance of prohibiting and eliminating racial discrimination in all its forms. Under U.S. law, claims that seemingly neutral laws, procedures, or practices are having disparate impacts or effects on persons or groups of a particular race, color, or national origin may be brought under the Voting Rights Act of 1965, as amended, Title VII of the 1964 Civil Rights Act, and the federal regulations implementing Title VI of the 1964 Civil Rights Act.

318. General Recommendation XIV, which is recommendatory in nature, states that “in seeking to determine whether an action has an effect contrary to the Convention, [the Committee] will look to see whether that action has an unjustifiable disparate impact upon a group distinguished

by race, colour, descent, or ethnic origin.” The term “unjustifiable disparate impact” indicates the view of the Committee that the Convention reaches only those race-neutral practices that both create statistically significant racial disparities and are unnecessary, i.e., unjustifiable. This reading of article 2 (1) (c) tracks the standards for litigating disparate impact claims under Title VII and the Title VI regulations in U.S. law. It is also consistent with the standards used in litigation of equal protection claims under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which statistical proof of racial disparity, particularly when combined with other circumstantial evidence, is probative of the discriminatory intent necessary to make out a claim. In the view of the United States, article 1 (1) (c) does not impose obligations contrary to existing U.S. law.

319. Title VII prohibits employers from using facially neutral employment practices that have an unjustified adverse impact on members of a protected class. Examples of practices that may be subject to disparate impact challenges include: written tests, height and weight requirements, educational requirements, and subjective procedures such as interviews. Once a plaintiff establishes disparate impact, the practice may withstand scrutiny only if the employer proves that the practice is “job related for the position and consistent with business necessity.” However, even if the employer so proves, the plaintiff may still prevail by showing that the employer has refused to adopt an alternative practice that would satisfy the employer's legitimate interests without having the disparate impact. Many disparate impact cases are prosecuted by the Department of Justice Office for Civil Rights under the “pattern or practice” authority of section 707 of Title VII. The laws enforced by the Department of Labor’s Office of Federal Contract Compliance Programs also prohibit federal contractors and subcontractors from utilizing recruiting and selection procedures that have a disparate impact on a protected group. A number of examples of disparate impact cases in the employment arena are set forth in the section on article 2 (1) (b) above.

320. Title VI prohibits discrimination on the basis of race, color, or national origin by governmental agencies and any private entity receiving federal funds or assistance. More than 28 federal agencies have adopted regulations implementing Title VI that apply the intent standard and the disparate impact standards to their own operations and the operations of any recipients of funds or assistance. DOJ regulations can be found at [www.usdoj.gov/crt/cor/coord/vimannual.htm#III.%](http://www.usdoj.gov/crt/cor/coord/vimannual.htm#III.%). The legal standards in Title VI cases are similar to those for Title VII cases. Once disparate impact is proved, the defendant organization may prevail only if it can show a “substantial legitimate justification” for the practice. If such justification can be shown, then the court focuses on whether there are any “equally effective alternative practices” that would result in less racial or ethnic disproportionality.

321. Since 2000, where deemed necessary, legislation and policies have been reviewed to determine if new enforcement priorities are appropriate in areas involving disparate impact. For example, in 2005 the Equal Employment Opportunity Commission (EEOC) set up a special task force to assess whether the agency was doing enough to combat systemic discrimination - patterns or practices of discriminatory activity that have broad impacts on an industry, profession, company, or geographic location. The task force recommended that the EEOC make the fight against systemic discrimination an agency-wide top priority, and the agency has done so. Although systemic discrimination encompasses more than just disparate

impact cases, this re-prioritization will have the effect of increasing the focus on disparate impact prosecutions as well as other cases. Similarly, the Department of Justice reexamined the manner in which it selected employers for investigation to determine if those employers had violated Title VII. As a result of this reexamination, the number of the Department's pattern or practice investigations has increased, and the Department has filed an increased number of cases alleging a pattern or practice of discrimination. Since 2001, the Department of Labor's Office of Federal Contract Compliance Programs has also refocused its efforts on detecting and preventing systemic discrimination. Special emphasis has been placed on eliminating disparities in compensation that affect large numbers of workers.

