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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Visit to the United States of America

### Report of the Special Rapporteur on minority issues\*, \*\*

#### *Summary*

In the present document, the Special Rapporteur on minority issues, Fernand de Varennnes, reports on the official visit that he conducted to the United States of America from 8 to 22 November 2021 at the invitation of the Government.

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\* The summary of the present report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

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

## Annex

### **Report of the Special Rapporteur on minority issues, Fernand de Varennnes, on his visit to the United States of America**

#### **I. Introduction**

1. The Special Rapporteur on minority issues, Fernand de Varennnes, conducted an official visit to the United States from 8 to 22 November 2021 at the invitation of the Government to evaluate the current situation of minorities in the country. He visited the capital, Washington DC, and had both online and in person meetings in the states of California and Texas as well as the territories of Guam and Puerto Rico, including to locations in northern Guam and the island of Vieques. He consulted widely with more than one hundred officials at federal, state and territorial levels, academics, civil society organizations and minority representatives from different parts of the country, including senior government officials from federal ministries such as the State Department, the Department of Interior, the Department of Health and Human Services, the Department of Justice, the Department of Education, the Department of Homeland Security, the Federal Bureau of Investigation, the Federal Trade Commission, the Domestic Policy Council, the White House Office of Intergovernmental Affairs, US Congress Black Caucus, the US Congress Pacific Islands Caucus, the Congressional Asian Pacific American Caucus, and the Congressional Hispanic Caucus.

2. In California he was able to meet with official representatives from the State Department of Education and the Department of Justice, the California Latino Legislative Caucus, the California Legislative Black Caucus, and the California Asian Pacific Islander Legislative Caucus. In Texas, the Special Rapporteur met with the Chairman of the Mexican American Legislative Caucus and the Vice Chair of the Texas Black Legislative Caucus, as well as the Elections Administrator for Harris County.

3. In Guam, he had meetings with the Lieutenant Governor, the Speaker of the Legislature of Guam, the Chairperson of the Legislative Committee on Environment, the Attorney General, the Guam Preservation Trust Chief Program Officer, as well as with Kumision Fino' Chamoru Board Members. In Puerto Rico his meetings included the Director of the Civil Rights Commission of Puerto Rico and one member of the Puerto Rico Congress.

4. He also received a very large number of written submissions both in advance and during his visit from Civil Society Organizations, particular those representing Asian-Americans, Arabs, Atheists and Humanists, Bahais, African Americans, Cajuns, Chamorro, the Deaf community, Dominican, Haitian, Hindu, Hispanics and Latinx, Jewish, Korean, Muslim, Pacific Islanders, Roma, and other minorities. He is deeply grateful to all those who organized community consultations for him.

5. The Special Rapporteur would like to sincerely thank the United States for the invitation to undertake this mission and for the support and invaluable cooperation of the State Department.<sup>1</sup> He regrets to report that no official of the State of Texas was available or accepted meeting him.

6. The objectives of the visit were to identify, in a spirit of cooperation and constructive dialogue, good practices and to address existing gaps in the promotion and protection of the human rights of persons belonging to national or ethnic, religious and linguistic minorities in the United States of America, in conformity with the mandate of UN Special Rapporteur on minority issues. More specifically, this mission's purpose was to identify ways of improving

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<sup>1</sup> I am grateful for the great support and work undertaken by Hee Kyong Yoo, Marina Narvaez, Isabelle Besse and particularly Christel Mobeck for the coordination and finalization of the mission to the USA, as well as staff of the UN Office of the High Commissioner for Human Rights and former UN Minority Fellow Manuel Lujan Cruz. Many provided invaluable and much appreciated assistance for meetings and other support in different locations such as the American Civil Liberties Union, the Center on Race, Immigration & Social Justice at California State University, the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas, and Fermín L. Arraiza Navas and the International Human Rights Clinic at the Interamerican University of Puerto Rico.

the effective implementation of international obligations in relation to the rights of minorities in the COUNTRY in areas of particular significance such as equality and non-discrimination, the right to effective political participation of minorities, education and the linguistic rights of minorities, access to justice and administration of criminal justice, and measures to address hate speech and hate crimes.

## II. Minorities in the United States

7. The United States is a nation of paradoxes when it comes to human rights and minorities.

8. The land which welcomes the world's tired, poor, and huddled masses is also the land where support for slavery led to one of the world's most brutal civil wars, where racial segregation persisted into the 20th century, and where indigenous peoples' experiences have for centuries been one of dispossession and even brutality.

9. Religious minorities, especially non-Christian, such as Jews were often subjected to long-standing discrimination and exclusion in employment, social clubs, and quotas on enrollment at colleges, particularly in the first half of the 20<sup>th</sup> century, although a majority of social country clubs in the US in the 1960s did not admit Jews, and a few still did not do so in 2011.<sup>2</sup> Some ethnic minorities such as the Roma have been and continue to be largely 'invisible' in official statistics because they are not identified as a distinct category for the purposes of the national census and thus ignored in policy and other areas despite probably constituting many hundreds of thousands. Teaching in the languages of minorities 214454 was largely banned from 1916. 'Non-White' minorities such as Asians were in the 19<sup>th</sup> and early 20<sup>th</sup> centuries not treated as equals, and often faced racist barriers in different parts of the country, while African Americans were held in servitude as slaves for centuries, denied the right to vote and equal citizenship well into the 20<sup>th</sup> century, and still face barriers to equal treatment without discrimination. While slavery itself was abolished in 1865, its legacy remains, often buttressed by repressive, exclusionary and discriminatory legislation, policies and practices that made – and many argue continue to make – African Americans having less or not being to accumulate wealth and property.

10. The strict word limit for this report makes it impossible to delve into these complex issues. This report aims to identify key minority issues and explain the relevance of the international human rights obligations of the United States.

## III. International and national human rights context

11. The relationship of the United States with international human rights has always been contradictory. Its chairmanship of the League of Nations led to the refusal of a racial equality proposal for the Covenant of the League of Nations in 1919, the world's first attempt to incorporate a binding human right obligation in international law. But there was a volte-face some 30 years later when Eleanor Roosevelt, as the chair of the United Nations Human Rights Commission, was one of the driving forces for the 1948 Universal Declaration of Human Rights and symbolized the USA's historical legacy in setting up the foundational stone for international human rights.

12. Nevertheless, the United States "has not signed and ratified any of the human rights treaties that would allow... citizens to present individual complaints to the United Nations human rights treaty bodies", and considers "the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as non-self-executing", with the result that international rights treaties are generally not recognized as rights in United States courts."<sup>3</sup>

<sup>2</sup> Gus Garcia-Roberts (August 10, 2011). "Indian Creek Country Club's Membership Exposed". Miami New Times. <https://www.miaminewtimes.com/news/indian-creek-country-clubs-membership-exposed-6532350>.

