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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF 1853rd MEETING

Held at the Palais Wilson, Geneva
on Thursday, 21 February 2008, at 3 p.m.

Chairperson: Ms. DAH

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS, AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (*continued*)

Fourth, fifth and sixth periodic reports of the United States of America (CERD/C/USA/6; HRI/CORE/1/Add.49; list of issues and written replies by the State party, documents without reference distributed in the meeting in English only)

1. *At the invitation of the Chairperson, the members of the delegation of the United States of America took places at the Committee table*.

2. The CHAIRPERSON welcomed the delegation of the United States, noting its high level, and particularly welcomed Mr. Boyd, a former expert of the Committee.

3. Mr. TICHENOR (United States of America) said that the United States shared the Committee's view that resolute and concerted efforts were needed to eliminate the scourge of racial discrimination. The size, level and composition of the United States delegation, as well as the intensive efforts on the part of its members to prepare the report and the written replies to the list of issues, attested to the importance attached by the United States Government to its obligations under the Convention.

4. The United States was a multiracial and multi-ethnic democratic State in which people enjoyed protection against discrimination thanks to the Constitution, federal laws and the laws of the states. Even though there had been considerable progress in race relations, one had to recognize that certain problems persisted and that much remained to be done to completely eliminate racial and ethnic discrimination in the country.

5. Ms. BECKER (United States of America) recalled that the United States had ratified the Convention in 1994 and stressed that the Constitution prohibited public authorities, at all levels, to practice discrimination of any kind against persons or groups of people and that national legislation extended that prohibition to cover acts by private entities and employers. She also noted that the Department of Justice had, in 2007, celebrated the fiftieth anniversary of the Civil Rights Division, which was the body responsible for implementing national laws banning discrimination. The Division had initially had only six to eight lawyers for monitoring the implementation of federal laws protecting civil rights in the entire country but now had close to 700 staff members in Washington and other lawyers assigned to 93 courts all over the country, who brought actions or argued civil rights cases in the courts.

6. One of the main concerns of the United States Attorney General was to ensure compliance with civil rights laws in a decisive, fair and impartial manner. The Civil Rights Division strove each day to defend the rights of all persons, whatever their nationality. Those activities dealt with all aspects of life, in particular education, labour and housing and covered both civil and criminal law. In 2007, the Division had launched an initiative aimed at combating racist threats; which facilitated investigations into incidents involving the public display of hangman's knots and symbols of lynching aimed, for example, at intimidating peaceful civil rights demonstrators. Recently the Division had obtained a sentence of life imprisonment for James Seale for having murdered two young African Americans in 1964. The Division had also reached agreements with the owner of a night club in Virginia Beach who had been barring African Americans from entering the club and with a landlord in Massachusetts who had been discriminating against Asian Americans.

7. Reviewing the main points raised in the written replies to the list of issues, she said, with regard to question 1, which requested detailed statistics on non-nationals in the country, that the number of people born abroad and non-nationals of the United States had reached about 33.5 million people in 2003, or 11.7 per cent of the total population. According to the statistics for that year, the composition of the population as a whole was 88.3 per cent nationals, 4.5 per cent naturalized persons and 7.2 per cent non-nationals.

8. Turning to question 2 on the rights of non-nationals, she noted that article 1, paragraphs 2 and 3, of the Convention did not prohibit distinctions between nationals and non-nationals in the enjoyment of certain rights and did not limit the sovereign right of states to authorize or deny entry into their territory. Foreigners nevertheless enjoyed many rights defined in the national laws under the same conditions as nationals, and they could make use of a wide range of provisions that protected them against discrimination based on race or national origin.

9. With regard to question 3 of the list of issues, which dealt with the compatibility of article 1, paragraph 1, of the Convention with the provisions of domestic civil rights legislation that required that complaints against racial discrimination be accompanied by proof that the discrimination had been intentional, she pointed out that the wording of the question might lead one to think that all acts that might have an adverse impact on certain racial or ethnic groups − including those drawing no distinctions on the basis of race − were covered by the definition laid down in article 1 of the Convention. However, under that article, racial discrimination required that there exist a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethic origin.

10. When Government authorities took steps to combat discrimination, they needed to examine the facts carefully in order to determine whether they constituted racial discrimination. In any case, domestic laws did not require that the intentional nature of a discriminatory act be proven in a systematic way. That applied, in particular, when a complaint of racial discrimination in the workplace was submitted under the relevant federal law.

11. Turning to question 4 of the list of issues, which dealt with the declaration made by the Senate that the Convention could not be applied directly, she noted that the declaration in no way changed the obligations of the United States under the Convention, although she wished to clarify that the Convention did not establish a new instrument that might make it possible for certain individuals to request the courts to apply the Convention directly. As her delegation had stressed during the examination of the previous report, the Convention did not impose on States parties the obligation to make that instrument directly applicable in their courts. As a result, the implementation of the Convention in the United States was ensured through the application of federal and state laws on discrimination.