322. One critical form of disparate impact discrimination involves unintentional discrimination against persons with limited English proficiency (LEP). Since 2000, the Department of Justice has also devoted substantial resources to implementation of Executive Order 13166 of August 11, 2000, "Improving Access to Services for Persons with Limited English Proficiency." This Order required agencies to examine the services they provide, identify any need for those services by persons who are LEP, and develop and implement systems to ensure meaningful access by such persons. Federal agencies as well as recipients of grants or federal assistance are expected to comply. The Federal Interagency Working Group on LEP, coordinated by the Department of Justice, has issued an LEP video in five languages, a "Know your Rights" brochure directed towards LEP individuals in 10 languages, and a second brochure for federal agencies and recipients that outlines the LEP requirements. The Working Group also hosted a two-day meeting in the Washington, D.C. metropolitan area to discuss delivery of government services to the LEP community and how to ensure greater access to such services. The conference presented attendees with an opportunity to share with and learn from leaders in the field of providing language access, and included federal, state, and local officials; funding organizations; and language service providers. The Working Group's website, [www.lep.gov](http://www.lep.gov), has been steadily growing and is maintained by the Department of Justice. In addition, the Department of Justice has issued several technical assistance documents for its own recipients, including LEP Planning Tools for departments of correction and law enforcement agencies and a Tips and Tools resource document with specific chapters about providing LEP access in courts, law enforcement agencies, 911 call centers, and domestic violence service providers.

323. Examples of successes in this area include the following. First, after a compliance review showed problems, the Office of Justice Programs collaborated with the Philadelphia, Pennsylvania Police Department and with advocacy groups to help the Department implement a new LEP policy in December of 2005. Today when Philadelphia police are confronted with LEP individuals, they have access to professional interpreters, telephonic interpretation, and vital documents translated into seven languages. Second, after receiving guidance from the Department of Justice, the Minnesota Supreme Court approved a proposed amendment to the Minnesota Rules of Civil Procedure making it clear that foreign language interpreters must be provided for all litigants and witnesses, not only in criminal proceedings, but also in civil cases, at court expense. Third, on October 11, 2006, following the Department of Justice's August on-site investigation and negotiations of a complaint of discrimination, the State of Maine Supreme Judicial Court issued an Administrative Order providing for interpreters in both civil and criminal proceedings as well as in a range of other court proceedings including judicially-assisted mediations.

**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 that 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 (para. 394).**

324. U.S. law prohibits racially discriminatory actions by law enforcement agencies, including police violence and brutality, and the Civil Rights Division of the Department of Justice, with the aid of United States Attorney's Offices and the FBI, actively enforces those laws. A description of enforcement activities is contained in the section of the report concerning article 5, Discrimination by Law Enforcement.

325. In order to address the incidence of brutality and discriminatory actions noted in the Initial U.S. Report, the United States has stepped up its training of law enforcement officers with a view to combating prejudice that may lead to violence. In the aftermath of 9/11, one of the focus areas for such training has been the increased bias against Arab Americans and Muslim Americans. The Department of Justice Community Relations Service has established dialogues between government officials and Arab and Muslim communities in the U.S., and has created a training video for law enforcement officers. The Department of Homeland Security - one of the largest federal law enforcement agencies in the United States - has emphasized training for DHS employees and is developing an online "Civil Liberties University." The FBI also expanded cultural sensitivity training to all Special Agents in response to broader post-9/11 FBI investigative jurisdiction in these communities.

326. Further examples of law enforcement training are set forth in the section on article 5, Discrimination by Law Enforcement. State and local authorities also conduct similar types of training.