<sup>3</sup> Report of the Working Group of Experts on People of African Descent on its mission to the United States of America, A/HRC/33/61/Add.2, par. 10.

13. The legal landscape for the protection of human rights inside the country is also far from comprehensive or even coherent. While the Fourteenth Amendment to the Constitution adopted grants full United States citizenship to all persons born or naturalized in the United States, and the Fifteenth Amendment to the Constitution prohibits denial of the right to vote on the basis of race, there are exceptions for territories which are not states, and therefore hundreds of thousands of US citizens – mainly minorities and indigenous peoples - do not fully enjoy equal rights with other Americans.

14. Neither is there a national human rights legislation or mechanism to ensure that the country's population can enjoy the full range of human rights generally recognized in international law. The Constitution's first ten amendments, or the Bill of Rights, provides important human rights protections, including the freedom of speech, religion, peaceful assembly, liberty and security, and fair trial. Yet at best it is an incomplete amalgam. Only certain rights are guaranteed, though some state constitutions go much further in terms of human rights protection. There were also significant and hard-won gains made mainly during the civil rights movement in the 1960s such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

15. The most marginalised individuals and communities are often the most vulnerable in the absence of comprehensive legal protection of human rights, and these tend to be minorities. The rate of African Americans with no health care coverage was 9.7 percent, while it was just 5.4 percent among Whites.<sup>4</sup> The recent COVID pandemic has exacerbated inequalities between have and have nots: data on 20 November 2021 shows that hospitalization rates for Indigenous, Black, and Hispanic and Latinx minorities are significantly higher than for Whites.<sup>5</sup> The 'racial wealth divide' between the White majority and the African-American and Hispanic minorities has additionally been increasing in recent decades: the median Black family has \$24,100 in wealth and the median Latino family \$36,050, compared to the \$189,100 in wealth owned by the typical White family – an increasing gap since 1989.<sup>6</sup> Similar patterns of inequality can be observed in education, incarceration rates and a multitude of other data. There is thus a huge overrepresentation of minorities as the poorest Americans, as well as dramatic underrepresentation in the halls of power and authority: in the judiciary, minorities such as Black, Asian, Latino, or Native American hold only 15% of state Supreme Court judges nationwide, even though they are nearly 40% of the nation's population.<sup>7</sup>

16. Minorities are also more likely to be used as scapegoats for conspiracists and xenophobes, blamed as simple answers to complex issues. Unfortunately, recent years have seen the phenomenal growth of hate speech in social media creating conditions poisoning individual minds and proving toxic to social cohesion in the country. Many told the Special Rapporteur of a growing feeling that the United States is becoming a darker, nastier and more divided society. It is increasing moving away from being, to borrow from the country's Constitution, 'a more perfect union'.

17. On the more positive side however, the Special Rapporteur was impressed by the significant changes taking shape in 2021 following the 2020 federal elections. The Biden Administration has expressed a commitment to respect international human rights and reconnect with the international community in this field. There is also a recognition that their credibility in terms of human rights internationally is directly related to upholding human rights at home. The United States was recently elected as a member of the Human Rights Council and has issued a standing invitation to UN Special Procedures mandate holders.

18. The current administration has undertaken numerous positive steps to improve the situation and rights of minorities, including adopting as a priority in Executive Order 13985

<sup>4</sup> "Key Facts About the Uninsured Population," Henry J. Kaiser Family Foundation, December 7, 2018, <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

<sup>5</sup> Per 100,000 people, around 1500 indigenous, 1106 Black, and 891 Latinx people have had Covid-19 symptoms serious enough to require hospitalization, compared to 577 Whites. [https://gis.cdc.gov/grasp/COVIDNet/COVID19\\_3.html](https://gis.cdc.gov/grasp/COVIDNet/COVID19_3.html).

<sup>6</sup> Survey of Consumer Finances, 1989 – 2019, Board of Governors of the Federal Reserve System, [https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Net\\_Worth;demographic:racec14;population:all;units:median;range:1989,2019](https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Net_Worth;demographic:racec14;population:all;units:median;range:1989,2019).

<sup>7</sup> Alicia Bannon et. al, "State Supreme Court Diversity," (July 23, 2019), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity>.

for pursuing ‘a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized’ as well as an Executive Order on advancing equity, justice, and opportunity for Asian Americans, Native Hawaiians and Pacific Islanders, efforts to strengthen regular, meaningful and robust consultation with tribal nations, the adoption of Executive Order 13995 on ensuring an equitable pandemic response and recovery, legislation recognizing June 19 as Juneteenth National Independence Day, a US federal holiday commemorating the end of slavery in the US, and the adoption of the Covid-19 Hate Crimes Act. Some states such as California have recently adopted more robust human rights legislation and innovative policies and programs to address more actively hate speech and hate crimes targeting minorities. It has also put into place specific measures for the use of minority languages in education and in accessing public and health services. These and other legislation and initiatives provide important additional protection for minorities beyond that found in federal civil rights laws such as Title VI of the Civil Rights Act of 1965 and the Equal Educational Opportunities Act. Many other states in the country however do not.

19. Existing civil rights legislation, mostly crafted nearly 60 years ago during the 1960s civil rights movement, are often more restrictive than international human rights counterparts, particularly in relation to the prohibition of discrimination. In some areas of application there must be evidence of a form of ‘intent to discriminate’ that can be difficult to demonstrate in order to make out what constitutes discrimination.<sup>8</sup> Both approaches can be too narrow compared to international obligations – and therefore lead to situations where legislation, policies or practices are deemed not discriminatory in US law yet breach global human rights obligations.

20. There is an urgent need not only to adopt comprehensive national legislation, but to revamp current piecemeal and narrow civil rights laws to more closely conform to universal human rights obligations. The Special Rapporteur is of the view that the 1960s civil rights laws were an important and essential development well suited a particular social and political context, but that there needs to be a legislative revamping more than half a century later to handle the more complex and rapidly changing challenges of the digital 21<sup>st</sup> Century, with increasing inequalities between the have and have nots, rapid movements of people and goods across borders, and the near spontaneous megaphones of xenophobia, racism, hate and incitement to violence reaching millions through social and other media.

21. Along the same lines, both United Nations human rights mechanisms and civil society organizations in the United States have expressed concern about the absence of a national human rights institution in line with the Paris Principles on the status of national institutions for the promotion and protection of human rights. The need for an interagency federal body responsible for implementation and follow up to United Nations human rights mechanisms’ recommendations has also been pointed out to the Special Rapporteur.