12. With reference to question 5 on the mandate and resources allocated to various Government bodies responsible for the elimination of racial discrimination and the machinery to coordinate the activities of the federal and state administrations, she said that the legal and constitutional framework for eliminating racial discrimination included a whole range of provisions aimed at preventing and combating racial discrimination throughout society, especially in the critical areas of law enforcement, employment, education, housing, voting rights and access to programmes financed by the federal Government.

13. With regard to question 6 of the list of issues, which dealt with racial profiling, she noted that the current Administration had issued guidelines on the subject for law enforcement officers aimed at eliminating illegal practices of that type. Those guidelines were used by the Department of Homeland Security in training its staff. Various laws authorized the Attorney General to bring civil actions against law enforcement officials who engaged in racial discrimination by making use of racial profiling. When unconstitutional practices were detected, the Department of Justice assisted the local agency concerned in reviewing its policies, procedures and staff training so as to bring them into conformity with the Constitution and federal laws. The Community Relations Service of the Department also offered free courses on racial profiling to train law enforcement officers. A number of states had also adopted laws prohibiting racial profiling and had established regulations on the collection of data by police officials.

14. Turning to question 7 on methods used to address systematic discrimination, she noted that, before filing lawsuits in employment discrimination cases, the Department of Justice investigated state or local government employers suspected of engaging in systematic discrimination. Such investigations were labour and resource intensive and lasted months, even years. In 2007, the Department had launched 14 new investigations of that kind.

15. Ms. SILVERMAN (United States of America) said that the Equal Employment Opportunity Commission also conducted investigations into systematic discrimination cases and brought them to trial. In 2006, that body had launched an initiative aimed at strengthening the national scope of its activities, in particular by emphasizing the use of enhanced technology, expert resources and national coordination. The initiative had led to an increase in the number of suits brought on the basis of complaints filed by the Commission in courts.

16. Ms. BECKER (United States of America), responding to question 8 of the list of issues, which requested additional information on the way civil rights laws were used to prevent private actors from engaging in racial discrimination, said that many federal civil rights laws covered acts committed by private actors. Furthermore, the Equal Credit Opportunity Act and the Immigration and Nationality Act had anti-discriminatory provisions that prevented lenders and employers from engaging in discrimination.

17. With regard to question 9 on the consistency of certain recent Supreme Court decisions with the provisions of article 2, paragraph 2, of the Convention, her delegation reaffirmed the view of the United States Government that decisions on the adoption of special protective measures on behalf of a racial or ethnic group should be left to the discretion of each State party and that such measures should not necessarily be based on race or ethnic origin.

18. In the *Parents Involved in Community Schools* v. *Seattle School District No. 1* case, the Supreme Court had held that the school districts concerned had not demonstrated that their race-conscious student assignment plans had been sufficiently carefully targeted to achieve a Government interest. In her delegation's view, that decision was fully consistent with article 2, paragraph 2, of the Convention, which did not stipulate that special measures needed to be explicitly based on race.

19. On question 10 dealing with measures to combat racial or ethnic segregation in housing, the United States shared the concerns of the Committee with regard to the concentration of certain racial, ethnic and national minorities in poor residential

neighbourhoods. The Civil Rights Division and the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development monitored the application of various laws and Executive Orders aimed at combating discrimination in housing. In 2007, the offices to which complaints were to be addressed and which were responsible for investigating cases based on them had received 10,154 such complaints.

20. With regard to question 11 on the alleged phenomenon of "resegregation" in public schools and on available integration measures, she noted that the Department of Education encouraged school districts, when they were not under a legal obligation to eliminate segregation, to take voluntary race-neutral measures, i.e. through the establishment of special schools, the distribution of students among schools by lottery and programmes favouring freedom of school choice. Where the segregation was the result of intentional discrimination, school districts could use carefully tailored race-conscious measures to remedy the problem. Where segregation was due to local demographic patterns, school authorities were not obliged under the law to take measures. To remedy de jure racial segregation, school districts could use race-conscious measures.

21. Turning to question 12 of the list of issues, which dealt with efforts to prohibit and punish racially motivated crimes, she noted that such crimes were usually prosecuted at the state level and that 47 states had adopted laws against race crimes, which they actively enforced. Since the release of the periodic report under consideration, the Department of Justice had charged 20 people with arson, vandalism, shootings and assault and had investigated more than 800 incidents since 11 September 2001 directed against individuals perceived to be Arabs, Muslims, Sikhs or South Asians; 38 defendants had been charged and 35 had been convicted.

22. On question 13, which dealt with legal aid for indigent defendants, she noted that an estimated $1.2 billion had been spent in 1999 to finance indigent criminal defence programmes in the 100 most populous counties. By law, defendants had access to counsel without discrimination of any kind. In recent months various initiatives had been launched to improve the quality of indigent legal aid services. All criminal defendants could also bring a claim that the legal aid provided had been ineffective.

23. Responding to question 14 regarding measures aimed at eliminating racial disparities in the criminal justice system, she stressed that the United States was committed to ensuring equal justice for all people regardless of race or ethnic origin. The reasons for the racial disparities in the criminal justice system were complex. Moreover, recent statistics showed that the rate of growth of the number of African Americans in incarceration was lower that that for Whites and Hispanics, which was encouraging.

