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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى الولايات المتحدة الأمريكية

تقرير المقرر الخاص المعني بقضايا الأقليات، فيرناند دي فارين \* \* \*

موجز

يناقش المقرر الخاص المعني بقضايا الأقليات، فيرناند دي فارين، في هذا التقرير، زيارته الرسمية إلى الولايات المتحدة الأمريكية بناءً على دعوة من الحكومة، في الفترة من 8 إلى 22 تشرين الثاني/نوفمبر 2021، لتقييم حالة الأقليات في البلد.

\* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمَّم باللغة التي قُدِّم بها فقط.

\*\* قُدِّم هذا التقرير بعد انقضاء الموعد النهائي لكي يتضمن أحدث المعلومات.



الرجاء إعادة الاستعمال

## Annex

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

## I. Introduction

1. From 8 to 22 November 2021, the Special Rapporteur on minority issues, Fernand de Varennes, conducted an official visit to the United States of America at the invitation of the Government to evaluate the situation of minorities in the country. He visited the capital, Washington, D.C., and had both online and in person meetings in the States of California and Texas, as well as in the territories of Guam and Puerto Rico, including locations in northern Guam and the island of Vieques, Puerto Rico. He consulted widely with more than 100 officials at the federal, state and territorial levels and with academics, representatives of civil society organizations and minorities from different parts of the country, as well as with senior government officials from federal ministries, including the State Department, the Department of the 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, the Congressional Black Caucus, the Congressional Pacific Islands Caucus, the Congressional Asian Pacific American Caucus and the Congressional Hispanic Caucus.

2. In California, the Special Rapporteur met with representatives of the California Department of Education, the Department of Justice, the California Latino Legislative Caucus, the California Legislative Black Caucus and the California Asian and Pacific Islander Legislative Caucus. In Texas, the Special Rapporteur met with the Chair of the Mexican American Legislative Caucus and the Vice-Chair of the Texas Legislative Black Caucus, as well as the Elections Administrator of Harris county.

3. In Guam, the Special Rapporteur met with the Lieutenant Governor, the Speaker of the Legislature of Guam, the Chair of the Legislative Committee on Environment, Revenue and Taxation, Labour, Procurement and Statistics, Research, and Planning, the Attorney General, the Chief Programme Officer of the Guam Preservation Trust, as well as with members of the Board of the Kumision I Fino' Chamoru. In Puerto Rico, he had meetings with the Director of the Civil Rights Commission of Puerto Rico and with a member of the House of Representatives of Puerto Rico.

4. The Special Rapporteur also received a very large number of written submissions, both in advance and during his visit, from civil society organizations, in particular organizations representing Asian Americans, Arabs, atheists and humanists, Bahá'is, African Americans, Cajuns, Chamorros, the deaf, Dominicans, Haitians, Hindus, Hispanic and Latinx communities, Jews, Koreans, Muslims, Pacific Islanders, the Roma and other minorities. He is deeply grateful to all of those who organized community consultations with him.

5. The Special Rapporteur extends his sincere gratitude to the Government of the United States for its invitation to undertake this mission and for the support and invaluable cooperation of the State Department.<sup>1</sup> He regrets that no official of the State of Texas was available or accepted to meet with him.

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<sup>1</sup> The Special Rapporteur is grateful for the support and the work undertaken by Hee Kyong Yoo, Marina Narvaez, Isabelle Besse and particularly Christel Mobeck in the coordination and finalization of the mission to the United States. He also thanks the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Manuel Lujan Cruz, graduate of the United Nations Minority Fellowship Programme, for their assistance. Many others provided invaluable and much appreciated assistance for meetings and support in different locations, including the American Civil Liberties Union; the Center on Race, Immigration & Social Justice at California State University, Sacramento; the Bernard and Audre Rapoport Center for Human Rights and Justice at the University

6. The objectives of the visit were to identify good practices, in a spirit of cooperation and constructive dialogue, 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, in conformity with the mandate of the Special Rapporteur. More specifically, the purpose of the visit was to identify ways to improve 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, education and linguistic rights, access to justice and administration of criminal justice and measures to address hate speech and hate crimes.

## II. Minorities in the United States of America

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

8. The country that has welcomed 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 twentieth century and where the experiences of indigenous peoples have for centuries been one of dispossession and even brutality.

9. Religious minorities, especially non-Christian communities, such as Jews, have been subjected to long-standing discrimination and exclusion in employment, membership in social clubs and quotas on enrolment at colleges, particularly in the first half of the twentieth century: a majority of social country clubs in the United States in the 1960s did not admit Jews, and a few still did not as late as 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 are thus ignored in policy and other areas, despite probably constituting a population of many hundreds of thousands. Teaching in the languages of minorities was largely banned from 1916 onwards. In the nineteenth and early twentieth centuries, non-white minorities such as Asians were not treated as equals, often facing 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 twentieth 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 prevented, and many argue continue to prevent, African Americans from accumulating wealth and property.

