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the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF THE 1854th MEETING

Held at the Palais Wilson, Geneva,  
on Friday, 22 February 2008, at 10 a.m.

Chairperson: Ms. DAH

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The meeting was called to order at 10.05 a.m.

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

Fourth to sixth periodic reports of the United States of America (continued)

1. At the invitation of the Chairperson, the members of the delegation of the United States of America resumed their places at the Committee table.
2. Mr. HARRIS (United States of America), replying to questions posed by Committee members at the previous meeting, explained that many civil rights statutes did not require proof of intentional discrimination. In response to the query whether, given the extent to which United States law prohibited private acts of discrimination, the United States might withdraw its reservation I (2) to the Convention, he said that since there were potential areas where United States law might not cover private conduct, the need for the reservation remained. On the subject of special measures under article 2 (2) of the Convention, he said that in accordance with United States law affirmative action programmes involving racial classifications were permissible as long as the programmes were narrowly tailored to a compelling State interest. Consistent with the Convention, special measures could also include those taken to promote certain racial or ethnic groups or individuals as necessary as long as the measures themselves were not race-based.
3. In response to the request for additional information on the Supreme Court decision in Virginia v. Black, he said that the Court had distinguished between free speech, as protected by the United States Constitution, and a “true threat”, which could be banned under the First Amendment. That Amendment defined it as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”. The Court had therefore held that a ban on cross-burning carried out with intent to intimidate did not violate the First Amendment.
4. Regarding the reservation by the United States to article 4 of the Convention on restricting activities relating to freedom of speech, expression and association (reservation I (1)), he said that it was not necessary or permissible to prohibit ideas based on racial superiority or hatred in the United States; those odious ideas would not succeed in a free society because of their intrinsic lack of merit.
5. Before deciding whether or not to become a party to an international treaty, the United States exhaustively analysed each of the treaty’s articles to determine whether it could implement them all, amending its domestic legislation or making reservations where appropriate. Many of the issues raised by Committee members - such as restricted voting rights for residents of the District of Columbia, restricted voting rights for offenders convicted of felonies and the possibility that offenders under the age of 18 convicted of egregious offences might be sentenced to life imprisonment without parole - were of long standing; the United States had not believed they violated the Convention when it had become a State party.

6. In response to a question on United States participation in preparations for the 2009 Durban Review Conference and, recalling that his Government had withdrawn its negotiators from the first World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, because of pervasive anti-Semitism at the session, he said that the United States strongly opposed regular budget funding of preparatory work and would not be participating in activities of the Preparatory Committee except to observe the proceedings. The United States would decide whether to participate in the 2009 Conference nearer the time.

7. Mr. BOYD (United States of America) said that poor outcomes in the United States often correlated with race: for example, over-representation of African-Americans in the criminal justice and penal systems and racial minorities' lack of access to adequate health care. However, in order to address such disparities, it was essential to distinguish between those that were caused by racial discrimination and those that were caused by other factors - socio-economic or cultural, for example - and that simply correlated with race. That important distinction affected who bore primary responsibility for eliminating the racial disparities. The Government bore the immediate burden of acting when the poor outcome was the result of racial discrimination, using the wide range of tools at its disposal, including affirmative action measures. However, when other factors were the cause, the Government was more limited and the participation of other organizations and individuals was required. Poverty was often at the root of disparities that correlated to race on issues such as housing, health care, criminal justice and access to credit, and while the Government certainly had a role to play in such contexts, non-government actors were often in the best position to help and were necessary players in forming public-private partnerships which had proved so effective in the past.

8. Following the devastation caused by Hurricanes Katrina and Rita and in response to the shortage in New Orleans of permanent affordable housing and basic health-care services for the low-income population, which substantially comprised racial minorities, public-private partnerships had begun to form and seek solutions that the Government could not easily solve alone and quickly. For example, non-profit organizations that had been formed to build affordable housing had teamed up with the Department of Housing and Urban Development to acquire land and development rights to build replacement units, to which displaced tenants would have absolute first right of return. Corporate philanthropists and foundations had funded programmes to provide comprehensive social and remedial services to low-income displaced tenants with the aim of helping them regain self-sufficiency and ultimately achieve prosperity. All stakeholders had a role to play in addressing poverty and other factors from which racial minorities suffered disproportionately, and studies had shown that such programmes could and did change the outcomes of poor and vulnerable people, with the important collateral benefit of adding to the financial stability of affordable housing developments.

9. Mr. ROTHENBERG (United States of America) pointed out that while, as the Committee had noted in its General Recommendation XXXI, disparities in rates of imprisonment were possible indicators of racial discrimination, they were not necessarily the result of such discrimination. There were limits to the Government's ability to address such disparities, especially regarding criminal justice matters. Although there was undoubtedly racism among certain individual actors in the criminal justice system, the disparities were more likely caused by underlying social, economic, and cultural factors, as well the behavioural choices of the persons involved. However, the Federal Government actively sought out, prosecuted and punished intentional racial discrimination and had taken the lead in ending racial profiling nationwide.

Indeed, vigorous enforcement of criminal law benefited racial, ethnic and economically disadvantaged communities, who were disproportionately the victims of violent crime. Although traditionally the criminal justice system had failed African-Americans through insufficient concern for black victims of crime, often failing to prosecute white rapists and murderers, such was no longer the case. The Federal Government was currently prosecuting two white defendants accused of murdering a black man in Kansas City, Missouri, and the death penalty would be sought if they were convicted.