24. With regard to question 15, which dealt with the link between racial bias and the death penalty, she noted that in order to establish that a violation of the principle of equality before the law had occurred, a defendant had to show that his prosecution or conviction had been the result of purposeful discrimination. In the *McCleskey* v. *Kemp* case, a convicted murderer had sought to have his death sentence overturned based on a statistical study showing that, in the State of Georgia, murderers of white victims were more likely to be sentenced to death than murderers of black victims. The Supreme Court had rejected the argument on the grounds that a statistical study, even if true, could not prove intentional discrimination in the particular case.

25. There had been a number of studies on the extent of racial disparities in death penalty cases, but their conclusions were equivocal. Some showed that the race of the victim had some impact on the decision reached but none showed statistically significant effects based on the race of the defendant.

26. Turning to question 16, which dealt with police brutality against members of certain minorities, she said categorically that such abuse of authority was unacceptable and recalled that various civil and criminal remedies were available to victims. Since 2000, the Department of Justice had convicted 400 police officers and public officials of criminal misconduct. In many cases the victims had been members of a minority.

27. Ms. SILVERMAN (United States of America), responding to question 17 of the list of issues, which dealt with measures adopted following 11 September 2001 with a view to preventing and punishing discrimination against Arabs, Muslims, Sikhs and South Asians, said that the Equal Employment Opportunity Commission had, since 11 September 2001, received more than 1,000 complaints of work discrimination submitted by Muslims or people of Arab, South-Asian or Middle-Eastern origin, which was twice as many as had been received during the prior six years. In December 2007, the Commission had won more than $4 million in damages and interest to compensate 152 victims of repercussions of the events of 11 September. It had also brought 10 separate actions in federal courts, which had yielded about $1.5 million for 21 plaintiffs.

28. Ms. BECKER (United States of America) said, with reference to question 18 of the list of issues, that the Customs and Border Protection Service, which was part of the Department of Homeland Security, had instituted policies and procedures, including a training programme for the border patrol police, to ensure that undocumented foreigners stopped at the border between Mexico and the United States were properly treated. Where mistreatment was suspected, the Service collaborated closely with other authorities at the federal, state and local levels, and the Office of the Interior in the Department of Homeland Security and/or the Office of the Inspector General opened an investigation. Officers found guilty of mistreatment of illegal aliens were subject to criminal prosecution and/or disciplinary procedures, including prosecution by the Department of Justice. Under the procedures of the Department of Homeland Security, all complaints of mistreatment allegedly committed by private vigilante groups were reported and examined in coordination with interested domestic and foreign parties.

29. In response to question 19, she said that the United States vigorously prosecuted those who had committed criminal acts against Native American women, including those in Alaska, migrant women and female domestic workers. The Department of Justice investigated cases of sexual exploitation involving law enforcement officers or civil servants and brought them to trial if appropriate; it prosecuted federal and state law enforcement agents and members of prison services who had deprived inmates of their constitutional rights. The Department also prosecuted individuals implicated in the human slave trade, which disproportionately affected women, girls and ethnic minorities.

30. The 1964 Civil Rights Act prohibited sexual discrimination in hiring and the harassment of women in the workplace. The Fair Housing Act and the Fair Credit Opportunity Act prohibited sexual discrimination in housing and access to credit and guaranteed that protection to all women, including members of racial or ethnic minorities. The Department of Justice monitored the implementation of those laws.

31. Long aware of the scope of violence afflicting Native American women, the United States Government was intent on combating the phenomenon. As described in detail in the written responses to the list of issues, the Department of Justice worked closely with prosecutors and law enforcement officers at the tribal and state levels to ensure that crimes against women were investigated and that the perpetrators of those criminal acts were brought to justice.

32. In response to question 20 of the list of issues, which dealt with the conditions imposed on nationals of certain countries by federal immigration laws, in particular the USA Patriot Act and the National Security Entry and Exit Registration System, she pointed out that the nationality-based distinctions stipulated in particular in immigration laws were not inherently suspect under the Convention. The National Registration System established by the former Immigration and Naturalization Service following the terrorist attacks on 11 September 2001 to prevent new attacks on State security required certain persons to register when they entered and left United States territory and that they report in periodically during their stay. The goal was to ensure that non-immigrant foreigners left the territory at the end of their authorized stay. Aliens from more than 150 countries had been admitted under the programme, whose criteria were based on nationality and age.

33. The National Security Entry and Exit Registration System was consistent with United States obligations under the Convention. It sought to protect national security and public safety, did not subject foreigners to arbitrary arrest and detention and did not unduly burden their freedom of movement. Furthermore, federal courts, ruling on cases involving equal protection and due process set forth in the Fifth Amendment to the United Constitution, have consistently upheld the legality of the nationality criteria of the National Registration System.