10. While the strict word limit for the present report makes it impossible to delve into these complex issues, it 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 law has been contradictory. In 1919, a commission was appointed, under the chairmanship of President Woodrow Wilson, with the task of defining the terms of what was to become the Covenant of the League of Nations. Negotiations on the Covenant led to the first attempt on the part of the international community to incorporate a binding human rights obligation to uphold racial equality in international law. Despite a majority vote approving the provision, President Wilson refused to accept the adoption of the provision by a simple majority. There was a volte-face, however, some 30 years later when Eleanor Roosevelt, as Chair of the United Nations Commission on Human Rights, was one of the driving forces behind the drafting and

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of Texas; Fermín L. Arraiza Navas; and the International Human Rights Clinic at the Interamerican University of Puerto Rico.

<sup>2</sup> Gus Garcia-Roberts, "Indian Creek country club's membership exposed", *Miami New Times*, 10 August 2011, see <https://www.miaminewtimes.com/news/indian-creek-country-clubs-membership-exposed-6532350>.

adoption of the 1948 Universal Declaration of Human Rights, which symbolizes the historical legacy of the United States in setting up the foundation for the international human rights architecture.

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>

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 United States Constitution grants full citizenship to all persons born or naturalized in the United States and the fifteenth amendment prohibits denial of the right to vote on the basis of race, there are exceptions for territories that are not States, and therefore hundreds of thousands of United States citizens, mainly minorities and indigenous peoples, do not fully enjoy equal rights with other Americans.

14. Moreover, there is no national human rights legislation nor a national human rights mechanism to ensure that the population can enjoy the full range of human rights generally recognized in international law. While the Bill of Rights, incorporating the first 10 amendments to the Constitution, provides important human rights protections, including the freedom of speech, religion, peaceful assembly, liberty and security and fair trial, it is, at best, an incomplete amalgam, guaranteeing only certain rights: some State constitutions go much further in terms of human rights protections. There have, however, been significant and hard-won gains in the area of human rights, mainly achieved during the civil rights movement in the 1960s, notably the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968.

15. In the absence of comprehensive legal human rights protections, the most marginalized individuals and communities, which tend to be minorities, are often the most vulnerable. According to a report on the uninsured population, in 2019, the share of African Americans without health-care coverage was 9.7 per cent, while it was just 5.4 per cent among whites.<sup>4</sup> The coronavirus disease (COVID-19) pandemic has exacerbated inequalities between have and have nots: data as at 20 November 2021 show that hospitalization rates for indigenous, Black and Hispanic and Latinx minorities were significantly higher than for whites.<sup>5</sup> In addition, the “racial wealth divide” between the white majority and the African American and Hispanic and Latinx minorities has been on the rise in recent decades: the median Black family has \$24,100 in wealth and the median Hispanic and Latinx family has \$36,050 in wealth, compared to \$189,100 in wealth owned by the typical white family – a gap that has been increasing since 1989.<sup>6</sup> Similar patterns of inequality can be observed in education and incarceration rates and are reflected in a multitude of other data. There is a huge overrepresentation of minorities among the poorest Americans, as well as a dramatic underrepresentation of minorities in the halls of power and authority. In the judiciary, the proportion of minorities, such as Black, Asian, Hispanic and Latinx and Native Americans,

<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), para. 10.

<sup>4</sup> J. Tolbert, K. Orgera and A. Damico, “Key facts about the uninsured population”, Henry J. Kaiser Family Foundation, 6 November 2020, see <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

<sup>5</sup> According to the Centers for Disease Control and Prevention, per 100,000 people, around 1,500 indigenous, 1,106 Black and 891 Hispanic and Latinx people have had COVID-19 symptoms serious enough to require hospitalization, compared to 577 whites (see [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, see [https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Net\\_Worth;demographic:racecl4;population:all;units:median;range:1989,2019](https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Net_Worth;demographic:racecl4;population:all;units:median;range:1989,2019).

serving as State Supreme Court judges is only 15 per cent nationwide, even though they represent nearly 40 per cent of the national population.<sup>7</sup>

16. Minorities are also more likely to be used as scapegoats for conspiracists and xenophobes – providing simple answers to complex issues. Unfortunately, in recent years there has been a phenomenal growth in hate speech on social media, poisoning individual minds and proving toxic to social cohesion in the country. Many interlocutors told the Special Rapporteur about a growing feeling that the United States is becoming a darker, nastier and more divided society, moving away from being, to borrow from the United States Constitution, “a more perfect union”.

17. On the positive side, however, the Special Rapporteur was impressed by the significant changes taking shape in the United States in 2021 following the 2020 federal elections. The Biden administration has expressed its commitment to respect international human rights and to reconnect with the international community in this regard. There is also recognition on the part of the administration that its international credibility in terms of human rights 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 special procedures mandate holders of the Council.

18. The current administration has undertaken a number of positive steps to improve the situation and protect the rights of minorities, including the adoption of: (a) Executive Order 13985, setting out a comprehensive approach to advancing equity for all, including people of colour and others who have been historically underserved and marginalized;<sup>8</sup> (b) Executive Order 1403, advancing equity, justice and opportunities for Asian Americans, native Hawaiians and Pacific Islanders, including efforts to strengthen regular, meaningful and robust consultations with tribal nations; (c) Executive Order 13995 on ensuring equitable pandemic response and recovery legislation; (d) the Juneteenth National Independence Day Act, recognizing 16 June as a federal holiday commemorating the end of slavery in the United States; and (e) the COVID-19 Hate Crimes Act. Some States, including California, have recently adopted more robust human rights legislation and innovative policies and programmes to address hate speech and hate crimes targeting minorities more actively. It has also put into place specific measures for the use of minority languages in education and in accessing public and health services. The above-mentioned orders and other legislation and initiatives provide important additional protections for minorities beyond those found in federal civil rights laws such as Title VI of the Civil Rights Act of 1965 and the Equal Educational Opportunities Act of 1973. However, many States within the country do not have additional protections.