10. Regarding racial disparities in the use of the death penalty, he reiterated that evidence of intentional racial discrimination was equivocal. Everyone involved, from judges to victims, appreciated the seriousness of the process of condemning someone to death and carrying out an execution, and it was that very seriousness that made the process so time-consuming, as it ensured that every avenue of review was provided to a defendant and that his or her constitutional rights were protected to the greatest extent possible.

11. It was true that persons under the age of 18 could be sentenced to life in prison without parole. That sentence was imposed on juveniles who had been prosecuted as adults - a decision taken by the court on the basis of such factors as the type and seriousness of the offence, the juvenile's role in committing the offence and the juvenile's past record - and who had been tried and convicted of an extremely serious crime (e.g. murder or rape) and determined to be a danger to society. However, juvenile offenders were separated from adult prisoners to the extent possible. Racial disparities in application of that sentence to juveniles were not per se evidence of racial discrimination.

12. In response to the question whether eight-year-olds could be sentenced to life in prison without parole, he said that it might be theoretically possible in states that had not explicitly established a lower age-limit other than the age of criminal responsibility. However, according to Human Rights Watch, Oregon had eliminated the sanction for offenders under the age of 18, and the majority of states that authorized application of the sanction to juveniles had set the minimum age at 14 years.

13. Regarding the racial impact of the differential in federal sentencing for trafficking in crack cocaine versus trafficking in cocaine powder, the United States Sentencing Commission had, the previous year, lowered the recommended sentence concerning crack cocaine in order to address the perceived racial effects of the differential and had recently made that revision retroactive, affecting thousands of defendants. Congress was currently considering the issue. There was, however, a valid basis for the differential since trafficking in crack cocaine was associated with higher levels of violence than trafficking in cocaine powder, and the policy had repeatedly been upheld as constitutional. At least one current legislative proposal would reduce the differential but would not eliminate it entirely.

14. In response to the question about the status of efforts to provide residents of the District of Columbia with greater voting rights, he referred to paragraphs 211 and 212 of the periodic report and added that two bills were currently pending in Congress to provide the District with a full voting member of the House of Representatives, a proposal had been debated in the Senate but not voted on, and a further bill was pending before the Senate Committee on the Judiciary.

15. In response to the question whether the Federal Government had a role in the practice of preventing convicted felons from voting, he recalled paragraph 208 of the periodic report and pointed out that several courts of appeal had recently determined that state felon disenfranchisement laws did not violate the Constitution or federal election statutes. Since the Constitution specifically authorized the states, not the Federal Government, to conduct all elections, the voting eligibility of convicted felons was a state issue and the ability of the Federal Government to address the issue was severely limited.

16. He said that the “voter-ID” laws in force in various states, requiring individuals to present photo identification prior to casting a ballot in an election, helped to prevent voter fraud, which diluted and therefore debased the constitutional guarantee of the right to vote. The Help America Vote Act required states to use voter-ID systems in certain circumstances, such as in the case of first-time voters registered to vote by mail. The laws had been endorsed by the National Commission on Federal Election Reform in 2005, and, according to public opinion polls, were supported by the vast majority of United States citizens. In response to the question about the pre-clearance by the Department of Justice of the voter-ID law in the State of Georgia, he said that that action had been taken after careful analysis that had lasted several months and concluded that it would not be discriminatory. On 26 September 2007, a federal district court had dismissed the challenge to the law and noted that the plaintiffs had failed to identify any individual who had not or could not have obtained the requisite identification. The Georgia Supreme Court had also recently dismissed a challenge under State law. Furthermore, the State now provided the required identification free of charge.

17. Mr. SICILIANOS, Country Rapporteur, said that the distinction drawn by the delegation between causation and correlation with regard to poor outcomes and race was a subtle one that was implicit in the logic underlying its replies concerning the right to vote. Yet the distinction between direct and indirect discrimination made in article 1 (1) of the Convention appeared to dovetail nicely with that drawn between correlation and causation, in that it referred to the effects a measure might have, despite seeming race-neutral on the surface.

18. The delegation’s statement to the effect that states, and not the Federal Government, were specifically authorized to conduct all elections and that the voting eligibility of convicted felons was a uniquely state issue was unacceptable. That was because international law was indifferent to the internal organization of a state and held the State - in this case the Federal Government of the United States - accountable for its obligations under that law. That principle had been laid down by the former Permanent Court of International Justice as early as the 1920s.

19. Mr. LAHIRI commended the Federal Government and the state governments for the impressive infrastructure they had constructed to combat racism and racial discrimination. He welcomed the announcement by the United States that, after carefully reviewing its laws and procedures, it had determined that it could fully implement the Convention under its existing domestic law. In the delegation’s replies concerning the issues of causation and correlation and the limits of the Government, the tendency had been to emphasize the compliance of the United States Government with the letter of the law, rather than to propose proactive measures that could be taken under its law to achieve the objectives of the Convention. That had also come out in the reply to article 7, according to which the United States provided training on specific legal provisions aimed at combating discrimination instead of the provisions of the Convention as such. There was no need for such an exclusionary approach, given that both the domestic law

of the United States and the Convention were working towards a common goal. With its extensive machinery and its willingness to implement the Convention, efforts to train all public officials at the state and local levels in the provisions of the Convention and in implementing its domestic laws in such a way as to promote the Convention's objectives would add considerable synergy to the process.

