



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
22 August 2022

Original: English

Committee on the Elimination of Racial Discrimination 107th session

Summary record of the 2900th meeting

Held at the Palais des Nations, Geneva, on Friday, 12 August 2022, at 10 a.m.

Chair: Ms. Shepherd

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The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined tenth to twelfth periodic reports of the United States of America (continued) (CERD/C/USA/10-12; CERD/C/USA/Q/10-12)

1. *At the invitation of the Chair, the delegation of the United States of America joined the meeting.*

2. **Ms. Tlakula** (Country Rapporteur) said that the Committee was concerned that gun violence against persons belonging to racial and ethnic minorities and indigenous peoples was increasing and that the firearm homicide rate had risen by 35 per cent in 2020. She would be interested to know what steps were being taken to adopt legislation to expand background checks for all private firearm transfers, to prohibit the carrying of concealed handguns in public venues, to increase transparency in respect of gun use in crime and illegal gun sales and to ensure strict adherence to the principles of necessity and proportionality when deadly force was used for self-defence. She would appreciate up-to-date information on steps taken to review the “Stand Your Ground” laws or on to repeal the Tiahrt Amendments, as the Committee had recommended in its previous concluding observations, and on the firearm homicide rate in recent years, disaggregated by race and ethnicity of the victims, including for the period since the Government’s adoption of a comprehensive strategy to combat gun violence and other violent crime.

3. The Committee had received information that law enforcement officers had killed 1,145 people in 2021, including 266 persons of African descent. Police killings had not abated since the murders of Breonna Taylor and George Floyd, and people of African descent were almost three times more likely than white people to be killed by the police. She therefore wished to know what measures the State party had taken to address systemic racism in law enforcement and to prevent the excessive use of force by law enforcement and Customs and Border Protection officers against people belonging to ethnic minorities and undocumented migrants. She would be grateful for information on the following: the training of police and Customs and Border Protection officers; efforts to increase diversity within law enforcement agencies; measures to ensure prompt and effective investigations into police killings and excessive use of force against persons belonging to ethnic minorities and undocumented migrants; and steps to ensure that the perpetrators were prosecuted and punished appropriately and the victims or their families provided with adequate compensation. The Committee would welcome statistics on investigations into recent police killings of persons of African, Asian, Hispanic or Latino or indigenous descent, and their outcomes. The delegation might also indicate what steps the State party had taken, if any, to review the use of qualified immunity to protect law enforcement officers from civil liability for misconduct.

4. The Committee would also be interested to know what measures were being taken at the federal level to strengthen the right to vote of all United States citizens, including measures to modernize voter registration processes, to strengthen voting by mail, early voting and ballot access, to provide voting information to indigenous people in their own languages and to prevent practices such as gerrymandering, the imposition of artificial and unnecessary voter identification requirements and the manipulation of polling station locations that limited the voting rights of people living in poverty, persons belonging to racial and ethnic minorities, indigenous persons, persons with disabilities and persons with limited English proficiency. Noting that black men were disproportionately disenfranchised owing to state laws withdrawing the voting rights of convicted felons, she asked what federal measures were being taken to restore the voting rights of citizens who had served their sentences or been released on parole. Information on the current status of the Washington, D.C. Admission Act, which would enable the residents of Washington, D.C. to participate fully in the country’s democracy, and on measures to combat disinformation and voter intimidation would be welcome.

5. Furthermore, the Committee would appreciate information on measures taken to secure the effective and equitable participation and representation of persons belonging to racial and ethnic minorities and indigenous peoples, in particular women and young people,

at all levels of government, especially in institutions responsible for developing policies that affected them. It would also appreciate statistics on the representation of racial and ethnic minorities and indigenous peoples, particularly women, in the judiciary.

6. In the light of reports that some states had adopted legislation aimed at restricting and criminalizing protest activities in response to Black Lives Matter protests, and that law enforcement officers had used disproportionate force against protesters, journalists, observers and medical personnel and had shown a permissive attitude towards far right or white supremacist groups, she would like to know how the State party would guarantee the exercise of the right to freedom of peaceful assembly of persons belonging to racial and ethnic minorities. In addition, following allegations that technology companies had sold the location data of peaceful anti-racism demonstrators to law enforcement agencies, she asked what was being done to prevent the use of surveillance tools and other technologies to monitor human rights defenders during protests.