19. Existing civil rights legislation, mostly crafted nearly 60 years ago during the civil rights movement of the 1960s, is often more restrictive than international human rights law, particularly in relation to the prohibition of discrimination. In some cases, there must be evidence of a form of “intent to discriminate”, which can be difficult to demonstrate in order to determine what constitutes discrimination.<sup>9</sup> Such approaches can be too narrow compared to international obligations, and can therefore lead to situations where legislation, policies or practices are deemed not discriminatory under United States law yet breach international human rights obligations.

20. There is an urgent need both to adopt comprehensive national legislation and to revamp existing piecemeal and narrow civil rights laws to conform more closely to universal human rights obligations. The Special Rapporteur is of the view that while the civil rights laws of the 1960s were important, essential and well suited to that particular social and political context, more than half a century later there needs to be a legislative update to handle

<sup>7</sup> Alicia Bannon and others, “State Supreme Court diversity”, Brennan Center for Justice, New York University, 23 July 2019 (see <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity>).

<sup>8</sup> See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

<sup>9</sup> The Supreme Court ruled in *Alexander v. Sandoval* (532 U.S. 275 (2001)) that a private citizen cannot pursue a case under Title VI of the Civil Rights Act of 1964 based on discriminatory effects (what is known as “disparate impact”), although United States federal agencies can.

the more complex and rapidly changing challenges of the digitized twenty-first century, including increasing inequalities between have and have nots, rapid movements of people and goods across borders and the nearly unconstrained 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 principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The need for an inter-agency federal body responsible for implementation and follow-up to the recommendations of United Nations human rights mechanisms has also been pointed out to the Special Rapporteur.

22. The Special Rapporteur has been presented with 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 and challenges and threats caused by environmental degradation and growing economic, health and educational disparities, leaving a disproportionate proportion of minorities behind. Building a better America requires a new deal for the twenty-first century for all Americans, and is most needed for the most marginalized and vulnerable minorities. The United States needs a 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 tragic deaths of George Floyd, Breonna Taylor, Ahmaud Arbery and so many others. Submissions and testimonies to the Special Rapporteur have made it abundantly clear that African Americans are among the most marginalized minorities in the country in socioeconomic terms, are by far the most likely to be denied the right to vote in federal and State elections, to be incarcerated, to be the targets of hate speech on social media and to be disproportionately discriminated against. In the near future, other United Nations special procedures, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group of Experts on People of African Descent, will focus more on the particular predicament of African Americans. The United States is to be commended for inviting the former to conduct a mission to the country in 2023. The Special Rapporteur urges the Government to also invite the Working Group of Experts on People of African Descent for a follow-up meeting to its mission of January 2016, since the Working Group would be in a special position to consider the complex discussion over whether the federal Government should compensate the descendants of former enslaved people to redress the country's legacy of slavery, whether this should take the form of reparations and what form such reparations should take.

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

24. A focus of the visit of the Special Rapporteur, one of the core international human rights and the foundation stone of democracy in the United States is the right, as set out in article 25 of the International Covenant on Civil and Political Rights, that every citizen shall have the right and the opportunity, without any of the distinctions 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 fourteenth and fifteenth amendments to the United States Constitution prohibit some forms of discrimination in voting, and despite the adoption of the Civil Rights Acts of 1960 and 1964 and the Voting Rights Act of 1965, implementation of the right to vote and to political representation continues to be problematic. Until 2013, the legislation passed in

the 1960s prevented local and State governments from adopting laws and practices that denied citizens the equal right to vote on account of race. However, in 2013, the Supreme Court of the United States, in its opinion in *Shelby v. Holder*, ruled that a section of the law (section 4.(b)) could no longer be constitutionally applied, rendering another section (section 5) essentially inoperable, with the result that States with a previous history of racial discrimination can now change their election practices without obtaining approval from the federal Government.<sup>10</sup>

26. It also became clear during the visit of the Special Rapporteur that the right and the opportunity to vote by universal and equal suffrage is increasingly and actively being undermined, and that such efforts are having a more pronounced impact on minorities, including African Americans and Hispanic, Latinx and indigenous peoples. This is not a new phenomenon historically, as recognized by other United Nations independent experts, including by the Special Rapporteur on extreme poverty and human rights 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 is often a requirement 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>11</sup>

27. Four years later, the pace of what the Special Rapporteur on extreme poverty and human rights described as the undermining of democracy has expanded explosively. Millions of American citizens,<sup>12</sup> disproportionately minorities, do not have the opportunity or are not allowed to vote in national elections, with each individual State entitled to adopt its own requirements as to how precisely votes can be cast. The consequences of the disenfranchisement of the voting rights of individuals with certain types of criminal records or associated debts, the imposition of onerous ID requirements, the manipulation of polling stations and restrictions on acceptable levels of assistance in voting by some States are clear, concrete and significant measures. Despite the historically high turnout during the 2020 general election, the participation of Black, Hispanic and Latinx and Asian minorities remained dramatically unequal: while 70.9 per cent of white voters cast ballots, only 58.4 per cent of those 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>13</sup>

28. One highly notable development in this regard is an omnibus bill adopted in the State of Texas that has had a disproportionate impact on African American, Hispanic and Latinx, Asian and other minorities.<sup>14</sup> The legislation makes it harder for those who face barriers to voting owing to their language, mainly minorities, to get help in casting their ballots, restricts the ability of election workers to stop harassment disproportionately targeting minorities by partisan poll watchers and bans 24-hour and drive-through voting. It is now an offence in

<sup>10</sup> Supreme Court of the United States of America, *Shelby v. Holder* (570 U.S. 529 (2013)).

