

## UNITED STATES OF AMERICA

### Follow-up - State Reporting

#### i) Action by Treaty Bodies, including reports on missions

CERD, A/64/18 (2009)

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### Chapter IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

48. In 2009, Mr. Amir served as coordinator and Mr. Prosper as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

49. Terms of reference for the work of the coordinator on follow-up<sup>1</sup> and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee<sup>2</sup> were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

50. At the 1923rd meeting (seventy-fourth session) and the 1897th meeting (seventy-fifth session), held on 2 March and 17 August 2009 respectively, the coordinator on follow-up presented a report on his activities to the Committee.

51. Since the closing of the seventy-third session, follow-up reports on the implementation of recommendations regarding which the Committee had requested information were received from the following States parties: Austria (CERD/C/AUT/CO/17/Add.1), Belgium (CERD/C/BEL/CO/15/Add.1), Bosnia and Herzegovina (CERD/C/BIH/CO/6/Add.2), Canada (CERD/C/CAN/CO/18/Add. 1), Italy (CERD/C/ITA/CO/15/Add.1), New Zealand (CERD/C/NZL/CO/17/Add.1), Republic of Korea (CERD/C/KOR/CO/14/Add.1), Republic of Moldova (CERD/C/MDA/CO/7/Add.1), Turkey (CERD/C/TUR/CO/3/Add.1) and United States of America (CERD/C/USA/CO/6/Add.1).

52. At its seventy-fourth and seventy-fifth sessions, the Committee considered the follow-up reports of Belgium, Bosnia and Herzegovina, Israel, Italy, New Zealand, the Republic of Korea and the United States of America and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

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<sup>1</sup> For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

<sup>2</sup> For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18)*, annex VI.

## **Follow-up - State Reporting**

### **ii) Action by State Party**

**CERD, CERD/C/USA/CO/6/Add.1 (2009)**

## **Information provided by the Government of the United States of America on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination \***

[13 January 2009]

### **United States response to specific recommendations identified by the Committee on the Elimination of Racial Discrimination**

1. In its concluding observations regarding the fourth, fifth, and sixth periodic reports of the United States, the Committee on the Elimination of Racial Discrimination requested that the United States provide, within one year, information on its response to specific recommendations identified by the Committee.<sup>1</sup> These specific recommendations and the United States responses to them are provided below.

2. As a preliminary matter, the United States would like to express appreciation for the ongoing dialogue with the Committee on the issues identified in the Committee's concluding observations. Many of these issues were raised by the Committee in written questions posed to the United States in advance of the U.S. appearance before the Committee in February 2008 and during the February 2008 meeting itself. Rather than restating the information the U.S. Government previously provided in response to the Committee's concerns that are the subject of the respective recommendations below and which remain relevant, we have endeavored to succinctly state the U.S. legal and policy framework in a given area and provide relevant updates in the respective areas since the February 2008 meeting. The United States Government intends to consider more fully all of the Committee's concluding observations as it prepares its next periodic report.

### **Paragraph 14**

#### **Recommendation**

**Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its efforts to combat racial profiling at the federal and state levels, inter alia, by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation. The Committee also draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and urges the State party, in accordance with article 2,**

**paragraph 1 (c), of the Convention, to put an end to the National Entry and Exit Registration System (NEERS) and to eliminate other forms of racial profiling against Arabs, Muslims and South Asians.**

## **Response**

3. The United States condemns the use of racial profiling, which is understood to be the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures. As previously described, the U.S. Department of Justice pursues a multi-faceted approach to combating racial profiling.

4. First, the Department investigates patterns or practices of violations of federally protected rights by law enforcement agencies under Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The Department also examines allegations that a police department discriminates on the basis of race in its treatment of civilians under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c), which prohibit discrimination on the basis of race, color, and national origin by law enforcement agencies that receive Federal financial assistance.