20. Despite the separation of powers between the executive, judiciary and legislature, it was possible to consider devising innovative forms of interaction between them with the aim of solving serious social ills. Such a suggestion was all the more pertinent given the innovative manner, in which the United States had characteristically approached its activities.

21. Mr. de GOUTTES said that problems relating to the functioning of the law enforcement and criminal justice systems in a particular State were often strong indicators of racial discrimination and ethnic inequalities. Such problems were worrying because they had a direct impact on groups of persons whom the police and the justice system had a special duty to protect. The Committee was particularly concerned when such problems were found in a country as large and important as the United States, given that it was one of the world's most representative models of a multi-ethnic society. While it might be true that the underlying cause of such problems was of a structural nature, some of the statistics provided to the Committee were frankly alarming. He would appreciate the delegation's comments on that matter.

22. For example, Human Rights Watch had reported that, in 1995, over half of all children held in prisons for young people were African-American. Of the number of youths convicted, those of African-American origin were convicted at a rate that was two times higher than that of other segments of the population. Despite the fact that African-American women comprised only 13 per cent of the total population, they accounted for nearly half of the female prisoners in State prisons. Moreover, with regard to civil penalties ordered for drug-related crimes in 2003, of the 92,000 women deprived of the right to receive social assistance under laws denying social assistance to individuals convicted of drug-related crimes, nearly half were African-American. While it was true that those figures did not in themselves constitute proof of racial discrimination, they were nevertheless worrying.

23. Mr. LINDGREN ALVES said that the explanations provided by the delegation tended to be too legalistic in nature and failed to consider underlying social causes. For example, the problem of poverty underlying the plight of African-Americans affected by Hurricane Katrina was precisely the kind of social problem that had given rise to the development of affirmative action. In that connection, it was unclear why the Supreme Court had rejected the idea of establishing admission quotas or preferences in universities or other academic establishments.

24. Regarding the question of life sentences without parole for young offenders, the explanation provided by the delegation had failed to address the fact that such a practice was in violation of international law. Although the explanation given was that such sentencing was applied only after serious consideration had been given to the kind of crime committed, Human Rights Watch had reported that 26 per cent of the 2,381 youths serving life sentences without parole had been convicted of felony murders or aiding and abetting the commission of a crime, which often differed substantially from intentional homicide. Such justification for keeping a child in prison for a lifetime was unacceptable as well as inhumane. In fact, in a number of instances, the United States tended to take an insular approach to international law,

giving precedence to its own internal law over the dictates of international law. Yet, in the area of human rights, international law specifically regulated certain aspects of internal affairs. Although the United States ensured that its laws were fully in conformity with international instruments before ratifying them, and formulated and submitted reservations where that was not the case, it should give equal consideration to adapting its laws in order to bring them into conformity with those instruments.

25. Mr. THORNBERRY said that he was not entirely convinced that, in the context of racist speech in organizations, good ideas would drive out bad, as had been implied by the delegation. At the opening of the current session, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had stressed the importance of guarding against the recent tendency towards the normalization of racist discourse in the body politic. The coarsening of public discourse could have tremendously bad consequences and could degenerate into a racist vocabulary of dehumanization, producing tragic results, as history had amply demonstrated. Although formal discrimination by state authorities in the United States had decreased over the years, there were still many examples that provoked questions regarding the possibility of state authorization of discriminatory systems.

26. Much of the Committee's time was taken up with trying to examine the effect of deeper social factors. With regard to racism, the Committee had found that the essence of racist behaviour was not individual malice, but rather institutional and cultural racism. It should also be remembered that, in many States in the world, even the apparatus of State might unconsciously be dominated by a certain cultural paradigm. From that perspective, it was possible that the intentionalist paradigm of racial discrimination that the United States was strongly sponsoring did not, in many cases, capture its essence.

27. He echoed remarks made by Mr. Lahiri and Mr. Lindgren Alves about the minimalist interpretation of the Convention by the United States. The Convention concerned more than simply legalistic issues; it was a search for the constructive development of its norms and principles in partnership with States parties.

28. Mr. KJAERUM, referring to the delegation's reply to the question on voting rights, said that even though legislation or practice might on the surface appear to be race-neutral, if it had a disproportionately negative effect on ethnic, racial or other minority groups, the Committee was obliged to raise the question. From that perspective, the State party also had the obligation to study such legislation or practice in order to determine its potentially negative effects, including those that might be produced by the introduction of a mandatory photo identification card for voting. Even though that practice might not be introduced with explicitly racist intentions, it might have the implicit effect of further marginalizing groups that were already vulnerable.

29. The issue of United States rendition flights was one that affected the entire global community. It was essential to bear in mind that when the United States Government took an individual into custody, wherever in the world that might be, it bore responsibility for that individual. The Committee's general recommendation No. 30 on discrimination against non-citizens said that States parties should ensure that non-citizens detained in the fight against terrorism were properly protected by domestic law that complied with international human rights, refugee and humanitarian law.

30. The delegation should comment on the dramatic rise in the number of immigrants held in detention in the United States; according to data he had received, they had increased threefold in the past decade and were mostly members of racial minorities. He requested information on the reasons for the increase, as well as on the duration and conditions of detention.