7. The Committee would be grateful for information on the steps that had been taken to mitigate the socioeconomic consequences of the coronavirus disease (COVID-19) pandemic for racial and ethnic minorities, including black Americans, indigenous persons and non-citizens. It would be useful to know what measures the State party had taken to implement and go beyond the commitment – assumed in the Ministerial Decision on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, adopted on 17 June 2022 at the twelfth Ministerial Conference of the World Trade Organization – to waive intellectual property protections for COVID-19 vaccines and thus address the high rates of COVID-19 morbidity and mortality worldwide among the people and groups most exposed to racial discrimination.

8. Across the United States, racial disparities and segregation in the education sector remained a significant obstacle to equality in education and in life opportunities. The Committee would therefore welcome further information on the adoption of national standards to address funding gaps in public education that disproportionately affected districts consisting predominantly of minority communities, efforts to reduce the disproportionate application of disciplinary measures to black students, particularly boys, who too often were suspended or expelled and became part of the “school-to-prison pipeline”, measures to address racial and economic segregation in schools, including in early childhood education, and measures to address racial disparities in academic achievement.

9. The Committee would appreciate information regarding measures taken to ensure effective access to affordable and adequate health-care services for all, including persons belonging to racial and ethnic minorities who resided in states that had opted out of the Medicaid expansion programme, indigenous people – in particular members of the American Indian and Alaska Native communities – and immigrants, who had lower rates of health insurance than the native-born population. It would also be interested to know how the Government intended to enforce a recently proposed rule to implement the anti-discrimination provision of the Affordable Care Act, which would address discrimination in federally funded health-care services, and whether it would review the use of algorithms in the health-care sector, which had been found to be biased against patients belonging to racial and ethnic minorities.

10. Noting that black women were three times more likely to die from pregnancy-related causes than white women and that the mortality rate of black infants was more than double that of white infants, she asked what further measures were being taken to address persistently higher mortality rates among racial and ethnic minorities and ensure that they had access to health services without discrimination. She would be grateful if the delegation could provide statistics on maternal and infant mortality rates in the last 10 years, disaggregated by race and ethnic origin.

11. The Committee had received numerous submissions expressing concern following the Supreme Court ruling of 24 June 2022 on the case of *Dobbs v. Jackson Women’s Health Organization*, which the United Nations High Commissioner for Human Rights had described as “a major setback after five decades of protection for sexual and reproductive health and rights in the United States through *Roe v. Wade*”. In that regard, it would be useful to know what measures were being taken to address the impact of intersectional

discrimination and systemic racism on the sexual and reproductive health and rights of racial and ethnic minorities. In particular, the Committee wished to know what steps were being taken, in the light of the State party's international human rights obligations, to counter the profound and deadly impact of the Supreme Court ruling and of state laws and court decisions that restricted women's access to reproductive health and abortion services and created new barriers, including the prosecution of abortion service providers and of women and girls who underwent abortions. What measures would be taken to safeguard the right to interstate travel so that women could have access to abortion services in States that offered them?

12. It would be interesting to know what measures were being taken to combat multiple and intersectional discrimination against women belonging to ethnic minorities in terms of their access to an adequate standard of living and to work, education, health services and justice, and to prevent and combat violence against women and girls belonging to racial and ethnic minorities, including women belonging to the lesbian, gay, bisexual, transgender and intersex community.

13. The Committee would also welcome information on the impact of the measures to address environmental pollution described in the periodic reports and on further efforts to address the disproportionate effects of environmental pollution, climate change and natural disasters on racial and ethnic minorities and indigenous peoples, including in non-autonomous territories administered by the United States. It would be useful to know what had been done to address concerns about the development of petrochemical facilities in areas predominantly inhabited by people of African descent, such as "Cancer Alley" in Louisiana, where industrial pollution had affected the residents' health and, in some instances, forced them to relocate. The delegation might also comment on allegations that the State party's failure to prevent the construction of industrial facilities on the burial sites of enslaved people amounted to a desecration of Black history.