34. Mr. ARTMAN (United States of America) said that the federal Government had recognized 560 separate tribes based on their history, culture and system of governance. The Government maintained an official government-to-government relationship with the tribes and recognized their autonomy. Many tribes had established their own justice systems based on courts, law codes, legislative bodies and an executive power and contributed to the rich diversity of the United States.

35. Responding to question 21 of the list of issues, he noted that article 5 of the Convention required States parties not to guarantee the exercise of all the rights enshrined in the Convention but to prohibit discrimination in the exercise of rights that were effectively guaranteed under domestic law. With regard to the measures taken by the United States to ensure effective enjoyment, in conditions of equality, of the rights enshrined in article 5 of the Convention by Native Americans, including those in Alaska, Hawaii and other Pacific islands, he invited members of the Committee to consult the written replies to the list of issues. He added, however, that in filling posts in the two Government bodies responsible for developing policies and programmes to benefit Native Americans and for administering them, preference in hiring was given, under federal law, to Native American candidates. The goal of that policy was to ensure that Native Americans participated in the promotion of tribal self-government and the economic, social and cultural programmes established for their benefit. Comprehensive health services meeting the needs of Native Americans, including those of Alaska, had been established, as well as social services aimed at improving the quality of life in those communities.

36. Information on programmes for native Hawaiians and natives of other Pacific islands could be found in the written replies to the list of issues.

37. Responding to question 27 of the list of issues concerning the existence of a doctrine of "encroachment" on the land claims of indigenous peoples, he said that domestic law provided transparent procedures under which Congress could, if it deemed it necessary, abrogate treaty-based rights, in conjunction with just compensation for the tribe concerned. He added, however, that there was no general doctrine that allowed the federal Government or any person to deprive Native Americans of their land rights.

38. Regarding the Committee's interest in the matter raised by certain descendants of the Western Shoshone nation, he invited members of the Committee to consult the written replies and annex II of the sixth periodic report. He explained that the Western Shoshones had brought an action for compensation in 1951, claiming that part of their land had been taken unfairly, and they had won the suit, as the court had recognized that their ancestral claim to that land had been extinguished in 1872, and that they had the right to compensation both for the land and sub-surface resources. Later, some descendants of the Western Shoshones had objected to the litigation strategy followed by their ancestors but had failed to bring their objections to the attention of the appropriate courts in time. Furthermore, the initial claim had been a collective action, unlike the aggregation of individual claims that certain descendants were trying to bring before the Committee.

39. Responding to question 28, he said that in Native American territory tribes had full authority over areas of spiritual and cultural significance, although certain laws of general applicability, such as environmental laws, might also apply. Those areas under tribal jurisdiction were protected by tribal law and custom and were not subject to the consultation process under which domestic law guaranteed to Native Americans protection of their rights in areas of special spiritual and/or cultural significance that were found on federal land. Executive Order 13007 required federal land managers to ensure access by Native Americans to their sacred sites and to allow them to engage in their rituals there; Government agencies were also to avoid adversely affecting the physical integrity of those sites and as much as possible to maintain the confidentiality of those sites. Furthermore, Executive Order 13175 required those agencies to consult with tribal governments before developing federal policies, proposing legislation or promulgating regulations that affected the rights of Native Americans. There were also other laws and policies that sought to protect the sacred sites of Native Americans, such as the National Historic Preservation Act, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act and the American Indian Religious Freedom Act, which were discussed in greater depth in the written replies.

40. Ms. BECKER (United States of America), responding to question 22 of the list of issues, which dealt with the elimination of discrimination in access to certain professions, said that under federal law, in particular Title VII of the Civil Rights Act of 1964, businesses with more than 15 employees were not allowed to use hiring practices or criteria that, intentionally or unintentionally, discriminated against members of racial minorities. That legislation applied to all employers, including those in the legal and accounting professions. Many states had adopted similar laws prohibiting discrimination in businesses with fewer than 15 employees.

41. She pointed out that the written replies provided additional information on programmes developed by the Department of Labour and on some of the many programmes administered by state and local governments and professional associations to promote the hiring and retention of members of racial minorities. Workforce training programmes were also available to all, in particular to

immigrants, so that they could acquire the skills needed to get work in high-growth sectors and high-demand professions.

42. Responding to question 23, she said that federal law prohibited discrimination based on race, colour, ethnic origin or other criteria in the provision of disaster services and benefits. In the two and one half years since the devastation caused by hurricanes Katrina and Rita in the south of the country, the Federal Emergency Management Agency had provided an unprecedented level of assistance to the people and communities of the Gulf Coast. The shelter and housing programmes established by that agency had assisted hundreds of thousands of evacuated and displaced persons and had enabled them to find long-term housing.

43. The Department of Housing and Urban Development administered programmes in Louisiana and Mississippi aimed at assisting victims to get back into their homes, rehabilitating temporary rental housing and supporting regional infrastructure projects.

44. In response to question 24 of the list of issues, she said that the federal Department of Health and Social Services sought to ensure that the health and medical insurance needs of all citizens, including members of racial and ethnic minorities, were met. To that end and in order to reduce disparities in health care, the Department administered a wide array of programmes at the federal and state levels, including joint federal and state efforts, such as the Medicaid programmes.