**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 (para. 395).**

327. The Committee's question seems to be based on the assumption that the existence of differing incarceration rates among racial and ethnic groups is due to failure of the United States to guarantee the right of everyone, without distinction as to race, color, or national or ethnic

origin, to equal treatment before the courts and all other organs administering justice. This assumption, however, is inaccurate. As noted above, the U.S. does take firm action to guarantee the right of everyone to equal treatment before the courts and other administrative and judicial entities. Neither race nor ethnicity is a criterion in access to courts or other tribunals, the selection of jurors, or the provision of counsel for the indigent. Likewise, immigration status is not a factor in access to courts. Many factors account for differences in the incarceration rates of various populations. As noted above in the section on article 5, Representation in the Criminal Justice System, some scholarly research indicates that disparities are related primarily to differential involvement in crime by the various groups (with some unexplained disparities particularly related to drug use and enforcement), rather than to differential handling of persons in the criminal justice system. To the extent that varying incarceration rates may relate to socio-economic factors, the United States will continue to work to eliminate the impact of such factors.

**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 (para. 396).**

328. Capital punishment continues to be an issue of great public debate in the United States. It continues to be supported by a majority of the citizens in a majority of states in the U.S., although a significant number of citizens do not support it. The serious debate concerning capital punishment in the United States is evidence of the complexity of the issue and strongly held opinions on both sides. See discussion above, under article 5, Capital Punishment.

329. To the extent that capital punishment is applied in the United States, the U. S. Government remains confident that it is imposed only in the most egregious cases and only in the context of the heightened procedural safeguards required by our federal and state constitutions and statutes, and that it is not administered in a manner inconsistent with U.S. human rights obligations, including the Convention.

**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 (para. 397).**

330. This issue is dealt with above in the discussion under article 5, Voting. As noted in that discussion, the issue is a matter of continuing scrutiny in the states of the United States, and the law in a number of states has changed in recent years. The longstanding practice of states on this matter, however, does not violate U.S. obligations under the Convention.

**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 enjoying 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 (para. 398).**

331. As noted in the discussion of article 5, above, some of the rights enumerated in article 5, which may be characterized as economic, social, and cultural rights, are not explicitly recognized as legally enforceable “rights” under U.S. law. Nonetheless, the federal and state constitutions and laws fully comply with the requirements of the Convention that the rights and activities covered by article 5 be enjoyed on a non-discriminatory basis.

332. As discussed in the sections on article 2 and article 5, above, the United States has in place a panoply of legislation and measures, including special measures, to ensure non-discriminatory treatment as provided in article 5. Substantial progress in addressing disparities in housing, education, employment, and access to health care has been made over the years, and evidence of further progress in a number of areas is set forth in this report. For example, the gap between poverty rates for both African Americans and Hispanics as compared to that for non-Hispanic Whites has closed slightly since the 1998 rates described in the Initial U.S. Report. In addition, the unemployment rate for Hispanics dropped between 1999 and 2005, and the 2005 jobless rate among immigrants fell below that of U.S.-born workers for the first time in at least a decade. Minority-owned businesses represent the fastest-growing segment of the nation’s economy, including African American-owned business growth at four times the national average and Hispanic-owned business growth at three times the national rate. Some evidence also suggests that gaps in educational attainment may be beginning to close, at least at the elementary and middle school levels. Special measures are in place for education, business development, contracting, and a number of other areas that contribute to the enjoyment of social and economic rights.

333. Despite progress in addressing the legacy of segregation and disparities in opportunity and achievement, much work remains to be done to overcome challenges that still exist. Thus, it will be critical for the United States, at all levels, to continue to work on these issues.

**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 (para. 399).**

334. It appears from the text of its conclusion and recommendation that the Committee may have misinterpreted the United States Government’s position. As described in the section concerning article 2 (2), above, the United States acknowledges that article 2 (2) requires States

parties to take special measures “when circumstances so warrant” and, as described in this report, the United States has in place a number of such measures. The decision concerning when such measures are in fact warranted is left to the judgment and discretion of each State Party. The determination of the precise nature and scope of such measures is also left to the judgment and discretion of each State Party, and the United States maintains its position that, consistent with the Convention, special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection may or may not in themselves be race-based. For example, a “special measure” might address the development or protection of a racial group without the measure itself applying on the basis of race (e.g., a measure might be directed at the neediest members of society without expressly drawing racial distinctions).