22. The Special Rapporteur has been presented convincing evidence that millions of Americans, particularly minorities, are facing growing inequality, discrimination and even exclusion, facing dramatic increases in hate speech and hate crimes, as well as the challenges and threats caused by environmental degradation and growing economic, health and educational disparities leaving a disproportionate proportion of them behind. Building a better America requires a new deal for the 21<sup>st</sup> century for all Americans. It is most needed for the most marginalized and vulnerable minorities. The United States therefore needs comprehensive human rights infrastructure, vision and legislation that includes the creation of a national human rights entity for the promotion and protection of human rights consistent with the Paris Principles.

23. There is also a particular historical and social context that warrants a specific focus on African Americans, particularly in the wake of the tragedies experienced by those such as George Floyd, Breonna Taylor, Ahmaud Arbery, and so many others. Submissions and testimonies to the Special Rapporteur have made it abundantly clear that they are amongst the most marginalised minorities in the country in socio-economic terms, are by far the most likely to be denied the vote in federal and state elections, to be incarcerated, to be the targets of hate speech in social media, and to be disproportionately discriminated against. Other UN

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<sup>8</sup> The U.S. Supreme Court ruled in *Alexander v. Sandoval* that a private citizen cannot pursue a case Title VI of the Civil Rights Act of 1964 based on discriminatory effects (what is known as ‘disparate impact’). See, *Alexander v. Sandoval*, 532 U.S. 275 (2001), though US federal agencies can.

procedures will focus more on their particular predicament in 2022 and later. These include the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group of Experts on People of African Descent. The United States needs to be commended for inviting the former to conduct a mission to the country in 2023. The Special Rapporteur in particular urges the USA to invite the Working Group of Experts on People of African Descent for a follow-up meeting to its 19 to 29 January 2016 mission, since the Working Group will be in a privileged position to consider the complex discussion over whether the federal government should compensate the descendants of former enslaved people to redress for the country's legacy of slavery, whether this should take the form of reparations, and what form these reparations should take.

#### **IV. The right to effective political participation of minorities, particularly the right to vote and political representation**

24. One of the focuses of the mission of the Special Rapporteur, and one of the core international human rights and a foundation stone of democracy in the country, is that “every citizen shall have the right and the opportunity without any of the distinctions mentioned in article 2 [such as race, colour, sex, language, religion, political or other opinion, national or social origin] and without unreasonable restrictions: ... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

25. Effective protection of this fundamental human right is weak in the United States. While the 14<sup>th</sup> and the 15<sup>th</sup> Amendments to the US Constitution prohibit some forms of discrimination in voting, implementation continued, despite the adoption of the Civil Rights Acts of 1960 and 1964, and the 1965 Voting Rights Act, and continues to be problematic. This legislation prevented local and state governments from adopting laws and practices that denied citizens the equal right to vote on account of race— or at least that was the case until 2013 when the Supreme Court of the United States opinion in *Shelby v. Holder* ruled that a section of the law (section 4b) could no longer be constitutionally applied and essentially inapplicable another (section 5), with the result that states, with a previous history of racial discrimination, can now change their election practices without getting approval from the federal government.<sup>9</sup>

26. It also became clear during the Special Rapporteur's mission that the right and the opportunity to vote by universal and equal suffrage is increasingly and actively being undermined – and having a more pronounced impact mainly on minorities such as African Americans, Hispanics, and indigenous peoples. This is not a new phenomenon historically and was already recognised by other UN independent experts, such as in 2017: “In the US there is overt disenfranchisement of vast numbers of felons, a rule which predominantly affects Black citizens since they are the ones whose conduct is often specifically targeted for criminalization. In addition, there are often requirements that persons who have paid their debt to society still cannot regain their right to vote until they paid off all outstanding fines and fees. Then there is covert disenfranchisement, which includes the dramatic gerrymandering of electoral districts to privilege particular groups of voters, the imposition of artificial and unnecessary voter ID requirements, the blatant manipulation of polling station locations, the relocating of DMVs to make it more difficult for certain groups to obtain IDs, and the general ramping up of obstacles to voting especially by those without resources. The net result is that people living in poverty, minorities, and other disfavored groups are being systematically deprived of their voting rights.”<sup>10</sup>

27. Four years later, the pace of what my colleague described as the undermining of democracy has expanded explosively. Millions of American citizens,<sup>11</sup> disproportionately minorities, do not have the opportunity or are not allowed to vote in national elections, with each individual state of the country entitled to adopt its own requirements as to how precisely votes can be cast. The consequences of disenfranchisement by some states of those with

<sup>9</sup> 570 U.S. 529 (2013).

<sup>10</sup> Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, Washington, 15 December 2017, par.

<sup>11</sup> More than 2% of US citizens, some 5.1 million citizens were disenfranchised for the October 2020 presidential election on account of a felony conviction.

certain types of criminal records or associated debts, of onerous ID requirements, manipulation of polling stations or restrictions on acceptable assistance in voting are clear, concrete and significant: despite historically high turnout during the 2020 general election, Black, Hispanic and Asian minorities' participation remained dramatically unequal: while 70.9% of white voters cast ballots, only 58.4% of these minorities voted. Efforts to restrict voting rights sharply escalated in 2021, with at least 19 states passing 33 laws making it harder for Americans to vote.<sup>12</sup>

28. Most notable in this direction is S.B. 1, a Texan omnibus legislation that disproportionately impacts on African American, Hispanic, Asian and other minorities. It makes it harder for those who face language access barriers, mainly minorities, to get help to cast their ballots, but also restricts the ability of election workers to stop harassment disproportionately targeting minorities by partisan poll watchers and bans 24-hour and drive-thru voting. It is now an offence in Texas for election workers to send absentee ballot applications to voters who didn't request them. The electoral system in Texas, and unfortunately in a growing number of other states, thus appears increasingly loaded against minorities. Despite minorities representing about 95% of the population growth in Texas in the 2020 census of which more than half was Hispanic, the two congressional seats added because of this population growth have a majority white population makeup according to court documents filed in a lawsuit shortly before the Special Rapporteur's mission. Such examples of what is known in the United States as 'gerrymandering'<sup>13</sup> are in the upswing in the country and many submissions made to the Special Rapporteur emphasized that what was involved is the dilution of the voting power of minorities. In States such as California, with an independent redistricting commission, no such undermining of the right to vote of minorities appear to be occurring.