45. The 2003 Act modernizing Medicare was a landmark law that provided seniors and individuals with disabilities with better benefits by reducing the cost of prescription drugs. The law could considerably reduce inequalities experienced by seniors from racial or ethnic minorities. Medicare now covered preventive medicine, including conditions that disproportionately affected members of racial and ethnic minorities.

46. The written replies to the list of issues provided more details on the various programmes developed in the framework of the National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations. She added that the Office of Minority Health of the Department of Health and Human Services enforced federal civil rights laws to ensure that all citizens had access to adequate health care and services, without regard to race, colour or national origin.

47. In response to question 25, which dealt with measures taken by the United States to address racial disparities in the field of sexual and reproductive health, she said that her country had prioritized efforts to ensure that women, in particular minority women, had access to adequate health care in that field. She urged members of the Committee to consult the written replies, which described in detail initiatives taken by the Department of Health and Social Services, such as the programme targeted towards African American women entitled “A Healthy Baby Begins with You”, which focused on prenatal and post-natal care and the detection of HIV/AIDS among young mothers and newborns, and other health programmes targeted especially towards high-risk mothers from ethnic and racial minorities, such as African Americans.

48. Given that AIDS was the main cause of death for Black women aged 25 to 34, the office responsible for women’s health in the Department of Health and Human Services was financing awareness-raising programmes on risk factors and prophylactic measures against the virus. Many states, such as New York, had imposed mandatory AIDS testing for newly delivered women in order to detect which newborns needed antiretroviral treatment at birth.

49. Responding to question 26 of the list of issues, she said that the 2001 "No Child Left Behind" law sought to reduce the school dropout rate among minority students and to ensure that those children, as well as disadvantaged and handicapped children and children with low English skills, received a good quality education. The law sought to hold schools accountable for student performance, to impose consequences on schools that failed to educate disadvantaged students, to conduct annual assessments and have schools hire highly qualified teachers. The latest available data showed that gaps between school achievement rates for various categories of children seemed to be diminishing. She added that it was wrong to refer to a "school-to-prison pipeline" because, for one thing, discipline and the school environment varied from school to school and for another, there were no data supporting such a characterization. She said that her country was very concerned by the school dropout problem and that many programmes administered by the Department of Education and the Department of Justice sought to motivate young people to continue in school.

50. In response to question 29, in which the Committee requested her Government's views as to whether the 2005 Detainee Treatment Act and the 2006 Military Commissions Act were consistent with the Convention, she noted that the treatment of foreign enemy combatants was governed by the law of armed conflict. Nevertheless, in the written replies, members of the Committee would find information on the judicial review machinery available to enemy combatants under those laws.

51. With regard to question 30 of the list of issues, which dealt with the extent to which undocumented migrant workers had access to courts in order to deal with problems such as back pay, she explained that all workers in the country, including undocumented aliens, were entitled to the protections of labour laws, which were spelled out in the written replies. It should be noted that, when the Department of Labour monitored whether an employer carefully followed labour laws, it did not check on the immigration status of employees.

52. In response to question 31 of the list of issues, she said that the burden of proof in civil cases rested with the plaintiff and that in employment discrimination cases it was the plaintiff who had to prove that he had been the victim of discrimination. The written replies provided details on the shift in the burden of proof in certain cases, on the law governing "disparate impact" suits under Title VII of the 1964 Civil Rights Act and on cases alleging a violation of the anti-discrimination provisions of the Immigration and Nationality Act.

53. Mr. TICHENOR (United States of America), responding to question 32 of the list of issues, said that the United States implemented its obligations by providing training on legal provisions directed specifically at eliminating discrimination and at promoting tolerance and mutual understanding, rather than by organizing training exclusively on the provisions of the Convention. He added that the written replies described in detail the various programmes administered by the many federal agencies involved in enforcing civil rights law and in administering programmes designed to combat discrimination based on the grounds covered by the Convention.

54. Mr. SICILIANOS (Rapporteur for the United States of America) thanked the delegation for its exhaustive oral presentation, its sixth periodic report and its detailed written replies. He also thanked the many non-governmental organizations (NGOs) that had submitted shadow reports, which was a sign of the dynamism of civil society in the United States.

55. He surmised from reading the various reports submitted by the State party that the plaintiff in racial discrimination cases had to prove that the respondent had intentionally acted in a discriminatory manner, which was particularly difficult to prove. In that connection he requested additional information on the thrust of the draft civil rights act of 2008, submitted by Senator Edward Kennedy, which, according to the information he had received, would eliminate the plaintiff's obligation to prove the intentional nature of the discriminatory act of which he had been a victim.

56. He wished to know whether the State party planned to withdraw its reservation to article 2, paragraph 1, subparagraphs (c) and (d), and to articles 3 and 5 of the Convention, or at least narrow the scope of that reservation. He recalled that the State party had stated that those articles did not apply to it because domestic law could not regulate private life. However, to prohibit discrimination committed by private individuals was, in the view of the Committee, just as important as to prohibit discrimination committed by Government employees.

