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THE CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION

REPORT OF THE
UNITED STATES OF AMERICA

to

THE COMMITTEE ON
THE ELIMINATION OF RACIAL DISCRIMINATION

July 1998

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INTRODUCTION

The Government of the United States of America welcomes the opportunity to report to the Committee on the Elimination of Racial Discrimination on the legislative, judicial, administrative and other measures giving effect to its undertakings under the Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Article 9 thereof. The form and content of this Report follow the General Guidelines adopted by the Committee in July 1993 (CERD/C/70/Rev.3).

This Report has been prepared in the Department of State with extensive assistance from the Civil Rights Division of the U.S. Department of Justice, the Equal Employment Opportunity Commission, the U.S. Civil Rights Commission, and other departments, agencies and entities of the United States Government most closely concerned with the areas covered by the Convention. Substantial contributions were also solicited and received from interested members of the many non-governmental organizations and other public interest groups active in the area of civil rights, civil liberties and human rights in the United States. The Report covers the situation in the United States through the end of 1997 and thus constitutes the initial and first periodic reports (due, respectively, in November 1995 and November 1997) to the Committee.

The United States ratified the Convention on the Elimination of All Forms of Racial Discrimination in October 1994, and the Convention entered into force for the United States on November 20, 1994. In its instrument of ratification, which was deposited with the Secretary General of the United Nations pursuant to Article 17(2) of the Convention, the United States conditioned its ratification upon several reservations, understandings and declarations. These are set forth at Annex I and discussed in some detail at the relevant portions of this Report. The texts of relevant statutory and other legal provisions are appended at Annex II.

Completion and submission of this Report has been guided by the fact that since June 13, 1997, the federal government has been engaged in a major review of domestic race issues. On that date, the President established an "Initiative on Race" and authorized creation of a seven-member Advisory Board to examine issues of race, racism and racial reconciliation and to make recommendations on how to build a more united America for the 21st Century. Executive Order No. 13050, 62 Fed. Reg. 32987 (June 17, 1997). The Advisory Board submitted its report to the President on September 18, 1998. Based on its recommendations, the Administration then proceeded to formulate specific proposals and plans for action. It was judged both necessary and relevant to permit this comprehensive assessment to [proceed] [be completed, and the President's final report issued,] in order to provide the Committee with the

most complete and authoritative information and understanding on the current situation in the United States. To this end, a copy of the Initiative's final report is appended at Annex III. Annex IV includes a chart-book prepared for the President's Initiative by the Council of Economic Advisers entitled "Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin" (September 1998).

Since 1992, the United States has been a party to the International Covenant on Civil and Political Rights, some provisions of which may be considered to have wider application than those of the Convention on the Elimination of All Forms of Racial Discrimination. The initial U.S. Report under the Covenant, which provides general information, was submitted to the Human Rights Committee in July 1994 (HRI/CORE/I/Add.49 and CCPR/C/81/Add.4). The United States also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the same time as it ratified the Convention on the Elimination of All Forms of Racial Discrimination. In February 1995, the United States signed the Convention on the Rights of the Child. On XXX, 1998, the President submitted ILO Convention No. 111 on Elimination of Discrimination in Employment to the Senate for its advice and consent to ratification.

Prior to ratifying the Convention on the Elimination of All Forms of Racial Discrimination, the United States Government undertook a careful study of the requirements of the Convention in light of current domestic law and policy. That study concluded that U.S. laws, policies and institutions of government are fully consonant with the specific provisions of the Convention. Legally, racial discrimination is prohibited throughout the United States, and the principle of non-discrimination is central to governmental policy throughout the country. The legal system provides strong protections against and remedies for discrimination on the basis of race, color, ethnicity or national origin. These laws and policies have the genuine support of the overwhelming majority of the people of the United States, who share a common commitment to the values of justice, equality of treatment and opportunity, and respect for the individual.

It is nonetheless true that race, ethnicity, and national origin continue to play an adverse role in contemporary American society. The domestic struggle to overcome the legacy of slavery and de jure segregation has made major strides over the last half-century but is still incomplete. Current forms of racial discrimination persist against African Americans, American Indians, native Alaskans and other native Americans, Hispanics and Latinos, and Asian Americans, despite the progress associated with the enactment of major civil rights laws beginning in the 1960s. The path towards true racial equality has been uneven, and substantial racial and cultural barriers must still be overcome.

Therefore, even though U.S. law is in conformity with the treaty's requirements, the United States has not yet fully achieved the object and purpose of the treaty. Additional steps are needed to promote the important principles embodied in its text. In this vein, the United States welcomed the visit of the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance during the fall of 1994 and took due note of the report of his findings (E/CN.4/1995/78/Add.1, dated 16 January 1995). In November 1997, the White House convened an unprecedented Hate Crimes Conference to formulate effective responses to the increasing number of violent crimes motivated by racial and ethnic sentiments. The President's Initiative on Race, and the preparation of the current report on implementation of the Convention, are also important parts of that effort.

Reflecting the multi-ethnic, multi-racial and multi-cultural nature of America today, a significant role is undertaken in the private sector, including activities and programs by such non-governmental groups ("NGO's") as the National Association for the Advancement of Colored People (NAACP), Amnesty International, the Urban League, the Lawyers Committee for Human Rights, the American-Arab Anti-Discrimination Committee, the Cuban-American National Council, among many others. NGO's remain a vital part of the overall effort to combat discrimination in America. They played an important role in the Civil Rights Movement, have been actively involved in the President's Initiative on Race, and will be instrumental in working towards full achievement of the purposes of the present Convention.

As a functioning multiracial democracy, the United States seeks to enforce the established rights of individuals to protection against discrimination based upon race, color, national origin, gender, age, disability status and family status, in virtually every aspect of American social and economic life. The law prohibits discrimination in the areas of education, employment, housing and mortgage credit access, public accommodations, voting, in the military, and in programs receiving federal financial assistance. The federal government has established a wide ranging set of enforcement procedures to administer these laws, with the U.S. Department of Justice exercising a major coordination and leadership role on most critical enforcement issues.

We have developed, at the federal and state levels, a broad range of legal and regulatory provisions as well as administrative systems to enforce civil rights. Civil rights enforcement agencies have worked diligently over the last three decades to improve the enforcement of these laws as well as to promote the education, training and technical assistance which are necessary components to complaints processing. In addition, the U.S. Congress has significantly strengthened the enforcement provisions of some of the civil rights statutes (Fair Housing, for example, received increased enforcement and penalty provisions in 1988). The federal government remains committed to providing full, prompt, and effective

administration of these laws. Recent assessments of the laws by the Citizens Commission on Civil Rights and the U.S. Civil Rights Commission have noted that improvements in the administration of various civil rights statutes have occurred over the past several years but that additional actions are required.

Since the time of our Civil War (1861-65), American society has sought to create ever more effective means to address and resolve racial and ethnic differences without violence. The laws adopted during the post-war Reconstruction Era were largely ineffective because of the continuing existence of de jure segregation in the southern states in such key areas as housing, employment, public accommodations and other critical domains of social life. Following World War II, a combination of popular civic action and critical decisions by the Executive and Judicial branches of the federal government set the stage for peaceful strategies for addressing the legacy of slavery. In 1948, the U.S. Supreme Court banned racially restrictive covenants that limited the sale of housing to persons of color. In the same year, President Truman issued an Executive Order requiring equality of treatment for all persons in the U.S. Armed Forces. In 1954, the Supreme Court rendered its landmark school desegregation decision in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), which provided the legal basis for the emergence of the contemporary civil rights movements. Throughout the 1960's and 1970's, peaceful, non-violent approaches have been central to the domestic civil rights revolution and resulted in new laws, programs and institutions.

In each of the areas covered by this Convention, the American people can point with pride at the great strides towards equality which have been made over the past half-century. Regrettably, no government or people in the world can claim to have eliminated racial discrimination within its boundaries or among its populations. Despite the enormous accomplishments which have been achieved, much remains to be done to achieve this important goal. While the scourge of officially-sanctioned segregation has been erased, de facto segregation and persistent racial discrimination continue to exist despite our national adherence to the principles of equality, equal opportunity and equal protection. For instance, as detailed elsewhere in this report, there continues to be clear evidence of discrimination in the housing, credit and employment markets. The forms and variations in discriminatory practice have changed and adapted over time and, for the most part, do not resemble the blatant and open forms of mistreatment practiced twenty to thirty years ago. Discrimination is nonetheless present in American society and continues to restrict and limit equal opportunity. For many, the true extent of contemporary racism remains clouded by ignorance as well as disparities of perception. Recent surveys indicate that, while most whites do not believe there is much discrimination today in American society, most minorities believe the opposite on the basis of their life's experiences.

In recent years, the national conscience has been sharply reminded of unfinished business by such notorious incidents as the 1991 beating of Rodney King by two Los Angeles police officers. After earlier acquittals on state charges, both officers were convicted of federal crimes and sentenced to thirty months' imprisonment. Other recent incidents have included the burning of black churches and mosques in Springfield IL, High Point NC, and Huntsville AL; the brutal murder of James Byrd, Jr., in Jasper, Texas in June 1998; and [here mention incidents likely to have the attention of the Committee].

No country or society is completely free from racism, discrimination and ethnocentrism. None can claim to have achieved complete success in the protection and promotion of human rights. All should welcome open dialogue and constructive criticism. As a society, the United States continues to search for the best means to attack and eliminate all forms of racial discrimination through the various mechanisms available within a pluralistic, federal system of government. The Government of the United States intends to use its commitments and obligations under this Convention to motivate and facilitate a continuing review of the relevant policies, practices and institutions in order to assure full and effective compliance with the treaty.

The United States has long been a vigorous supporter of the international campaign against racism and racial discrimination. We believe that the last half century of progress in addressing the need for anti-discrimination programs has provided us with a useful perspective upon which to offer insights to other countries with diverse and growing minority populations. By the same token, we can learn from the experiences of others. We look forward to a constructive dialogue with the members of the Committee.

PART I. GENERAL

In accordance with the Committee's guidelines, the following sections provide general information about the land and people, the political and legal structure, and the status of human rights in the United States. Additional background information is contained in the Initial Report of the United States to the Human Rights Committee under the International Covenant on Civil and Political Rights (HRI/CORE/I/Add. 49 and CCPR/C/81/Add.4) submitted in July 1994. More detailed statistical information relevant to the issue of racial discrimination is included at Annexes III and IV.

A. Land and People

The United States of America covers 9.629 million sq. km., including the 48 coterminous states which span the North American continent, the states of Alaska and Hawaii, and the various insular areas. The latter include, in the Pacific Ocean, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, Wake and Midway Islands, Johnston Atoll, Howland, Jarvis and Baker Island, Kingman Reef and Palmyra Atoll, and in the Caribbean Sea Puerto Rico, the Virgin Islands and Navassa Island. The geography of these various areas is diverse, as are the climates, vegetation, wildlife and productive agricultural uses.

When the most recent national census was completed in 1990, the population of the United States had reached 248,709,873. As of the end of 1997, the Census Bureau estimated that the total population had increased to 267 million and was growing at a rate of approximately 3 million per year. By the year 2000, the total population is expected to have grown to [Census to elaborate, correct, supplement]

The United States is an increasingly diverse multi-ethnic, multi-racial society. Virtually every national, racial, ethnic, cultural, linguistic and religious group in the world is represented among its population. A majority of the population is white ("caucasian"). Of the total population now exceeding 267 million, approximately 33.8 million (or 13%) identify themselves as black or African American, some 2.3 million (1%) self-identify as American Indian, Eskimo or Aleut, another 10 million (4%) consider themselves to be Asian or Native Hawaiians or other Pacific Islanders -- these being the main groups of racial self-classification now used by the government. There is considerable diversity within these groups, and literally dozens of smaller national, racial and ethnic groups also exist.