<sup>11</sup> Statement on visit to the United States by Professor Philip Alston, Special Rapporteur on extreme poverty and human rights, Washington, D.C., 15 December 2017, para. 18 (see <https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur>).

<sup>12</sup> More than 2 per cent of United States citizens, some 5.1 million citizens, were disenfranchised in the October 2020 presidential election owing to felony convictions.

<sup>13</sup> Testimony of Wendy Weiser, Vice-President for Democracy at the Brennan Center for Justice at New York University School of Law, before the Senate Committee on the Judiciary on protecting the John R. Lewis Voting Rights Advancement Act (6 October 2021) (see <https://www.brennancenter.org/our-work/research-reports/testimony-protecting-precious-almost-sacred-right-john-r-lewis-voting>).

<sup>14</sup> State of Texas, United States of America, Bill S.B. No. 1 (available at <https://capitol.texas.gov/tlodocs/871/billtext/pdf/sb00001i.pdf>).



Texas for election workers to send absentee ballot applications to voters who have not requested them. The electoral system in Texas, and unfortunately in a growing number of other States, thus appears to be increasingly loaded against the voting rights of minorities. Despite the fact that, according to the 2020 census, minorities represent about 95 per cent of population growth in Texas, of which more than half is Hispanic and Latinx, according to court documents filed in a lawsuit before the visit of the Special Rapporteur, the two congressional seats added because of the increased population are located in areas with a majority white population. Such examples of gerrymandering<sup>15</sup> are on the upswing in the United States and many submissions made to the Special Rapporteur emphasized that the voting power of minorities is being diluted. In States such as California, with an independent redistricting commission, no such undermining of the right to vote of minorities appears to be occurring.

29. 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 Hispanic and Latinx populations, have been disproportionately and negatively impacted in their exercise of the right to vote, even if none of the measures identified directly refer to ethnicity, language or religion. The linkages are surprisingly evident, however: poorer minority voters may have limited free time to vote on workdays since they may have more than one part-time job, may not work during standard office hours or may not have time to line up for hours to exercise their right to vote because their polling stations may be crowded. Moreover, they may have little or no transportation to get to a polling station. Limiting the number of drop-off boxes, restricting voting by mail, restricting voting to a limited number of hours, locating polling stations far from public transportation or from areas where minorities live or creating electoral districts that dilute the concentration of minority voters all contribute to restricting the voting rights of poorer minority groups.

30. It must be emphasized that the impact of all of the above measures, and the submissions and testimonies received by the Special Rapporteur, all reflect recent legislation adopted in 19 States in 2021 making voting disproportionately harder for minorities. The Special Rapporteur has not been presented with clear evidence of any significant amount of fraud in the electoral process or illegal voting affecting the integrity of the electoral system that would warrant measures likely to exclude many Americans from the right to vote.<sup>16</sup> It appears that most restrictive measures are adopted only because of a perception that encouraging and making the exercise of the right to vote too accessible could facilitate fraud, and hence must be discouraged – again despite the absence of any evidence of such issues being at play in connection with the 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 that the phenomenon, and the 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 commitment of the current administration to improve protections of the right to vote of all Americans with the introduction of two federal voting bills, the Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act, as well as with other legislation such as the For the People Act, which contain voting-rights protections. The latter would facilitate the universal and equal right to vote of all citizens by setting national voting standards and strengthening legal protections against discriminatory voting laws and policies. More specifically, it would set

<sup>15</sup> Gerrymandering is achieved 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 the votes of an opposing group are thinly distributed in a number of districts to dilute its odds of winning a seat.

<sup>16</sup> In the 2016 national elections, out of 135 million votes cast, there were four documented cases of voter fraud, one of which was a woman who cast a ballot on behalf of her dead husband; see, “There have been just four documented cases of voter fraud in the 2016 election”, *The Washington Post*, 1 December 2016.



minimum national standards for voting by mail, make Election Day a federal holiday and restore the requirement that States seek federal approval for changes to their electoral practices that could harm minority voters. At the time of the writing of the present report, however, both pieces of voting-rights legislation, merged into one, have failed to be adopted by the Senate. The right to vote of millions of minorities, already severely curtailed, is 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 of whom constitute peoples in a colonial context, cannot vote in presidential elections.<sup>17</sup> These citizens are not represented in the 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 fewer rights in terms of the right to vote and to political representation and participation as expressed in article 25 of the International Covenant on Civil and Political Rights. The present report cannot provide a detailed account of 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 these territories. Such restrictions are archaic remnants of the colonial past of the United States, which continues through the political disenfranchisement of populations in its overseas territories.