5. In that connection, the enforcement efforts of the Department of Justice have continued to lead to court orders and settlement agreements that prohibit racial profiling and that require the collection of statistical data. For example, in *United States v. New Jersey*, No. 99-5970 (MLC) (D.N.J. filed 22 December 1999), the governing consent decree requires the State of New Jersey to take various measures to ensure that officers of the New Jersey State Police do not engage in racial profiling. Statistical data regarding stops conducted by New Jersey State Police are reported by the Independent Monitoring Team in semiannual reports publicly filed with the court. Similarly, in *United States v. Los Angeles*, CV-00-11769-GAF (C.D. Ca.), the governing consent decree requires the Los Angeles Police Department to collect statistical data regarding traffic stops. In addition, the Department recently concluded a Memorandum of Agreement with the City of Villa Rica, Georgia, which required the City's police department to take specific actions to ensure that police officers did not engage in racial profiling, including requirements that the police department collect and analyze data regarding traffic stops. Since November 2007, the Department has opened up four new police pattern or practice investigations involving police departments, the Kings County (NY) Hospital Police Force, the Puerto Rico Police Department, the Lorain, Ohio Police Department and the Harvey, Illinois Police Department. One of the four, the Puerto Rico Police Department case, involves allegations of racial profiling. This particular investigation is focused on allegations of excessive use of force, unlawful searches and seizures, and discriminatory policing. This level of activity is consistent with the number of police-pattern-or-practice investigations that have been opened on an annual basis since 2004.

6. Second, the Department is authorized to conduct administrative investigations of allegations that a police department discriminates in its treatment of civilians under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c). When a legal violation is found, the Department typically moves to either cut off funds following an administrative hearing or to

refer the matter to the Department for enforcement. The Department is currently investigating four complaints of racial profiling by individual officers. This past year, it completed four investigations of racial profiling by individual police officers, all of which resulted in findings that the statutes had not been violated.

7. Third, the Department combats racial profiling in the course of its overall enforcement of the criminal civil rights laws of the United States, which prohibit willful acts of misconduct by law enforcement officers and other public officials, as well as hate crimes. Over the last few years, the Department has achieved a remarkable prosecution record in enforcing the United States' civil rights laws. In fiscal year 2008, the Department set a record by filing 108 criminal civil rights cases, the largest number of civil rights cases ever brought in a single year in the history of the Department. In fact, those 108 cases eclipsed the previous record for the Department by 12 cases. Over the last several years, the Department has enjoyed a high rate of success in obtaining convictions in the cases it has brought. In Fiscal Year (FY) 2006, the Department charged 201 defendants, and in FY 2007, convicted 189 defendants. These are the highest such figures in the history of the Department. In some cases, racial profiling plays a role in the alleged criminal misconduct. For instance, in a 2007 case, a former Memphis, Tennessee, Police Department Officer pleaded guilty to a federal civil rights offense, admitting that he had stolen cash from targeted Latino motorists he had pulled over and searched while on duty as a Memphis Police Department officer. Although these numbers do suggest that racial profiling remains a serious problem within the United States, it also reflects continuing efforts by the United States to prevent and punish such activity.

8. Finally, the Department provides education, training, and technical assistance to various federal law enforcement agencies on the "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," prepared by the Department in 2003 pursuant to a 27 February 2001 Presidential Directive. The Guidance was distributed to the heads of all executive branch agencies and all federal law enforcement agencies. Several components within the Department continue to collaborate with other federal law enforcement agencies on their racial profiling training. The 2003 Guidance continues to be distributed at federal law enforcement trainings, and new law enforcement officers are tested on its principles. In addition, the Department has incorporated the 2003 Guidance into its regular civil rights training courses at the National Advocacy Center. The Department's Civil Rights Division also coordinates with the Department's Community Relations Service, which provides racial profiling training to police departments around the country. Moreover, as part of the Department's post-9/11-backlash initiative, the Department continues to convene regularly scheduled interagency meetings with the Muslim, Arab, Sikh, and South Asian communities to facilitate the discussion of civil rights issues, including racial profiling concerns, between community groups and federal agencies.

9. As demonstrated above, the United States has a robust framework for combating racial profiling at the federal and state levels, complete with tools, such as the various statutes described above that provide a basis for criminal prosecutions or remedial action, and the 2003 guidance, binding on all federal law enforcement officers. Additionally, in the materials we previously provided to the Committee we described numerous efforts throughout the states to document and combat the practice of racial profiling. Since the appearance of the United States before the Committee in February 2008, neither the End Racial Profiling Act, nor other similar

federal legislation has been enacted.