Proportionally, the size of these "minority" groups is growing in relation to the majority of the population who identify themselves as "white." Since 1970, the proportion of

non-Hispanic whites has fallen substantially, while the proportion of Hispanics, American Indians, Asians and Pacific Islanders has increased sharply; the percentage that is black or African American has increased more slowly. During the six year period from 1990 to 1996, for example, the black population increased by nearly 13%, the American Indian group by nearly 15%, the Hispanic by 29% and the Asians/Pacific Islanders by 34%, while the non-Hispanic white population grew by only 3%.

The U.S. Census Bureau indicates that non-Hispanic whites constituted 73% of the population as of the end of 1997. According to current estimates, that figure will decline by the middle of the 21st century to 53%, while Hispanics will constitute nearly a quarter of the population, blacks 14%, Asian/Pacific Islanders 8.7% and American Indians and Alaskan Natives 1.1%. Within a matter of years, it is estimated that California, Texas, Maryland and New Jersey will join New Mexico and Hawaii as so-called "majority minority" states.

With regard to ethnicity, approximately 11% of the current population (29 million) consider themselves to be of Hispanic or Latino origin; nearly 60% have roots in Mexico, 12% in Puerto Rico, and 5% in Cuba. The largest number of Mexican Americans is found in Los Angeles County; the largest number of Puerto Ricans is in the five boroughs of New York City; and the largest number of Cubans is in Dade County, Florida. Fifty eight counties in the United States have a majority Hispanic population.

Interracial marriage is increasing at consistently high rates. For example, according to the U.S. Census, 31% of native-born Hispanic husbands and wives between the ages of 25 and 34 are married to white spouses. Among Asian Pacific Americans, some 36% of the men and 45% of the women have white spouses.

Historically, the United States has been a nation of immigrants, and immigration continues to be a driving force in the diversification of the population today. Indeed, the number of immigrants has never been higher, and most are people "of color." According to the 1990 Census, nearly 20 million people, or more than 12% of the current population, were not born in the United States. Roughly one-third of recent population growth has come from immigration, mostly from Mexico, the Philippines, China, Cuba, India, Vietnam and the former Soviet Union. Patterns vary, however, by time and location. According to a recent study by New York City demographers, the largest group of legal immigrants to the city during the period 1990-1994 came from the Dominican Republic; the next most numerous groups were from the former Soviet Union, China (including for these purposes Taiwan and Hong Kong), Jamaica and Guyana. All told, the 563,000 immigrants came from more than 150 different countries.

The United States is increasingly polyglot. While English remains predominant, there is no official language nor are there restrictions on the use of other languages. More than 32 million people, or nearly one in every eight, speak a language other than English, mostly Spanish or Spanish Creole. The 1990 Census revealed that 95% of all U.S. residents say they speak English well. There is no official religion and no governmental regulation of religious activity. While the majority of the religious population is Christian (predominantly Protestants and Roman Catholics), virtually every religion, sect, denomination and belief is represented; Jews and Muslims each make up about 2% of the population, and followers of various Eastern religions comprise about 3%. The resulting mosaic of cultures enriches contemporary American society and strengthens its commitment to freedom and tolerance.

The diversity of the contemporary American population is striking, especially when compared to the other most populous countries in the world (for example, China, India, Indonesia, Brazil, Russia, Pakistan, Bangladesh and Japan). As a result it is difficult to make generalizations about the condition of minorities in the United States. Not all minorities in the country have shared identical or even similar experiences, and the experiences of all minorities cannot be determined by examining those of one group.

About three quarters of all people in the United States live in urban areas, with the term "urban" meaning 2500 or more residents in an area incorporated as a city, village or town. In 1990, according the Census, Hispanics, Asians and blacks were much more likely than whites or native Americans to live in central city areas. Nearly half of all native Americans lived in rural areas, and 37% lived on reservations or in other American Indian or Alaskan Native areas. Hispanics and American Indians are heavily concentrated in the western and to a lesser extent the souther parts of the country. Despite massive outmigration throughout the 20th century, a majority of the black population continues to live in the South.

B. General Political Structure

The United States of America is a federal republic of 50 states, together with a number of commonwealths, territories and possessions. At the national level, the U.S. Constitution establishes a democratic system of governance and guarantees a republican system at the state and local level. It establishes the will of the people as the basis of governmental legitimacy.

The federal government consists of three branches: the executive, the legislative and the judicial. The executive branch is headed by the President, who is elected for a term of four years. The President has broad powers to manage national affairs and the workings of the federal government, including the various executive departments and agencies. The U.S. Constitution vests the legislative powers in the Congress, which consists of the U.S. Senate

and the U.S. House of Representatives. Each State elects two Senators for six year terms. The terms are staggered so that one third of the Senators are elected every two years. By contrast, U.S. representatives are each elected for two year terms, and the 435 seats in the House of Representatives are allotted to each state on the basis of population, with one representative elected from each congressional district. The third branch consists of a system of independent federal courts headed by the Supreme Court of the United States and including subordinate courts throughout the country. The power of the federal judiciary extends to civil actions for money damages and other forms of redress as well as to criminal cases arising under federal law. The Constitution safeguards judicial independence by providing that federal judges shall hold office "during good behavior" - in practice, until they die, retire or resign.

At the state level, this tripartite governmental structure is replicated, with each state having its own constitution and executive, legislative and judicial branches. The state governor acts as head of the executive; all state legislatures have two houses (except Nebraska's); and most state courts systems mirror the federal, with at least three levels, often more. Most states are divided into counties, and areas of population concentration are incorporated into municipalities or other forms of local government (cities, towns, townships, boroughs, parishes or villages). In addition, every state includes school and special service districts to provide systems of education and various other public services (e.g., water, sewer, fire and emergency, higher education, hospital services, transportation). The result is that literally hundreds of governmental entities and jurisdictions exist at the state and local levels; for the most part, the leaders of these entities are elected, although some are appointed by others who are elected. The power of these governmental entities is vast, and each state is in many respects a sovereign entity, free to promulgate and enforce law and policy pertaining exclusively to matters within its jurisdiction.

A significant number of U.S. citizens (approximately X millions or Y%) live in areas outside the 50 states and yet within the political and legal framework of the United States. These areas include: the District of Columbia (seat of the national government and a federal enclave); the unincorporated territories of American Samoa, the U.S. Virgin Islands, and Guam; the Commonwealth of Puerto Rico; and the Commonwealth of the Northern Mariana Islands. While the specific governmental framework for each is largely determined by the areas's historical relationship with the United States, all reflect substantial self-government and the inhabitants are all accorded the fundamental guarantees of the U.S. Constitution.

A special relationship exists with American Indians and Alaskan Natives. While the diversity of the indigenous North American population makes generalizations difficult (there are more than 550 American Indian and Alaskan Native tribes, speaking more than 150 different languages), many enjoy considerable governmental autonomy on reservations or

other Indian lands. The provision of "federal recognition" reflects the principles of self-determination and government-to-governmental relations founded on acceptance of tribal sovereignty. Other tribal groups have over time been assimilated into local society. All are U.S. citizens and enjoy the fundamental protections of the U.S. Constitution.

C. General Legal Framework

The essential guarantees of human rights and fundamental freedoms within the United States are set forth in the U.S. Constitution and statutes of the United States, as well as the constitutions and statutes of the several states and other constituent units. In practice, the enforcement of these guarantees ultimately depends on the existence of an independent judiciary with the power to invalidate acts of the other branches of government which conflict with those guarantees. Maintenance of a republican form of government with vigorous democratic traditions, popularly elected executives and legislatures, and the deeply-rooted legal protections of freedoms of opinion, expression, religion and the press, all contribute to the protection of fundamental rights against governmental limitation and encroachment.

The U.S. Constitution is the central instrument of government and the supreme law of the land. Adopted in 1789, it is the world's oldest written constitution still in force. Together with its 27 amendments (the first 10 are known as the "Bill of Rights"), the Constitution guarantees the essential rights and freedoms of all individuals within the United States. State constitutions and laws may, and sometimes do, provide stronger protections than federal law (for example, in the area of freedom of religion and expression) but none may fall below the basic guarantees of the federal Constitution.

Neither the U.S. Constitution nor the laws of the United States provide for the declaration of a state of emergency entailing suspension of the normal operations of the government or permitting derogations from fundamental rights. The basic requirement for a republican form of government, the general functions of the three branches of government, and most of the fundamental civil and political rights enjoyed by individuals, are all enshrined in the federal Constitution and thus remain in effect at all times, even during crisis situations.

There is no single statute, institution or mechanism in the United States by which internationally recognized human rights and fundamental freedoms are guaranteed or enforced. Rather, domestic law provides extensive protections through various constitutional provisions and statutes which typically provide for administrative and judicial remedies both at the federal and state levels. Responsibility for identifying violations and enforcing compliance is therefore shared among the various branches at all levels of government. In practice, a major impetus derives from individual remedial actions, advocacy by non-governmental

organizations, legislative monitoring and oversight, and the ameliorative efforts of a free and energetic press.

Several parts of the federal government bear special responsibilities for matters directly relevant to this Convention. The Civil Rights Division of the Department of Justice serves as the chief civil rights enforcement agency for the federal government, charged with the effective enforcement of federal civil rights laws, in particular the Civil Rights Acts of 1964 and 1991, the Voting Rights Act of 1965, and Executive Order No. 12250 (which requires all executive departments and agencies to eliminate racial, religious and sex discrimination). The Division enforces laws prohibiting police misconduct. It also enforces parts of the Equal Credit Opportunity Act and the Fair Housing Act (primary responsibility for administration of the latter statute is vested in the Secretary of Housing and Urban Development). Under these various statutes, the Division may bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, and in some instances is empowered to prosecute those who use force or threat of force to violate a person's rights to non-discrimination. The Justice Department's responsibilities permit it to seek broader remedial orders that may include both punitive damages as well as education, training and affirmative action hiring issues essential to full effective, affirmative relief.

The Equal Employment Opportunity Commission, an independent agency within the executive branch established by the Civil Rights Act of 1964, has oversight and compliance responsibilities concerning the elimination of discrimination based inter alia on race, color and national origin (as well as religion, gender, age and disability) by private employers in all aspects of the employment relationship. In FY 1996, the Commission obtained \$145 million in monetary benefits (excluding litigation awards) for parties bringing discrimination charges, through settlement and conciliation.

While not an "enforcement agency," the U.S. Commission on Civil Rights has a broad mandate to monitor and report on the status of civil rights protections in the United States. As an independent, bipartisan agency, it collects information on discrimination or denials of equal protection of the laws because of race, color, and national origin, evaluates federal laws, and makes recommendations to the President and the Congress concerning the effectiveness of governmental equal opportunity and civil rights programs.

Other federal departments and agencies also have important enforcement responsibilities. For example:

-- Within the Department of Education, the Office of Civil Rights is charged with administering and enforcing the civil rights laws related to education, including desegregation

of the country's elementary and secondary schools. This Office gives particular attention to discrimination against minorities in special education and remedial courses, in math and science and advanced placement courses, in the use of tests and assessments, and in higher education admissions.

-- The Assistant Secretary for Fair Housing and Equal Opportunity within the Department of Housing and Urban Development administers the laws prohibiting discrimination in public and private housing and ensures equal opportunity in all community development programs. HUD's Office of Fair Housing and Equal Opportunity administers two grant programs: the Fair Housing Assistance program (which provides financial assistance to supplement enforcement activities at the state and local levels) and the Fair Housing Initiatives Program (a competitive grant program to provide funding to private fair housing groups).

-- The Office of Civil Rights within the Department of Health and Human Services administers civil rights laws prohibiting discrimination in federally-assisted health and human services programs, with particular emphasis on areas of managed care, quality of health care, inter-ethnic adoption, services to limited English proficient persons, and welfare reform.

-- Authorities within the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) administer programs dedicated to equality in government contracting, and the Department's Civil Rights Center enforces federal statutes and regulations that prohibit discrimination on the basis of disability in various activities conducted by the Department of Labor.

