

# **Advance Version**

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## **Human Rights Council**

**Forty-sixth session**

22 February–19 March 2021

Agenda item 6

**Universal periodic review**

## **Report of the Working Group on the Universal Periodic Review\***

### **United States of America**

#### **Addendum**

**Views on conclusions and/or recommendations, voluntary commitments  
and replies presented by the State under review**

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\* The present document is being issued without formal editing.

1. The United States (U.S.) has carefully reviewed the 347 recommendations received. This response reflects our continuing efforts, in consultation with civil society, to promote, protect, and respect human rights for all.
2. Some recommendations ask us to achieve an ideal, e.g., end discrimination or police brutality, and others request action not entirely within the power of our Federal Executive Branch, e.g., adopt legislation, ratify treaties, or act at the state level. We support or support in part these recommendations when we share their ideals, are making serious efforts to achieve their goals, and intend to continue doing so. Nonetheless, we recognize, realistically, that the United States may never completely accomplish what is described in these recommendations' literal terms.
3. We support recommendations to take actions we are taking or have taken without in any way implying that our efforts have been unsuccessful or that these actions are necessarily legally required. With respect to judicial remedies, we cannot make commitments regarding the outcome of independent court proceedings.
4. Where recommendations include inaccurate assumptions or assertions, we have decided whether we support them, support them in part, or note them by looking past their rhetoric to the proposed action or objective.
5. These responses should not be construed to suggest that the U.S. necessarily regards each of the matters addressed as subject to U.S. international human rights obligations.

## **Civil rights and non-discrimination**

6. We support:
  - 89, 102, 134-135, 141-142, 220, 223, 225-227, 228, 230, 232-236, 249-250, 256-260, 262, 265, 267, 269-271, 320, 322-323. With respect to 134, 135, 223, 234, 235, 249, racial profiling is prohibited under our Constitution and federal government policy. With respect to 232, 233, 236, see also 224, para. 7.
  - 111, 115-116, 120, 122, 137, 139, 143-144. The U.S. is committed to combating discrimination. On January 20, 2021, the President issued Executive Order 13,985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." It directs the federal government to identify and address potential barriers that underserved communities face to accessing benefits and services in federal programs. We support 139 with the understanding that "international laws" refers to the international obligations of the U.S.
  - 117-119, 121, 140. We are committed to countering racism, discrimination of all kinds, xenophobia, bullying, harassment, and related intolerance consistent with the U.S. Constitution, which provides robust protections for freedom of expression.
  - 146-148. On January 20, 2021, the President issued Executive Order 13,988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," which directs federal agencies to develop a plan to fully implement laws that prohibit sex discrimination, to include sexual orientation and gender identity discrimination.
  - 317. The U.S. understands the phrase "equal pay for work of equal value" to promote pay equity between men and women. The U.S. implements this principle by requiring "equal pay for equal work."
7. We support, in part:
  - 124-126, 231. The U.S. has comprehensive federal and state legislation and strategies to combat discrimination. See 111, para. 6. While a national "action plan" is not currently contemplated, we are working diligently toward better enforcement and implementation of these laws and programs. With respect to 231, see also 219.
  - 112-114, 123, 127, 129-133, 136, 138, 145, 217, 224, 264, 268, 272, 275-277, 314, 321. We share the ideals reflected in these recommendations and support them subject

to the limitations set forth in para.2, and para. 3 with respect to 321. With respect to 113, 133, 264, see also 134, para. 6. With respect to 112, 123, 126, 127, 129, 130, 131, 132, 133, 138, 145 see also 117, para. 6. With respect to 224, without commenting on any particular incident, we support enforcing laws that prohibit racial discrimination, racial profiling, and excessive use of force in policing.

- 216, 261, 266. We do not agree with some of these recommendations' premises but are committed to combating discrimination, domestic violent extremism, and hate crimes and promoting tolerance.
  - 219, 238-239, 243. We support these insofar as they recommend compliance with our international human rights obligations and our domestic law.
8. We do not support:
- 128, 278.