**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 (para. 400).**

335. Treaties. During its first hundred years of existence, the United States dealt with Indian tribes concerning land occupancy and property rights through federal treaties and legislation. Although treaty making between the federal government and the Indian tribes ended in 1871, the treaties retain their full force and effect even today because they are the legal equivalent of treaties with foreign governments and have the force of federal law. Further, unlike treaties with foreign governments, treaties with Indian tribes are subject to special canons of construction that tend to favor Indian interests. Notably, Indian treaties are interpreted, to the extent that such original intention is relevant, as they would have been understood by the Indians at the time of their signing, as opposed to by the federal authors of the treaties; and where the treaty is ambiguous as to its interpretation, the Court will interpret it to favor the Indians specifically because it was not written by them or in their language.

336. Lands. At the time the United States was founded, Indian tribes held their land in “aboriginal title,” which consisted of a right of use and occupancy. Since then, Congress and the Executive Branch have acted to recognize tribal property rights through treaties, statutes, and executive orders. Today, federally recognized tribes hold virtually all their land in fee simple or in trust (with the United States as trustee holding legal title and the tribe exercising all rights to occupation or use). In either case, tribal holdings of land are fully protected by law.

337. Once Congress has acted to recognize Indian property rights, such as through treaty or statute, any impairment of such rights may be compensable under the Fifth Amendment of the U.S. Constitution. Although the Supreme Court long ago held that Congress had authority to alter treaty obligations of the United States, Lone Wolf v. Hitchcock, 187 U.S. 553, (1903), alterations that affect property rights may give rise to a Fifth Amendment claim for compensation. It should also be noted that, even where the occupancy right based on aboriginal title has been found to be not compensable, compensation has in fact been paid by the United States for many Indian land cessions at the time they were made.

338. In 1946, the Congress adopted the Indian Claims Commission Act, which provided for a quasi-judicial body, the Indian Claims Commission (ICC), to consider unresolved Indian claims that had accrued against the United States, a large portion of which involved historical (pre-1946) claims for compensation for taken lands. The act authorized claims to be brought on behalf of “any Indian tribe, band, or other identifiable group of American Indians” with respect to “claims arriving from the taking by the United States, whether as a result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant ... .” Under the Act, recovery of compensation did not depend on proof of recognized title; compensation was available even if a tribe’s property interest was aboriginal only. The ICC represented the exclusive remedy for tribes in suits against the United States, which ordinarily would have been barred by statutes of limitations and sovereign immunity laws. The ICC also recognized lower burdens of proof on claimants, more favorable rules of evidence, and broad, equitable bases of relief in order to help Indians establish their historic claims. Such favorable, pro-claimant procedures would not ordinarily have been available under regular court rules. Indian tribes had five years to file their claims, and they could seek compensation for general wrongs that might not otherwise have been actionable under law. The wording of the act and its legislative history make clear that only financial compensation was contemplated by Congress; the ICC had no authority to restore land rights that had been extinguished. The fact that the ICC could only decide financial compensation was confirmed by the Commission’s decision in Osage Nation of Indians v. United States, 1 Indian Claims Commission 54 (December 30, 1948), reversed on other grounds, 119 Ct. Cl. 592, cert. denied, 342 U.S. 896 (1951). To encourage lawyers to assist Indian claimants, the Indian Claims Commission Act provided that lawyers could receive as attorneys’ fees up to ten percent of the awards that they won for their Indian clients. For many Indian claimants, the ICC provided the possibility of compensation and a measure of justice that would have been denied to them under the historically restrictive laws and policies that had limited their ability to seek such compensation.