-- Within the Department of Agriculture, civil rights programs are aimed at ensuring that all USDA customers and employees are treated fairly and equitably; the Secretary of that Department has recently attempted to rebuild these programs after numerous complaints, including litigation by African American farmers alleging discriminatory treatment in the provision of funds and services.

In the U.S. Congress, special emphasis has long been given to matters involving discrimination on the basis of race, color, national origin, and ethnicity. In addition to the oversight functions of various standing committees in both Houses (such as Judiciary, Indian Affairs, and Commerce, Justice, State, the Judiciary and Related Agencies), attention is focused through less formal mechanisms such as the Black, Hispanic and Human Rights Caucuses.

Under Article VI of the U.S. Constitution, duly ratified treaties become part of the "supreme law of the land" with a legal status equivalent to enacted federal statutes. As such,

they prevail over previously enacted federal law (to the extent of any conflict) and over any inconsistent state or local law. As discussed below, treaties may be deemed “self-executing” or not. For present purposes, this distinction relates primarily to the ability of private individuals to bring suits directly on the basis of the treaty in the absence of implementing legislation. Designating a treaty as not “self executing” does not alter the international obligations assumed by the United States in ratifying the treaty in question.

Because existing U.S. law already provides constitutional and statutory protections against, and remedies for, racial discrimination sufficient to meet the requirements of the Convention, it was deemed unnecessary, at the time of ratification, to propose specific new implementing legislation for this treaty in particular. Should continuing review of U.S. compliance indicate that such legislation would be appropriate, it will of course be considered.

D. Information and Publicity

In the United States, information about human rights in general, and the various human rights in particular, is readily available. As a general matter, people are well-informed about their fundamental civil and political rights, including the rights of equal protection, due process, and non-discrimination. The scope, meaning and 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.

Information about human rights treaties is freely and readily available to any interested person in the United States. The constitutional requirement that the U.S. Senate give its advice and consent to ratification of a treaty ensures that there is a public record of its consideration, typically on the basis of a formal transmittal by the President, a record of the Senate Foreign Relations Committee’s hearing and report to the full Senate, and the action of the Senate itself. Moreover, the text of any treaty, whether or not the United States is a party, can be readily obtained from any number of sources, including the Library of Congress, public libraries, educational institutions, and non-governmental organizations. Increasingly, information about human rights, civil rights and related subjects is available from the World Wide Web and other sites on the Internet. For example: [list/describe main websites: DOL, HUD, DOJ, State].

In the case of the Convention on the Elimination of All Forms of Racial Discrimination, the record of its consideration is set forth in several official documents, including inter alia the initial Message from the President transmitting the Convention to the Senate on February 23, 1978 (Sen. Exec. Doc. 95-C); the printed record of the public hearings before the Senate Foreign Relations Committee on May 11, 1994 (S. Hrg. 103-659); the Report and Recommendation of the Senate Foreign Relations Committee, dated June 2, 1994.

(Sen. Exec. Rep. 103-29), and the record of consideration on the floor of the Senate (Cong. Rec. S6601, daily ed. June 8, 1994).

At the May 1994 hearing before the Senate Foreign Relations Committee, representatives of various non-governmental organizations involved in human rights, as well as concerned academics and legal practitioners, testified in person or submitted written comments for consideration by the committee and inclusion in its formal records. The Administration was represented by the Assistant Attorney General for Civil Rights, the Assistant Secretary of State for Democracy, Human Rights and Labor, and the Legal Adviser of the Department of State.

As part of its program to increase public awareness of human rights obligations throughout the country, this Report will be published and made available to the public through the Government Printing Office and the depositary library system, much as was done with the Report on compliance with the International Covenant on Civil and Political Rights. In addition, copies of the Report and the Convention will be widely distributed within the executive branch of the U.S. Government and to federal judicial authorities, as well as to relevant state officials, state and local bar associations, and non-governmental human rights organizations.

DRL/CRC: please outline additional steps to distribute/disseminate information regarding this treaty and basic human rights protections within the US; steps to promote treaty as the law of the land and to bring US law and practice into conformity. Also, what can be said about human rights education, public awareness, ngo activities, etc. Can we say anything about the proposed inter-agency human rights working group? Link to publication/dissemination of the PIR Report. **PIR:** Additions?

E. Factors Affecting Implementation

While there has been significant progress in the improvement of race relations in the United States over the past half century, serious obstacles remain to be overcome. Discrimination is far less pervasive than 30 years ago, yet de facto discrimination against minority individuals and groups persists in American society. This affects not only African Americans but also Native Americans and Hispanics, as well as other races, nationalities and

ethnicities. In its contemporary dimensions it takes a variety of forms, some more subtle and elusive than others. Among the principal causative factors are: [here we should identify briefly the major areas and causes of shortcoming in achieving the goals of the Convention; it's the best place for notorious anecdotal illustrations likely to be familiar to members of the Committee or to be highlighted by the NGO's and advocates]

- The persistence of attitudes, policies and practices reflecting a legacy of segregation, discrimination and disparities in opportunity and achievement. Governments at all levels must undertake new efforts to promote a constructive dialogue among the races, to eliminate racial stereotyping, and to combat implicit assumptions and hidden biases. Stronger protection against racially motivated "hate crimes" is needed.

- Inadequate enforcement of existing anti-discrimination laws, and underfunding of federal and state civil rights agencies. Governments at all levels must have and use adequate resources to ensure the laws are effectively enforced on behalf of every racial and ethnic group in the country.

- Insufficient data on racial and ethnic issues. Many white persons do not believe that racial discrimination is a common or active form of mistreatment and are therefore less supportive of race conscious remedial actions.

- Economic disadvantage. In contemporary America, persons belonging to minority groups are disproportionately at the bottom of the income distribution curve. While it is inaccurate to equate minority status with poverty, nonetheless members of minority groups are more likely to be poor than are non-minorities. It is also true, in the United States as elsewhere, that almost every form of disease and disability is more prevalent among the poor, that the poor face higher levels of unemployment, that they achieve lower educational levels, that they are more frequently victimized by crime, and that they are increasingly found in urban or "inner city" environments which exacerbate these problems.

- Persistent discrimination in employment and labor relations, especially in the areas of salary and compensation, but also hiring, tenure, training, promotion layoff and in the work environment. Over the past few years, for example, complaints against major employers in the news including Texaco, Shoney's, General Motors, Pitney Bowes, Avis

- Continued discrimination in housing and credit markets, in rental and sales of homes, denial of fair and equal treatment in public accommodation and consumer goods

- Lack of educational opportunities. Minorities as a whole lack adequate early

childhood learning opportunities, attend comparatively under-funded primary and secondary schools, are less likely to have completed high school and therefore less likely to be able to take advantage of higher education.

- Most importantly, discrimination in the criminal justice system. There is ample documentation of adverse treatment of blacks, Hispanics, Latinos and other minorities by police and law enforcement personnel at all levels, especially through the use of “racial profiling” techniques. They suffer from less favorable prison conditions, are affected by disparate sentencing provisions in drug cases, are more likely to be sentenced to death in capital cases.

- Health care. [Elaborate: Health care insurance and coverage needs to be expanded, especially through full funding of the Race and Ethnic Health Disparities Initiative.]

- Refugees and asylum. [Need to note allegations of racism and discrimination; Haiti, Cuba, Central America]

PART II: INFORMATION RELATING TO ARTICLES 2 TO 7

Since the Civil War (1861-65), the United States has worked to develop the correct configuration of constitutional, statutory and voluntary cooperation to transform race relations from conditions of slavery for African Americans to one of legal and actual parity. Because the relevant laws derive from specific historical and social circumstances over this lengthy period, they have taken a particular shape which does not readily parallel the specific articles of the Convention. Some aspects of this body of law, and of the national political structure, required the United States to condition its adherence to the Convention on a few narrowly crafted reservations, understandings and declarations. Hence, it is useful to preface the discussion of the specific articles with the following background information.

A. Prohibition of Racial Discrimination

Existing U.S. constitutional and statutory law and practice provide strong and effective protections against discrimination on the basis of race, color, ethnicity or national origin in all fields of public endeavor as well as remedies for anyone who, despite these protections, becomes a victim of discriminatory acts or practices anywhere within the United States or subject to its jurisdiction.

The Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of

the United States provide protections against racial discrimination. Several statutes enacted by Congress since the Civil War of 1861-1865 expand these protections. These include the 1866, 1871 and 1954 Civil Rights Acts, the Voting Rights Act of 1965, and the Fair Housing Act. Moreover, most states and large cities in the United States have statutory and administrative schemes for protecting individuals from discrimination in fields actively regulated by state and local governments. Existing U.S. law also provides extensive remedies and avenues for redress for acts of discrimination.

1. U.S. Constitution

The constitutional protections against racial discrimination are contained in the Thirteenth, Fourteenth and Fifteenth Amendments, all of which were ratified in a five-year period following the conclusion of the Civil War in 1865, and in the Fifth Amendment, which since 1954 has been construed to forbid the federal government from engaging in racial discrimination.

(a) Thirteenth Amendment. The Thirteenth Amendment abolished slavery. Section 2 of the Amendment authorizes Congress to enforce the prohibition of slavery through "appropriate legislation." As set forth below, a few civil rights statutes have been enacted pursuant to Section 2 of the Thirteenth Amendment. It is clear that the Thirteenth Amendment and legislation implementing its commands are consistent with the Convention.

(b) Fifth and Fourteenth Amendments. The part of the Fourteenth Amendment that speaks to racial discrimination is the Equal Protection Clause, which provides that "[n]o State shall deny to any person within its jurisdiction the equal protection of the laws." Equal protection strictures apply to the federal government through the Due Process Clause of the Fifth Amendment. Bolling v. Sharpe, 347 U.S. 497 (1954).

The U.S. Supreme Court has interpreted the Equal Protection Clause as a "direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). In essence, it precludes governments from adopting unjustifiable legal distinctions between groups of people. Plyler v. Doe, 457 U.S. 202, 216-219 (1982). Over time, the Supreme Court has made plain that distinctions based on race or national origin are inherently suspect, and thus are rarely justifiable. McLaughlin v. Florida, 379 U.S. 184, 192 (1964). When challenged in court, such distinctions are subject to "strict scrutiny," the most exacting standard of constitutional review. Under strict scrutiny, a classification violates the Equal Protection Clause unless it is necessary to promote a "compelling state interest" and is "narrowly tailored" to achieve that interest. Palmore v. Sidoti, 466 U.S. 429, 432 (1984). In practice, most racial or ethnic classifications fail to

satisfy those standards. Bernal v. Fainter, 467 U.S. 216, 219 n.6 (1984). Moreover, strict scrutiny applies not only to laws that specifically categorize individuals on the basis of race or ethnicity, but also to ostensibly neutral laws that are enforced only against certain racial or ethnic groups. Personnel Administrator v. Feeney, 442 U.S. 256, 277 (1979) (citing Yick Wo v. Hopkins, 118 U.S. 356 (1886)).

Even where racial or ethnic classifications are not at issue, strict scrutiny applies to legal distinctions that interfere with the exercise of certain fundamental rights that the Supreme Court has determined are subject to equal protection guarantees. Under this strand of equal protection doctrine, the Supreme Court has invalidated discriminatory measures in the areas of voting, Harper v. Virginia State Board of Education, 383 U.S. 663 (1966), inter-state and foreign travel, Aptheker v. Secretary of State, 378 U.S. 500 (1964), and access to court systems, Griffin v. Illinois, 351 U.S. 12 (1956).

In short, the Equal Protection Clause, as interpreted in the Supreme Court's suspect classification and fundamental rights jurisprudence, is consistent with the enumerated guarantees of Article 5 of the Convention.

(c) Fifteenth Amendment. The last of the post-Civil War era Amendments, the Fifteenth Amendment provides that the right to vote "shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." This is consistent with the voting guarantee that is among the rights enumerated in Article 5 of the Convention.