29. The examples of measures being adopted to make or having the effect of making voting more difficult are legion. Minorities, particularly African Americans, Asian Americans and Hispanics, were disproportionately and negatively impacted in their exercise of the right to vote, even if none of the measures identified directly referred to ethnicity, language or religion. But the linkages are surprisingly evident: poorer minority voters may have limited free time to vote on working days since they may have more than one part-time job, not work during 'office hours' or have no time to line up for hours to exercise their right to vote because their polling station may be crowded. They may have little or no transportation to get to a polling station. Limiting the number of drop-off boxes, restricting voting by mail, only allowing voting during a limited number of hours, or locating polling stations away from public transportation or areas where minorities are located, or creating electoral districts which 'dilute' the concentration of minority voters.

30. It needs to be emphasised that the impact of all these measures, and the submissions and testimonies received by the Special Rapporteur all pointed to recent legislation adopted in 19 states passing 33 laws in 2021 making voting disproportionately harder for minorities. The Special Rapporteur has not been presented with any clear evidence of any significant amount of fraud in the electoral process or illegal voting to the 'integrity' of the electoral system which would warrant measures likely to exclude many Americans from the right to vote.<sup>14</sup> It appears that most restrictive measures are adopted only because of 'perception' that encouraging and making the exercise of the right to vote too accessible could facilitate fraud

<sup>12</sup> Testimony of Wendy Weiser, Vice President for Democracy and the Brennan Center for Justice at NYU School of Law, before the U.S. Senate Committee on the Judiciary on "Protecting a Precious, Almost Sacred Right: The John R. Lewis Voting Rights Advancement Act" (Oct. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/testimony-protecting-precious-almost-sacred-right-john-r-lewis-voting>.

<sup>13</sup> This is done through manipulating the boundaries of electoral districts to gain an unfair political advantage, so that the votes of one particular group are more concentrated and are more likely to win a seat, or that of an opposing group is more thinly distributed in a number of districts to 'dilute' the odds of winning a seat.

<sup>14</sup> In the 2016 national elections, there were four documented cases of voter fraud out of 135 million votes cast, one of which was a woman who cast a ballot on behalf of her dead husband. The Washington Post, 'There have been just four documented cases of voter fraud in the 2016 election', 1 December 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/12/01/0-000002-percent-of-all-the-ballots-cast-in-the-2016-election-were-fraudulent/>.

and hence had to be discouraged – again despite the absence of any evidence of such issues in the recent 2020 national elections.

31. The conclusion of the Special Rapporteur is that many of the obstacles minorities face in the exercise of the right and opportunity to vote by universal and equal suffrage are unreasonable and therefore discriminatory and clear violations of one of the pillars of international human rights law, and the phenomenon – and undermining of democracy – is increasing. Human rights, and especially the equal right to vote, are moving backwards for minorities in the United States.

32. On the positive side, the Special Rapporteur was heartened by the Biden Administration commitment to better protect the right to vote of all Americans with federal voting bills — the Freedom to Vote and the John R. Lewis Voting Rights Advancement Act — as well as with other legislation such as the For the People Act which contained voting rights protection. The latter would facilitate the universal and equal right to vote of all citizens by setting national voting standards and strengthen legal protections against discriminatory voting laws and policies. More specifically it would set minimum national standards for voting by mail and make Election Day a federal holiday. The latter would restore requirements that states seek federal approval for changes to their electoral practices that could harm minority voters. At the time of completing this report however, both pieces of legislation, merged into one, failed to be adopted by the US Senate. The right to vote of millions of minorities is thus severely curtailed and increasingly at risk.

33. There are other areas where minorities are not entitled to full and equal human rights in terms of political participation and representation. Millions of citizens in United States territories, most of whom are also members of minorities and some constituting peoples in a colonial context, cannot vote in presidential elections.<sup>15</sup> These minorities are not represented in the U.S. Senate, and their representatives in the House of Representatives cannot vote on the floor. American Samoans are currently not considered citizens, but ‘nationals’ with even less rights in terms of a right to vote and to political representation and participation as expressed in Article 25 of the International Covenant on Civil and Political Rights. This report cannot detail the various historical factors and the varying forms of autonomy and status, including that of people with the right to self-determination, which led to the exclusion of mainly minorities and peoples from overseas territories. The Special Rapporteur is of the view however that the prohibition of discrimination in international human rights law and the right to universal and equal voting rights and to take part in the conduct of public affairs through freely chosen representatives are not fully implemented in the archaic remnants of the country’s colonial past which continues through the political disenfranchisement of the populations in these territories.

## **V. Education and the linguistic rights of minorities**

35. Students belonging to minority groups are often enrolled in public schools in communities with concentrated poverty and, therefore, are more often provided fewer resources and educational opportunities. Too often these are linked to lower educational opportunities. More to the point, public school district budgets can be tied in some states to local property taxes. While somewhat of an oversimplification since it is not always the case that per-student expenditures necessarily track community wealth, the general consequence is still that public schools in wealthier communities have more local funding. Federal funding reportedly does not make up for this discrepancy. There is also in some parts of the United States significant financial support, tax and other forms of concessions and transfers for private education – and which minorities tend to be hugely underrepresented. More than one organization pointed out this could be seen as a form of structural discrimination, akin to a diversion of public resources away from public education, resulting in underfunding of the public school system, underpaying of public teachers, and disproportionate impacting on mainly minority students.

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<sup>15</sup> There are five inhabited American territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Their total population in 2020 was around 3.5 million people.



36. The Special Rapporteur is of the view that there should be national standards for the funding of all public schools to address the inherently systemic and discriminatory impact of locally based funding approaches to public education. There are under the Biden Administration laudable efforts to more directly and equitably address these funding inequalities, such as with the the 2021 American Rescue Plan that expands opportunities for students most in need such as students from low-income backgrounds and minorities, and federal funding such as Title I, Part A (Title I) of the Elementary and Secondary Education Act.

37. While some states such as California have put in place forms of bilingual education, particularly for its large Hispanic minority as well as some of the larger more concentrated minority and minority communities, and the results for these have been overwhelmingly positive, this is not necessarily the case for linguistic minorities in other parts of the country. The Cajun (also known as ‘Cadiens’ or ‘Acadiens’) minority for example historically constituted a significant proportion of the population in the state of Louisiana and parts of neighbouring states, have seen their culture and language (French) come under threat because of legislation and policies, mainly after 1916, through active prohibitions of the use of their language in schools until almost the late 20th century. As with indigenous and Spanish languages, the French Cajun language is part of the rich cultural and linguistic heritage of the country. Despite Louisiana’s French agency, CODOFIL efforts and the passing in more recent years several of laws to protect the State’s French language and culture, further measures for their preservation, revitalization and promotion, including in innovative programs in education and elsewhere to ‘renormalise’ and strengthen the use and position of the French language in Louisiana. This could include temporary special measures in order to promote the use of French in smaller communities, and resources to renew exchanges with kindred Acadien educational and other institutions.