339. In describing the special and unique measures accorded to Indian tribes in this and other respects, it is important to note that, based on the separate status of Indian tribes recognized in the U.S. Constitution, tribes also have a special political relationship with the federal government and are afforded special rights, benefits, and treatment that are not afforded to other sub-national groups or members of society. This special and more favorable treatment is permissible without violating the equal protection standards of the Constitution because it is based on the political relationship between tribes and the U.S. Government rather than the racial heritage of tribal members. Morton v. Mancari, 417 U.S. 535 (1974). When indigenous individuals deal with the federal government in their individual capacities, they are of course entitled to the same

constitutional rights as all other citizens. On tribal matters, the tribal representatives deal with the U.S. Government in respect of the government-to-government relationship between the federal government and tribes.

340. Article 5 (c) and Recommendation XXIII. Article 5 (c) calls for States parties to guarantee the right of everyone to equality before the law with respect to political rights, in particular the right to participate in local, state and federal elections, to take part in the government as well as the conduct of public affairs, and to have equal access to public service. General Recommendation XXIII also calls for equal rights in respect of participation in public affairs. The United States Constitution and federal law ensure the right of members of tribes to participate equally in elections at all levels and in the conduct of public affairs. Tribal members have equal access to public service, as well as a preference to be hired, if qualified, by the Bureau of Indian Affairs in the Department of the Interior and the Indian Health Service in the Department of Health and Human Services.

341. Tribes (as a group) are also afforded rights not afforded to other members of American society with respect to the conduct of public affairs. For example, the United States provides for numerous consultation mechanisms with tribes that are not afforded other members of society. Many executive orders that regulate actions of the U.S. Government require consultation with tribes on federal actions specifically affecting tribes. For example, Executive Order 13175 requires federal agencies to have a process for meaningful input from tribes in the development of regulations and policies that may affect tribes. Other examples include executive orders requiring consultation on protecting Indian sacred sites and on tribal colleges and universities. In addition, consultation with tribes is also mandated on the same basis as consultation with states on issues of national application.

342. Western Shoshone Claims. The United States maintains its position that the issues raised by certain Western Shoshone descendents are not appropriate for consideration under early-warning measures and urgent procedures, which are not contemplated or described within the text of the Convention. In this context, it should be borne in mind that the United States has not made a declaration under article 14 of the Convention to accept individual complaints. As it indicated in response to the Committee's inquiry, the United States instead addresses these matters in this periodic report. The following two paragraphs present a very brief overview of the Western Shoshone claim. Annex II to this report provides a more detailed explanation of this matter.

343. In 1951, the Western Shoshone, represented by the Te-Moak Bands, brought a land claim before the Indian Claims Commission seeking compensation for the value of Western Shoshone lands that had been taken by the United States. Finding that the Te-Moak Bands of Western Shoshone were organized under the Indian Reorganization Act of 1934 and recognized by the Secretary of Interior as having authority to maintain a suit, the ICC ruled expressly that the Te-Moak Bands of Western Shoshone Indians, Nevada, had the right to maintain the action for and on behalf of the Western Shoshone, the land-using entity. 11 Ind. Cl. Comm. 387, 388. In 1962, over the objections of the U.S. Government, the ICC found that the Western Shoshone had possessed aboriginal title to the territory involved and that these lands had been taken both by gradual encroachment of settlers and miners on the land, and by the U.S. Government's

treatment of portions of the land as federal or public lands. The parties to the litigation stipulated that the lands had been taken in 1872, a valuation trial was held, and the ICC declared the value of the lands and sub-surface rights to be over \$26 million at the valuation date (compensation worth approximately \$157 million as of March 2007).