57. He noted that, contrary to what the State party had stated in its report and its written replies, it would seem, according to many mutually confirming reports received from NGOs, that immigrants and refugees had, since 11 September 2001, suffered systematic human rights violations at the hands of the federal Government, local governments, the counties and states, law enforcement officials, employers and private citizens. It would seem also that new laws and policies sought to restrict the rights of non-citizens to due process, and that the authorities had adopted hundreds of measures aimed at preventing immigrants and refugees from obtaining employment at a viable wage and denying them access to health care and education. He requested the delegation to give the Committee its views on that problem.

58. He noted with satisfaction that President Bush had committed himself to ending racial profiling in the United States but he deplored the fact that the Department of Justice, rather than developing a law to prohibit that practice, had simply revised the "Guidelines regarding the Use of Race by Federal Law Enforcement Agencies", which only resulted in regulating the practice. He would welcome the delegation's comments on that problem.

59. He had also heard that many institutions had included in their mandates efforts to combat racial discrimination at the state and federal levels and that those institutions were fortunately quite active. It was his view, however, that the State party should establish national machinery for centralizing decisions on the subject and for monitoring systematically that Government policies and practices were consistent with the Convention. He also regretted that there were no programmes at the federal level to support state initiatives to combat discrimination.

60. The Committee and the State party seemed to have diverging views on the matter of "special measures": the Committee felt that the adoption of such measures by States parties where inequalities persisted was an obligation under article 2 of the Convention, whereas the State party insisted in its written replies that the adoption of such measures was a matter falling under the discretion of the States.

61. Based on his reading of some of the shadow reports, he considered that recent Supreme Court decisions in the *Meredith* v. *Jefferson* and *Parents Involved in Community Schools* v. *Seattle School District* cases threatened the jurisprudence that had ensured the desegregation of public schools since the historic decision in the *Brown* v. *Board of Education* case. He asked how the State party intended to remedy the situation and, in particular, whether Congress intended to adopt a law on the matter.

62. With regard to article 3 of the Convention, he said that information reaching the Committee suggested that segregation was still particularly virulent in urban areas, especially in housing, and disproportionately affected poor people of colour, in particular African Americans and Hispanics. Segregation in housing was the most frequent form of inequality and social exclusion experienced by such people, but not the only one: they were also disadvantaged when it came to education, employment, health care, exposure to violence and crime, the imposition of heavier criminal sentences and others. He took note of the measures adopted by the State party to combat segregation in housing, but it seemed that the State party should redouble its efforts to improve the situation in that area.

63. The United States had posed a reservation with regard to article 4 of the Convention on the grounds that the article apparently posed a conflict with the First Amendment of the United States Constitution. However, the Supreme Court had ruled that speech inciting others to murder, for example, was not protected by the constitutional principle guaranteeing freedom of expression. Furthermore, 47 states had adopted laws on hate crimes and the Department of Justice had made the repression of such crimes a matter of priority. In that context, he wished to know whether the Government planned to withdraw its reservation or, at least, narrow its scope.

64. With regard to article 5 of the Convention, he noted that people of colour were overrepresented in United States prisons and that, according to information received, a disproportionate number of children of colour had received life sentences without the possibility of parole. He invited the delegation to provide additional information on that problem and drew the delegation's attention to the Committee's General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system. He also wished to know the delegation's views on a 2007 study by the American Bar Association that called for a moratorium on the death penalty.

65. He noted that the Department of Justice had, since 2000, convicted more than 400 law enforcement officers for brutality on the job and that there was still much evidence of pervasive brutality being committed by the police against members of racial and ethnic minorities. Clearly the United States needed to intensify its efforts to combat that troubling phenomenon and put an end to practices such as racial profiling and the violence inflicted by law enforcement agents since 11 September 2001 on Arabs, Muslims, South Asians and persons from the Middle East.

66. Violence against women belonging to racial or ethnic minorities, in particular Native Americans and indigenous Alaskans, as well as migrant and domestic workers, continued to be a problem. Even though, according to the State party, nationals and non-nationals, whatever their sex or colour, enjoyed the same legal protections against violence, the information available showed that the problem of violence against women persisted. The Government of the United States had, nevertheless, taken measures to combat that phenomenon, along with the traffic in human beings, which was justifiably considered to be a modern form of slavery.

67. With regard to article 5 (c) of the Convention, he recalled troubling information to the effect that more than 5 million people convicted of major crimes had lost the right to vote after having served their sentences. African Americans were overrepresented at every stage of the criminal justice system and that policy prevented the African American community from participating fully in political life. He invited the delegation to provide more information on that problem.

68. Turning to article 5 (d) of the Convention, he referred to a shadow report in which Native American organizations demanded the return of native land confiscated under the "full powers" doctrine, the return of sacred land, and an end to attempts to exploit sacred land, for which the states should have obtained prior agreement from the native peoples concerned. He urged the delegation to discuss the problem more fully.