38. Similarly, the Chamorro language in Guam and neighboring islands is on the UNESCO list of endangered languages, following an English-only policy introduced by the United States which lasted until relatively recently. While attitudes towards the language have changed dramatically in recent years, Chamorro is not widely taught in schools, and its use as a medium of instruction is still very limited. This continues to have a detrimental effect on the academic performance of Chamorro children and how they perceive their identity, language and culture. There is widespread evidence that student achievement and performance, community and school pride, and educational opportunity are clearly and directly tied to the use of the first language of indigenous and minority children as medium of instruction in education.<sup>16</sup> As in the case of indigenous languages and French in Louisiana, the indigenous Chamorro language’s precarious state, a legacy of previous discriminatory practices by officials and repressive legislation and policies, needs to be redressed and normalized in Guam.

39. The Special Rapporteur believes the Native American Languages Act should be expanded to directly include indigenous languages from overseas territories such as Guam, and that it be expanded to provide guaranteed funding for sustained revitalization initiatives of these languages.

40. Individuals who are deaf or hard of hearing, as well as members of their families and others who use sign languages to communicate, are using a full-fledged language and are therefore members of a linguistic minority. Concerns related to sign language include the lack of national legal recognition of American Sign Language (ASL) as a full-fledged language, and language deprivation as many deaf children are not able to learn sign language at a young age. Federal legislation and initiatives such as the Education of the Deaf Act support institutions such as Gallaudet University, the world’s first university for the deaf, the National Technical Institute for the Deaf, and a number of schools for the deaf. Nevertheless, the use of sign-language in education and the status of ASL in the country varies hugely and is not always consistent. In many states ASL is only recognized as a ‘foreign language’ so that it may be accepted for the purposes of college or university credit. Teaching in sign language is not always favoured, and in some states not actively used as medium of

<sup>16</sup> Language rights of linguistic minorities: A practical guide for implementation, UN Special Rapporteur on minority issues, 2017, section IV, <https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/LanguageRights.aspx>.

instruction, contrary to what is generally considered to be in the best approach in educating deaf and hard of hearing children.

## VI. Access to Justice and Administration of Criminal Justice

41. The Special Rapporteur commends the United States' Biden Administration for acknowledging and taking notable steps in the justice field such as the relaunching by the Attorney General of an Office for Access to Justice and other initiatives, such as to strengthen legal aid in the country.

42. The Special Rapporteur was nevertheless made aware of sentencing disparities and incarceration rates for minorities in the US criminal justice system. The use of mandatory minimum sentences and zero tolerance policies in some state laws, as well as the 'War on Drugs' from the 1970s, have had the effect of disproportionately criminalising large swaths of minority populations. One third of the prison population is African American and one third is Hispanic, while they only make up some 13 % and 18 % of the population in the US. This has created a vicious circle of exclusion and barriers to later employment and inclusion in society for those with criminal antecedents, such as accessing adequate housing, social programmes and credit. Ultimately millions – overwhelmingly minorities – are being effectively excluded from political representation and the right to vote because of felony or even misdemeanor convictions and associated penalties.

43. The Special Rapporteur is of the view that minorities find themselves disproportionately at the receiving end of marginalization and criminalization that crushes them into a generational cycle of poverty, with a criminal justice system that is structurally set up to advantage and forgive those who are wealthier, and penalizing those who are poorer, particularly minorities of colour. As pointed out one of his colleagues, "the criminal justice system is effectively a system for keeping the poor in poverty while generating revenue to fund not only the justice system but diverse other programs... So-called 'fines and fees' are piled up so that low level infractions become immensely burdensome, a process that affects only the poorest members of society who pay the vast majority of such penalties".<sup>17</sup>

44. What could be added is that these poorest members of society caught up in this vicious cycle are mainly from minority communities such as African Americans and Hispanics. Every day in the country, almost half a million people are in jails without being convicted of a crime, incarcerated because they cannot afford bail. The cash bail system disproportionately impacts minorities such as Blacks and Hispanics, and this has more than doubled over the past 15 years.<sup>18</sup>

45. Police killings of and violence and brutality towards African Americans are of extremely grave concern because of more recent high-profile incidents. But what is overlooked is the systemic nature of what the mediatized incidents reveal. Available statistics indicate that African American men are almost three times as likely, and Hispanic men are almost twice as likely, to be killed by police than white men. Independent and effective oversight of law enforcement is crucial to end such practices, in addition to other practices that need to be more systematically put into place towards de-escalating confrontational approaches towards certain minorities, ending racial profiling practices which is still prevalent. The Special Rapporteur looks forward to his colleague the Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance upcoming 2022 mission to the US to further elaborate on these issues.

## VII. Hate Crimes and Hate Speech

46. There are hate crime laws at the federal level and in most States, prohibiting violence and threats of motivated by race, color, religion, national origin, and other protected categories. The Special Rapporteur was informed of numerous recent initiatives by federal authorities to further tackle hate crimes and speech, such as the COVID-19 Hate Crimes Act

<sup>17</sup> Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, Washington, 15 December 2017, par. 48.

<sup>18</sup> Wendy Sawyer, 'How race impacts who is detained pretrial', Prison Policy Initiative, 9 October 2019, [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/).

and the Jabara-Heyer No Hate Act for what was described as a ‘new range of tools’ to combat hate crimes and incidents. He was also informed that the FBI has now elevated hate crimes to its highest-level national threat priority, which results in increasing the resources for hate crimes prevention and investigations.

47. However, there is no uniform definition for what constitutes a hate crime. As for hate speech, while it is not criminalized due to the First Amendment protection of speech, authorities reportedly act when hateful expressions turn into discrimination or violence. Enforcement should be in line with the International Covenant on Civil and Political Rights Article 20(2), which provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

48. The FBI gathers data on hate crimes, but reporting is voluntary. The FBI relies on local law enforcement agencies to collect and submit this data but doesn’t compel them to do so, with the result that thousands of them do not send any data, and among the 15,000 that do, some 88 percent reported for example they had not a single hate crime in a year.<sup>19</sup> Not only are hate crimes and incidents of hate speech hugely underreported by public officials, minorities themselves may hesitate to do so. Members of some communities may not trust law enforcement, face language challenges, or may be undocumented and afraid to contact law enforcement officials. This means that there is likely a significant undercount of reporting. African Americans are reported to be the minority most affected by hate crimes and hate speech, while religious hate crimes and hate speech most frequently target Jewish and Muslim minorities.<sup>20</sup> Overall, even the underreported FBI data showed that hate crimes in 2020 have risen to their highest level in over a decade, and that the majority of the reported hate crimes were motivated by race, ethnicity or religion bias, most targeting minorities to the extent of representing perhaps more than 70% of the hate crimes in the country.