2. Federal Legislation

Since the Civil War, Congress has adopted a number of statutes designed to supplement and expand upon the prohibitions of the Thirteenth, Fourteenth and Fifteenth Amendments in an effort to eliminate racial discrimination in a broad range of governmental, economic and social activity.

(a) The 1866 and 1871 Civil Rights Acts. Now codified at 42 U.S.C. §§ 1981-85, these Reconstruction-era statutes prohibit racial discrimination in the making and enforcement of private contracts (including employment, education, health care and recreational facilities) (§ 1981) and in the inheritance, purchase, sale or lease of real and personal property (§ 1982); they also provide causes of action for civil damages against anyone who under "color of law" subjects another to unlawful discrimination (§ 1983), as well as those who conspire to deprive individuals of their federally secured rights (§ 1985). [describe briefly setbacks under Slaughterhouse cases]

(b) The Civil Rights Act of 1964. Often described as the most important civil rights legislation in U.S. law, this statute prohibits discriminatory acts involving public accommodation, federally-funded programs and private employment.

(i) Title II of the Act, codified at 42 U.S.C. § 2000a, prohibits discrimination on the basis of “race, color, religion or national origin” in places of “public accommodation,” which are defined broadly to include hotels, theaters, golf courses, gasoline stations, dining and entertainment facilities serving or affecting interstate commerce. While this statute has in practice been broadly applied (for example, to cover theaters, bars and golf courses), it contains an exception for private clubs and other establishments not in fact open to the public.

(ii) Title VI, codified at 42 U.S.C. § 2000d et seq., provides that no person in the United States shall be excluded from participation in, or denied the benefits of, any federally-funded or assisted program or activity on account of race, color or national origin. This provision has had a particularly salutary effect in the continuing efforts to eliminate de jure school segregation and its vestiges as well as housing segregation.

(iii) Title VII, codified at 42 U.S.C. § 2000e et seq., is the primary federal statute addressing discrimination in employment. Subject to certain exceptions, it prohibits discrimination on the basis of race, color and national origin (among other factors) in hiring, compensation, conditions of employment and dismissals by employers, labor organizations and employment agencies affecting commerce. Smaller employers are prohibited from engaging in intentional discrimination on the basis of race by § 1981. Complaints under this statute are initially filed with the Equal Employment Opportunity Commission. In 1991, Congress amended Title VII to provide additional remedies for intentional discrimination in the workplace.

(c) The Voting Rights Act of 1965. Among the most fundamental rights in any democratic system is the right to participate freely in the government of one's country without discrimination on the basis of race, color or national origin. In the United States, the Fifteenth Amendment has prohibited denial of the right to vote on the basis of race, color or previous condition of servitude since 1870, and the Twenty-Fourth Amendment has precluded such other potentially discriminatory practices as poll taxes and literacy tests since 1964. In 1965, Congress supplemented these guarantees by adopting the Voting Rights Act, 42 U.S.C. §§ 1973-73c, which forbids states and their political subdivisions from using any voting qualification, standard, practice or procedure to deny or abridge the right of any U.S. citizen to vote on account of race or color or because of membership in a language minority group. As interpreted, this statute also reaches discrimination on the basis of ethnic or national origin. It also requires that bilingual voting information be made available where more than

5% of the population or 10,000 individuals speak a language other than English. The statute was amended in 198?? to prohibit practices that result in denial or abridgment of the right to vote.

(d) The Fair Housing Act. This statute, originally enacted as Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments Act of 1988, is codified at 42 U.S.C. §§ 3601-19. It prohibits discrimination on the grounds of, inter alia, race, color, religion, or national origin in the sale or rental of housing as well as in real estate related transactions (i.e., lending, insurance, and appraisal practices) and brokerage services. Exceptions are provided for private clubs, single family dwellings and owner-occupied boarding houses with no more than three other family units, except when the owner uses the services of real estate brokers or others.

(e) Other Federal Statutes. Equal Credit Opportunity Act? Americans with Disabilities? Immigration 1965 in so far as it eliminated racial quotas from the immigration selection system

[DOJ/DOL/HHS/HUD elaborate]

3. State Anti-Discrimination Measures

Most of the states, and many large cities, have adopted their own statutory and administrative schemes for protecting individuals from discrimination in fields actively regulated by state and local governments. For example, state constitutions and statutes typically protect individuals from discrimination in housing, employment, public accommodations, government contracting, credit transactions and education. As a result, a particular discriminatory act might well violate federal, state and local law -- each with their own sanctions. To a varying extent, states may provide protections which differ from or exceed the minimum requirements of federal law. Where such protections exist, state or municipal law also provides judicial or administrative remedies for victims of discrimination.

[Needs to be expanded, by describing (one-two paras) the structure/provisions/protections of New York, California, Florida, etc., indicating some examples where state/local protections are broader/stronger/more far-reaching than the related federal provisions. Best examples to be included in Annex II]

Today there exist some 85 state and local agencies with laws equivalent to the federal

Fair Housing Act [HUD: elaborate].

[EEOC: can you elaborate on funding of equivalent state and local agencies.]

B. U.S. Reservations, Understandings and Declarations

While U.S. law and policy are broadly consonant with the requirements of the Convention, the concurrence is not exact in all respects. The principal points of difference concern: (a) the Convention's prohibitions concerning advocacy and incitement, which to a certain extent conflict with constitutional guarantees of free expression and association, (b) the Convention's requirements to restrict the activities of private persons and non-governmental entities, which in some instances lie beyond the reach of current U.S. law, and (c) the express extension of the Convention's restrictions to all levels of political organization, which implicates the delicate relationship between the state and federal governments in the United States systems. While these differences are mostly ones of approach rather than substance, they nonetheless required clarification in the context of U.S. ratification of the Convention.

In making these clarifications, the United States took particular note of Article 20, which precludes reservations which are "incompatible with the object and purpose of the Convention" or "the effect of which would inhibit the operation of any of the bodies established by the Convention." While the prohibition against incompatibility is well-established in international treaty law, paragraph 2 of this Article also provides that "[a] reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it." This provision is clearly intended to protect the integrity of the Convention as a uniform and widely-adopted international standard against racial discrimination, to which States Parties conform their domestic law to the greatest possible extent. The United States supports this goal.

It is the considered view of the United States that none of these reservations, understandings or declarations is incompatible with the object and purpose of the Convention or otherwise violative of international law.

1. Freedom of Speech, Expression and Association

Article 4 of the Convention explicitly requires States Parties to condemn all propaganda and all organizations based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred

and discrimination in any form. States Parties are further required to take immediate and positive measures to "eradicate all incitement to, or acts of, such discrimination" *inter alia* by (a) punishing the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and acts of violence or incitement to acts of violence, as well as the provision of assistance to racist activities, including financing; (b) prohibiting organizations and activities which promote and incite racial discrimination, including participation in such organizations and activities; and (c) preventing public authorities or institutions, whether national or local, from promoting or inciting racial discrimination.

Article 7 imposes an undertaking on States Parties to take measures to combat prejudice and promote tolerance in the fields of teaching, education, cultural and training.

These provisions reflect a widely held view that penalizing and prohibiting the dissemination of ideas based on racial superiority are central elements in the international struggle against racial discrimination. The Committee itself has given a broad interpretation to Article 4, in particular emphasizing in General Recommendations I (1972) and VII (1985) the mandatory requirements of Article 4(a) and (b), and its view that the prohibition against the dissemination of all ideas based on racial superiority or hatred is compatible with the rights of freedom of opinion and expression. Many other States Parties to the Convention have enacted and enforced measures to give effect to these requirements.

As a matter of national policy, the U.S. Government has long condemned racial discrimination (including the heinous practice of apartheid), and it engages in many activities both to combat prejudices leading to racial discrimination and to promote tolerance, understanding and friendship among national, racial and ethnic groups. Such programs include those under the authority of Title VI of the Civil Rights Act, the Fair Housing Act, the Bilingual Education Act, the Mutual Educational and Cultural Exchange Act of 1961, the International Education Act (Title VI of the HEA of 1965), and the National Foundation on the Arts and the Humanities Act of 1965. Further, the Hate Crimes Statistics Act of 1990 mandates collection by the Justice Department of data on crimes motivated among other things by race.

However, the government's ability to restrict or prohibit the expression or advocacy of certain ideas, however objectionable, is sharply curtailed by the First Amendment to the U.S. Constitution. Under the First Amendment, opinions and speech are protected without regard to content. Certain types of speech, intended and likely to cause imminent violence, may constitutionally be restricted, so long as the restriction is not undertaken with regard to the speech's content. For example, several federal statutes punish "hate crimes," i.e., acts of violence or intimidation motivated by racial, ethnic or religious hatred and intended to

interfere with the participation of individuals in certain activities such as employment, housing, public accommodation, use of public facilities, and the free exercise of religion. See 18 U.S.C. §§ 241, 245, 247; 42 U.S.C. § 3631. An increasing number of state statutes are similarly addressed to hate crimes, and while they too are constrained by constitutional protections, the U.S. Supreme Court has recently determined that bias-inspired criminal conduct may be singled out for especially severe punishment under state law. See R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377 (1992), Wisconsin v. Mitchell, 508 U.S. 476 (1993). Nonetheless, in most circumstances, speech itself is protected regardless of its content.

The requirements of Article 4 of the Convention are thus inconsistent with the First Amendment. During the drafting of Article 4, the U.S. delegation expressly recognized that it posed First Amendment difficulties, and upon signing the Convention in 1966, the United States made a declaration to the effect that it would not accept any requirement thereunder to adopt legislation or take other actions incompatible with the U.S. Constitution. A number of other States Parties have conditioned their acceptance of Article 4 by reference to the need to protect the freedoms of opinion, expression, association and assembly recognized in the Universal Declaration of Human Rights.

In becoming party to the International Covenant on Civil and Political Rights in 1992, the United States faced a similar problem with respect to Article 20 of that treaty. In part because the Human Rights Committee had adopted a similarly broad interpretation of that article in its General Comment 11 (1983), the United States entered a reservation intended to make clear that the United States cannot and will not accept obligations which are inconsistent with its own constitutional protections of free speech, expression and association. A similar reservation was therefore adopted with respect to the current Convention. It reads:

"[T]he Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

2. Private Conduct

Given the breadth of the definition of "racial discrimination" under Article 1(1), the obligation imposed on States Parties 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) as well as Articles 3 and 5, the Convention may be viewed as imposing a requirement on the government of a State Party 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.

Since the time of the Civil Rights Cases, 109 U.S. 3 (1883), it has been clear that the Fourteenth Amendment prohibits "[s]tate action of a particular character" and that, by contrast, "[i]ndividual invasion of individual rights is not the subject-matter of the amendment." *Id.* at 11. The "state action" requirement of the Equal Protection Clause reflects a traditional recognition of the need to preserve personal freedom by circumscribing the reach of governmental intervention and regulation, even in situations where that freedom is exercised in a discriminatory manner.

In determining whether state action for Fourteenth Amendment purposes is present in a given case, the critical inquiry under U.S. domestic law is whether the conduct of a private party is "fairly attributable" to the state. Lugar v. Edmonson, 457 U.S. 922, 937 (1982). Under that test, governmental involvement with private parties is often insufficient to trigger a finding of state action. For example, in and of itself, government licensing and regulation of private entities is not state action. Moose Lodge No. 107 v. Irvin, 407 U.S. 163 (1972) (licensing); Jackson v. Metropolitan Edison, 419 U.S. 345 (1974) (regulation). That is also the case with government contracting. Blum v. Yaretsky, 457 U.S. 991 (1982). However, state employees acting under color of law are generally "state actors." West v. Atkins, 487 U.S. 42 (1988). In addition, the Supreme Court has held the following constitutes state action: the private performance of "public functions," Marsh v. Alabama, 326 U.S. 501 (1946); judicial enforcement of private discriminatory arrangements, Shelley v. Kraemer, 334 U.S. 1 (1948); certain forms of governmental assistance or subsidies to private parties, Norwood v. Harrison, 413 U.S. 455 (1973); and state encouragement of discrimination by private parties, Reitman v. Mulkey, 387 U.S. 369 (1967).