14. Recalling that the Committee, in its general recommendation No. 34 (2011), had stated that States parties should effectively acknowledge in their policies and actions the negative effects of the wrongs inflicted on people of African descent in the past, chief among which were colonialism and the transatlantic slave trade, she said that she would appreciate an update on the progress made towards the adoption by Congress of the Commission to Study Reparation Proposals for African-Americans Act and on similar initiatives with a view to establishing a federal commission.

15. **Mr. Payandeh** (Country Task Force) said that he wished to know how the State party intended to systematically analyse, address and remedy deeply entrenched disparities in the criminal justice system, where racial and ethnic minorities were overrepresented as a result of overpolicing, racial bias, mandatory minimum sentencing – in particular for minor drug offences – and discretionary sentencing. Racial and ethnic minorities were significantly overrepresented among convicts facing the death penalty, for reasons that included overpolicing, a higher probability of arrest and prosecution, racially biased jury selections and a higher likelihood of wrongful conviction due to cross-racial bias in identification testimony, or so-called cross-racial misidentification. Accordingly, he wished to know what measures had been taken to address the disproportionate application of the death penalty to members of racial or ethnic minorities. While he welcomed the Government's declaration of a moratorium on federal executions, it would be useful to know what steps the State party planned to take towards the abolition of the death penalty at the state as well as federal levels.

16. The Committee had also received several submissions regarding the discriminatory collateral consequences of incarceration, which included felony disenfranchisement, the difficulties convicted people faced in gaining access to housing and employment, and the risk that they might be subjected to welfare bans or, in the case of non-citizens, deportation. He would therefore be grateful for details of the measures the State party was planning or had taken to mitigate such consequences, in particular for black communities. It would also be interesting to know how the State party ensured that algorithms designed to measure the risk of recidivism, such as those used by the Prisoner Assessment Tool Targeting Estimated Risks and Needs (PATTERN) assessment tool of the Department of Justice, did not perpetuate or exacerbate existing structural discrimination.

17. Regarding conditions of detention, he wondered how the State party planned to address reported problems, including the extensive use of solitary confinement, the frequent use of chemical agents such as pepper spray, the imposition of forced or low-wage labour, and the non-application of health and safety laws to prison labour – all practices that disproportionately affected persons of African descent and other racial and ethnic minorities.

18. The Committee would also be interested to know how the State party ensured non-discrimination against racial and ethnic minorities in decisions regarding the transfer of juvenile delinquents to adult facilities and how it ensured compliance with standards under the Prison Rape Elimination Act and corresponding regulations. As the Committee remained concerned about the sentencing of juvenile offenders to life imprisonment without parole, it would appreciate statistics, disaggregated by race and ethnicity, on the number of such sentences that had been handed down to young persons. What had been done to continue the positive developments that had followed the 2012 Supreme Court decision in the case of *Miller v. Alabama*, and how had the federal government addressed some States' failure to comply with that decision? Did the State party intend to abolish life imprisonment without parole for juvenile offenders? If so, how would it ensure that such sentences were not replaced by other excessive or disproportionate punishments?

19. Recalling that the Human Rights Council had recently recognized that human rights violations of indigenous peoples were a persistent legacy of colonialism, the Committee welcomed the recent presidential memorandum on tribal consultation and strengthening nation-to-nation relationships, which pledged respect for tribal sovereignty and self-governance, committed to fulfilling treaty responsibilities to Tribal Nations and emphasized the need for consultation. The Committee would appreciate information on the implementation of the memorandum and on any plans to engage in or intensify existing dialogues with indigenous peoples, including those of insular territories and indigenous peoples who were not federally recognized.