49. The underreporting of hate crimes is acknowledged by the Biden Administration. The Department of Justice has made its portal [civilrights.justice.gov](https://civilrights.justice.gov) more accessible to make it easier to report hate crimes and is focusing on improving language access through translations and attempts to ensure culturally competent information.

50. What is largely unacknowledged is that the overwhelming targets of hate speech in social media are minorities. Of particular concern is also the increasing virulence of intersecting misogynous and racist hate speech which means minority women are particularly vulnerable to some of the most violent and dangerous forms of hate speech in social media. It has been suggested that hate speech in social media is also contributing to harm in the real world, noting that the 16 March 2021 shooting spree at spas and massage parlors in the metropolitan area of Atlanta where eight people were killed, six of whom were Asian women, occurred during the backdrop of rising anti-Asian sentiment in the United States during the COVID-19 pandemic.

51. Anti-Semitism, Anti-Asian speech, Islamophobia, derogatory slurs against Hispanic, Arab and other minority communities and anti-immigration xenophobia are surging, sometimes at record levels, in the whole country. These appear to be creating real societal harm and cleavages in the country with xenophobia, scapegoating and scare-mongering mainly aimed at minorities. The algorithms of some social media platforms create rabbit-holes and amplify prejudice, racism and disinformation. While no one suggested that social media platforms did not offer people the opportunity to positively connect, share and engage, many decried the harmful and misinformative content. As one minority spokesperson mentioned, the business model of some of these platforms promote hate speech, damage democracy and is tearing societies apart.

52. Many minority and human rights organisations expressed the view that social media platform owners were not sufficiently and proactively responding to this dangerous and

<sup>19</sup> ‘Why America Fails at Gathering Hate Crime Statistics’, ProPublica, 4 December 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>.

<sup>20</sup> The Council on American-Islamic Relations’ last report before the pandemic noted a 17% increase in anti-Muslim bias incidents in the US in 2017 over 2016, as well as a 15% increase in hate crimes targeting American Muslims in the same period. ‘Targeted: 2018 Civil Rights Report’, CAIR, 2018, p. 6. The Anti-Defamation League has also reported historic levels of antisemitic incidents over the past four years. See <https://www.adl.org/news/press-releases/us-antisemitic-incidents-remained-at-historic-high-in-2020>.

growing tendency, and that more direct intervention was needed in order to impose, if necessary, further responsibilities and liabilities for the real harm and even violence and abuse caused by hate speech.

53. To ensure the protection of freedom of expression as well as to tackle the damaging effects of hate speech and hate crimes propagated or facilitated by social media platforms, the Government must move in the same direction as other democracies such as Austria, Germany, the United Kingdom and the European Union towards enacting legislation against hate and crime on social networks, to make the deletion procedure of hate speech and crime postings simpler, and more transparent. and shift responsibility for the harm caused to the social network provider.

## **VIII. The Human Rights of Religious Minorities**

54. While religious freedom is guaranteed by state and federal law and that federal legislation such as the Religious Land Use and Institutionalized Persons Act offers protection in some areas for religious or belief minorities, domestic legislation does not always effectively protect against discrimination on the basis of religion or belief as prohibited in international human rights. While Title VII and the Fair Housing Act prohibit discrimination based on religion in employment and housing respectively, no federal legislation directly and generally prohibits discrimination on the ground of religion or belief, nor for that matter on the ground of language, two of the most important forms of human characteristics under which discriminatory practices and policies often take place and impact on minorities.

55. Furthermore, following the events of 11 September 2001, the US government at the time introduced domestic legislation to address homeland security, including the Patriot Act which negatively impacted minorities, particularly Muslims and people of Arab or South Asian descent. This had a chilling effect on the activities of many Muslims, who reportedly attended mosque less frequently or stopped going completely. The chilling effect has never completely gone away. The previous administration's 2017 Muslim Ban also disproportionately targeted and impacted Muslim Americans as well as Arab and South Asian Americans – and arguably discriminatory in international human rights. The Department of Homeland Security's recognition that extreme right-wing terrorism/white supremacists represent the number one domestic terrorism threat in the United States, targeting minority communities of colour, and those based on religion or ethnicity is however a welcome step.

56. The Biden Administration has replaced the former Countering Violent Extremism (CVE) programme with the Center for Prevention, Programmes and Partnerships (CP3). The focus is broadened from Muslims to a wider spectrum, including white supremacists. The Department of Homeland Security has stated that CP3 is moving away from a law enforcement approach and rather aiming at a public health, whole of society approach, working with local communities. However, civil society has argued that this approach simply expands the reach of the ineffective and discriminatory CVE programme.

57. While the National Strategy for Countering Domestic Terrorism includes a focus on white supremacist violence and the importance of respecting civil rights, concerns remain. The Department of Justice has issued guidelines on profiling which do not apply to national security investigations or at the border. This means that religious and ethnic profiling is still allowed to take place in these areas, often targeting Muslims and Hispanics.

58. Religious or belief discrimination is also affecting non-theists, humanists and atheists in the United States where 'Christian bias or favouritism' appears to contradict the official secular nature of the state. This includes discrimination in schools, through school-led prayers, which it has reported still occurs in some public schools despite constitutional, legislative and jurisprudential requirements that school officials acting in their official capacity not lead prayers or otherwise coerce or compel students to engage in prayer, and restrictions on the right to political participation, due to high electability barriers. Pro-religious bias is reported to be deeply engrained, while seven state constitutions still have unconstitutional bans preventing non-religious people from holding office. Furthermore, there are reported incidents of religious minorities being excluded from accessing public services through private providers. In one recent incident, training services required by the Tennessee Department of Children's Services were denied to a Jewish couple by a state-funded adoption agency because they were not Christian. Tennessee legislation adopted in 2020 allows faith-

based organizations to deny adoptions if these are inconsistent with an agency's "religious or moral convictions or policies" to the "extent allowed by federal law." Complicating this evident issue of discrimination on the ground of religion is that federal law in the US only specifically prohibits, under Title VI of the Civil Rights Act of 1964, discrimination based on race, color, or national origin — but not religion — in programmes or activities that receive federal funding. Finally, since the US Supreme Court in *Fulton v. City of Philadelphia* in 2021, corporations and other legal entities can claim in US law their 'freedom of religion or belief' to those of individuals. Such an approach is inconsistent with international human rights law since freedom of religion or belief is an individual right available only to humans, not corporations.