69. With reference to article 5 (e) of the Convention, he requested information on violations of the right to work, i.e. pay, hours of work, safety and sanitation in the workplace, particularly in certain sectors that had a disproportionate number of workers of racial and ethnic minorities. Noting that shadow reports submitted by NGOs drew attention to segregation in employment, he asked the delegation for its views on the problem.

70. He noted that, despite progress made in access to health insurance and health care, there were still racial disparities in infant and maternal mortality rates, life expectancy and prevalence rates for diseases such as cancer, HIV/AIDS and heart disease. According to information he had received, minority families and children rarely had medical insurance. Shadow reports submitted by indigenous organizations indicated that the Indian Health Care Improvement Act needed to be brought up to date in order to better address the health needs of Native Americans. He invited the delegation to present its views on that subject.

71. With regard to article 6 of the Convention, he asked about the draft civil rights act of 2008, which would make it possible once again for victims of discrimination to file complaints of illegal discrimination based on race, national origin, sex or disability in a court of law. He asked the delegation to comment on that draft law.

72. Mr. AVTONOMOV quoted sources that indicated that the United States was seeking to distance itself from the Durban Programme of Action, and he wished to know whether the State party intended to participate in the preparatory work for the Durban Review Conference and in the Conference itself, which would be held in 2009. Raising the issue of the situation of the indigenous peoples of Hawaii and Alaska, he asked why the Government denied those people justice, which would require recognizing their unique status, since the United States had never rejected the right to self-determination.

73. Mr. DIACONU shared Mr. Avtonomov's views on the indigenous people of Hawaii and asked why the United States had voted against the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. He also asked why justice was so slow in certain cases involving discrimination, in particular the *US* v. *Board of Education of Chicago* case. Finally, he expressed his astonishment that the United States continued to consider that the Convention should not apply to the private sector.

74. Mr. KJAERUM wished to know the delegation's views on laws adopted by certain states obliging voters to submit identification documents with a photograph, which was intended to prevent electoral fraud. Some organizations claimed that that practice prevented poor people, members of minorities and the elderly from voting, as they often didn't have such identification documents. He asked whether studies had been conducted to evaluate the effect of such laws on the exercise of the right to vote by disadvantaged groups. He drew attention to the situation of the inhabitants of the District of Columbia, who were unable to vote in presidential and vice-presidential elections, and asked whether the United States planned to change that situation, given the fact that the population of the District was 60 per cent African American.

Referring to the loss of the right to vote by many people convicted in criminal cases, he noted that for many convicts, especially African Americans, that right was not restored after they had served their sentences and asked the delegation to provide more information on the problem. Finally, he asked whether the United States intended to establish a genuine independent human rights institution.

75. Mr. de GOUTTES welcomed the frankness with which the United States Government recognized, in paragraphs 53 and 54 of its report, the problems that persisted in the field of racial discrimination. He drew the delegation's attention to the Committee's General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system and recalled the Committee's concerns in that connection. He wished to know why so many African Americans and Hispanics were arrested, held and convicted by federal courts. On the subject of the death penalty, he was glad to see that the total number of such sentences had diminished, although there had nevertheless been 53 executions in 2006. He asked how many African Americans and Hispanics had been among those executed. He noted that in 2005 African Americans had made up 42 per cent of those condemned to death and Hispanics 13 per cent. Furthermore, it would seem that two thirds of those consuming crack were White, but 82 per cent of those convicted for crack consumption were Black or Hispanic. Given the problem of causality that the situation raised, he felt that a solution would lie rather in improving living conditions rather that in repression. He would be interested in hearing the delegation's view on the subject.

76. Mr. MURILLO MARTINEZ wished to know whether hurricane Katrina had led to internal displacement of the population and whether the federal Government had taken steps to help those people. He also wished to know whether the Government had evaluated the impact of the construction of the wall between the United States and Mexico on migrants.

77. Mr. THORNBERRY said that he took note of the statement by the United States delegation that special measures in favour of disadvantaged groups were not always based only on race, but he was not sure that their effects were sufficient to meet the State party's obligations under the Convention.

78. He wished to know the basis for the doctrine of encroachment adopted by the State party to justify the diminishment or extinction of land claims of indigenous peoples and what were the legal grounds for its application to the territory of the Western Shoshones. He pointed out that it was important to include minority groups in the process of taking decisions that affected them, which should go beyond simply consulting with their representatives. He took note of the difficulty encountered by the United States Government in negotiating a settlement with the Western Shoshones, given the weakness of their institutions, but felt that the Government should not have agreed to work with one sole interlocutor, namely, the Te-Moak bands (CERD/C/USA/6, para. 343), as representing the entire Western Shoshone nation for the purpose of working out a settlement of their claims. With regard to the sacred places, he also wished to know whether some of them had been claimed by the Shoshones as indigenous land claims and how many cases had been dealt with by the Indian Claim Commission (ibid., para. 338).