Furthermore, the Thirteenth Amendment's prohibition against slavery and involuntary servitude does encompass both governmental and private action. Civil Rights Cases, 109 U.S. 3, 20 (1883). The U.S. Supreme Court has held that Congress may regulate private conduct under § 2 of the Thirteenth Amendment, which provides that "Congress shall have the power to enforce this article by appropriate legislation." Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). Such power includes determining what constitutes the "badges and incidents of slavery and the authority to translate that determination into effective legislation." *Id.* at 440. See also United States v. Kozminski, 487 U.S. 931, 942 (1988) (discussing Thirteenth Amendment right to be free from involuntary servitude). Until the 1968 decision, there had been little/no use of the Thirteenth Amendment for housing discrimination cases.

Although Jones could be read as authorizing Congress to regulate a broad array of harms on the ground that they were a form of servitude and slavery, the Court has had no occasion to define the outer limits of Jones. The Court has intimated, however, that "some private discrimination ... in certain circumstances" is subject to legislation under § 2 of the Thirteenth Amendment. See Norwood v. Harrison, 413 U.S. 455, 470 (1973). The Reconstruction-era civil rights statutes, which are predicated on the Thirteenth Amendment, reach private action. For instance, under the Reconstruction-era civil rights statutes discussed above, § 1982 has been used to prohibit private actors from engaging in racial discrimination in a variety of activities, including the sale or rental of private property, see Jones, supra, 392 U.S. at 413; the assignment of a lease, see Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969); and the grant of membership in a community swimming pool, see Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 410 U.S. 431 (1973). Racial restrictions in the making and enforcement of private contracts are prohibited by § 1981, see Patterson v. McLean Credit Union, 491 U.S. 164, 272 (1989); see also Runyon v. McCrary, 427 U.S. 160 (1976) (reaching refusal of private school to admit black students). Finally, § 1985(3) has been applied to some private conspiracies. Compare Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993) (demonstrations against abortions clinics not within scope of statute) with Griffin v. Breckenridge, 403 U.S. 88 (1971) (conspiracy to deprive blacks of right of interstate travel within reach of statute).

In addition to the Thirteenth Amendment, Congress may regulate private conduct through the Commerce and Spending powers that it possesses under Article I of the Constitution. For example, it was under the Commerce Clause that Congress passed Title II and Title VII of the 1964 Civil Rights Act, which prohibit private entities from discriminating in public accommodations and employment. Katzbach v. McClung, 379 U.S. 294 (1964). The Fair Housing Act is similarly grounded in the Commerce Clause. And it was under its Spending Power as well as its authority under Section 5 of the Fourteenth Amendment that Congress passed Title VI of the 1964 Civil Rights Act, which prohibits discrimination by public and private institutions that receive federal funds. Lau v. Nichols, 414 U.S. 563 (1974).

Arguably, the reference to "public life" in the definition of "racial discrimination" in Article 1(1) of the present Convention might be read to limit the reach of its prohibitions to actions and conduct involving some measure of governmental involvement or "state action." The negotiating history of the Convention is far from clear on this point, however, and it is certainly not possible to say with assurance that the term "public life" as contemplated by the drafters is synonymous with the permissible sphere of governmental regulation under U.S. law. Moreover, the Committee appears to have taken an expansive view in this regard, finding in the Convention a prohibition against racial discrimination perpetuated by any person or group against another. Accordingly, some forms of private individual or organizational

conduct which are not now subject to governmental regulation could well be found within the sphere of "public life" as that term is interpreted under the Convention.

Accordingly, it is appropriate to indicate clearly, 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."

3. Dispute Settlement

In accordance with its long-standing policy, the United States also conditioned its adherence upon a reservation requiring its consent to the exercise of the jurisdiction of the International Court of Justice over any dispute which might arise between it and another State Party. The text of this reservation is identical to those recently taken upon ratification of other treaties, including the ICCPR:

"[W]ith reference to Article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

4. Federalism

Given its constitutional roots and its embodiment in the extensive statutory provisions enacted by Congress over the decades, federal anti-discrimination law is pervasive and reaches the state and local levels of government as well as the federal. It provides the basis for broad

regulation of racially-discriminatory conduct at the private level as well. Nonetheless, it is limited to the enforcement of constitutional provisions or statutes otherwise based on powers delegated to the Congress, for example through the Commerce Clause. There remains to the constituent states and local governments a fairly substantial range of action within which to regulate or prohibit discriminatory actions beyond the reach of federal law. As indicated above, in some instances the states and local governments have exercised their inherent authority by adopting statutes and administrative regulations providing powerful and effective protections against, and remedies for, discrimination based on race, color, ethnicity and national origin.

There is no disposition to preempt these state and local initiatives or to federalize the entire range of anti-discriminatory actions through the exercise of the constitutional treaty power. Nor is it necessary to do so in order to ensure that the fundamental requirements of the Convention are respected and complied with at all levels of government within the United States. In some areas, it would be inappropriate to do so. For example, state and local communities have always taken the lead in public education. Federal control over education, particularly in the areas of curricula, administration, programs of instruction, and the selection and content of library resources, textbooks, and instructional materials, is expressly limited by statute. Measures to ensure fulfillment of the Convention in these areas will include activities that conform to these provisions.

Furthermore, there is no need for implementing legislation providing the Federal Government with a cause of action against the constituent states to ensure that states fulfill the obligations of the Convention; subject to the constraints imposed by our federal system, the Federal Government already has the authority under the Constitution and the civil rights laws to take action against states to enforce the matters covered by the Convention.

It is important to stress that this understanding is not a reservation. It does not condition or limit the international obligations of the United States. Nor can it serve as an excuse for any failure to comply with those obligations as a matter of domestic or international law. It serves instead to address a specific and sensitive aspect of the fundamental governmental structure of the Union. As an aspect of the modality of implementation in domestic law, it is entirely within the discretion of the United States as a State Party and contravenes no provision of the Convention.

In ratifying the International Covenant on Civil and Political Rights in 1992, the United States addressed the federalism issue through adoption of an interpretive understanding, the effect of which was to clarify that the United States will carry out its obligations in a manner consistent with the federal nature of its form of government. A similar

understanding was adopted for the Torture Convention as well as the current 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."

5. Non-Self-Executing Treaty

In ratifying the Convention, the United States made the following declaration:

"[T]he United States declares that the provisions of the Convention are not self-executing."

The purpose and effect of this declaration relate to the availability of the Convention as a basis for private litigation in U.S. courts. Under Article VI, cl. 2, of the U.S. Constitution, duly ratified treaties become the supreme law of the land, equivalent to a federal statute. In considering ratification of previous human rights treaties, in particular the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1990) and the International Covenant on Civil and Political Rights (1992), both the Executive Branch and the Senate have considered it prudent to declare those treaties to be non-self-executing. The intent is to clarify that the treaty will not create a new or independently enforceable private cause of action in U.S. courts.

As was the case with the prior treaties, existing U.S. law provides extensive protections and remedies sufficient to satisfy the requirements of the present Convention. Moreover, federal, state and local laws already provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions in court, as well as certain forms of discriminatory conduct by private actors. Given the adequacy of the provisions already present in U.S. law, there was no discernible need for the establishment of additional causes of action or new avenues of litigation in order to guarantee compliance with the essential requirements of the Convention.

This declaration has frequently been misconstrued and misinterpreted. Declaring the Convention to be non-self-executing in no way lessens the obligation of the United States to comply with its provisions as a matter of international law. Neither does it contravene any provision of the treaty or restrict the enjoyment of any right guaranteed by the Convention.

The declaration will not deny Americans any right to pursue international law protections in U.S. courts, nor does it have the effect of preventing individuals from raising relevant principles and standards of international law in U.S. courts under international or domestic law. There is, of course, no requirement in the Convention that States Parties make it "self-executing" in their domestic law or that individuals be afforded a specific cause of action in domestic courts on the basis of the Convention itself, to pursue their rights. The drafters quite properly left the question of implementation to the domestic laws of each State Party.

The United States is aware of the Committee's preference for the direct inclusion of the Convention into the domestic law of States Parties. Some non-governmental advocacy groups in the United States would also prefer that human rights treaties be made "self-executing" in order to provide a convenient vehicle for litigation. The declaration reflects a different choice, one in favor of retaining existing pathways for judicial enforcement and of providing any necessary amendments to domestic law through the ordinary legislative process.

C. Specific Articles

Against this background, the specific provisions of U.S. law which give effect to the requirements of the Convention are indicated below.

A preliminary word is necessary about the Convention's definition of "racial discrimination." Although the definition contained in Article 1(1) contains two specific terms ("descent" and "ethnic origin") not typically used in federal civil rights legislation and practice, there is no indication in the negotiating history of the Convention or in the Committee's subsequent interpretation that those terms encompass characteristics which are not already subsumed in the terms "race," "color," and "national origin," as they are used in existing federal 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.

ARTICLE 2

Under Article 2(1), States Parties to the Convention condemn and undertake to eliminate racial discrimination in all its forms and by all appropriate means. To this end, this article specifies a number of specific undertakings.

(a) As required by Article 2(1)(a), racial discrimination by the government is prohibited throughout the United States. No public authority may engage in an 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. As indicated above, U.S. law extends this prohibition to private organizations, institutions and employers in many (but not all) circumstances.

(b) In the United States, no governmental authority may sponsor, defend or support such acts itself, or by any persons or organizations.

- NEED to cite limitations on governmental acts of discrimination, etc.- must address here (per General Recommendation XIII) training of law enforcement officials in protection of human rights and principle of non-discrimination, esp re detention or arrest

(c) Under Article 2(1)(c), States Parties must take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination. In the United States, this obligation is fulfilled primarily in three ways: through litigation, through legislative oversight, and independent examination and analysis.

DOJ/CRCComm/EEOC: elaborate

Discriminatory Purpose and Effect. 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." Article 2(1)(c) also requires States Parties to "amend, rescind or nullify any laws and regulations" that have such effects.

The U.S. satisfies the policy review obligation of Article 2(1)(c) through this nation's legislative and administrative process, as well as through court challenges brought by governmental and private litigants. With respect to the second obligation of Article 2(1)(c), practices that have discriminatory effects are prohibited by certain federal civil rights statutes, even in the absence of any discriminatory intent underlying those practices. Thus, such

practices may be nullified under the force of those statutes, consistent with Article 2(1)(c). This is true of the Voting Rights Act of 1965, which Congress amended in 1982 to make clear that practices that have discriminatory results violate Section 2 of that statute. It is also true of Title VII of the 1964 Civil Rights Act, the federal regulations implementing Title VI of the 1964 Civil Rights Act, and the Fair Housing Act, as those statutes have been interpreted by the Supreme Court and lower courts. Griggs v. Duke Power Co., 401 U.S. 424 (1971) (Title VII); Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582 (1983) (Title VI implementing regulations); R. Schwemm, Housing Discrimination Law and Litigation § 10.04 (1990) (noting that although the Supreme Court has yet to address the issue, lower courts have uniformly held that disparate impact claims may be brought under the Fair Housing Act, even in the absence of discriminatory intent). Those three statutes prohibit intentional racial discrimination. But even in the absence of evidence of discriminatory intent, plaintiffs can make out a prima facie case of discrimination in violation of the statutes if they show that a race-neutral practice causes statistically significant racial disparities. If the plaintiff satisfies the prima facie test, the burden shifts to the defendant to justify the practice by demonstrating its necessity.