## Criminal justice

9. We support:
- 218, 221, 237, 241, 244-245, 247-248, 252-253.
  - 162, 215. We are committed to reducing gun violence in a manner consistent with U.S. law and the U.S. Constitution, which protects the individual right to keep and bear arms.
  - 263. We support this recommendation to the extent it recommends continuing efforts to reform the criminal justice system.
10. We support, in part:
- 178, 181-183, 189, 201, 204, 207, 209-211. Capital punishment is a legally available punishment under international law in appropriate cases and circumstances. In addition to the federal government, certain U.S. states authorize capital punishment, subject to the limitations imposed by the U.S. Constitution. President Biden supports legislatively ending the death penalty at the federal level and incentivizing states to follow the federal government's example. Regarding 204, we support the second part of this recommendation. The U.S. Department of Justice (DOJ) continues to take great precautions to ensure decisions to seek the death penalty at the federal level are not based on factors that include race or national origin. Regarding 207, we support the second part of this recommendation. The U.S. has been working diligently to fully implement its obligations under the *Avena* judgment, including by seeking legislation.
  - 212-214, 222, 229, 242, 254. We share the ideals in these recommendations and support them subject to the limitations set forth in para. 2, and para. 3 for 254. With respect to 212, 213, 214, we strongly support expanding the number of firearms transfers that are subject to background checks but with limited, common-sense exceptions. With respect to 222, see also 219, para. 7.
  - 251. The U.S. supports undertaking those law enforcement reforms that enhance trust between police and communities and promote fairness and accountability for the activities of law enforcement.
11. We do not support:
- 179-180, 184-199, 202-203, 205-206, 208. See 178, para. 10.
  - 200, 246. Juveniles may receive only non-mandatory life sentences and only for particularly severe homicide offenses when warranted in a particular case. These sentences are intended to be rare and are subject to review on appeal.

## **Economic, social, and cultural rights and measures; indigenous issues; and the environment**

12. We support:

- 152, 286-288, 290-294, 301, 318.
- 151. Addressing climate change is a core priority for the U.S. We intend to take action consistent with U.S. law to develop and implement an ambitious plan to combat the climate crisis.
- 255, 284. The U.S. supports investing in direct solutions to alleviate the personal and social problems surrounding issues of poverty.
- 149, 299-300, 302-312. It is the policy of the U.S. to support women's and girls' sexual and reproductive health and rights in the U.S., as well as globally. On January 28, 2021, the President issued a "Memorandum on Protecting Women's Health at Home and Abroad," which revoked the January 23, 2017 Presidential Memorandum on the "Mexico City Policy," thereby rescinding the prior policy. As relevant to 304, this Memorandum also directed a review of the Title X family planning program and any other regulations governing the Title X program that impose undue restrictions on the use of federal funds for women's access to complete medical information. With respect to 149, the U.S. did not participate in the Nairobi Summit, but supports furthering efforts to prevent and address female genital mutilation and child, early, and forced marriages.
- 315-316. We support exploring possible legislation expanding the availability of paid parental leave for parents who seek it.

13. We support, in part:

- 283. We support the part of this recommendation asking us to work towards the ideal of equality, subject to the explanation in para. 2. Addressing inequities in our economy is a top priority for President Biden.
- 285, 289, 296, 298. The U.S. is not a party to the ICESCR, and we understand that the rights therein are to be realized progressively. With respect to 285, we support the policy goals of reducing poverty and inequality. With respect to 289, 296, 298, we support the policy goal of improving access to quality, affordable healthcare.
- 295, 313. We support these recommendations in part, subject to para. 2, because we share the ideals of, respectively, improving access to healthcare and promoting access to quality education.
- 325. We support this recommendation to the extent it asks us to continue to support the development of boys and young men; the U.S. has no plan to create a new federal mechanism at this time.
- 326. We support in part this recommendation, which asks us to continue to consult with indigenous communities, insofar as consistent with our 2010 statement of support for the UNDRIP.

14. We do not support:

- 154, 297.

## **National security**

15. We support:

- 175-176. The U.S. intends to work toward a resolution to the issue of the Guantanamo Bay detention facility that comports with our values. Until that time, detention operations will continue to be conducted consistent with all applicable U.S. and international law.

- 240. Addressing sexual violence in the military remains one of the Department of Defense's top priorities.
16. We support, in part:
- 153. We share the ideal of preventing business involvement in human rights abuses, but support this recommendation in part subject to the explanation in para. 2.
  - 164. Torture is already prohibited under international law at all times and in all places. Although we fully support this aspect of the recommendation, we support other aspects insofar as they recommend continued compliance with our international legal obligations and as consistent with domestic law and policy.
  - 177. We reject the premise of this recommendation, but see explanation of 175, para. 15.
17. We do not support:
- 108, 166-174.