31. Mr. MURILLO MARTÍNEZ said that he had been puzzled and discouraged by the delegation's reply concerning the participation of the United States in the Durban Review Conference, which seemed to be inconsistent with its statements at the previous meeting concerning its commitment to combating racism and racial discrimination. The Durban process constituted the foremost multilateral forum for fighting the scourge of racism and racial discrimination. An excellent dialogue had been held with the United States at a recent conference in Santiago (Chile) and its views had been incorporated in the Santiago Declaration, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (Montreal Process), which had been very well received by the indigenous peoples and persons of African descent in the region. On his recent visit to Colombia, President Bush had also participated, along with a high-level delegation representing United States political parties and the African-Colombian population itself, in a much appreciated dialogue on the issue of African-Colombians. The international institutions that provided such opportunities for dialogue were very important and should be strengthened.

32. He asked what policies had been developed to address the needs of the African-American population displaced by Hurricane Katrina. He enquired what statistics had been gathered on the return of those displaced persons, what had been the reaction of the New Orleans authorities to the information on the situation of displaced African-Americans, and whether any studies had been conducted on the impact of past history on questions of racism, notably with regard to the wall that was being constructed along the southern border of the United States.

33. Mr. DIACONU said that Governments were required to examine the underlying or structural causes of criminality, including disparities in socio-economic status and education. Serious measures taken in those fields were likely to result in a lower level of criminality. As to the issue of special measures, the United States had taken such measures in the 1970s and 1980s in the field of education because they had been warranted. He wondered whether circumstances had improved so dramatically in the United States that the measures were no longer warranted. He asked whether studies had been conducted into the need for special measures and whether the beneficiaries involved had been consulted about their potential cancellation.

34. Article 1 (2) of the Convention should not be interpreted to mean that the situation of non-citizens was not pertinent since, under article 5 and under other international instruments, non-citizens had equal rights in many fields, with the exception of political rights. It was therefore not correct to dismiss the equal rights of non-citizens in most fields of human rights.

35. Given that the United States recognized its indigenous populations' right to self-government, he asked whether, it also accorded them the right to dispose of their land. He enquired whether the Government was taking measures to avoid damage to the environment by private actors in areas inhabited by racial or ethnic groups. The Government had the obligation to protect weaker actors from stronger, more powerful ones, who might act in breach of human rights.



36. Mr. KEMAL said that all the nations and races of the world were strongly represented in the United States as a result of the millions of people who had migrated there. For that reason, the problems and solutions suggested by the United States, especially in the field of race, were of interest to and affected the entire world. Although it might be true that the United States Government could not alone solve the problems relating to the damage caused by Hurricane Katrina, it was also true that private companies and NGOs could not address that problem without massive assistance from the Government. Joint efforts were needed to repair the damage and help the poor people who had been adversely affected, the majority of whom were of African-American and Native American origin.

37. Mr. AVTONOMOV said that the status of treaties signed with the Native American nations was unclear, as was the manner in which that status was determined. He was concerned that the treaties appeared to have lost their force qua international treaties since the United States reserved the right unilaterally to amend them. When those treaties had been concluded in the latter half of the nineteenth century, the United States had used the international approach, and the Senate had approved their ratification by the President. At the time, the Indian nations involved had been considered nations in international relations. In fact, that had been the reason given for the non-recognition of the Russian governorship of Alaska on the part of the United States, Spain and the United Kingdom. Currently, the treaties signed with the Native American nations remained in force and were part of treaties at large. The United States Treaty with the Western Shoshone of 1863, known as the Treaty of Ruby Valley, had made no reference to the notion of trusteeship by the United States over Western Shoshone lands. He would appreciate the delegation's comments on those issues.

38. Mr. HARRIS (United States of America) said that, while his Government's legalistic approach to the text of the Convention could give the impression that there was little concern for the wider societal issues involved, that was not the case. Governments' obligations as a matter of good public policy were sometimes expressed as violations of the Convention, which was misleading. All his delegation's replies were based on matters of principle and were the result of careful textual analysis consistent with international treaty law. The United States assumed international legal obligations by consent, pursuant to its constitutional processes. Prior to ratifying a treaty, his Government thoroughly examined its legislation in order to ensure the treaty could be implemented pursuant to domestic law. Training for law enforcement officials therefore tended to focus on treaty obligations as a matter of domestic law rather than a duty arising from international instruments. Nonetheless, he accepted that a different focus could be beneficial in that area.

39. Turning to Mr. Sicilianos's question on the internal organization of government and voting rights, he had not intended to imply that the national Government did not have an obligation because of the federal structure. All international law obligations applied to all levels of government.

40. Mr. ROTHENBERG (United States of America) added that, given the internal organizational structure, there was very little the Government could do in that area. That issue was being handled at other levels of government.

41. Mr. HARRIS (United States of America), replying to Mr. Thornberry's question on article 4, said he recognized that some countries had tragic histories that suggested that the threshold of concern over free speech might be lower than in the United States. While people might find some expressions offensive or hurtful, and some speeches could have negative social consequences, people were not imprisoned for expressing ideas. His Government trusted that poor ideas would fail on their own merit.

42. He regretted that Mr. Murillo Martínez had not found his country's position at the Durban Review Conference acceptable. That position had been taken owing to the unfortunate circumstances surrounding the Conference. It had been a matter of principle and did not reflect a larger indifference on the issue of race.

43. He had discussed the subject of renditions with the Committee against Torture and the Human Rights Committee the previous year, and particularly the questions on what legislation was applicable, when the law of war applied, and what standards might apply to various circumstances. Those issues fell under the remit of other human rights treaty bodies since decisions taken in that area were not based on race.