10. The U.S. Attorney General recently reiterated the Department of Justice's policy against racial profiling in its own law enforcement activities when it issued revised guidelines regulating the domestic operations of the Federal Bureau of Investigation (FBI) on 3 October 2008. The new guidelines consolidate several different FBI guidelines in order to provide uniform standards for how the FBI conducts criminal investigations, national security investigations, and intelligence gathering. The guidelines make clear they "do not authorize any conduct prohibited by the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies." The referenced use-of-race guidance "prohibits racial profiling in law enforcement practices without hindering the important work of our Nation's public safety officials, particularly the intensified anti-terrorism efforts precipitated by the events of September 11, 2001." Although the guidelines maintain the status quo with respect to the use of race or ethnicity in investigations, they have been criticized by advocacy groups and members of Congress for not going far enough to eliminate racial profiling, particularly in national security investigations.

11. Additionally, as also previously explained by the United States representatives during the February 2008 hearing, the Department of Homeland Security (DHS) has adopted policies that protect fundamental liberties and provide for the investigation of civil rights violations. DHS has long provided its officials training on how to accomplish their mission objectives while complying with laws and policies against illegal profiling. As part of its statutory authority under 6 U.S.C. § 345, DHS's Office for Civil Rights and Civil Liberties (CRCL) continues to assist DHS leadership in developing and implementing policies and procedures "to ensure the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities." 6 U.S.C. § 345(a)(3). This includes ensuring that DHS policies comply with all applicable laws and policies against illegal profiling.

12. In addition to these preventative measures, and in consultation with the DHS Office of Inspector General, CRCL also has the authority under 6 U.S.C. § 345 to investigate complaints indicating possible abuses of civil rights or civil liberties, including allegations of illegal profiling. CRCL has used this authority to establish its Review and Compliance Unit, which leads this effort and which has conducted numerous investigations across the country.

13. Based on recommendations from ethnic and religious communities and civil rights advocacy groups, DHS has also worked to improve the cultural competency of its personnel. The goal here is also preventative: by increasing knowledge of different customs, beliefs, and practices, the Department hopes to avoid unprofessional and illegal conduct based on lack of knowledge or misunderstanding. For example, DHS has produced and widely distributed training posters on common types of Muslim and Sikh American head coverings; a training DVD on basic aspects of Arab and Muslim cultures; and a poster on the kirpan, a Sikh article of faith. Additionally, for the past two years, DHS components have provided training to security officers on what to expect during the Hajj travel season, an idea that was developed through the Department's robust community outreach efforts. The Department's experience has shown that these training efforts not only protect civil rights, they also allow DHS employees to do their jobs better by helping them distinguish cultural and religious norms from suspicious conduct.

14. The Committee on the Elimination of Racial Discrimination also raised concerns regarding the National Security Entry-Exit Registration System (NSEERS). As the United States explained to the Committee when it appeared in February of 2008, the United States is fully aware of the criticism of this programme and has already taken a number of steps to adjust policy and address concerns. For instance, in 2003, DHS suspended the original re-registration requirements of NSEERS and also reduced the number of countries to which the programme applies. The Department also had a series of meetings with civil rights and community leaders regarding the future of the programme and the implications for individuals who did not or could not comply with NSEERS requirements. DHS is continuing to review the programme at the very highest levels and is confident that it will reach a resolution that addresses community concerns while ensuring security.

15. At the same time, U.S. courts have continued to be available to individuals who have brought lawsuits challenging the application of various aspects of the NSEER program. In a very recent decision, the Second Circuit Court of Appeals denied petitioners' claims in *Rajah v. Mukasey*, 2008 WL 4350021 (2nd Cir. 24 September 2008) that the Special Call-In Registration Program (part of NSEERS), which ultimately led to petitioners' deportation: (a) lacks statutory authorization; (b) is invalid as a matter of administrative law; and (c) violates equal protection guarantees in the United States Constitution. Petitioners' claims that evidence obtained during the Program should be suppressed under the Fourth and Fifth Amendments were also denied.

16. In denying the equal protection claim, the Court found that the special registration programme was a "plainly rational attempt to enhance national security." The Court joined every federal circuit court that has considered the issue in concluding that the programme did not violate Equal Protection guarantees. In its analysis the Court did acknowledge that the countries selected for inclusion in the programme were, with the exception of North Korea, predominantly Muslim. In response, the Court noted the threat posed by radical Islamic groups, as demonstrated by the September 11 attacks, and that the Program was tailored to those facts, as evidenced by the fact that it excluded males under 16 and females on the ground that military age men are a greater security risk, that Muslims from non-specified countries were not subject to registration, that aliens from the designated countries who were qualified to be permanent residents in the United States were exempted whether or not they were Muslims, and that non-Muslims from the designated countries were subject to registration.