20. The Committee took note of the State party's position that the principle of free, prior and informed consent called for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in the consultations were taken. Regrettably, that position was not in accordance with the Committee's general recommendation No. 23 (1997) or with international human rights standards in general. He wondered whether the State party applied a restrictive definition of free, prior and informed consent in all cases or whether a more substantial standard might be considered in cases where the State's decisions might have a significant direct impact on the rights and the way of life of indigenous peoples. He wished to know how the State party ensured that consultations with indigenous peoples took place at the earliest stage of planning, were inclusive and meaningful, and took account of their concerns. He would also be interested to know what measures the State party had taken or was considering in order to protect indigenous peoples' lands, territories, sacred sites and way of life from the adverse effects of activities such as mineral extraction, infrastructure projects and the construction of border fences and walls. In addition, the Committee would be grateful for up-to-date information on the measures taken to address the concerns it had raised under its early warning and urgent action procedure, particularly in relation to the situation of the Lipan Apache (Ndé), Native Hawaiian, Kanaka Maoli, Gwich'in and Anishinaabe indigenous peoples. Regarding the long-standing issue of the Western Shoshone peoples, the Committee regretted that the current report merely referred to the periodic reports of 2013. As not all of the affected tribes seemed to have accepted the compensation offered for the disputed land, he wondered whether the State party was still actively engaged in the issue and was open to a sincere dialogue with the aim of resolving the dispute.

21. In the light of reports that enforcement officers and private security companies used excessive force against indigenous people, he asked what steps might be taken to guarantee indigenous persons' rights to security of person and to freedom of assembly. Moreover, given that studies showed that American Indian and Alaska Native women faced a disproportionately high risk of violence, he wondered how the State party planned to fulfil its obligations to protect indigenous women from violence, including sexual violence, to support victims and to effectively prosecute perpetrators. The Committee welcomed the recent reauthorization of the Violence Against Women Act; however, it wished to know more

about the State party's plans to enhance the administration of criminal justice in Indian territories, including under the jurisdiction of tribal courts.

22. Lastly, he asked whether the State party had adopted or planned to adopt legislation or due diligence regulations to ensure that transnational corporations registered in the United States did not infringe the human rights of indigenous peoples in other countries, either through their own activities, those of subsidiary companies, or through business relationships within the supply chain.

23. **Mr. Guissé** said that he would appreciate information on the measures taken to tackle housing issues, which disproportionately affected racial minorities, including measures to strengthen implementation of the Fair Housing Act, to prevent, investigate and punish discriminatory mortgage lending, to combat exclusionary zoning and lack of legal representation of tenants facing eviction, to reduce homelessness and address its criminalization and minimize the adverse effects of the lifting of the federal moratorium on evictions introduced during the COVID-19 pandemic. Details on the measures taken to alleviate the disproportionate impact of food insecurity on racial and ethnic minorities and indigenous peoples and tackle high food prices and lack of access to food would also be welcome. He asked how the State party intended to remedy the overrepresentation of children of African descent and indigenous children in the foster care system, overcome the barriers to reunification of children with their families and review law and policy in that area.

24. **Ms. Stavrinaki** said that she would like to know what measures the State party had taken to integrate traditional community-based medicine in the health system, improve access to health care, including reproductive health care and abortion, for indigenous peoples and Afro-descendant communities and ensure that such care was respectful of the cultures of those communities and free from coercion, stigma and other forms of discrimination. Since petrochemical and methanol plants were located predominantly in areas inhabited by persons of African descent, she wished to know whether studies had been carried out to monitor the health impact of such plants on those communities and inform environmental licensing policies and whether affected communities were offered health-related preventive services and adequate remedies.

25. **Mr. Diaby** said that he would appreciate more details, and in particular statistics, on the progress achieved since the Committee's previous consideration of the situation in the United States, which had taken place in 2013. He wished to know whether the State party intended to amend the mandate of the United States Commission on Civil Rights in order to bring it into line with the Paris Principles. With reference to the reported 1,055 killings carried out by the police in 2021, he asked how many of those cases had been investigated, how many had resulted in the conviction of police officers and whether assistance or reparation had been provided to the victims' families. In addition, he would appreciate information on how frequently the Convention was mentioned during training for border force officials and details of the training sessions held, whether the State party intended to adopt legislation to better protect indigenous, migrant and human rights defenders of African descent and what obstacles stood in the way of the establishment of a ceiling for the amount of bail requested of immigrants.

26. **Mr. Balcerzak** said that, since underprivileged communities of colour were disproportionately affected by natural and manmade disasters, including pollution, he wished to know what legal and practical steps had been taken to ensure that natural and industrial disasters did not lead to environmental racism. It would also be useful to know whether the implementation of programmes to assist the victims of the Katrina and Rita hurricanes had produced the expected results.