By contrast, the equal protection components of the Fifth and Fourteenth Amendments, as well as 42 U.S.C. §§ 1981 and 1982, have been interpreted to proscribe only intentional discrimination. See Washington v. Davies, 426 U.S. 229 (1976) (Equal Protection Clause); General Building Contractors Ass'n, Inc. v. Pennsylvania, 458 U.S. 375 (1982) (Section 1981); R. Schwemm, Housing Discrimination Law and Litigation § 10.04 (1990). This is not to say that disparate impact is irrelevant in equal protection or Sections 1981 or 1982 litigation. Determining whether discriminatory purpose exists "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977). Disparate impact "may provide an important starting point" for that inquiry. Id. Indeed, where racial disparities arising out of a seemingly race-neutral practice are especially stark, and there is no credible justification for the imbalance, discriminatory intent may be inferred. Casteneda v. Partida, 430 U.S. 482 (1977). In most cases, however, adverse effect alone is not determinative, and courts will analyze statistical disparities in conjunction with other evidence that may be probative of discriminatory intent. Arlington Heights, 429 U.S. at 266-67. If the totality of the evidence suggests that discriminatory intent underpins the race-neutral practice, the burden shifts to the defendant to justify that practice. Id. at 270-71 n.21 (citing Mt. Healthy City School Bd. of Education v. Doyle, 429 U.S. 274 (1977)).

The negotiating history of the Convention leaves unclear the precise scope of a State Party's obligation under Article 2(1)(c). It does not appear to be the case, however, that the provision requires the invalidation of every race-neutral law, regulation or practice that causes

some degree of adverse impact on racial groups. In its recently adopted General Recommendation XIV, the Committee declared that "in seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or ethnic origin."

The Committee's use of the term "unjustifiable disparate impact" indicates its view that the Convention reaches only those race-neutral practices that both create statistically significant racial disparities and that are unnecessary. This reading of Article 2(1)(c) tracks the standards for litigating disparate impact claims under Title VII, the Title VI implementing regulations, and the Fair Housing Act. It is also consistent with equal protection and Sections 1981 and 1982 standards, to the extent that statistical proof of racial disparity -- particularly when combined with other circumstantial evidence -- is probative of the discriminatory intent that is necessary to make out a claim under those provisions and shift the burden to the defendant to justify a race-neutral practice. In the view of the United States, Article 2(1)(c) does not impose obligations that are contrary to U.S. law.

(d) 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, governmental policy at all levels in the United States reflects this undertaking, and there are many different mechanisms, including litigation and legislation, to achieve this important goal.

Private Action Reservation. While the Constitution and laws of the United States establish extensive protections against racial and ethnic discrimination, including the regulation of significant areas of quasi- and non-governmental activity, our system also places great importance on the principles of individual privacy and freedom from governmental interference in private conduct. Thus, there are important constitutional limits on the permissible reach of governmental regulation into areas protected by notions of individual privacy. For the reasons articulated in the discussion above, the United States conditioned its ratification on a formal reservation stating that, to the extent the Convention calls for a broader regulation of private conduct than permissible under U.S. law, 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.

(e) Under Article 2(1)(e), each State Party undertakes "to encourage, when 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."

[Agencies must describe what fed gov't does, relevant NGO activities, be specific as to statutes, programs, funding, etc.] The activities of major civil rights groups and organizations are directed to the goals of diversity management and promotion

Special Measures. 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 enjoyment 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."

Together, Article 1(4) and Article 2(2) permit, but do not require, States Parties to adopt race-based affirmative action programs without violating the Convention. Deciding when such measures are in fact warranted is left to the substantial discretion of each State Party.

At the federal level, the United States has been pursuing such "special measures" for several decades. For much of this century, racial and ethnic minorities and women have confronted a variety of legal and social exclusions in the United States. African Americans and Hispanic Americans were segregated into low wage jobs, usually in the agricultural sector. Asian Americans were forbidden by law from owning land and therefore worked fields to which they could not hold title. Women were barred by law in many states from entering entire occupations, such as mining, fire fighting, bartending, law, and medicine.

The first significant wave of progress in enhancing employment opportunities for African Americans and women came during the labor shortages of World War II and immediately after. Some affirmative action efforts began even before the great burst of civil

rights statutes in the 1950's and 1960's. In 1961, President John F. Kennedy issued an Executive Order (No. 10925) which used the term "affirmative action" to refer to measures designed to achieve non-discrimination in employment. Four years later, President Lyndon Johnson required federal contractors to take affirmative action to ensure equality of employment opportunity without regard to race, religion and national origin. In 1968, gender was added to the protected categories. The most far-reaching expansion of the affirmative action approach at the federal level took place in 1969 in connection with the so-called "Philadelphia Order" concerning construction trades in Philadelphia, PA. Historically, the armed forces, and in particular the United States Army, have been the most successful in their efforts at racial integration.

The concept of affirmative action was initially incorporated into federal statutory law through Title VII of the Civil Rights Act of 1964, which aimed at ending discrimination by large private employers whether or not they had government contracts. That Act established the Equal Opportunity Employment Commission, discussed above. In Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), the U.S. Supreme Court ruled

A substantial number of existing federal affirmative action measures could be considered "special and concrete measures" for the purpose of Article 2(2). These include the array of minority preferences to promote fair employment, "set-asides" for minority contractors, race-conscious educational scholarships, direct support for historically black colleges and universities, and creation of minority electoral districts as a remedy for violations of the Voting Rights Act, to name only a few. Some are hortatory, such as those based in statutes encouraging recipients of Federal funds to use minority-owned and women-owned banks. Others are mandatory, for example the Community Reinvestment Act which requires federally chartered financial institutions to conduct and record efforts to reach out to underserved communities. Still others focus on targeted training and investment efforts: the U.S. Department of State maintains a minority internship program specifically designed to increase minority participation in the Foreign Service.

The Small Business Act requires each federal agency to set goals for contracting with "small and disadvantaged businesses." Under its so-called "§ 1207" authority, the Defense Department is permitted to provide a 10 per cent bid price preference and to employ reduced-competition systems as a means of meeting its "small and disadvantaged businesses" contracting goals. The Omnibus Diplomatic Security and Anti-Terrorism Act requires that a minimum of 10 per cent of funds appropriated for diplomatic security projects be allocated to minority business enterprises. Certain small education grant programs (e.g., those under the

Patricia Roberts Harris Fellowship, 20 U.S.C. § 1134D-G, and the Women and Minorities in Graduate Education Program, 20 U.S.C. § 1134A) target minorities in graduate education. The Department of Agriculture gives preferences to “socially disadvantaged” persons in the sale of farm properties and sets aside loan funds for farmers in this group. The Department of the Treasury administers a “minority-owned bank deposit” program in which designated banks receive special consideration to act as depository institutions holding cash for federal agencies, so long as no increased cost or risk results from the government.

The proper goal of all such programs is to promote equal opportunity by ensuring every citizen a fair chance to achieve success. While they cannot legitimately supersede the concept of merit, affirmative action measures do recognize that existing patterns of discrimination, disadvantage and exclusion may require race- or gender-conscious measures to achieve that equality of opportunity. Appropriately fashioned affirmative action programs will therefore fight discrimination and promote inclusion, fairly and on a transitional basis. As a matter of law and policy, they may not create any form of “quotas” or “numerical straightjacket,” nor may they give preference to unqualified individuals, create reverse discrimination or continue to exist or operate after its purposes have been achieved.

The exact line between permissible and impermissible affirmative action measures has been one of the most difficult issues in U.S. law, and it has not been static. See, e.g., Regents of University of California v. Bakke, 438 U.S. 265 (1978); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Metro Broadcasting, Inc. v. FCC, 497 U.S. 647 (1990); Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995). The U.S. Supreme Court’s decision in the last named case changed the standard of legal analysis required to determine the constitutionality of affirmative action programs that apply to race and ethnicity, by holding that many federal programs must be reviewed by the courts using a “strict scrutiny” test under the equal protection component of the Fifth Amendment’s Due Process Clause. Thus, a program must be shown to meet a “compelling governmental interest” and must be “narrowly tailored to meet that interest.” This is a more demanding test than had previously been applied to federal affirmative action programs. As a practical matter, it has required a searching analysis and re-evaluation of many such programs.

In recent years, there has been public debate over the concept of “reverse discrimination,” that is, the adverse or discriminatory effects of affirmative action programs themselves. This debate extends beyond the prohibition in the second sentence of Article 2(2) against permitting special measures to continue once their goals have been achieved. It involves both questions about the constitutionality of “reverse discrimination” in the first instance. There have been a number of legislative proposals to limit the use of preferential treatment in employment opportunities to remedy past discrimination and diversify work

forces, as well as several judicial challenges. Examples of the latter include Maryland Troopers Ass'n v. Evans, 993 F.3d 1072 (4th Cir. 1993) (Maryland State Police discriminated against non-blacks by complying with the terms of a court-ordered consent decree which was held to violate 14th Amendment and Title VII) and Hopwood v. Texas, 84 F.3d 720 (5th Cir. 1996), cert. denied, 518 U.S. 1033 (1996) (University of Texas School of Law could not use race as a factor in its admissions decisions when white applicants with higher test scores than minority applicants were denied admission).

In 1995, at the specific direction of the President, a thorough Executive Branch review was conducted of the Federal government's affirmative action programs. While finding "undeniable progress in many areas," the report concluded, not surprisingly, that "widespread discrimination and exclusion - and their ripple effects - continue to exist" and that the various affirmative action programs should therefore be continued and improved. Among the statistics cited in support of this conclusion were the following:

This debate will continue. It is the United States' view that the Convention does not impose any obligation which would prevent or require adoption and implementation of appropriately-formulated affirmative action measures that are otherwise consistent with U.S. constitutional and statutory provisions.

ARTICLE 3

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.

Racial segregation, once lawful in the United States even after the abolition of the practice of slavery in the mid-19th century, has been prohibited since 1964 (passage of Title VI) and 1968 (passage of Title VIII). The United States emphatically condemns racial segregation and apartheid and prohibits any such practice in any territory under its jurisdiction.

Prior to the removal of the racist regimes in southern Africa, the United States condemned the policies and practices of those regimes and imposed economic and related sanctions in accordance with the decisions of the United Nations. Independent of the federal government's actions, many state and local governments as well as private institutions also acted to divest or otherwise dissociate themselves economically as well as politically from governments and institutions supporting or tolerating apartheid.

ARTICLE 4

As a nation, the American people reject all theories of the superiority of one race or group of persons of one color or ethnic origin or which attend 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 requires more. States Parties must “undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.” More specifically, Article 4(a) obliges States Parties to penalize four categories of misconduct:

- (i) all dissemination of ideas based on racial superiority or hatred,
- (ii) incitement to racial hatred,
- (iii) all acts of violence or incitement to violence against any race or group of persons of another color or ethnic origin, and
- (iv) the provision of any assistance to racist activities, including the financing thereof.

The Committee has stressed the importance with which it views these obligations, as reflected, for example, in General Recommendation VII adopted in 1985 in which the Committee stressed the mandatory character of Article 4, and General Recommendation XV of 1993 in which the Committee stated its opinion that “the prohibition of the dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression.” Article 4(b) requires States Parties to declare illegal and prohibit organizations which promote and incite racial discrimination, to prohibit their propaganda activities, and to make participation in such organizations and activities an offense punishable by law. Article 4(c) imposes an obligation to forbid public authorities and institutions from promoting or inciting racial discrimination.

Constitutional Limitations. For reasons described above, the ability of the United States to give effect to these requirements is circumscribed by constitutional protections of individual freedom of speech, expression and association. Accordingly, the United States took a reservation to this article, and to the corresponding provisions of Article 7, to make clear that it cannot accept any obligation to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

Nonetheless, there remains a substantial area in which the United States can, and does, give effect to the object and purpose of this article.