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

34. Students belonging to minority groups are often enrolled in public schools in communities with concentrated poverty and therefore have access to fewer resources and educational opportunities, which, too often, are linked to lower educational attainment. More to the point, in some States the budgets of public school district are tied 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 outcome is that public schools in wealthier communities have more local funding. Federal funding reportedly does not make up for this discrepancy. In some parts of the United States there is significant financial support, through taxes and other forms of concessions and transfers, for private education, where minorities tend to be hugely underrepresented. More than one organization pointed out that 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 and the underpayment of public teachers, including a disproportionate impact on mainly minority students.

35. 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 laudable efforts under the Biden administration to more directly and equitably address these funding inequalities, such as the 2021 American Rescue Plan, which expands opportunities for students most in need, including students from low-income backgrounds and minorities, and the Elementary and Secondary Education Act, which includes federal funding such as Title I, part A (Title I).

36. While States such as California have forms of bilingual education, particularly for its large Hispanic and Latinx minority, as well as some of the larger more concentrated minority communities, and the results have been overwhelmingly positive, this is not necessarily the case for linguistic minorities in other parts of the country. For example, the Cajun minority (also known as “Cadiens” or “Acadiens”), which historically constitutes a significant proportion of the population in the State of Louisiana and parts of neighbouring States, has

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<sup>17</sup> There are five inhabited American territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands. Their total population in 2020 was around 3.5 million people.

seen its culture and language (Cajun French) come under threat because of legislation and policies, mainly after 1916, which actively prohibited the use of the language in schools almost until the late twentieth century. As with indigenous and Spanish languages, Cajun French is part of the rich cultural and linguistic heritage of the country. Despite the efforts of the Council for the Development of French in Louisiana, and the passing, in more recent years, of several of laws to protect the State's French language and culture, further measures are needed for its preservation, revitalization and promotion, including through innovative programmes to "renormalize" and strengthen its use and position in Louisiana. This could include temporary special measures to promote the use of French in smaller communities, and resources to renew exchanges between Cajun educational and other institutions.

37. Similarly, the Chamorro language in Guam and neighbouring islands is on the list of endangered languages of the United Nations Educational, Scientific and Cultural Organization, 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 a medium of instruction in education.<sup>18</sup> As with the case of other indigenous languages and with Cajun French in Louisiana, the precarious status of the language of the indigenous Chamorro, which reflects a legacy of discriminatory practices by officials and repressive legislation and policies, needs to be redressed and normalized in Guam.

38. The Special Rapporteur believes the Native American Languages Act of 1990 should be expanded to include indigenous languages from overseas territories such as Guam and that it be expanded to provide guaranteed funding for sustained revitalization initiatives for those languages.

39. Individuals who are deaf or hard of hearing, as well as members of their families and others who use sign languages to communicate, use 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 as a full-fledged language, and the deprivation of its use by many deaf children who are not given instruction in it at a young age. Federal legislation and initiatives such as the Education of the Deaf Act of 1986 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 American Sign Language in the country varies hugely and is not always consistent. In many States, it is only recognized as a foreign language so that it may be accepted for the purposes of a college or university credit. Teaching in sign language is not always favoured, and in some States it is not actively used as a medium of instruction, contrary to what is generally considered to be the best approach in educating deaf and hard-of-hearing children.

## VI. Access to justice and administration of criminal justice

40. The Special Rapporteur commends the Biden administration for acknowledging and taking significant steps to ensure access to justice and address the administration of justice, including the relaunch, by the Attorney General, of the Office for Access to Justice and other initiatives to strengthen access to legal aid in the country.

41. The Special Rapporteur was nevertheless made aware of sentencing disparities and incarceration rates for minorities in the criminal justice system of the United States. The use

<sup>18</sup> See Special Rapporteur on minority issues, "Language rights of linguistic minorities: A practical guide for implementation", Geneva, 2017, sect. IV (available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf)).

of mandatory minimum sentences and zero-tolerance policies in the laws of some States, as well as the “war on drugs” of the 1970s, have had the effect of disproportionately criminalizing large swaths of minority populations. One third of the prison population in the United States is African American and one third is Hispanic and Latinx, although the two minorities only make up some 13 per cent and 18 per cent, respectively, of the population of the country. This has created a vicious circle of exclusion and barriers to later employment and inclusion in society for those with criminal antecedents, including in 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 misdemeanour convictions and associated penalties.

42. 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, within a criminal justice system that is structurally set up to advantage and forgive those who are wealthier and to penalize those who are poorer, particularly minorities of colour. As pointed out by the Special Rapporteur on extreme poverty and human rights, “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 programmes ... 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>19</sup>

43. It should be noted that the poorest members of society caught up in this vicious cycle are mainly from minority communities, such as African Americans and Hispanic and Latinx individuals. Every day in the United States, almost half a million people are in jail without being convicted of a crime or incarcerated because they cannot afford bail. The cash bail system disproportionately impacts minorities, notably the Black and Hispanic and Latinx populations, and the proportion of those affected has more than doubled over the past 15 years.<sup>20</sup>

44. Police killings of and violence and brutality towards African Americans are of extremely grave concern because of more recent high-profile incidents. However, 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 and Latinx 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 measures that need to be systematically put into place to de-escalate confrontational approaches towards certain minorities, and thus to end prevalent racial profiling practices. The Special Rapporteur looks forward to further elaboration on this subject in the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to the United States in 2022.