17. Furthermore, the United States would emphasize again a point it previously raised with the Committee in this regard - that countries routinely employ nationality-based distinctions in their immigration laws, for example with respect to visa waiver programmes, which many countries employ, or immigration benefit programmes (such as Temporary Protected Status under U.S. law) and that the Convention does not prohibit such programmes.

## **Paragraph 19**

### **Recommendation**

**The Committee reiterates its Decision 1 (68) in its entirety, and urges the state party**

**to implement all the recommendations contained therein.**

### **Response**

18. As explained in a special annex to its most recent periodic report, the United States recognizes, as a historical matter, that indigenous people throughout the world have been unfairly deprived of lands they once habitually occupied or roamed. Such ancestral lands once constituted most of the Western Hemisphere. In 1946, recognizing that many Indian tribes in the United States had been unfairly deprived of such lands, the United States Congress established a special body, the Indian Claims Commission ("ICC"), to hear such claims by Indian tribes, bands, or other identifiable groups for compensation of lands that had been taken by private individuals or the government. In 1951, the Western Shoshone, represented by the Te-Moak Bands, successfully brought such a claim. The parties to the litigation stipulated that the lands were taken in 1872. A valuation trial was held and the ICC declared the value of the lands and sub-surface rights as of the valuation date.

19. The petitions submitted by certain Western Shoshone descendants to the Committee on the Elimination of Racial Discrimination concern an internal dispute among Western Shoshone descendants about the litigation strategy pursued in that claim. However, they failed to raise their objections in a timely manner. Specifically, the ICC and appellate court found that their attempt to intervene in the proceedings was untimely because: (a) 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; (b) they had not presented an excuse to the court for the delay; and (c) they had not demonstrated fraud or collusion by the representatives of the Western Shoshone in the litigation. Because they have been unsuccessful in pursuing their objections, certain Western Shoshone descendants who disagreed with the litigation strategy now seek to bring the issue of an 1872 land taking claim to the Committee, despite ample recourse before U.S. courts, including the United States Supreme Court, and despite the fact that their position does not represent the views of all Western Shoshone descendants, most of whom wish to receive the compensation awarded by the ICC.

### **Paragraph 21**

#### **Recommendation**

**The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders - including children - belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.**

## Response

20. As the United States explained to the Committee on the Elimination of Racial Discrimination during the February 2008 meeting, and previously to both the Committee against Torture and the Human Rights Committee, the imposition of life without parole sentences on juveniles is a lawful practice that is imposed in rare cases where individuals, despite their youth, had committed gravely serious crimes. The imposition of such sentences is accompanied by procedural safeguards and robust due process protections enshrined in the United States Constitution. While the considerations vary from state to state, juvenile life without parole (JLWOP) sentences are generally only imposed on juveniles that have committed "serious" offenses - typically murder - and, only after a judge has made a determination that the juvenile can be tried as an adult. In such cases, whether a juvenile offender is prosecuted as an adult depends upon a number of factors that are weighed by a court, such as, inter alia, the age; personal, family or other relevant circumstances or background of the juvenile; the type and seriousness of the alleged offense; the juvenile's role in committing the crime; and the juvenile's prior record/past treatment records. This ensures that these lengthy sentences are imposed only when it has been determined through a judicial process that the juvenile is no longer amenable to the treatment and rehabilitative nature of the juvenile justice systems found in most states in our country. While they serve their sentences, juvenile offenders are separated from adult prisoners to the extent possible, taking into account factors such as the security risk that they pose to other prisoners, the risk of harm to themselves, their need for medical and/or mental health treatment options, and the danger they pose to others and to the community.