Hate Crimes. U.S. law has long provided criminal penalties for certain violations of civil rights, including in particular acts of violence motivated by racism. See, e.g., 18 U.S.C. § 245(b)(2). Federal “hate crimes” law makes it “an offense punishable by law” all acts of violence or incitement to such acts, provision of assistance including financing. In some instances, harsher penalties have been available when ordinary crimes are committed with racist intent.

In recent years, the federal government has undertaken a number of initiatives to combat hate crimes and violence. Central to these efforts has been the undertaking to gather information. The Hate Crimes Statistics Act of 1990, Pub. L. 101-275, 28 U.S.C. § 534, directs the Attorney General to collect data from state and local law enforcement agencies about crimes that “manifest evidence of prejudice based upon race, religion, sexual orientation, or ethnicity.” The Federal Bureau of Investigation’s Uniform Crime Report Program is the central repository for hate crime statistics. Subsequent efforts were directed at youth who commit hate crimes, including development of a school-based curriculum to address prevention and treatment of hate crimes by juveniles. The Violence Against Women Act, adopted as part of the Violent Crime Control and Law Enforcement Act of 1994, allows victims of gender-based crimes to sue the offender in federal or state court.

The Community Relations Service of the U.S. Department of Justice has played an important role in assisting communities to address underlying racial tensions and conflict

[DOJ/CRS to elaborate]

Forty-seven jurisdictions in the United States have enacted some form of legislation designed to combat hate crimes. A number of states, including California, Florida and Ohio, have adopted laws prohibiting specific activities at specific places, for example vandalism and intentional disturbances at places of worship. Florida and the District of Columbia have prohibited such acts as burning a cross or placing a swastika or other symbol on another’s property with intent to intimidate. Thirty-nine states have enacted laws against bias-motivated violence and intimidation; for example, a New York statute prohibits bias-motivated discrimination or harassment. Other states (for example, Wisconsin) provide for enhanced penalties when the motivation for an otherwise criminal act is bias. Nineteen states mandate the collection of hate crime statistics.

In two recent cases, the U.S. Supreme Court has addressed first amendment issues in the context of hate crimes legislation. In R.A.V. v. City of St. Paul, Minn., 505 U.S. 377 (1992), the municipal ordinance in question made 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.” The Court held that the statute unconstitutionally restricted freedom of speech on the basis of its content. Under the First Amendment, a majority of the Court said, a jurisdiction may proscribe unprotected speech on the basis of its content but may not select one area of speech to criminalize while leaving other areas unrestricted.

Subsequently, in Wisconsin v. Mitchell, 508 U.S. 476 (1993), the Court addressed the issue of enhanced penalties for crimes motivated by prejudice. Under the relevant state law, an individual who was convicted of aggravated assault (an offense which normally carried a penalty of 2 years imprisonment) was sentenced to an additional four years imprisonment because his crime had been racially motivated. The state Supreme Court found the statute to be in violation of the First Amendment, as interpreted by the U.S. Supreme Court in R.A.V. v. City of St. Paul, Minn., because it singled out the defendant’s biased thoughts and penalized him based on the content of those thoughts. On appeal, the U.S. Supreme Court reversed that judgment and upheld the statute as constitutional. In a unanimous opinion, the Court held that while the St. Paul ordinance had (impermissibly) targeted expression, the Wisconsin enhanced-penalty statute was aimed at unprotected (indeed, criminal) conduct.

In subsequent decisions, federal and state courts have followed this distinction, generally upholding statutes which punish specific behavior motivated by bias. For example, a federal appellate court sustained the criminal prosecution under federal civil rights laws of a defendant who had burned a cross on a black family’s lawn, distinguishing that act done with intent to intimidate from similar acts meant to make a political statement. United States v. Stewart, 65 F.3d 918 (11th Cir. 1995), cert. denied --- U.S. ---, 116 S.Ct. 958 (1996). In T.B.D. v. Florida, 656 So.2d 479 (Fla. 1995), cert. denied, 516 U.S. 1145 (1996), the state’s highest court upheld a statute making it a misdemeanor to place a “a burning or flaming cross, real or simulated” on the property of another without permission. The government has a valid interest in protecting individuals from fear of violence, the court said, and “fighting words” by their nature inflict injury or tend to incite an immediate breach of the peace.

Racism on the Internet.

[DOJ to elaborate][?? Finley, 118 S.Ct. 2168??]

Review of Relevant Penal Legislation.

[[DOJ to elaborate, including pending bills, state and federal.]

ARTICLE 5

Article 5 obliges 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. The policy and objectives of government at all levels are also consistent with its provisions.

Importantly, Article 5 goes even further, by requiring States Parties to guarantee equality and non-discrimination on this basis "notably in the enjoyment" of a list of specifically enumerated rights. Some of these enumerated rights, which may be characterized as economic, social and cultural rights, are not now explicitly recognized as legally enforceable "rights" in 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 by their domestic law. In this respect, U.S. law fully complies with the requirements of the Convention. In many of the areas covered by this article, however, serious problems remain.

Equality Before Tribunals. The right to equal treatment before the tribunals and all other organs administering justice, as guaranteed by Article 5(a), is provided by U.S. law through the operation of the Equal Protection Clause of the U.S. Constitution, which is binding on all governmental entities at all levels throughout the United States. Nonetheless, the perception of unequal treatment especially in the criminal justice system is widespread among African Americans, Latinos and Hispanics, and in many respect that perception is supported by data. Among the specific shortcomings are:

-- Racial stereotyping and "profiling": Race is sometimes used as an indicator of risk or suspiciousness or justification for identity checks mention training of policie in racial discrimination matters, black as well as other ethnic backgrounds, efforts to diversify the police force.

-- Overrepresentation in the criminal justice system: This is a growing trend. A majority of all federal, state and local prison and jail inmates in the United States today is non-white. The incarceration rate for African Americans is 7.66 times that for whites and approximately 4 times their proportion in society at large. In 1994, approximately 46% of the inmates in state prisons were black, 17% Hispanic. The reasons for these disparities are complex and disputed; some argue they stem from inequities in law enforcement practices as well as judicial sentencing.

- According to a study done by the Department of Justice's Center for Equal Opportunity in 1996, blacks charged with murder, rape and other major crimes are more likely to be acquitted by juries or freed because of a dismissal than white defendants.

- Disparities in sentencing: The statistical disparity in racial composition of prisoners sentenced to capital punishment is widely acknowledged. At the end of 1996, for example, of the total of 3xxx prisoners under sentence of death (all for murder), YYY described themselves as white and ZZZ (or MM%) as black or "other." Just over one-third of those executed in 199Z were black, C were Hispanic, and D were Native American. Since the reinstatement of the death penalty in 1976, SS% of convicts executed have been white, TT% black and UU% Hispanic; .KK% were Native American.

- Disparities in capital punishment: 1990 GAO study found that the death penalty was invoked disproportionately if the victim was white. Quote? Congress has considered issue in Racial Justice Act proposals.

In McCleskey v. Kemp, 481 U.S. 279 (1987), the Supreme Court

[DOJ to elaborate]

Security of Person. Under Article 5(b) the State Party must provide equal protection against violence and bodily harm, whether inflicted by governmental officials or by individuals, groups or institutions.

- constitutional and statutory guarantees; examples

- abuses against people of color nonetheless continue to occur. Racist attitudes among law enforcement and correctional personnel. Misconduct, abuse and brutality, discrimination at the hands of law enforcement agents and institutions; especially at the local and state levels

- 1994 legislation 42 USC 14141 "pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."

- need data from OJS; national crime victimization survey. E.g., In 1993, slightly more than half of all murders in the U.S. were committed against Black Americans, and the homicide rate for black males vastly exceeded all others. However, the percentage of households estimated to have been touched by crime nationwide differed far less dramatically (22.6% for whites, 27.2% for blacks). Over two thirds of all persons arrested were white; even

higher percentages were recorded for crimes of arson and vandalism.

- other racially motivated violence, hate crimes
- remedies? screening and training procedures???
- conditions of imprisonment, supermax facilities (SHU's)

Political Rights. As required by Article 5(c), 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 government as well as in the conduct of public affairs, and to have equal access to public service.

In large part, these guarantees have arisen out of the national legacy of slavery as well as a history of disenfranchisement of women and minorities. Even after African Americans and other national and ethnic groups were assured the right to vote, they faced significant obstacles in exercising that right, in the form of property ownership requirements, literacy tests, poll taxes, and similar obstacles. However, since 1920 every United States citizen has had the right to cast a meaningful vote. The U.S. Supreme Court ruled long ago that the one person-one vote standard must be met in achieving full political representation. Single member districting of congressional and other political sub-units has assured that minorities increasingly have effective political representation, particularly at the local levels in city and county governments, school boards and special districts.

statistics re participation of minorities in elections
percentages of elected officials at all level
congressional districting issues

Participation in government - statistics: e.g., the first Native American to serve in the U.S. Senate in 60 years was elected in 1992. By 1994, more African Americans, Hispanics and Asians/Pacific Islanders were serving in the U.S. House of Representatives than ever before, including a number in leadership positions. In 1993, some 10% of state legislators were from minority groups, including 520 African Americans and 156 Hispanics; nation-wide, there were 356 black mayors and 2 black state governors. The number of black Americans holding elective office rose Despite these gains, minority representation in elective office still falls short of their proportional presences in the general population.

As of mid-1994, approximately 10% of the federal judiciary were members of minority groups. In addition to one African American Supreme Court Justice, 60 African Americans served on the lower federal courts, along with 35 Hispanics, 5 Asian Americans,

and 1 Native American. At the state court level, 12 African Americans served on state supreme courts in addition to more than 580 in other judicial offices. At the state level, it is estimated that 28% of correctional officers are black and 5% Hispanic; nationally, some 11% of police officers and detectives are African American and 9% Hispanic.

Other Civil Rights. In Article 5(d), States Parties are obliged to ensure equality of enjoyment in respect of a number of fundamental human rights and freedoms, including freedom of movement and residence, the right to leave one's country and return, 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 opinion and expression, the right to freedom of peaceful assembly and association.

These rights are guaranteed in the United States through a variety of provisions of law.

summarize guarantees
issues
statistics

Economic, Social and Cultural Rights. Article 5(e)(i) guarantees equality and non-discrimination in respect of 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. As a matter of law and regulation, this obligation is met; in practice, however, significant disparities continue to exist.

As indicated in the 1998 Economic Report of the President, although some narrowing of economic status between various racial and ethnic groups has occurred in recent years, very substantial gaps persist. For example, the median incomes of non-Hispanic white families and of Asian families are nearly double those of black and Hispanic families. By one 1993 measure, the median wealth (net worth) of non-Hispanic white households was nearly 10 times that of blacks and Hispanics. Poverty rates among Hispanics and blacks are more than triple those of non-Hispanic whites; the poverty rate among Hispanics exceeds that of blacks. The Bureau of the Census estimates that as of 199??, approximately 33% of black Americans lived below the federal poverty level (compared to 15% of the population as a whole). The rate for Hispanic Americans was slightly over 30% and for Native Americans about 31% (although among those living of reservations it went in some cases as high as 51%).

The pervasiveness of child poverty is of particular concern. Since 1993, child poverty

rates within the United States have fallen but differences among racial and ethnic groups remain too high. Between 1993 and 1996, the poverty rate for white children fell 1.5 percentage points to 16.3%; the rate for black children fell even more, from 46.1% to 39.9%, the lowest rate in 20 years but still twice as high as the rate for white children. In 1996 the rate for Hispanic children was even higher, at 40.3%. By comparison, the rate for Asian children was 19.5%.

The sources or causes of socio-economic differences are complex, depending on a mixture of current conditions, such as the state of the national and local economies, and individual characteristics, such as educational background, occupational experiences, and family background. They extend beyond racial and ethnic differences. Nonetheless, since the mid-1970's, there has been an unmistakable increase in inequality both overall and among racial and economic groups in the United States.