## **IX. The situation in United States' overseas territories**

59. Most of the populations of the territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) are members of ethnic, religious and linguistic minorities, even if they also be considered indigenous peoples with associated rights in relation to self-determination. In addition, these territories are considered under Chapter XI of the Charter of the United Nations as Non-Self-Governing Territories, meaning "territories whose people have not yet attained a full measure of self-government". While Puerto Rico and Northern Mariana Islands are no longer on the UN list of non-self-governing territories, the United Nations Special Committee on Decolonization determined in 1972 that a "colonial relationship" existed between the U.S. and Puerto Rico. Similarly, many Guamanians consider their island to be colonized by the United States.

60. To be clear, there are different categories of rights-holders in international law in overseas territories which may overlap but are not necessarily exclusive: indigenous peoples; colonial peoples in the 'non-self-governing context', and national or ethnic, religious and linguistic minorities. An indigenous people not in a colonial context would have a distinct legal status to an indigenous people of a territory under Chapter XI. Many individuals who are members of an indigenous people could also, in addition to any status other status as a people, be in some contexts members of a linguistic or religious minority. These are distinct legal categories which can be overlapping and neither exclusive nor detrimental to each other. The individual human rights of minorities have no consequences as to the collective rights indigenous peoples and peoples in a colonial relationship may have in international law. The populations of overseas territories and other non-self-governing territories are separate and distinct peoples with the right to self-determination, while some of the individuals in these territories may at the same time constitute in matters of language, religion or culture minorities.

61. During the Special Rapporteur's visit to Guam, a major area of concern expressed to him was the US military' control over approximately one third of the island, and military activities are alleged to have caused serious contamination to the land and drinking water. A firing range complex is under construction above an aquifer which provides 90% of the water in Guam. Military construction is also taking place in ancestral lands containing ancient burial sites. Such sites do not have similar levels of protection as other indigenous sites such as Native American sites on mainland USA.

62. As federal laws supersede local laws of Guam and other territories, the local population often feel their rights and interests are subsidiary to those of citizens from the mainland. They cannot vote in presidential elections and have no voting representation in Congress. A plebiscite to let the people who were colonized by the United States and their descendants decide on their status and the future of the island was blocked by a lower court and the U.S. Court of Appeals for the Ninth Circuit affirmed the ruling in 2019. The Ninth Circuit found the plebiscite statute used ancestry as a proxy for race, in violation of the 15th Amendment. Many feel they are second-class citizens who cannot effectively present and protect their interests.

63. The Commonwealth of Puerto Rico is similarly devoid of equal rights to political participation and representation. Puerto Rico has a fiscal deficit that compounds their political rights deficit. Because of the territory's precarious budgetary position real legal and political authority ultimately resides in the Financial Oversight and Management Board that was imposed by Congress on Puerto Rico as part of PROMESA. The draconian austerity measures imposed on Puerto Rican territorial authorities and the whole population, without

regard to any obvious human rights considerations in the Board's decisions, have led to dramatic cuts and reductions in areas such as public education, public health. It is difficult to disagree with the claims made by many Puerto Ricans met during meetings in San Juan and Vieques, that Puerto Ricans are being controlled by a colonial-type overseas power to the detriment of the people of Puerto Rico, without any meaningful representation at the national level and with no real ability to govern themselves as a non-self-governing territory in the international sense.

64. While the current administration must be commended for adopting executive orders that seek to address some of these grievances, none fundamentally change many of the claims of discriminatory treatment. There remains in place a legal and political legacy from an era with a colonial mindset towards mainly non-White minorities which is anachronistic. The Special Rapporteur is of the view that a new federal approach is necessary in order to fully respect the identity, traditions and specificities of these territories and their communities, including their rights as non-self-governing territories, and their human rights as recognized under international human rights instruments.

## **X. Environmental Injustice and Discriminatory Treatment of Minorities**

65. Minorities are often disproportionately exposed to serious environmental hazards and contamination, including to drinking water aquifers. The disproportionate health, standard of living and educational performance and social impacts were particularly made evident during powerful testimonies in Guam and Vieques, Puerto Rico. Other special procedures have also been presented with compelling evidence of minorities "in disadvantaged areas with hazardous environments (e.g. in proximity to industrial toxicity, power stations, flood zones and so on) and without access to social and commercial facilities. The most polluting industrial facilities, across a range of sectors from farming and mining to manufacturing, are more likely to be situated in poor and minority neighborhoods, including those of people of African descent... and the lead-contaminated water in Flint, Michigan."<sup>21</sup> Minority communities and the peoples in territories such as Guam and Puerto Rico, as well as poorer minority rural regions on the mainland, may find themselves disproportionately exposed to contamination by chemicals or other pollutants, or underserved by municipal sewage systems, or the dumping grounds for years of military toxic ammunition and poisons. Despite the grave health consequences, highly contaminated sites known as Superfund sites such as in Vieques Puerto Rico and in Guam, or the municipal water supply in Flint Michigan where minorities are concentrated, do not seem to be sufficiently prioritized for cleanup as they should be, in an efficient or expedited manner.

66. Concretely, minority communities have disproportionately higher cancer and disease rates, more children with learning deficiencies or developmental challenges, and lower life expectancies. It is difficult to deny that White communities tend to be better served by government officials, and that decontamination measures, well-maintained sanitary systems or more effective measures for the protection of aquifer and water supplies are more likely to be in place.

67. The Special Rapporteur was particularly struck with the example of the island of Vieques in Puerto Rico in this regard. The US military used the island as a live munitions target practice for about 60 years. According to internal Navy documents, bombardments occurred on 180 days out of a year on average. The US military used high-level depleted uranium munitions and bombs from 1972. Other forms of contamination exist (heavy metals, etc.) because of the use Vieques as a munitions testing and warfare exercise ground. The result, summarised eloquently in a town meeting of a lack of any visible cleanup yet, is simply "They bombed us, they made us sick, then they left us. They don't give a damn."

68. Even though the Navy stopped these exercises and withdrew from Vieques in 2003, the health consequences are continuing across generations, with cancer rates clearly higher for Vieques than for the rest of Puerto Rico. Some of these occupied lands were returned in 2001 to the municipality of Vieques, and later others to federal and other agencies such as

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<sup>21</sup> Report of the Working Group of Experts on People of African Descent on its mission to the United States of America, A/HRC/33/61/Add.2 para 52.

the Puerto Rico Conservation Trust and the U.S. Department of Interior, including as a wilderness conservation area with no public access. None were, strictly speaking, returned to the local population.