21. Currently, forty-two states permit JLWOP sentences. Alaska, Colorado, Kansas, Kentucky, Maine, New Mexico, New York and West Virginia and the District of Columbia have prohibited JLWOP. Four of these prohibit life without parole sentences at any age. However, efforts are being made at the state and federal level to abolish JLWOP sentences. For example, since 2005, legislative efforts have been made in Florida, Illinois, Louisiana, Nebraska, Colorado, California and Michigan. Moreover, there are grassroots movements in support of abolition in various states including Iowa, Arkansas, Massachusetts, Washington, and Pennsylvania where, in September, the state Senate held a public hearing to conduct a "fact-finding" session on JLWOP sentences. Although most legislative efforts have either failed or are still pending in their respective legislatures, in 2006, Colorado passed legislation banning JLWOP sentences. More recently, in December 2008, the Michigan State House of Representatives passed legislation preventing judges from sentencing criminals who commit crimes before they turn 18 to life in prison with no chance at parole. The legislation has not been taken up in the Michigan State Senate.

22. On the federal level, currently pending in the United States Congress is H.R. 4300, the Juvenile Justice Accountability and Improvement Act of 2007, which would require states to enact laws and adopt policies to grant child offenders who are under a life sentence a meaningful opportunity for parole at least once during their first 15 years of incarceration and at least once every three years thereafter. On 11 September 2008, the House of Representatives Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security held a hearing on

H.R. 4300. Among those who testified before the Subcommittee were a children's rights activist, the executive director of the Equal Justice Initiative, and a medical doctor who testified regarding the cognitive and psychological development of children and its implications for juvenile justice accountability.

23. In light of the Committee's concern about the detention of juveniles, we would also like to recall for the Committee various tools available to the United States to ensure that the human rights of juveniles are respected while they remain in confinement. Under Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, the Department of Justice has the authority to file civil lawsuits when administrators of juvenile justice systems engage in a pattern or practice of violating confined juveniles' federal rights. The Department has investigated conditions of confinement in more than 100 juvenile facilities across the United States and its territories. In FY 2008, the Department settled four complaints regarding eleven juvenile facilities and began three new investigations involving seven facilities. The Department currently monitors conditions in more than 65 public facilities that operate under settlement agreements with the United States. The cases involve conditions for youths at facilities ranging from 30-bed detention centers to 700-bed training schools, and the investigations range from single facilities to state-wide systems.

24. The investigations, and the subsequent settlements reached in most cases, have focused on a number of important federal rights of juveniles, including rights guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and youths' constitutional rights to reasonable safety, adequate medical and mental health care, rehabilitative treatment, and education. Several of the cases have involved allegations of staff abusing juveniles, preventable youth-on-youth violence, and excessive use of restraints and isolation. The Department has made a priority of ensuring adequate access to mental health treatment and has focused attention on the special needs of very young juveniles, juveniles with special medical problems, and on the myriad of problems created by crowding in juvenile facilities.

25. Recent examples of this work include the Department's complaints against the States of Ohio and Oklahoma regarding conditions in their juvenile facilities. In May 2008, the Department brought suit regarding conditions in all eight Ohio juvenile justice facilities (*United States v. State of Ohio, et al.*, Civil Action No: 2:08-cv-475). The litigation addressed an alleged pattern or practice of unconstitutional conditions of confinement in the State-run juvenile facilities under Section 14141. Specifically, the complaint alleged constitutional deficiencies regarding: (a) protecting youth from harm; (b) medical care; (c) mental health care; and (d) special education services. In June 2008, the court approved a judicially-enforceable settlement requiring Ohio to implement extensive reforms in each of these areas. The settlement agreement also contains requirements for structured rehabilitative programming designed to modify behaviors, provide rehabilitation to the types of youth committed to each facility, address general health and mental health needs, and address requirements for parole eligibility. This programming is to be coordinated with youths' individual behavioral and treatment plans and is to be developed with the assistance of teachers, school administrators, correctional officers, caseworkers, school counselors, staff, and other qualified individuals.

26. Similarly, in December 2006, the Department brought suit regarding conditions in Oklahoma's L.E. Rader Center, alleging a pattern or practice of unconstitutional conditions regarding inadequate safety, excessive use of force, sexual abuse, inadequate mental health care, inadequate suicide prevention, inadequate rehabilitative services, and inadequate education (*United States v. State of Oklahoma, et al.*, 06-CV-673-GKF-FHM (N.D. Okla.)). After a preliminary injunction hearing before the Court regarding alleged life-threatening issues, the parties settled the case. In September 2008, the court approved a consent decree that includes extensive reforms in each of these areas, including, inter alia, an orientation on reporting abuses, facility rules, and assurance of the right of youths to be protected from retaliation for reporting abuse; mental health, suicide, and substance abuse screening; access to programmes and services for youths who have been placed on suicide precautions; mental health assessments for youths whose mental health screens, placement on suicide precautions or conduct indicates a possible serious mental illness; transition planning for youths with serious mental illness who are being released from the facility; identification of youths who were previously determined eligible and youth who are potentially eligible for special education services; and development and implementation of individualized education plans for all youths determined to be eligible for special education or related services.