The meeting was suspended at 10.50 a.m. and resumed at 11.15 a.m.

27. **A representative of the United States of America** said that the COVID-19 pandemic had laid bare disparate health outcomes for people of colour and the lack of equal access to health care. In view of the impact of the social determinants of health, a number of steps had been taken to provide more resources to support health and well-being. In June 2022, a blueprint on the maternal health crisis had been provided that took a whole-of-government approach to improving care and reducing disparities in maternal health outcomes through five thematic priorities: increased coverage of and access to quality maternal health-care

services, including through a sliding scale of care subsidies for the poorest in society; ensuring that those giving birth were decision makers who received culturally and linguistically appropriate support in accountable systems of care; improved data collection and transparency, including through the use of indicators that reflected the social determinants of health; an expanded workforce with a greater number of doulas and health-care providers; and strengthened economic and social support before, during and after pregnancy, including through increased screening of social factors and raised public awareness of maternity protections and benefits in the workplace.

28. Given the importance of individuals' ability to decide when and how to expand their family, the President had responded swiftly to the decision of the Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization* that permitted states to introduce laws to restrict access to abortion. The Executive Order on Protecting Access to Reproductive Healthcare Services had been issued almost immediately after the announcement of that decision, and a second executive order on the matter had been issued the previous week. The Department of Health and Human Services had focused its response on access to medication for abortion and, through its Office for Civil Rights, had taken steps to safeguard the privacy and right to non-discrimination of patients and providers and access to emergency abortion care under federal law, which took precedence over state laws on abortion. It should be noted that emergency medical care was available in all states to any person in need of it, regardless of their immigration or health coverage status. Additional funding had been released the previous week to provide training on reproductive health care and family planning. In order to support individuals to make decisions, under the Family Planning Services and Public Research Act of 1970, information on pregnancy, termination, adoption and referrals – including out of state – must be provided on request to patients, irrespective of their state of residence. A federal website provided the public with information on reproductive rights.

29. The Indian Health Service had been granted a historic investment of \$9 billion to address long-standing health inequities among American Indians and Alaskan natives. Centres for Medicaid and Medicare services were in the process of providing greater continuity of care and reducing financial disruption through supplementary payments for the Indian Health Service and tribal hospitals. The Office of Minority Health had established funding opportunities to help states and territories expand the use of community health workers, in order to strengthen cultural competency among health providers.

30. The Office for Civil Rights was responsible for ensuring the compliance of child welfare agencies with the legal obligations on non-discrimination set out in federal law. Her Government was committed to eradicating the injustice and structural racism that undermined equity and equality. Racial disparities occurred at almost every stage of the decision-making process; statistics showed that, compared to white families, black families were subjected to disproportionately high levels of investigation by child welfare services, were less likely to be reunified with their children as families and were overrepresented in the foster care population, alongside American Indian and Alaskan native children, and, in 20 states, Hispanic or Latino children as well. In 2021, the Children's Bureau of the Administration for Children and Families had issued a bulletin on addressing racial disparities by mitigating racial bias and discrimination, ensuring a diverse and culturally competent workforce, addressing historical trauma and using anti-racist casework strategies to support families. Increased funding for child welfare had been proposed in the President's budget to support kinship care, help young people leaving foster care, address gaps in the system and provide mental health and other support services.

31. **A representative of the United States of America** said that, in 2021, during the COVID-19 pandemic, Asian hate crimes had increased by 300 per cent nationally compared to 2020, despite underreporting. The March 2021 mass shooting in Atlanta had been a disturbing time for the city and for him personally as the city's mayor. The perpetrator of that shooting was being held in prison while he stood trial for that crime and had since pled guilty to four other killings. The priority for the city was to denounce hate, build bridges between communities and respond to the challenges that they faced. To that end, his team had held dialogues on hate and had met with community members and leaders from many groups, including Asian Americans and Pacific Islanders.

32. **A representative of the United States of America** said that speech uttered in the workplace could violate Title VII of the Civil Rights Act, which required employers to maintain a workplace free from harassment. The Equal Employment Opportunity Commission considered that a single utterance of an unambiguous racial epithet could create a hostile work environment, particularly if said by a person with authority over the employee, and it frequently filed lawsuits in that regard.