44. Mr. BOYD (United States of America), returning to the issue of Hurricanes Katrina and Rita, emphasized that all levels of government had a moral and policy obligation to respond to the needs of the victims of such disasters. It was, however, a shared responsibility with all the apparatus of society, and hence the preference for collaboration and partnership. The Government had allocated billions of dollars to respond to the aftermath of Katrina and Rita, and there were concerns among many, in and outside government, about how effectively those resources were being deployed. That concern strengthened the need for public/private partnerships to ensure that the resources reached the worst-affected people.

45. On the subject of the legal challenge to the use of special measures in the undergraduate and law school admission programmes at the University of Michigan, the Supreme Court had found that the law school programme's admission criteria were constitutional because the programme was narrowly tailored to achieve a compelling government interest. It was therefore a paradigm for public universities in the country.

46. Turning to Mr. Sicilianos's observations about the correlation between disparities resulting from racial discrimination and those that were mainly caused by other factors, he noted that where factors other than actual discrimination were the principal cause of outcomes, actors other than the Government had to be part of the problem-solving measures. From the legal viewpoint, whether disparate impacts were caused by actual discrimination, or whether racial minorities were disparately impacted by a race-neutral programme, affected the federal statutes applicable. In some cases, causes of action applied to disparate impacts only, while other constitutional causes of action required proof of actual discriminatory intent.

47. He agreed with the concern expressed by Mr. de Gouttes over the disproportionate representation of racial minorities in the criminal justice system. It was up to the Government and other authorities to decide whether that was indicative of actual discrimination in particular circumstances. Eliminating that disparity was a shared responsibility between the Government and the whole of society.

48. As to Mr. Kjaerum's concern over the disproportionate adverse effect of race-neutral voter-identification statutes, he said that not all statutes required proof of actual discriminatory intent. Section 2 of the Voting Rights Act protecting racial and ethnic minorities from anything that impaired their ability to exercise the franchise only required proof of disparate effect and disparate impact, not necessarily proof of actual discrimination.

49. He agreed wholeheartedly with Mr. Diaconu's observation that improving educational outcomes went a long way to solving many racial disparities.

50. Mr. ROTHENBERG (United States of America) said that the prison statistics Mr. de Gouttes had referred to were of concern to his Government, particularly because of their underlying causes. Nonetheless, in its report on life in prison without parole for juveniles, Human Rights Watch had indicated that it could not state definitively that intentional racial discrimination was the cause, because they did not have all the facts in each case. He was unable to comment on the statistic Mr. Lindgren Alves had quoted regarding juveniles in prison as he was not familiar with the relevant cases. Regarding the concern that his delegation had not replied directly to the question whether life in prison without parole violated international law, the situation reflected the current state of the law.

The meeting was suspended at 11.55 a.m. and resumed at noon.

51. Mr. ARTMAN (United States of America), replying to Mr. Thornberry's question on whether there was a uniform approach to recognizing tribes, noted that there was no internationally-accepted definition of the term "indigenous people". In the United States system, federal recognition of a tribe could occur by treaty, statute or executive or administrative order, or through dealing with a tribe as a political entity. There were currently over 560 federally-recognized tribes in his country. The criteria for administrative recognition were established in federal regulations and were objective, transparent and provided consistency in the federal recognition process. Once a tribe was federally recognized, it partook in a direct relationship with the national Government and enjoyed privileges and immunities. Some 17 groups were currently petitioning the Department of the Interior and being considered for federal recognition.

52. Turning to the question whether Native Hawaiians would be able to determine their own status as an indigenous people, it was not feasible for any group to "self-identify" in seeking self-government rights. There were substantial historical, structural and cultural differences between Native Hawaiians as a group and federally-recognized tribes and Alaska Native communities. Moreover, federal recognition of Native Hawaiians as tribes would raise difficult constitutional issues regarding disparate treatment based on race.

53. In answer to questions by Mr. Avtonomov and Mr. Ewomsan, he said that there were 230 federally-recognized Alaska Native tribes. Alaska Native villages and tribes maintained their authority in conformity with the structure of the Alaska Native Claims Settlement Act. The federal statute provided a mechanism for the settlement of all claims by Alaska Native communities, which entitled those communities to monetary relief for land and resources, and maintained federal recognition of Alaska Native governments. Those communities were also supported with economic development opportunities and cultural revitalization efforts.

54. Turning to the issue of ancestral lands, Congress had established the Indian Claims Commission in 1946 to hear claims by Indian tribes, bands and other identifiable groups for compensation for lands that had been taken by private individuals or the Government since the founding of the United States. The Commission had heard claims for over 30 years and had ordered compensation for the taking of land and subsurface rights.

55. In reply to Mr. Sicilianos's request for the delegation's views on three recommendations in a shadow report, he said that the first - that indigenous lands taken under plenary power doctrine should be restored - depended on whether that referred to lands taken without compensation or not pursuant to a treaty. If so, those claims came under the mandate of the Indian Claims Commission, and tribes had had the opportunity to bring such claims over 50 years previously. Reopening that claims process was beyond the scope of the Convention, and was unfeasible given contemporary realities and existing legal rights in his country.