69. While the US Navy, with EPA oversight, has completed significant clean-up work, including of 4,332 acres of surface and 489 acres of subsurface cleared of munitions and weapons contamination, the promised decontamination activities, including of at least one highly contaminated site, under a National Priorities List (NPL) for long-term cleanup financed by the federal Superfund program, have not progressed significantly in recent years as of 20 November 2021.

70. Also as of 20 November 2021, the hospital in Vieques damaged by Hurricane Maria had still not been repaired. The population must travel to the main island, not always a simple task, despite approval on 21 January 2020 by the Federal Emergency Management Agency (FEMA) of \$39.5 million to help rebuild the hospital. The Special Rapporteur personally saw no visible renovations on location almost two years later in November 2021. The results are people being sick and dying because of unavailable medical treatments in Vieques. Puerto Ricans present at the town hall in Vieques seemed convinced they are second-class citizens because of their ethnic background, and that what they experience would not occur if they were members of the White Anglo-Saxon majority. A similar sentiment was expressed in Guam in the widespread view that highly toxic waste left behind by the US military presence would not be left unanswered for so long if it occurred to members of the country's majority on the mainland. The Biden Administration and the EPA have more recently committed to take actions to address some of these longstanding environmental justice concerns.

## **XI. Conclusions and recommendations**

71. **On the United States' international obligations:**

(a) **The current administration must recommit to the global human rights architecture more than with mere words. This requires concrete action including:**

(b) **Completing the ratification process for human rights treaties or protocols that would allow United States citizens to present individual complaints to the United Nations human rights treaty bodies.**

(c) **Ratifying the United Nations Convention on the Rights of Persons with Disabilities**

(d) **Establish an interagency federal body responsible for implementation and follow up to United Nations human rights mechanisms**

(e) **Invite the Working Group of Experts on People of African Descent for a follow-up meeting to its 2016 country mission.**

72. **A pivotal moment in history: time for comprehensive national human rights legislation:**

(a) **Minorities are particularly vulnerable to the gaps and omissions of a patchwork federal and state human rights legislation and protections. Most federal human rights protection dates to the era of the 1960s civil rights movement. Sixty years later, the modern challenges of hate speech, misinformation and disinformation in social media, the recrudescence of Antisemitism and Islamophobia, as well as the growing threats of hate crimes, xenophobia and racism targeting other minorities. To this can be added the pandemic of intolerance and growing extreme right-wing nationalism, violence and attacks, usually against minorities. It is recommended:**

(i) **A strategic campaign for the adoption of comprehensive national human rights legislation to include the USA's international human rights obligations, particularly on the recognition of the right to equality without discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

(ii) The creation of a national human rights institution in line with the Paris Principles on the status of national institutions for the promotion and protection of human rights.

73. **Protecting democracy and guaranteeing the equal right to vote and to political participation and representation:**

(a) It is discriminatory that millions of American citizens, overwhelmingly minorities, cannot vote. The increasing number of barriers to the right and the opportunity without any discrimination to vote and to be elected at genuine periodic elections by universal and equal suffrage are inconsistent with the Government's obligations under international law. It also constitutes a direct and immediate danger to democracy in the country. More broadly, the US Government needs to pursue a campaign to update federal guarantees to the equal right of citizens. This must include:

(i) Revising and updating federal and other legislation to lift the denial of the right to vote in federal and presidential elections for US citizens and nationals of overseas territories.

(ii) Continuing efforts for the eventual adoption of the Freedom to Vote and the John R. Lewis Voting Rights Advancement Act. Alternatively, a campaign to completely revamp the Voting Rights Act of 1965 is needed to address contemporary forms of disenfranchisement, such as onerous ID requirements, gerrymandering, felony convictions and debts, limitations to poll station accessibility or drop-boxes, etc.

74. **Language and education of minorities:**

(a) The Special Rapporteur recommends that American Sign Language (ASL) be recognised as a full-fledged 'American language', and further that it be identified in federal and other legislation as a language for the purposes of its use as a language of instruction.

(b) The Native American Languages Act and similar legislation should be expanded to directly include indigenous languages from overseas territories such as Chamorro in Guam, as well as funding for sustained revitalization initiatives of these languages, and particularly for the development of their use as languages of instruction.

(c) Historical linguistic minorities such as the Cajun should be entitled to measures for the preservation, revitalization and promotion to 'renormalise' and strengthen their language. This could include temporary special measures in order to promote the use of French in smaller communities, and resources to renew exchanges with kindred Acadien educational and other institutions.

(d) The funding of public education in the United States continues to systematically disadvantage minorities from poorer communities. There must be national standards for the funding of all public schools to address more comprehensively and directly the inherently systemic and discriminatory impact of locally based funding approaches to public education.

75. **The targeting of minorities in hate speech and crimes:**

(a) The US Government must move towards enacting legislation against hate speech and crime on social networks, to make the deletion procedure of hate speech and crime postings simpler, more transparent and impose responsibility to the social network provider. This includes the need to amend Section 230 of the Communications Decency Act to remove general immunity to providers of social media platforms.

76. **The criminal justice system and minorities:**

(a) The Special Rapporteur calls for reform to move away from the incarceration of poorer minorities, such as by eliminating cash bail for most low-level offenses.

77. **Religious minorities:**

(a) There is significant religious bias in the United States which continues to affect religious or belief minorities. In the absence of comprehensive national human rights legislation, there must be efforts to at the very least amend the Civil Rights Act



of 1964 so that it covers discrimination based on religion or belief, in addition to race, color, or national origin.

78. **Environmental Justice:**

(a) A nation-wide study and consultation process on ‘environmental injustice and discrimination’, particularly affecting minorities and poorer communities most at risk in overseas territories and mainland states, in preparation of a national action plan to identify and prioritise the decontamination of sites still threatening communities water supplies and environment, including former and present sites used by the US military.

79. **Other Recommendations:**

(a) A statelessness determination system so that many among the more than 200,000 stateless individuals living in the United States, particularly children, have a pathway towards citizenship for the effective protection of their human rights, access to vital services, and their presence in the country.

(b) The recognition of the Roma minority in the country, and an acknowledgment of their historical presence, which will help address the still-existing negative stereotyping and even anti-gypsyism. The Roma should, amongst other needed measures, be included as a distinct category in future censuses.

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