33. **A representative of the United States of America** said that her Government's position on its reservation to article 4 of the Convention was clearly set out in the text of the reservation and in subsequent periodic reports submitted to the Committee. Her Government remained committed to combating racial and ethnic discrimination, but did not believe that banning and punishing offensive, hateful speech was either effective or appropriate. The Constitution required the approval of a two-thirds majority of the Senate to accede to international treaties, and reservations to such instruments were developed jointly by the executive branch and the Senate. The same requirement would apply to any change to the reservation to the Convention.

34. **A representative of the United States of America** said that the Department of Education was implementing a number of policies consistent with article 7 of the Convention in order to affirm students' identities, cultures, languages and backgrounds, and was working to address the inequities in the education system to provide better opportunities for underserved students – which included racially diverse students – at every stage of their education. Decisions on public school curriculums and textbooks were made at the state and local government levels. The Department of Education was working at the federal level to build an educator workforce that was racially, culturally and linguistically diverse; although more than half of public school students were students of colour, they were taught by a staff comprised of fewer than 20 per cent teachers of colour.

35. The Secretary of Education had issued several priorities in December 2021 to be used to guide the Department's funding and activities, which included the promotion of equity in students' access to educational resources and opportunities – a priority that had been reflected in almost half of the Department's grant programmes, which represented funding of more than \$777 million. Under that priority, the Department planned to encourage projects that would examine inequities and inadequacies in the education system, including approaches to learning that were inclusive with regard to race, ethnicity, culture, language and disability status.

36. An additional priority, which informed about a fifth of the Department's programmes, was to focus on the recruitment and preparation of diverse educators. A final priority was to ensure that the needs, academic or not, of the whole child were met, including by creating supportive learning environments. The Department, guided by that priority, planned to invite applications for funding for projects that would support professional development and learning for educators that was designed to reduce bias, increase engagement in schools and promote the use of an asset-based approach to education by teachers.

37. Underserved students, including students of colour, had lost disproportionately large amounts of instructional time during the pandemic. As part of well-funded recovery efforts, States and school districts were being given incentives to build stronger and more equitable education systems. The National Partnership for Student Success, a recently launched public-private partnership, had been created to recruit 250,000 adults to serve as tutors or mentors to children and other young people who had lost instructional time.

38. In keeping with the Administration's policy of empowering native children and youth, the Department had focused on promoting native cultures, identities and languages. It provided funding to some 1,300 school districts to meet the cultural, linguistic and educational needs of American Indian and Alaska native students.

39. In November 2021, the Department had launched a new inter-agency effort to promote and protect the right of American Indians and Alaska natives to further develop and use native languages. The Administration was also committed to a more meaningful tribal consultation process that respected the sovereignty of the country's tribal nations. For the first time ever, consultations with tribal nations had been held to draw up plans for the Department's annual budget.

40. **A representative of the United States of America** said that in her enforcement work at the Department of Education's Office for Civil Rights she had seen how important it was to respond to incidents of bias not properly addressed by the educational institutions where they took place. One recent resolution agreement secured by her Office, as the agreements by which complaints were settled were known, had involved a complaint made by a Jewish student who had been harassed with impunity for her Jewish ancestry. An investigation into the case of an immigrant student who had taken a beating at school to chants of "Welcome to America!" from other students had recently concluded. Another recent investigation had concerned the failure of a black student's school to respond to the racial harassment to which he had been subjected.

41. Under federal law, local school districts were required to put a stop to such bias incidents. If they failed to do so, her Office stepped in, as it had in the three cases she had mentioned. The message conveyed by the resolution agreements secured by the Office was that every student had to be protected.

42. Great nations did not avoid their past, and because the United States was a great nation students in its schools should be taught its full history. If new state laws on the teaching of history caused schools to violate students' rights, including to a learning environment free from racial hostility, her Office would intervene. Federal civil rights law would take precedence over any discriminatory state law.

43. Progress was being made towards eliminating racial segregation in schools and the discrimination in school discipline practices. One school in a school district where the Office was conducting an investigation into reports of segregation and discrimination in school discipline, for example, had been found to be overcoming adversity and employing model practices that schools in the rest of the district could follow. As every new school year brought with it new opportunities for discrimination, the Office wielded its enforcement lever aggressively to protect students from harm.