56. Turning to the recommendation that sacred land should be returned to indigenous peoples and that development affecting sacred lands should be allowed only with the free, prior and informed consent of the indigenous people affected, he said that in the areas where tribes had jurisdiction, they protected their sacred sites by tribal law and custom. As to public lands, including those managed by the Department of the Interior's Bureau of Land Management, the protection of indigenous sacred lands had already been explained in detail in the reply to question 28. Restoration of sacred sites that might have been taken hundreds of years previously, however, was subject to the same practical constraints as mentioned with regard to the first recommendation, and the Convention provided no guidance on such matters.

57. Referring to Mr. Thornberry's question on aboriginal title claims to lands, including sacred sites, he said that the vast majority of aboriginal Native American land in what was currently the United States had passed out of indigenous ownership prior to 1890. When the country had been founded, Indian tribes had held their land in "aboriginal title", which was a right of use and occupancy. Since that time, Congress and the Executive had acted to recognize tribal property rights through treaties, statutes and executive orders. Federally-recognized tribes therefore currently held almost all their land in that manner, not in aboriginal title.

58. On the issue of the fence along the border with Mexico, a question raised by Mr. Cali Tzay, if the fence was not constructed on Tohono O'Odham lands, the tribe would suffer since there were almost 1,000 unauthorized border crossings each day through that reservation. If the fence did not run through the reservation, the number of such crossings would increase exponentially, as would crime, environmental impact and the strain on the tribal infrastructure. The Bureau of Indian Affairs and the Department of Homeland Security were consulting with the Tohono O'Odham Nation in an attempt to mitigate the impact of the fence on tribal members who crossed the border daily for social or cultural reasons.

59. Turning to Mr. Cali Tzay's question about the impact on a tribe should the Government prohibit hunting or gathering on tribal land because a species was protected under the Endangered Species Act, that impact was minimized through provisions allowing tribal members to have special permits.

60. In answer to Mr. Thornberry's question on the plenary power doctrine and the discovery doctrine, he said the former included the exclusive placement of authority to conduct Indian affairs with the national legislature of Congress. The Constitution therefore gave Congress the power to regulate such affairs to the exclusion of the Executive and Judiciary. Plenary power over tribal matters was subject to the limitations placed on Congressional action by the Constitution. The doctrine of discovery provided that discovering Nations held fee title to discovered lands, subject to the Indians' right of occupancy and use. Consequently, no one could purchase Indian land or otherwise terminate aboriginal title without the consent of the sovereign.

61. As to Mr. Sicilianos's question about the Indian Health-Care Improvement Act of 2008, the Government was committed to reauthorizing and improving the Indian health service and to increasing the availability of high-quality health care to eligible American Indians and Alaska Natives. The Senate bill included provisions to maximize the Health and Human Services Secretary's flexibility and to strengthen his authority to administer that service. However, serious concerns remained, including the fact that new permissive authorities for new types of services could detract from existing services and that new reporting requirements could restrict the Secretary's flexibility to deliver health-care services to American Indians and Alaska Natives.

62. On the issue of the Declaration on the Rights of Indigenous Peoples, raised by Mr. Thornberry and Mr. Diaconu, he noted that that instrument had been adopted after a splintered vote and it included numerous interpretative statements. Reference to the Declaration was therefore inappropriate in the context of his Government's obligations under the Convention. The United States had been disappointed that the final text of the Declaration had been prepared and submitted after negotiations had concluded, and States had not been given the opportunity to discuss it collectively, in an open and transparent process. Moreover, the Declaration was not clear or capable of being implemented. While his Government could not therefore adopt the Declaration, it remained committed to promoting indigenous rights domestically and abroad.

63. Mr. KEEFER (United States of America), turning to questions by Mr. Sicilianos and Mr. Kjaerum on the legal framework governing the rights of non-citizens, said that aliens on United States territory enjoyed substantial protections under the Constitution and other domestic legislation, regardless of their immigration status. Many of those protections were enjoyed on an equal basis with citizens, including a broad range of protections against racial and national-origin discrimination.

64. Regarding due process rights, the Supreme Court had found that the due process protections of the Fifth and Fourteenth Amendments to the Constitution applied to all persons, including aliens, within United States territory. Aliens could lodge appeals against immigration decisions with the Board of Immigration Appeals and could seek judicial review of the Board's decisions. In the employment context, extensive protections applied to non-citizens, in many cases without regard to immigration status. All schoolchildren were entitled to free public education, regardless of their immigration status. The Department of Education's Office of Migrant Education was implementing programmes to improve the education of the estimated 700,000 migrant children and young people. Emergency medical care and some non-cash benefits were also available to all persons.

65. In response to Mr. Kjaerum's concern regarding immigration detention, increases in immigration detainees resulted from efforts to implement the immigration laws. The Bureau of Immigration and Customs Enforcement strove to ensure that all decisions were based on individual assessments and that human rights were respected at all times. Under the Immigration and Nationality Act, aliens who were subject to a final removal order must be released from immigration custody when it was unlikely that they could be removed within 180 days of a final removal order. National performance-based detention standards were currently being developed in cooperation with health experts and other relevant stakeholders.

66. Mr. BOYD (United States of America) said that racial profiling was the invidious use of race by law enforcement authorities. In many cases, it was logical to use race as one of several elements used to identify suspects, in which case it did not constitute racial profiling. Racial profiling involved the generalized use of race or ethnicity and was strictly prohibited in his country. It implied reliance on racial stereotypes, using race as a proxy for criminality.