## VII. Hate crimes and hate speech

45. There are hate crime laws at the federal level and in most States prohibiting violence and threats of motivated by race, colour, 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 hate speech, such as the COVID-19 Hate Crimes Act of 2021 and the Jabara-Heyer No Hate Act of 2021, in what has been described as a new range of tools to combat hate crimes and incidents. He was also informed that the Federal Bureau of Investigation has now elevated hate crimes to its highest level national threat

<sup>19</sup> Statement on visit to the United States by Professor Philip Alston, Special Rapporteur on extreme poverty and human rights, Washington, D.C., 15 December 2017, para. 33 (see <https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur>).

<sup>20</sup> Wendy Sawyer, “How race impacts who is detained pretrial”, Prison Policy Initiative, 9 October 2019, see [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/).

priority, which means that increased resources will be dedicated to the prevention of hate crimes and their investigation.

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

47. The Federal Bureau of Investigation gathers data on hate crimes, although reporting is voluntary. The Bureau relies on local law enforcement agencies to collect and submit data but does not compel them to do so, with the result that many local agencies do not submit data, and among the 15,000 that have done so, some 88 per cent have reported not a single hate crime in the space of a year.<sup>21</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 thus afraid to contact law enforcement officials. This means that there is likely to be a significant undercounting 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>22</sup> Overall, even the underreported data from the Federal Bureau of Investigation reveal 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 religious bias, most targeting minorities and representing perhaps more than 70 per cent of the hate crimes in the country.

48. 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.

49. What is largely unacknowledged is that the overwhelming targets of hate speech in social media are minorities. Of particular concern is the increasing virulence of intersecting misogynous and racist hate speech, which means that minority women are particularly vulnerable to some of the most violent and dangerous forms of hate speech on social media. It has been suggested that hate speech on social media is also contributing to harm in the real world, noting that the 16 March 2021 shooting spree at spas and massage parlours 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.

50. Antisemitism, Anti-Asian speech, Islamophobia, derogatory slurs against Hispanic and Latinx, Arab and other minority communities and anti-immigration xenophobia are surging, sometimes at record levels, throughout country. Such incidents appear to be creating real societal harm and divisions in the country, with the growth of xenophobia, scapegoating and scaremongering, mainly aimed at minorities. The algorithms of some social media platforms create rabbit-holes and amplify prejudice, racism and disinformation. While no one has suggested that social media platforms do not offer people the opportunity to positively connect, share and engage, many interlocutors denounced the rise in harmful content and misinformation. As noted by one minority spokesperson, the business model of some of these platforms promote hate speech, damage democracy and tear society apart.

<sup>21</sup> “Why America fails at gathering hate crime statistics”, ProPublica, 4 December 2017 (see <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>).

<sup>22</sup> The last report of the Council on American-Islamic Relations issued before the pandemic noted a 17 per cent increase in anti-Muslim bias incidents in the United States in 2017 over 2016, as well as a 15 per cent increase in hate crimes targeting American Muslims in the same period (see *Targeted: 2018 Civil Rights Report*, Council on American-Islamic Relations, 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>).

51. Many minority and human rights organizations expressed the view that social media platform owners were not sufficiently proactive in responding to this dangerous and 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.

52. To ensure the protection of freedom of expression and to tackle the damaging effects of hate speech and hate crimes propagated on or facilitated through social media platforms, the Government must move in the same direction as other democracies, such as Austria, Germany and the United Kingdom of Great Britain and Northern Ireland, as well as initiatives of the European Union, to enact legislation against hate crimes and to counter hate speech on social networks, including by simplifying the process for the deletion of hate speech and crime postings on social media, making the process more transparent and shifting the responsibility for the harm caused to the social network provider.

## **VIII. Human rights of religious minorities**

53. While religious freedom is guaranteed by States and under federal law and federal legislation, such as the Religious Land Use and Institutionalized Persons Act of 2000, offer 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 under international human rights law. 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 grounds of religion or belief, nor for that matter on the grounds of language, two of the most important aspects of human identity which give rise to discriminatory practices and policies that have a negative impact on minorities.

54. Furthermore, following the events of 11 September 2001, the United States Government introduced domestic legislation to address homeland security, including the Patriot Act of 2001, which negatively impacted minorities, particularly Muslims and people of Arab or South Asian descent. The act had a chilling effect on the activities of many Muslims, who reportedly attended mosque less frequently or stopped completely. The chilling effect has never completely gone away. The so-called Muslim ban imposed in 2017 by the previous administration also disproportionately targeted and impacted Muslim Americans as well as Arab and South Asian Americans – and was arguably discriminatory in terms of international human rights. In this regard, however, the recognition by the Department of Homeland Security that extreme right-wing terrorist groups, including 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 a welcome step.

55. The Biden administration has replaced the former countering violent extremism programmes with the Center for Prevention, Programs and Partnerships, whose focus is on a wider spectrum of domestic terrorism, including white supremacists. The Department of Homeland Security has stated that Center is moving away from a law enforcement approach, aiming instead at a public health, whole-of-society approach, working with local communities. However, civil society organizations have argued that this approach simply expands the reach of the ineffective and discriminatory countering violent extremism programmes.

56. 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 that 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 Hispanic and Latinx and Muslim communities.