344. (a) In 1974, certain Western Shoshone descendants, who had been part of the original litigating group, attempted to raise objections to the litigation strategy pursued in the claims case. These persons preferred not to claim compensation for a portion of the lands in favor of restoration of those lands. However, because they had failed to raise their objections in a timely manner so that the matter could be dealt with in the litigation under applicable law, their attempts to intervene were rejected. Specifically, the ICC and the appellate court found their attempt to intervene in the proceedings was untimely because:

- (1) They had waited 23 years from the start of the case before seeking to participate despite admitting in their filings to the court that they had been aware of the ICC proceedings for a very long time;
- (2) They had not presented an excuse to the court for the delay; and
- (3) They had not demonstrated fraud or collusion between the Te-Moak bands, which were prosecuting the case on behalf of the Western Shoshone, and the U.S. government.

Western Shoshone Legal Defense & Education Ass'n v. United States, 35 Ind. Cl. Comm. 457 (1975); affirmed, 531 F.2d 495 (Ct. Cl., 1976).

(b) In 1979, the award was certified and placed in an interest bearing account, and the Supreme Court subsequently found that payment of the award into the trust account represented a full discharge of the United States, pursuant to the ICC Act, from all claims and demands of the Western Shoshone with regard to the lands at issue. United States v. Dann, 470 U.S. 39 (1985). Other courts in which these Western Shoshone descendants have continued to file claims, even after the 1985 Supreme Court decision, have reaffirmed that the Western Shoshone no longer have a property right in the lands they claim. Thus, the Court of Federal Claims (CFC) ruled on September 19, 2006 that the issue of Western Shoshone treaty title had been resolved by the Supreme Court in 1985, and that the Treaty of Ruby Valley does not provide the ownership claimed by the tribes and bands in litigation. The Department of the Interior is developing a process to distribute the award, now worth more than \$157 million, to the Western Shoshone descendants;

(c) Because they have been unsuccessful in pursuing their objections, the dissenting Western Shoshone descendants now seek to bring before the CERD Committee what is essentially an internal dispute among the Western Shoshone, despite ample recourse before U.S. courts, including the U.S. Supreme Court, and despite the fact that their position is at odds with the decisions of the representatives of the Western Shoshone made at the time the case was litigated, and that their position does not now represent the views of all Western Shoshone descendants, most of whom wish to receive the compensation as awarded by the ICC. See discussion in Annex II.

345. Paragraph 8 of Decision 1 (68) recommends that the rights of the Western Shoshone be respected and protected without discrimination based on race, color, or national or ethnic origin, and that particular attention be paid to ensuring that the cultural rights and right to health of the Western Shoshone are not infringed. The United States does respect and protect the human rights of the Western Shoshone and members of Indian tribes without discrimination based on race, color or national or ethnic origin. In this regard, special benefits are accorded to Indian tribes - benefits not available to other groups or the general population. As noted above, these benefits are based on the unique political status of tribes rather than on race or ethnicity. With regard to the Committee's reference to the "right to health" and "cultural rights," the United States notes that article 5 of the CERD Convention does not require States parties to ensure enjoyment of such rights (some of which are not recognized as "rights" under U.S. law), but rather to prohibit discrimination in the enjoyment of those rights to the extent they are provided by domestic law. U.S. law fully complies with this requirement.

346. Moreover, the special laws and executive orders relating to Indian tribes noted above include numerous programs designed to help preserve and protect the cultural and ethnic identities of Indian tribes. For example:

- The Native American Graves Protection and Repatriation Act (NAGPRA) - a process for transferring possession and control of human remains, funerary objects, sacred objects, and objects of cultural patrimony to culturally affiliated Indian tribes and individual Indians and Native Hawaiian organizations;
- The Archaeological Resources Protection Act - a process for protecting material remains of human life or activities that are at least 100 years of age and of archaeological interest;
- The American Indian Religions Freedom Act - requiring federal agencies to evaluate their policies and procedures, in consultation with native traditional religious leaders, in order to determine appropriate changes necessary to protect and preserve native religious cultural rights and practices;
- The Indian Arts and Craft Act - promoting economic welfare through development of arts and crafts, as well as protecting against misrepresentation;
- The National Historic Preservation Act - a process for protecting historic and prehistoric archeological sites;
- The Native Languages Act - a policy to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages;
- Executive Order 13007 - to accommodate access to sacred sites on federal lands.