67. Mr. KEEFER (United States of America), referring to the concerns expressed by Mr. Sicilianos, Mr. de Gouttes, Mr. Kemal and Mr. Ewomsan about the treatment of Arabs, Muslims, Sikhs or South Asians in the post-9/11 environment, drew the Committee's attention to his delegation's written replies to questions 6 and 17 of the list of issues, recalling that more than 800 incidents involving threats or violence against those communities had been investigated by the Civil Rights Division of the Department of Justice. For example, the previous week individuals had been indicted for spray-painting offensive graffiti and swastikas on the walls of a Tennessee Islamic centre and then burning it to the ground.

68. In order to combat racial profiling and lessen the impact of law enforcement activities on those communities, the Department of Homeland Security had adopted the Department of Justice's Guidance regarding the Use of Race just described. Both Departments had developed live and computer-based training activities for law enforcement officials. Training alone was not sufficient, however, and a substantial investment had also been made and would continue to be made in outreach and communication with a view to providing information, responding to concerns and promoting interaction with those important communities.

69. Turning to the questions by Mr. Kemal regarding post-9/11 immigration from Arab and South Asian countries and delays in the issuing of student visas, he said that although there had been a decrease in non-immigrant visas for Arab and South Asian countries in 2002, there had been a steady increase from 2003-2006 in visas not only for persons from those countries but in general. For example, in 2006 the number of non-immigrant visas had risen 8 per cent, business/tourist visas 12 per cent and student visas 14 per cent. Processing delays had been cut dramatically and 97 per cent of non-immigrant visas were currently approved within two days of the interview. The State Department had instructed its missions to make student visas a special priority. Current waiting times for interviews for student and business visas were less than 30 days.

70. As to the security fence along the border with Mexico, he stressed that the motivation for extending that fence was not discrimination, but rather the legitimate desire of his Government to more effectively control its borders. By the end of 2008 the fence would extend for approximately 670 miles; the Department of Homeland Security had contacted more than 600 landowners affected by its construction and held 18 town hall meetings to discuss the

fence with all interested parties. His Government's effort to exercise greater control over the border with Mexico by building the fence was only one element of its comprehensive border security and immigration policy. With regard to vigilantism by private citizens along the United States-Mexico border, he stressed that while individuals could move freely and assemble, or report trespassing or violations, they could not take the law into their own hands, interfere with law enforcement officials or unlawfully interfere with individuals seeking to cross the border.

71. He thanked Mr. Murillo Martínez and Mr. Kemal for their concern for those affected by Hurricane Katrina. The magnitude of that disaster had initially overwhelmed all levels of government and valuable lessons had been learned as a result. His Government was moving aggressively to improve procedures and, in particular, assistance to the economically disadvantaged. While certain racial minorities had been significantly affected by Hurricane Katrina, the Federal Emergency Management Agency was prohibited from discriminating in its disaster assistance programmes and it focused on assisting all victims as quickly as possible.

72. Ms. BECKER (United States of America), referring to the issue of human trafficking raised by the Country Rapporteur, stressed her Government's commitment to combating that scourge. The human trafficking programme of the Department of Justice's Civil Rights Division had increased the number of human trafficking cases filed in the previous seven years by almost 700 per cent, while a record number of convictions had been obtained in each of the past four years.

73. The Department of Justice shared the concerns expressed by the Country Rapporteur and Mr. Cali Tzay about police brutality and was committed to vigorously prosecuting any law enforcement official who abused his position. The Department's Civil Rights Division had also exercised its statutory authority to prevent excessive use of force, unconstitutional use of canines, biased policing and unconstitutional searches and seizures. For example, 14 pattern or practice police misconduct investigations had been undertaken since 2001 and technical assistance was provided to law enforcement agencies with a view to improving their policing practices.

74. Turning to the issue of minority housing raised by the Country Rapporteur and Mr. Lahiri, she said that her Department was committed to ensuring fair housing practices and had, for example, prosecuted cases where real estate agents had tried to steer minorities such as African-Americans to certain neighbourhoods. In one case the victim had obtained a \$40,000 settlement and the offending agents had had to undergo fair housing training and submit reports to the Government.

75. Ms. HOMEL (United States of America) referred the Committee to the description of civil rights enforcement in the State of Illinois contained in annex I to the report. Over the past five years Illinois had been working in particular to strengthen its fair housing enforcement and in 2006 had signed an agreement with the federal Housing and Urban Development Agency (HUD) for the prosecution of cases of housing discrimination. Pursuant to that agreement, and taking into account the fact that Illinois law was substantially equivalent to federal provisions, cases in Illinois were referred by the HUD to the Illinois Department of Human Rights for investigation, with the HUD subsidizing the cost of the investigation.

76. Ms. BECKER (United States of America), in response to Mr. Lindgren Alves' concerns about the effect of California's Proposition 209 on African-American enrolment at the University of California at Los Angeles (UCLA), said that from 1996-2006 African-American enrolment at UCLA, the University of California at Berkeley and the University of California as a whole had declined from 5.1 to 2 per cent, 7.1 to 4 per cent and 4.1 to 3.4 percent respectively. That decline had, however, been offset by increased admission of other minorities, from 19 to 22 per cent, over the same period. The fact that the decline in African-American admissions was not as great in other institutions as it was at UCLA was attributed to the fact that the other universities took a more holistic approach to reviewing applications. Accordingly, in 2007 UCLA had adopted an approach whereby each application was reviewed in its entirety by one person. That change and an unprecedented effort to reach out to African-American students had increased UCLA's enrolment figures for African-American students from 2 per cent to 4.5 per cent. That was an example of the beneficial effect of the application of special measures.