57. Religious or belief discrimination also affects 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 through school-led prayers, which reportedly

still occur 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. Pro-religious bias is reported to be deeply engrained, and the constitutions of seven States still contain 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 Department of Children’s Services of the State of Tennessee 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 they are inconsistent with an agency’s “religious or moral convictions or policies” to the “extent allowed by federal law”. Complicating this evident discrimination is the fact that federal law in the United States under Title VI of the Civil Rights Act of 1964 only specifically prohibits discrimination based on race, colour, or national origin – but not on religion – in programmes or activities that receive federal funding. Finally, since the judgment of the United States Supreme Court in *Fulton v. City of Philadelphia* in 2021, corporations and other legal entities can claim under United States law their “freedom of religion or belief” as individual persons. 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. Situation in the overseas territories of the United States**

58. The majority of the people living in the overseas territories of the United States (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands) are members of ethnic, religious and linguistic minorities, even if they are also considered to be 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 to be Non-Self-Governing Territories, meaning “territories whose people have not yet attained a full measure of self-government”. While Puerto Rico and the Northern Mariana Islands are no longer on the United Nations list of Non-Self-Governing Territories, in 1972 the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples determined that a colonial relationship existed between the United States and Puerto Rico. Similarly, many residents of Guam consider that their island has been colonized by the United States.

59. 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. Indigenous peoples who are not in a colonial context have a distinct legal status under Chapter XI of the Charter of the United Nations. In some contexts, individuals who are members of a group of indigenous peoples could also be, in addition to any other status as a people, members of a linguistic or religious minority. These are distinct legal categories that can overlap and be neither exclusive nor detrimental to each other. The individual human rights of minorities have no consequence on the collective rights that indigenous peoples and peoples in a colonial relationship may have under 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 those territories may, at the same time, constitute minorities in matters of language, religion or culture.

60. During the visit of the Special Rapporteur to Guam, a major concern was expressed with regard to the control of the United States military over approximately one third of the island and the serious contamination of the land and drinking water allegedly caused by military activities. Moreover, a firing range complex is currently under construction above an aquifer that provides 90 per cent 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 the mainland of the United States.

61. As federal laws supersede local laws of Guam and other territories, the local population often feels its rights and interests are subsidiary to those of citizens from the mainland. Citizens of Guam cannot vote in presidential elections and have no voting representation in the United States 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 affirmed in a ruling of the United States Court of Appeals for the Ninth Circuit in 2019. The Ninth Circuit found the plebiscite statute used ancestry as a proxy for race, in violation of the fifteenth amendment to the Constitution. Many local residents feel they are second-class citizens who cannot effectively present and protect their interests.

62. The Commonwealth of Puerto Rico is similarly devoid of equal rights to political participation and representation. Puerto Rico has a fiscal deficit that compounds its 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 for Puerto Rico, which was imposed by Congress as part of the Puerto Rico Oversight, Management and Economic Stability Act of 2016. The draconian austerity measures imposed on Puerto Rican territorial authorities and the whole population, without regard to any obvious human rights considerations in the decisions made by the Board, have led to dramatic cuts and reductions in areas such as public education and public health. It is difficult to disagree with the claims made by many Puerto Ricans during meetings in San Juan and Vieques, that Puerto Rico is being controlled by a colonial-type overseas power to the detriment of its people, without any meaningful representation at the national level and with no real ability to govern itself as a Non-Self-Governing Territory in the international sense.

63. 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. An anachronistic legal and political legacy from an era with a colonial mindset towards mainly non-white minorities remains in place. 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 the populations of the territories and their minority 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**

64. Minorities are often disproportionately exposed to serious environmental hazards and contamination, including contamination of their sources of drinking water. The disproportionate impact of such hazards on society, including on health, standards of living and educational performance, were highlighted during powerful testimonies in Guam and Vieques, Puerto Rico. Other special procedures, including the Working Group of Experts on People of African Descent, have also been presented with compelling evidence of minorities "in disadvantaged areas with hazardous environments (for example, 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 neighbourhoods, including those of people of African descent ... and the lead-contaminated water in Flint, Michigan".<sup>23</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, underserved by municipal sewage systems or used over years as dumping grounds for 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 as sufficiently prioritized for clean-up as they should be, in an efficient or expedited manner.

<sup>23</sup> [A/HRC/33/61/Add.2](#), para. 52.



65. Concretely, minority communities have disproportionately higher rates of cancer and disease, 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 and more effective measures for the protection of aquifers and water supplies are more likely to be in place.

66. In this regard, the Special Rapporteur was particularly struck by the example of the island of Vieques in Puerto Rico. The United States military used the island as a live munitions target practice for about 60 years. According to internal United States Navy documents, on average, bombardments occurred 180 days out of the year. Moreover, the United States military used high-level depleted uranium munitions and bombs from 1972. Other forms of contamination, including heavy metal residues, exist because of the use of Vieques as a munitions testing and warfare exercise ground. The result, as summarized at a town meeting on the lack of any visible clean-up, was simply “They bombed us, they made us sick, then they left us. They don’t give a damn”.

67. Even though the United States Navy stopped these exercises and withdrew from Vieques in 2003, the health consequences have continued to affect generations of residents, 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 others to federal and other agencies, such as the Puerto Rico Conservation Trust and the United States Department of Interior, including as a wilderness conservation area with no public access. No lands, strictly speaking, were returned to the local population.