44. **A representative of the United States of America** said that the Department of the Interior operated 183 educational establishments, including universities, on dozens of reservations in 23 States. All those establishments offered a wealth of instruction in tribal culture, history and language. Most native students, however, attended schools run by state and local school boards.

45. A recent government report provided confirmation that the Federal Indian Boarding School System was part of the disposition of Indian territories and the forced assimilation of indigenous people through the removal of children from their communities to federally funded schools, where they had been punished for following their cultural traditions, including speaking their native tongues. The report made it clear that the federal Government was obligated to help ensure that native students had access to enriching educational environments, a goal that would be reached only if the federal, state and tribal authorities cooperated.

46. **A representative of the United States of America** said that, in October 2021, as part of efforts to support the eradication of hatred through education, California had become the first state in the country to require all students to complete a semester-long course in ethnic studies to earn a high school diploma. The introduction of that requirement had been the culmination of years of efforts to develop a curriculum that more closely reflected the history and cultures of California's diverse population, in particular blacks, Latinos, native Americans and Asian Americans.

47. A council on Holocaust and genocide education had been set up to identify resources to teach students across the state about the Holocaust and other acts of genocide. The aim was to provide young people with the tools to respond to on-campus incidents of antisemitism and bigotry.

48. **A representative of the United States of America** said that the city of Atlanta worked with the city's public school system to promote early childhood education. Education was leveraged to combat prejudice and promote understanding.

49. Peace Week Atlanta, a week-long series of interfaith activities, in-school discussions with students and other community-centred activities, took place at intervals throughout the

year. As he had noted previously, all students in the city's public schools attended an implicit bias training module.

50. One of the city's priorities was to ease the financial burden borne by families for childcare; the aim was to set aside \$20 million to strengthen the city's network of childcare providers. A community engagement programme, MyCity ATL, had been launched by the city and the school system to help members of the refugee and immigrant communities in the Atlanta learn about city services of interest to new residents.

51. **A representative of the United States of America** said that the Department of Homeland Security enforced strict standards of conduct for all employees, including Customs and Border Protection officers, investigated deaths resulting from use of force and followed up on complaints related to civil rights and liberties. Under a Department-wide policy on use of force issued in September 2018, all Department employees were required to report improper uses of force. Updated guidelines on use of force by Customs and Border Protection officers, as well as a procedures handbook, both of which were publicly available, had been produced in 2021. The updated guidelines and the procedural handbook covered such topics as de-escalation and an officer's duty to prevent excessive use of force by another officer.

52. Custom and Border Protection's Law Enforcement Safety and Compliance Directorate developed use-of-force policy and provided use-of-force education and training, as well as weapons and safety equipment. Virtual use-of-force training simulator systems located in all parts of the country enabled officers to demonstrate and perfect the skills required for everyday operations. Basic training for border patrol agents included an enhanced use of force scenario-based training experience.

53. All incidents involving less lethal force were reviewed by local review boards composed of senior Customs and Border Protection managers, while all significant uses of force, including any discharge of a firearm, were reviewed by a national board. The national board included senior officials from Customs and Border Protection, the Department of Homeland Security and the Department of Justice. It had reviewed 66 significant incidents.

54. All allegations of excessive use of force involving the Department of Homeland Security's employees or contractors were reported to the Department's Office of Inspector General, which was not part of Customs and Border Protection. The Office's investigations could result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions and personnel action. The Office also maintained a 24-hour hotline. If the Inspector General declined to investigate, other officials could step in. In addition, the Department's Office for Civil Rights and Civil Liberties investigated allegations of excessive use of force by Customs and Border Protection personnel.

55. In 2017, Customs and Border Protection had begun tracking and publicly reporting, through an online dashboard, assaults and other uses of force. According to the dashboard, there had been 592 incidents involving use of force in fiscal year 2019, 610 in fiscal year 2020 and 768 in fiscal year 2021.