77. Ms. SILVERMAN (United States of America) stressed the Equal Employment Opportunity Commission's (EEOC) commitment to the elimination of discrimination. She noted that the Civil Rights Act of 2008, recently introduced by Senator Ted Kennedy in response to Supreme Court decisions and concerns in the civil rights community, addressed racial discrimination but more particularly discrimination based on age, military status, disability, harassment of schoolchildren and gender-based equal-pay issues. The Act would, for example, reverse the Supreme Court Alexander v. Sandoval and Hoffman Plastics decisions, prohibit mandatory arbitration of employment discrimination claims and allow the award of unlimited damages in employment discrimination cases. All statutes enforced by the Commission covered acts of unintentional discrimination. Enforcement efforts were robust and many cases had challenged employers' use of apparently neutral policies that disadvantaged certain groups.

78. Turning to Mr. Ewomsan's concern about the persistence of racial discrimination, she said that while substantial progress had been made, the EEOC believed that racial discrimination still occurred too often in the area of employment. Accordingly, it had undertaken its Eradicating Racism and Colorism from Employment (E-RACE) initiative to increase public awareness of the problem and educate employers and employees about their responsibilities and rights. Through that initiative the EEOC had reinforced its enforcement efforts and sent a clear message to employers that discrimination would not be tolerated. The EEOC also worked to increase awareness in the workforce about race and colour issues and cultural differences.

79. As to disparities in health care noted by the Country Rapporteur and Mr. Lahiri, she recalled the delegation's lengthy replies to questions 24 and 25 of the list of issues and stressed her Government's commitment to addressing those disparities. With regard to Mr. Kemal's question about HIV/AIDS and African-American women, she said that in 2005 in 33 states the HIV rate for black women had been 60.2 per cent, compared to 30 per cent for white women and approximately 15 per cent for Hispanic women; furthermore, in 2004 HIV had been one of the leading causes of death for black women aged 10-50 and the leading cause for black women aged 25-34. In response to that situation the Centre for Disease Control was increasing its intervention and prevention programmes for community organizations and health departments,



including hospital workshops, on implementation of routines, rapid testing in maternity and emergency departments and at African-American community events, and demonstration and research projects with African-American women to identify undiagnosed women and reduce risk behaviour.

80. Ms. BECKER (United States of America) took note of the Committee's suggestion that a national human rights commission be established but said that the separate agencies working in the area of discrimination had developed expertise in specific areas of discrimination and the system was well suited to the complex situation in a large and diverse country. In addition, the United States Commission on Civil Rights served as a clearing house for information on discrimination-related issues and laws, monitored the activities of the Federal Government and reported regularly and made recommendations to the President and Congress.

81. Mr. TICHENOR (United States of America) thanked the Committee for a stimulating dialogue. He also welcomed the unprecedented participation in the reporting process of NGOs and civil society. His Government looked forward to receiving the Committee's concluding observations and to continued dialogue with it.

82. Mr. THORNBERRY reiterated the Committee's concern about the State party's rejection of the Declaration on the Rights of Indigenous Peoples and refusal to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. He wondered whether the State party's commitment to promoting the rights of indigenous peoples domestically and abroad would be based on domestic laws only rather than international norms. He noted that the Committee had, for example, invited the Canadian Government to assume its responsibilities in cases where the actions of Canadian companies abroad appeared to violate the rights of indigenous peoples. He expressed concern at information he had about interference by the State party in the way the Cherokee Nation chose its leadership. He also expressed surprise at the mention by the delegation of the concept of guardianship with regard to indigenous rights.

83. Mr. MURILLO MARTÍNEZ reiterated the importance of participation by the State party in the follow-up to the Durban Conference, whose deliberations would contribute greatly to international peace and stability.

84. Mr. CALITZAY said he looked forward to reading more information in the next periodic report on the protection of indigenous rights, for example in the Black Hills area of South Dakota. While he did not question the State party's right to build a fence along the border with Mexico, he requested information on efforts to reduce vigilantism along that border, where locals hunted down migrants, and people who helped migrants, for example, by giving them water, were prosecuted.

85. Mr. de GOUTTES said the United States provided a model for the multiracial and multicultural society that was becoming a growing reality in countries around the world. As a major Power it exerted great influence and it was for that reason that the Committee had high expectations of it with regard to implementation of the Convention. He trusted the State party would continue to be a model for a multicultural and multiracial society based on the rule of law.

86. Mr. AVTONOMOV said he looked forward to an explanation of the State party's treaty law. It seemed to regard treaties with its indigenous peoples as null and void and he wondered what would be the effect on its international obligations if that attitude were extended to international instruments.

87. Mr. LINDGREN ALVES thanked the delegation for providing more specific information in response to his questions. He agreed that the United States provided a model for a multicultural and multiracial society, which was the best answer to the problem of discrimination.

88. Mr. SICILIANOS thanked the delegation for its exhaustive responses to the issues raised. He would prepare the Committee's concluding observations taking into account all the information provided.

89. The CHAIRPERSON thanked the delegation for a highly constructive and informative dialogue and welcomed the spirit of cooperation it had shown in responding to the Committee's concerns in a comprehensive and timely manner. She also acknowledged the active participation and dynamism of the United States NGO community and urged those NGOs to continue their good work.

The meeting rose at 1.05 p.m.