79. With regard to the despoliation of indigenous lands and territories, he felt that international law had not made enough progress in that field and tended to deal with the problem in an overly fragmented manner. It was to be hoped that the recently adopted United Nations Declaration on the Rights of Indigenous Peoples would promote a general interpretation of the concepts of despoliation and degradation of

land that would be applicable in all situations. The United States also took a fragmented approach to recognizing indigenous peoples and tribes. In that connection he recalled that the Committee had favoured the application of uniform, non-subjective criteria and took the view that a more general and comprehensive approach was required in order to meet the requirements of equity and justice.

80. Mr. KEMAL wished to know whether the events of 11 September 2001 had had an influence on United States policy on immigration from Arab countries. Referring to the administrative difficulties experienced, when entering or leaving the United States, by many students whose names resembled those of persons suspected of having participated in terrorist acts, he wished to know whether the federal Government planned any measures to reduce those difficulties.

81. He drew attention to the need for greater efforts to assist African American women infected with HIV/AIDS. He said that, according to information he had received, the problem was so serious that immediate Draconian measures were needed to assist them.

82. With regard to the Western Shoshones, he was of the view that the injuries they had suffered and historical injustices inflicted on them called for fair compensation.

83. Mr. CALI TZAY recalled that for indigenous peoples land had no price and that even if the Western Shoshones had in fact been compensated, one had to recognize the significant gap between the value of the land and the indigenous sub-surface property rights, estimated at $26 million at the time their claims had been settled, and the profits generated by the exploitation of that territory by the United States. The land appropriated by the Government had been extensively exploited, which had led to pollution affecting rivers, lakes, the air and the sub-surface to such an extent that some even spoke of “environmental racism”.

84. He was of the view that new, very subtle and sophisticated forms of racism had emerged in the United States in recent years. The brutal use of force by the police against many African Americans and Hispanics was increasingly being denounced by many NGOs as a form of tolerated institutional racism, and the construction of a wall between the United States and Mexico had prompted various citizens groups in the United States to put pressure motivated by racial hatred on Mexican seasonal workers.

85. Mr. LAHIRI expressed his view that, given the legal and justice system arsenal that the United States had established to combat racism and racial discrimination, the results hardly seemed satisfactory. That situation revealed either a lack of vigour in implementing the anti-discriminatory apparatus or defects in the monitoring and evaluation of its effectiveness. The United States should provide an example and adopt a firm position on such matters by not tolerating the fact that certain states could abolish the special measures adopted to benefit certain underprivileged ethnic groups, especially with regard to education and health. He said that, despite the abolition of racial segregation in the 1950s, residential segregation persisted and strong measures were required to solve the problem once and for all.

86. Mr. EWOMSAN said that the legal and judicial measures taken by the country showed that the United States authorities were effectively combating racism. He was, however, surprised to learn the degree to which discrimination and racism still affected the African American population and wished to know how the delegation explained the situation. He noted that, despite a guideline in 2003 prohibiting law enforcement officers from engaging in racial profiling, as described in paragraph

112 of the report, federal law enforcement officers still used specific descriptions of the physical appearance of persons suspected of having committed crimes. Continued use of racial profiling by national security and border control forces had led to numerous abuses and violations of the rights of Arab Muslim persons. That situation should be ended.

87. He also noted that the report stated, in paragraph 22, that school attendance and completion rates for Native Americans, including those in Alaska, were lower than for the population as a whole. He wished to know whether the reasons for that situation had been studied and what measures had been taken or were planned to reverse that trend.

88. Mr. PETER expressed surprise that the United States had ratified only 4 or 5 of the 27 international human rights instruments and asked the delegation to explain that position. With regard to the death penalty, he also noted that the United States had not ratified the second Optional Protocol to the International Covenant on Civil and Political Rights, which committed States parties to end the practice of execution. He drew the delegation's attention to the need to examine carefully the ethnic origins of those sentenced to death.

89. On the subject of minors in the justice system, he deemed it unacceptable that 13 states offered no possibility of release on parole to minor prisoners convicted at an age when they were still not criminally responsible. He asked the State party to review its legislation on juvenile justice and to consider ratifying the Convention on the Rights of the Child.

90. Mr. LINDGREN ALVES, like the previous speaker, expressed shock that very young children in the United States were given life prison sentences with no possibility of parole, and recalled that the Human Rights Committee had found that that practice was inconsistent with the International Covenant on Civil and Political Rights. The United States was one of the few countries in the world that continued to try and convict children as adults, which was contrary to international law.

91. He said that, according to information he had received, in certain jurisdictions young men of colour constituted more than 90 per cent of those given life sentences without possibility of parole and that young African Americans were convicted at 10 times the rate of young whites, which, if it was true, constituted another violation of the Covenant. Furthermore, contrary to what the delegation had stated, information from many sources showed that the reduction in remedial measures in education had been particularly damaging to African Americans, who represented, for instance, only a very small percentage of the staff at the University of California at Los Angeles, compared to a higher figure of 6.6 per cent in 1996.

92. Mr. TICHENOR (United States of America) said that his delegation would answer the questions posed by Committee experts at the next meeting.

The meeting rose at 6.10 p.m.