In addition, provisions within some federal criminal statutes also limit their application in order to protect and preserve native religious practices, including, for example, the sale, possession, and use of peyote and the possession and transfer of eagle feathers and eagle parts. Such protections are uniquely made for Indians to ensure that the cultural and spiritual significance

Indians accord to their lands and activities are taken into consideration in decision-making. Thus, far from discriminating against the Western Shoshone, U.S. law provides benefits and protections not enjoyed by the general population.

347. Paragraph 9 of Decision 1 (68) urges an immediate dialogue with the Western Shoshone descendants in order to find a solution acceptable to them, in particular in light of General Recommendation XXIII. The United States would welcome a dialogue with the Western Shoshone descendants to resolve outstanding issues, and dialogue occurs in many areas. As noted above, the Western Shoshone people are organized in six different tribes, bands, and groups, including five federally-recognized tribes. These include the Te-Moak Tribes of Western Shoshone Indians, the Duckwater Shoshone Tribe, the Yomba Shoshone Tribe, and the Ely Shoshone Tribe, the Western Shoshone Committee of the Duck Valley Reservation, and the Fallon Band of Western Shoshone. As an example of government pursuit of such dialogue, the Bureau of Land Management (BLM) in the Department of the Interior engages various bands of the Western Shoshone about many land use issues, such as: traditional cultural properties; consistency of land uses with environmental requirements, particularly fire fuels reduction projects; oil, gas and geothermal leasing and land sales; matters involving the Archaeological Resources Protection Act (ARPA); and pine nut harvesting. More specifically:

- Traditional properties. The Te-Moak Tribe identified Mt. Tenabo as a traditional cultural property (TCP). Evaluation of Mt. Tenabo, in consultation with various Western Shoshone Tribes and Bands, resulted in two designations: the Mt. Tenabo/White Cliffs Property of Cultural and Religious Importance and the Horse Canyon Property of Cultural and Religious Importance. Two other properties, Tosawih Quarries and Rock Creek, have been determined eligible for listing on the National Register of Historic Places. The BLM has also regularly taken elders from the Duck Valley Shoshone-Paiute Tribes to the Tosawih Quarries area to monitor cultural sites that were burned over by wildfire and subsequently left exposed to looters;
- Land Acquisition. The BLM Elko Field Office is working with the Te-Moak Tribe of Western Shoshone (Elko, South Fork, Battle Mountain, and Wells Bands) to acquire land. The BLM's efforts include helping to identify available federal land, providing mapping services and serving as mediator among the tribes and city and country governments;
- Resource Impacts. The BLM Battle Mountain Field Office and the Te-Moak Tribe established the "Cortez Hills Tribal Working Group." The group consists of BLM and tribal staff and leadership. They will identify specific resources affected by mining in the Crescent Valley/Cortez area and explore alternatives or mitigation measures. The South Fork Band asked the BLM to work with them to identify borders of their traditional pine nut harvesting areas in the Sulphur Springs Range and the Roberts Mountains, with the intention to exclude or limit use within these areas by commercial pine nut harvesters. In a separate action, the BLM's Nevada Groundwater Projects Office received concerns and met with a group called the Western Shoshone Defense Project (representing numerous Western Shoshone tribes and bands) regarding the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project.

Many other examples of consultation are set forth in Annex II.

348. Dialogue has not always proven easy, however. For example, the BLM, which manages public lands with the mandate to maintain them in healthy condition, has sought repeatedly to engage the Western Shoshone Dann family regarding grazing livestock in trespass on public lands. In 1973, Carrie Dann stopped paying grazing fees for the use of public land. Since that time, Dann livestock use in trespass has resulted in severe overgrazing of the areas used. The Danns have been offered more opportunities than any other public land trespasser to resolve their issues with the BLM, but they have refused to do so.