Employment Discrimination. Despite strong legal protections safeguarding the right to work, to free choice of employment and to just and fair conditions of employment, the exclusion of people from employment opportunities on racial and ethnic grounds remains a significant problem. Besides hiring, discrimination persists in the areas of training, promotion, tenure, layoff policies, and the work environment. Approximately 80,000 complaints of employment discrimination are filed annually with the EEOC; an additional 60,000 discrimination complaints are filed with state fair employment practices agencies. In recent years, complaints have been brought against major employers such as Texaco, Shoney's, General Motors, Pitney Bowes, Avis, Descriptive case examples?

Improvement in economic conditions have recently reduced the national unemployment rate to its lowest level in 20 years. According to the Census Bureau, the unemployment rate for black Americans in the civilian labor force was 11.5% in 1994, as compared to a national rate of 6.1%. Both figures had declined from the previous year, more sharply for black Americans. By comparison, the estimated unemployment rate for Hispanics was 9.9%. The highest rate of unemployment is found among native Americans on reservations (in some cases over 50%).

African Americans constitute 10.4% of the employed civilian workforce; 88% of the black male labor force was employed (versus 89% of black women); and the overall participation rate of blacks in the civilian workforce was 73.5% (versus 79.8% for whites and 73.2% for Hispanics). Not surprisingly, far more white workers were unemployed (approximately 5.9 million) than black workers (1.6 million), Hispanics (1.1 million), or Asian and Pacific Islanders (.23 million).

In 1993, Hispanic men were half as likely as white men to be managers or professionals; only 0.4 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service industries are Hispanic.

Protection of foreign workers, especially migrants, seasonal and transient

Unions. U.S. law guarantees all persons equal rights to form and join trade unions, as required by Article V(e)(ii). Specifically, [what does the law provide]. Under these provisions, enforcement actions can be brought [needs examples of some such actions]..

Housing. Both federal and state laws guarantee equal rights to housing, as mandated by Article V(e)(iii), 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 Departments of Justice and Housing and Urban Development have vigorously prosecuted violations of the federal civil rights statutes in an effort to reduce housing discrimination, ensure habitability and provide an enabling environment for all.

Nonetheless, de facto segregation continues to exist in many areas of the United States, both urban and rural, and many areas in which residents are predominately non-white have low quality housing. Blacks and Latinos remain more likely to encounter discriminatory obstacles when they search for a home or apartment or a loan. Recent studies in the Washington D.C. areas demonstrated that blacks and Hispanics were discriminated against 36 percent of the time when they tried to buy a home, and 42 percent of the time they tried to rent a home. The home ownership rate among non-Hispanic whites is more than 50% higher than for blacks and Hispanics, and there is evidence of discrimination in mortgage lending practices. The U.S. Departments of Justice and of Housing and Urban Development enforce these laws through [Examples?? 1996 DOJ action against Hamilton Realty Co., an Alabama real estate firm, under Fair Housing Act of 1968 for racial "steering" allegedly refusing to refer black renters to buildings in white neighborhoods]

Health and Health Care: In comparison to all others in the world, the health care system in the United States is excellent, and on the whole Americans enjoy easier access to a higher level of medical care than almost any other population in the world. Neither the nation's health nor its health care system are perfect, however, and our society strives constantly to improve both, particularly with regard to members of minority communities.

There are continuing disparities in birth, death and mortality rates, as well as in the incidence of various diseases, on a racial and ethnic basis. The live birth rates (per 1000 women aged 15-44) in 1992 were 66.5 for whites and 83.2 for blacks. In 1993, the death rate

per 1000 was 9.1 for whites, 8.7 for blacks. The infant mortality rate for blacks continues to be significantly higher than for whites (in 1992, 16.8 per 1000 live births vs. 6.9) although both rates are declining. In 1993, the overall life expectancy at birth was 75.5 years; for the black population it was 71.5.

Rate of births out of wedlock remains highest among Hispanic women although the rate for white women has more than doubled in the past decade.

Disability:
AIDS victims

Environmental Racism. Over the past several years, there has been increasing concern in the United States over the discriminatory effects of environmental policy and decision making, enforcement of regulations and laws, disproportional impact of environmental degradation, siting of toxic waste facilities, hazardous industrial facilities use of dangerous chemicals such as pesticides

On February 11, 1994, the President issued an executive order No 12898 to all departments and agencies of the US Government directing them to take action to address environmental justice in minority populations and low-income populations. Agencies were directed, inter alia, to address disproportionate human health or environmental effects of programs on such populations, to collect additional data on these subjects, and to coordinate their efforts through a newly established inter-agency working group.

Many groups and advocates are concerned that existing legal remedies in this area may be insufficient. In R.I.S.E., Inc. V. Kay, 768 F.Supp. 1144 (E.D.Va. 1991), aff'd. w/o op., 977 F.2d 573 (4th Cir. 1992), for example, a 14th amendment challenge to the siting of county-run regional landfills in predominantly black neighborhoods was rejected because plaintiff had not provided sufficient evidence of intentional discrimination. The District Court stated that the Equal Protection Clause does not impose an affirmative duty to equalize the impact of official duties on different racial groups, but merely prohibits government officials from intentionally discriminating on the basis of race.

Need to describe legislative efforts, such as the Environmental Justice Act and Environmental Equal Rights Act

Education and Training. Racial segregation in education has been illegal in the United States since the U.S. Supreme Court's landmark decision in Brown v. Board of

Education, 349 U.S. 483 (1954). As a result of that decision, the Civil Rights Act of 1964, and Green v. County School Board, 391 U.S. 430 (1968), schools have become increasingly integrated. Subsequently enacted statutes provide additional protections. Many enforcement actions have been brought by the government; the U.S. Department of Education administers a number of significant laws and programs (such as ...), many of which are replicated at the state and local level. In their totality, these measures create a legal and policy framework aimed at the elimination of race-based disparities in educational quality and opportunity. Today, the American public educational system is open and accessible to all, regardless of race, ethnicity, or socio-economic status.

Nonetheless, in this area, there continues to be a mixed record of recent gains and persistent inequalities. In 1994, the percentage of black population 25 years or older who were high school graduates was higher than for the white population (36.2% vs. 34.5%); perhaps more importantly, that percentage had substantially increased from 1980 (up from 30.8%) while the figure for whites had declined (from 37.2%). The figure for Asian Americans was substantially lower (24.5%) but a far higher percentage of that group had completed four or more years of college (41.2%).

On average, Hispanics are likely to have much lower levels of educational achievement than whites or blacks. For Hispanics generally, the figures for 1993 indicate that 53.1% were high school graduates. Those from Central and South America were more likely to have achieved that educational level (62.9%) than Mexican Americans (46.2%) or Puerto Ricans (59.8%), with Cubans at about the same level (62.1%).

As a whole, the Native American population fared even better, with 65.5% high school graduates in 1990; within this group, however, there was substantial disparity, for example between the Iroquois and Pueblo communities (71.9% and 71.5%) and the Lumbee and Navajo (51.6% and 51.0%).

Although black students tend not to score as well on standardized tests, some 13% of advanced placement students are black.

“Affirmative action” in the field of education has recently been a subject of contention. Under the law, and as reflected in guidelines of the U.S. Department of Education, colleges and universities may not establish or enforce quotas for admission or set aside a certain number or percentage of admissions slots based on race. However, under the 1978 decision in Bakke, they may consider race or national origin as one factor among many in making admissions decisions, for the purpose of remedying the effects of past discrimination or achieving a diverse student body. Whether such “racial preferences” violate the Fourteenth

Amendment's guarantee of equal protection has been much debated. As a matter of policy, the federal government has strongly supported affirmative action programs for these purposes in higher education.

As an alternative to race-conscious admissions policies, some have called for "color-blind" policies. In 1995, the University of California's Board of Regents voted to prohibit universities within its state-wide system from considering race in admissions. The California Civil Rights Initiative, known as Proposition 209, prohibits the State from utilizing race-or gender-based affirmative action programs in State employment, public contracting or education.

The University of Texas Law School adopted an admissions procedure In Texas v. Hopwood, 78 F.3d 932, cert. denied, 518 U.S. 1033 (1996), the Fifth Circuit Court of Appeals held that procedure unconstitutional.

Bilingual education: State of California, which has the largest population of non-English speaking residents, recently voted to

Also address here efforts to protect/promote minority and indigenous languages as well as the English-speaking and writing skills of children of all races/ethnicity.

Cultural Activities. Article V(e)(vi) requires States Parties to recognize and guarantee the right to equal participation in cultural activities. In the U.S. system, these rights are protected primarily through limitations on the ability of the government to interfere or restrict. Our principles of tolerance permit cultural rights to be pursued without fear or hindrance. Ethnic heritage parades, ethnic/cultural clubs, language classes, religious theatrical artistic musical abound.

? Examples to describe "practice"?

Access to Public Accommodations. In accordance with Article V(f), U.S. law provides strong protections of the right of equal access to any place or service intended for use by the general public, including transport, hotels, restaurants, cafes, theaters and parks.

Nonetheless, black customers continue to encounter discrimination in stores, restaurants, bars, theaters. Refusal of service: in a notorious recent case, Denny's Restaurants
.....

Cases, statistics.

Immigration and Asylum.

ARTICLE 6

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, including the right to seek “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

Existing U.S. law provides extensive remedies and avenues for seeking redress for acts of discrimination. A person claiming to have been denied a constitutionally protected right, for example under the Due Process or Equal Protection Clauses of the Fifth or Fourteenth Amendments, may assert that right directly in state or federal court. The federal Civil Rights Acts typically provide statutory remedies; for example, under the 1871 Act, 42 U.S.C. § 1983, a person complaining of discrimination resulting from actions taken under color of state law may seek civil damages and injunctive relief against the responsible state official. Federal officials may be sued for damages directly under provisions of the Constitution. See, e.g., Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) (violations of Fourth Amendment protections against unreasonable searches and seizures by federal officers give rise to a federal cause of action for damages).

Americans freely utilize these avenues of recourse and remedy. Last year alone, the EEOC received over 80,000 complaints of employment discrimination. Moreover, 64,423 complaints were filed with state and local Fair Employment Practice commissions.

[Describe practice and decisions of courts and other judicial and administrative organs relating to cases of racial discrimination]

ARTICLE 7

[Describe efforts to combat prejudices which lead to discrimination and to promote understanding, tolerance and friendship among nations and racial and ethnic groups especially in the following areas:

(a) Education, Teaching and Training

[general info on educational system; steps to combat racial discrimination and prejudices; curricula and teacher training; to what extent are the Charter, the UDHR, the Declaration on RD and the Convention included in training and education

[disseminate information to gov't officials, minority groups, employers, unions, law enforcement

[Public campaign to prevent spread of racial discrimination

(b) Culture and Information

[Work of UN Associations, observance of UN human rights day, campaigns against racism and apartheid

[role of "state media," "mass information media"

c) Promotional Activities

[How does gov't promote multiculturalism? Special commissions? Hearings
Conference of the National Research council in Oct 98

[50th Anniversary of the Universal Declaration

CONCLUSION

[to be drafted]

ANNEX I

WILLIAM J. CLINTON

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The International Convention on the Elimination of All Forms of Racial Discrimination, was adopted by the United Nations General Assembly on December 21, 1965, and signed on behalf of the United States of America on September 28, 1966; and

The Senate of the United States of America by its resolution of June 24, 1994, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, provided that:

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

(2) That the 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.

(3) That with reference to Article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

II. The Senate's advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention:

That the 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.

III. The Senate's advice and consent is subject to the following declaration:

That the United States declares that the provisions of the Convention are not self-executing."

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, ratify and confirm the said Convention, subject to the aforesaid reservations, understanding and declaration.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this
twenty-ninth day of September
in the year of
our Lord one thousand
nine hundred ninety-four
and of the Independence
of the United States of
America the two hundred
nineteenth.

SEAL

By the President:

William J. Clinton

William Christopher
Secretary of State