### **Paragraph 31**

#### **Recommendation**

**The Committee recommends that the State party increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence. In particular, the Committee calls on the State party to ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.**

#### **Response**

27. The Federal Emergency Management Agency (FEMA) has continued to work with and support those affected by Hurricane Katrina to help them recover from this disaster. Three years after Hurricane Katrina, FEMA has provided more than \$7.8 billion to individuals and families through FEMA's Housing and Other Needs Assistance. This assistance includes personal property replacement, transportation assistance, health care and other expenses related to moving and storage. In Louisiana, FEMA has provided more than \$5.7 billion to families under the Individuals and Households Program (IHP) approving 857,000 households for Housing Assistance. In Mississippi, FEMA has provided more than \$1.2 billion in Individual Assistance to more than 216,000 households with over \$876 million of that going to temporary housing and repair of replacement activities. More than 143,000 families were provided with temporary housing units throughout the Gulf Coast which resulted in the largest temporary housing operation in the history of the United States. FEMA has moved over 127,000 households out of temporary housing units as residents move into long-term housing solutions.

28. FEMA is also continuing to work with those affected by Hurricane Katrina through case

management services. Since Hurricane Katrina, FEMA has awarded \$32 million to the Louisiana Recovery Authority (LRA) to assist with disaster case management for Louisiana families affected by hurricanes Katrina and Rita. Hundreds of case managers from the Louisiana Family Recovery Corps (LFRC) and the Greater New Orleans Disaster Recovery Partnership (GNODRP) will be able to provide much-needed disaster case management assistance to thousands of families across Louisiana. This is the second part of a two-phase disaster case management plan FEMA proposed to meet the ongoing needs of the Gulf Coast. It will continue through March of 2009.

29. During Phase One, 1 April to 31 May 2008, FEMA provided direct Cora Brown awards, described below, to Louisiana specifically for the cases that remained open from the Katrina Aid Today (KAT) program. The United Methodist Committee on Relief (UMCOR) formed KAT, a national case management consortium, following the devastation of Hurricane Katrina to provide disaster case management services to individuals and families. KAT was funded through more than \$66 million in donations from foreign countries. The Cora Brown Fund is used as a last resort to assist families who have unmet disaster-related needs following a presidentially-declared disaster. Potential recipients do not apply for this assistance. Instead, FEMA representatives identify them through information provided from various sources, including federal, state, local and voluntary relief agencies.

30. In Phase Two, the Louisiana disaster case management programme staff will coordinate the budget needs of their individual case management providers. FEMA has provided programme guidance for the state that assists in determining the funding for the programme needs. Eligible recipients for disaster case management assistance will be families living in FEMA temporary housing, families with health-related concerns living in FEMA-funded hotels or motels and families whose case management services are not yet fully completed and were in the Cora Brown disaster case management Phase One program.

31. Additionally, as the United States explained to the Committee on the Elimination of Racial Discrimination during the February 2008 meeting, the Department of Housing and Urban Development ("HUD") has collaborated with state and local authorities on a number of programmes to assist those affected by Hurricanes Katrina, Rita, and Wilma. HUD has provided approximately \$20 billion in funding to the state governments affected by these hurricanes. These funds are being used and administered by the states to rebuild their community infrastructure as well as assist individual property owners with repair or replacement of their homes and businesses. These ongoing programmes were described in the written materials we provided to the Committee in February of 2008.

32. Regarding efforts in Louisiana, some notable developments include:

- **Road Home Program** - as of 31 December 2008, this programme, administered by the Louisiana Recovery Authority and funded by HUD, has paid homeowners more than \$543 million in federal funds for home elevations after hurricanes Katrina and Rita. The vast majority of these funds - almost \$500 million - have been paid since the programme re-launched in the spring of 2008 with a simplified award process.