## **Immigration, migrants, trafficking, labor and children**

18. We support:
- 279-282, 324, 327-330, 341, 347.
  - 273-274. We support the principle of ensuring an environment in which human rights defenders can do their work freely, consistent with international and domestic legal obligations. The U.S. does not target immigrants, including unlawfully present non-citizens, based on advocacy positions they hold or state.
  - 331. U.S. policy is to respect family unity. On January 26, 2021, DOJ issued a policy memorandum rescinding the Zero-Tolerance Policy for improper entry. On February 2, 2021, President Biden issued an "Executive Order on the Establishment of Interagency Task Force on the Reunification of Families" to reunite families that remain separated.
  - 333-335, 337, 342-343. The U.S. supports efforts to protect the human rights of non-citizens in immigration detention, consistent with our international obligations, as well as the appropriate use of alternatives to detention. When non-citizen children are placed in government custody, we ensure they are placed in the least restrictive setting and treated in a safe, dignified, and secure manner.
  - 336, 339. The U.S. is committed to safe, humane, and lawful immigration enforcement, including access to asylum and family unity, and has ended the Zero-Tolerance policy.
19. We support, in part:
- 332. See 331, para. 18. We support this in part because improper entry by a non-citizen might violate U.S. laws and the Executive Branch is bound by those laws.
  - 338, 340, 344. See 331 and 333, para. 18. We support 338 in part because the US Congress has enacted various statutes making immigration detention mandatory in certain circumstances. We support 340 and 344 in part because there are certain rare circumstances under U.S. law where a separation is necessary, such as for the safety and well-being of the child.
  - 345. We support this recommendation subject to the explanation in para. 2.
  - 346. See 331 and 333, para. 18. For unaccompanied children who enter the U.S., the Department of Health and Human Services considers the best interests of the child in all placement decisions. We support this recommendation in part because the best interests of a child is one factor – not the only factor – in determinations by immigration judges.

## **Treaties, international mechanisms and domestic implementation**

20. We support:

- 76, 87-88, 101, 110.
- 1-2, 16, 18, 20, 23-24, 26-27, 30-31, 36-49, 53-54, 57-58, 163, 319. We support recommendations urging deliberative actions on treaties, such as that we “consider” ratifying them. We support recommendations asking us to ratify CEDAW, CRPD, and ILO Convention 111. We also support recommendations to ratify the CRC, as we support its goals and intend to review how we could move toward its ratification. We understand recommendations here and in para. 21 urging that we immediately ratify or accelerate ratification of certain treaties as not intended to prejudice appropriate consideration of them in accordance with constitutional procedures. Regarding 23, see also 78.
- 64-65, 150. On January 20, 2021, the U.S. deposited with the UN the instrument to rejoin the Paris Agreement on climate change.
- 67-74. The decision of the prior Administration to impose these sanctions will be reviewed as we determine next steps.
- 77-82. The U.S. has re-engaged with the HRC. We support 80 insofar as it recommends continued compliance with our human rights treaty obligations. For 77, see also 64.
- 86. We welcome and consider such recommendations, while recognizing that neither the HRC nor the treaty bodies has the authority to impose, change, or expand our treaty obligations.

21. We support, in part:

- 3-15, 17, 19, 21-22, 25, 28-29, 32, 50, 56, 62-63. We support the parts of these recommendations asking us to ratify treaties, identified above, of which the Administration is strongly committed to pursuing ratification, and those urging deliberative treaty actions. Regarding 63, we do not support the part concerning recognizing the competence of the IACtHR. Regarding 25, 29, 62, see also 33, para. 22 re the ICC. With respect to 62, see also 66.
- 66. We continue to have concerns about the ICC’s activities related to the Afghanistan and Palestinian situations. We support a broad range of measures to prevent impunity for international crimes through investigations and prosecutions at international, hybrid, and domestic courts. There may be exceptional cases where we consider cooperating with the court as we sometimes have in the past. We will weigh the interests at stake on a case-by-case basis when cooperation may be consistent with U.S. law and policy. With respect to sanctions, see 67, para. 20.
- 75. We do not support the premise of this recommendation or the part recommending that we ratify the Rome Statute. See 33, para. 22, 66, 67, para. 20.
- 83. The U.S. is committed to cooperation with human rights mechanisms. We support granting the Special Rapporteur access to facilities and detainees to the extent consistent with this mandate, and on mutually agreed terms, consistent with national security.
- 94-98. While the U.S. continues to improve and strengthen existing domestic institutions that monitor human rights, there are no current plans to establish a single national human rights institution. Regarding 94, we understand the reference to “human rights commitments” to refer to U.S. obligations under human rights treaties.
- 103. The U.S. recognizes the importance of the right of peoples to self-determination but supports relevant resolutions only to the extent they are consistent with current State practice and accurately reflect international law.

22. We do not support:

- 34-35, 51-52, 55, 59-61, 84-85.
- 33, 160. The U.S. shares the goals of the ICC in promoting accountability for the worst crimes known to humanity. At the same time, the U.S. is not a party to the Rome Statute that created the ICC, nor have we ever accepted its jurisdiction over our personnel.
- 90-93, 99-100. See 95, para. 21.

## **Other recommendations**

23. We received some recommendations that do not fit into specific categories. We support:

- 109.

24. We do not support:

- 104-107, 155-159, 161, 165.

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