349. Paragraph 10 of Decision 1 (68) urges adoption of three specific measures, including freezing any plan to privatize ancestral lands, desisting from all activities planned and/or conducted in relation to natural resources, and stopping grazing fees, trespass, and collection notices, etc. The recommended measures from the Committee on the Elimination of Racial Discrimination are inconsistent with the status of these lands under U.S. law, as repeatedly determined by U.S. courts. As noted above, under U.S. court decisions, including the 1977 ICC decision, the Court of Claims appellate decision and the 1985 Supreme Court decision, the Western Shoshone no longer have title to the lands claimed by the dissenting Western Shoshone. The Department of the Interior is developing a process to distribute the judgment, worth more than \$157 million, to the Western Shoshone descendants for the historic encroachment on their lands. That judgment was rendered according to the relevant legal obligations in effect. U.S. law has provided the Western Shoshone the same access (and in some respects greater access) than would have been provided to other citizens to the U.S. judiciary and to Congress to present their requests. In all events, as noted above, none of the actions taken by the United States with respect to the Western Shoshone descendants is based on the racial or ethnic identity of those individuals and, thus, such actions are not matters within the scope of the Convention.

350. ILO Convention Number 169. With regard to the Committee's reference to ILO Convention Number 169, the United States notes that it is not a State party to that Convention and that very few countries have ratified it. The United States believes it is appropriate to address the issues herein as they relate to its obligations under the CERD Convention, without reference to legal provisions that are not applicable to the United States or the large majority of other countries that have not assumed treaty obligations under that instrument.

**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 (para. 401).**

351. The requested data is contained in the section concerning article 5, Prisons.

**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 (para. 402).**

352. The Interagency Working Group on the Implementation of Human Rights Treaties continues to function under the leadership of the National Security Council in the White House and, among other things, oversees issues of human rights policy, as well as the preparation of United States reports to the United Nations Human Rights Commission and its constituent bodies. Indeed, the present report, like the May and October 2005 reports on U.S. implementation, respectively, of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, was organized under the auspices of that Interagency Working Group. The working group further acts as a point of contact and policy coordination on a wide range of U.S. bilateral and multilateral human rights initiatives, including U.S. participation in the United Nations General Assembly's Third Committee and the UN Human Rights Council.

353. Representative information concerning implementation at the state, local, and territorial levels is presented in the body of the report. Reporting at length on all 50 separate states and the territories would be extremely burdensome and so lengthy as to be unhelpful to the Committee. As an alternative, in addition to the representative information in the body of the report, we have included an Annex reporting at greater length on the programs in four states with varying geographic locations and varying racial and ethnic population compositions. This represents a milestone in U.S. human rights treaty reporting, which we hope will be of use to the Committee.

**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 (para. 403).**

354. The requested information is set forth in the section on Land and People, above.

**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 (para. 404).**

355. In submitting the Convention to the United States Senate for ratification, President Carter recognized that if the Senate gave its advice and consent to ratification, the President would then have the right to decide whether to make a declaration, pursuant to article 14 of the Convention, recognizing the competence of the Committee on the Elimination of Racial Discrimination to consider communications from individuals. If such a declaration were contemplated, he noted that it would be submitted to the Senate for consent to ratification. The United States remains aware of the possibility of making the optional declaration under article 14, but has not made any decision to do so.

**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 (para. 405).**

356. It is the general policy of the United States that the financial obligations of treaty bodies should be funded by the States parties to the particular treaty at issue. The United States believes that the costs of the CERD Committee should be funded under the Convention itself by the parties thereto, as required by the Convention in its original form, and thus does not support the amendment to article 8, paragraph 6.

**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 (para. 406).**

357. The United States agrees with the Committee's intention that the public have access to its deliberations, and the United States will continue to make available to the public both its reports to the Committee and the Committee's responses, as well as all publicly available Committee documents.

**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 (para. 407).**

358. This report constitutes the fourth, fifth, and sixth periodic reports of the United States. It addresses the points raised in the Committee's observations concerning the Initial U.S. Report.

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