- **Small Rental Program** - this programme, developed by the Louisiana Recovery Authority, implemented by the Louisiana Office of Community Development, and funded by HUD, provides funding to property owners to repair their storm-damaged, small-scale rental properties and make their units available to low- and moderate-income tenants at affordable rates. To date, the Rental program offered two rounds of funding under the incentive program. Landlords receive their awards for the incentive program at a closing after their unit is repaired and income-eligible tenants are identified. On December 17, 2008, the state of Louisiana announced a new option for Rental program participants that will provide current programme property owners up-front financing to cover repair and rebuilding expenses in exchange for providing affordable housing once the property is repaired. The up-front financing is an additional option for Rental program participants, but it will not replace the incentive program.
- **Long Term Recovery Program** - this programme provides funds to support implementation of local long-term recovery plans in the most heavily impacted communities in the state. In February 2008, the Louisiana Recovery Authority approved reallocating \$500 million to the programme, bringing the total amount of funding that will be available to the parishes to \$700 million. Funds from this programme will be distributed among parishes in the most heavily impacted areas of the state according to a formula that is based on estimated housing and infrastructure damages inflicted by Hurricanes Katrina and Rita. This is the same formula which was used to distribute the original \$200 million to the districts.

33. Regarding efforts by the State of Mississippi, in August 2008, the Governor issued a report on the third anniversary of Hurricane Katrina, which summarizes many of the ongoing recovery efforts and can be accessed at

<http://www.mississippirenewal.com/documents/GovKatrinaThreeYearReport.pdf>. The report contains a lengthy discussion on Mississippi's efforts to rebuild permanent housing. For rebuilding needs not met by insurance proceeds, Mississippi has designed innovative programmes, using Community Development Block Grants and Gulf Opportunity Zone incentives. Nearly all of the programmes have focused on the development of affordable housing for low and moderate income families. When all of these programmes have been implemented, the state anticipates that it will not only have replaced lost housing stock, but will have created more affordable housing in South Mississippi than existed before Katrina. In addition, on 28 August., the day before the third anniversary of Katrina, Mississippi Governor Haley Barbour announced the appointment of former Biloxi Mayor Gerald Blessey as housing "czar" to oversee post-Katrina state and federal programmes targeting housing needs.

### **Paragraph 36**

#### **Recommendation**

**The Committee recommends that the State party organize public awareness and**

**education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.**

## **Response**

34. Since appearing before the Committee on the Elimination of Racial Discrimination in February 2008, the United States has begun efforts to engage in greater publicity, outreach and training regarding U.S. obligations under the various United human rights treaties to which it is party. Now that the United States is current in meeting its reporting obligations under all of the United Nations human rights treaties to which it is party, the United States Department of State is in the process of formally communicating to federal agencies, the fifty states, federally recognized tribes and other appropriate entities and reminding them of U.S. obligations under the underlying conventions, the recent reports the United States government submitted to the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child, and is including in these materials the observations and conclusions issued by the respective committees.

35. Additionally, the State Department has requested federal agencies with oversight over U.S. laws that implement obligations under the International Convention on the Elimination of All Forms of Racial Discrimination to examine ways in which they can provide training on the Convention as part of their ongoing training activities. Relevant agencies are currently examining ways in which to incorporate such training.

- **Equal Employment Opportunity Commission (EEOC)** - In response to this request, the EEOC has agreed to include information on the Convention in an annual seminar it hosts with the over ninety state and local fair employment practice agencies ("FEPAs") with whom it has work-sharing agreements. As a component of presentations that EEOC staff make on developments in federal equal employment opportunity law, the EEOC will address the role of state and local FEPAs in support of the Federal government in meeting its treaty obligations under the Convention.
  - **Department of Homeland Security (DHS)** - DHS's Office for Civil Rights and Civil Liberties (CRCL) is also committed to providing Convention-related training for its personnel, as well as for its federal, state, and local partners, through the development of the DHS CRCL Civil Liberties Institute.
  - **Department of Justice (DOJ)** - The Department of Justice's Civil Rights Division provides training on the full array of domestic anti-discrimination/civil rights laws, consistent with the Committee's anti-discrimination principles. DOJ is also reviewing possible discussion of the Convention in those trainings.
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\* 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.

1/ See Committee on the Elimination of Racial Discrimination, concluding observations of the Committee on the Elimination of Racial Discrimination -United States of America, CERD/C/USA/CO/6.