68. While the United States Navy, with oversight of the Environmental Protection Agency, has completed a significant clean-up, including of 4,332 acres of surface and 489 acres of subsurface cleared of munitions and weapons contamination, as at November 2021, the promised decontamination activities, including the clean-up of at least one highly contaminated site, under a national priorities list for long-term clean-up financed by the federal Superfund programme, have not progressed significantly.

69. Despite the approval by the Federal Emergency Management Agency, in January 2020, of \$39.5 million to help rebuild the hospital in Vieques that was damaged by Hurricane Maria, has still not been repaired, and local residents must travel to the main island, not always a simple task. The Special Rapporteur personally saw no visible renovations on the location almost two years later when he visited in November 2021. As a result, people are sick and dying because of unavailable medical treatments in Vieques. Puerto Ricans present at the town hall held by the Special Rapporteur in Vieques seemed convinced they are second-class citizens because of their ethnic background, and that what they are experiencing would not occur if they were members of a white Anglo-Saxon community on the mainland of the United States. A similarly widespread sentiment was expressed in Guam with regard to the highly toxic waste left behind by the United States military presence. Local residents felt that it would not have been left unaddressed for so long had it occurred on the mainland in a non-minority community. The Biden administration and the Environmental Protection Agency have recently committed to take action to address some of the longstanding environmental justice concerns on the island.

## **XI. Conclusions and recommendations**

70. **The Special Rapporteur submits the following conclusions and recommendations with regard to the international obligations of the United States and the need for the current Administration to recommit to the global human rights architecture through concrete actions, including by:**

(a) **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;**

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

(c) Establishing an inter-agency federal body responsible for implementation and follow-up to United Nations human rights mechanisms;

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

71. The Special Rapporteur is of the view that the global community is at a pivotal moment in history and that it is time for comprehensive national human rights legislation. Minorities are particularly vulnerable to the gaps and omissions of a patchwork federal and State human rights legislation and protections. Most federal human rights protections date to the era of the 1960s civil rights movement. Sixty years later, the country is faced with 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. The Special Rapporteur therefore recommends that the Government:

(a) Launch a strategic campaign for the adoption of comprehensive national human rights legislation to include the 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;

(b) Create a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) on the status of national institutions for the promotion and protection of human rights.

72. With regard to the need to protect democracy and guarantee the equal right to vote and to political participation and representation, the Special Rapporteur observes that 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 obligations of the Government of the United States under international law. It also constitutes a direct and immediate danger to democracy in the country. More broadly, the Government needs to pursue a campaign to update federal guarantees to the equal right of citizens, including by:

(a) Revising and updating federal and other legislation to lift the denial of the right of citizens of the United States and nationals of overseas territories to vote in federal and presidential elections;

(b) Continuing efforts for the eventual adoption of the Freedom to Vote and the John R. Lewis Voting Rights Advancement Act: in addition, a campaign to completely revamp the Voting Rights Act of 1965 is needed to address contemporary forms of disenfranchisement, such as, inter alia, onerous identification requirements, gerrymandering, felony convictions and the imposition of related debts and limited access to poll stations or drop-boxes.

73. With regard to the use of native languages and the education of minorities, the Special Rapporteur recommends:

(a) Recognition of the American Sign Language as an official language of the United States and that it also be identified in federal and other legislation as a language for its use as a language of instruction;

(b) Expansion of the Native American Languages Act and similar legislation to directly include indigenous languages from overseas territories, including the language of the Chamorro peoples in Guam, as well as funding for sustained revitalization initiatives of indigenous languages, and particularly for the development of their use as languages of instruction;

(c) Preservation, revitalization and promotion of historical linguistic minorities such as the Cajun minority in order to renormalize and strengthen their

language: this could include temporary special measures to promote the use of Cajun French in smaller communities and the commitment of resources to renew exchanges with related Cajun educational and other institutions;

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

74. To address the targeting of minorities in hate speech and hate crimes, the Special Rapporteur recommends that the Government of the United States move to enact legislation against hate speech and hate crimes on social networks in order to facilitate processes for the deletion of hate speech and hate crimes postings and to make the process more transparent, as well as to impose responsibility on social network providers, including the amendment of section 230 of the Communications Decency Act to remove general immunity for providers of social media platforms.

75. The Special Rapporteur calls for the reform of the criminal justice system with regard to the treatment of minorities, in particular by reducing the incarceration of poorer minorities, including by eliminating cash bail for most low-level offences.

76. With regard to religious minorities, the Special Rapporteur notes that 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, efforts must be made, at the very least, to amend the Civil Rights Act of 1964 so that it covers discrimination based on religion or belief, in addition to race, colour or national origin.

77. In the area of environmental justice, the Special Rapporteur calls for a nationwide study and consultation process on “environmental injustice and discrimination”, in particular as such injustice and discrimination affect minorities and poorer communities most at risk both in overseas territories and mainland States, in preparation of a national action plan to identify and prioritize the decontamination of sites still threatening the water supply and the environment of minority groups, including former sites and sites presently being used by the United States military.

78. The Special Rapporteur also recommends that the Government of the United States consider the following measures:

(a) Adoption of 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 presence in the country;

(b) Recognition of the Roma minority in the country and acknowledgment of their historical presence, which would help to address existing negative stereotyping and anti-Roma sentiment: the Roma should, among other needed measures, be included as a distinct category in future censuses.