56. In April 2022, the Centers for Disease Control and Prevention had announced that Title 42 of the United States Code would no longer be used to block land entry, on public health grounds, of some people arriving at the country's land borders; the following month, however, a federal judge had issued a preliminary injunction against the planned termination of the Title 42 public health order. The Government had appealed the injunction, but the order would remain in effect until the litigation was resolved.

57. People subject to the order who expressed a fear that they would be at risk in the country to which they would be expelled were screened to determine whether it was more likely than not that they would be persecuted or tortured in that country. Non-citizens who were part of a family unit and expressed a fear of being at risk if sent to the country to which they would be expelled were exempted from the order. Case-by-case exemptions from the order were also possible. Haitians, for example, had been granted exemptions on that basis.

58. The Department had made efforts specifically to assist Haitian migrants. In May 2021, for example, Haiti had been designated for what was referred to as temporary protected status. As a result, Haitian nationals residing in the United States would be able to apply for temporary protection. A supplemental allotment of visas for temporary workers from Haiti

and several other countries had been announced in March 2022, and steps were being taken to resume visa processing under a programme that enabled Haitian nationals who had family members lawfully resident in the United States to await the processing of their immigrant visas in the United States.

59. Less than a week earlier, a United States district court had lifted the injunction that had required the Department to reimplement the Migrant Protection Protocols, under which some nationals of countries other than Mexico had been returned to Mexico, if they had arrived by land from Mexico, while proceedings to remove them from the United States were pending. The Department welcomed the court's decision. People who had been returned to Mexico would be allowed to enter the United States to await the outcome of proceedings to remove them.

60. **A representative of the United States of America** said that his office, the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, investigated complaints alleging excessive use of force by Customs and Border Protection personnel and worked with Customs and Border Protection to address any concerns that it identified. The Office also investigated allegations, including allegations made by migrants from Cameroon, against Immigration and Customs Enforcement officials.

61. The Office was notified of all non-employee deaths that occurred in Immigration and Customs Enforcement custody, as well as deaths involving use of force by law enforcement officials. It then requested all relevant information, which it reviewed to determine whether a more detailed investigation was warranted. Any necessary recommendations were made directly to the senior leadership of the relevant agency. The Law Enforcement Coordination Council focused on updating policies on use of force and training across the entire Department.

62. His Office had been reviewing the effect of Title 42 and the Migrant Protection Protocols on the most vulnerable people, including black migrants. It had made visits to the southern border and used its findings to provide policy advice to the Department. According to complaints received by the Office, screenings for all persons who expressed a fear of torture did not consistently occur. The Office had issued recommendations pursuant to an investigation regarding medical care and humanitarian protections for persons expelled under the Title 42 order.

63. In a bid to reunite children separated from their families at the United States-Mexico border under the previous Administration's zero-tolerance policy, the President had signed an executive order establishing an inter-agency task force on family reunification. More than 2,000 children had since been reunited with their families in the United States. The task force was taking steps to ensure that families were separated only when separation was required for the safety and well-being of the child.

64. The United States championed global efforts to end statelessness. It was also committed to improving protections for stateless persons in the country. Although it had not acceded to the statelessness conventions, it was a strong supporter of the objectives of the two conventions. Under the law, stateless persons were not treated any differently from other non-nationals of the United States, and the country did not contribute to the problem of statelessness.

65. **A representative of the United States of America** said that the Department of Homeland Security did not collect data on the race and ethnicity of persons in immigration detention; it did, however, have data on the nationality of persons placed in immigration in the past five years, which it would provide to the Committee in writing. By law, some non-citizens, including inadmissible non-citizens who arrived at or illegally crossed the border and non-citizens who could be denied entry or deported for having committed certain criminal offences, had to be detained pending the outcome of immigration proceedings. The Department nonetheless had discretion to authorize the release of non-citizens while removal proceedings were pending, and most detained non-citizens had the right to a custody redetermination hearing before a judge. Most migrants whose fear of being at risk if returned to their country of origin or a country through which they had transited was found credible were released. The median time of detention pending the completion of a status review or other determination had been six days in the first quarter of 2022.

66. In March 2022, the Department had published a rule under which non-citizens who received what was known as a positive credible fear determination could be released from custody while their applications for asylum were considered. In 2021, Immigration and Customs Enforcement had issued a directive that committed it to taking a victim-centred approach and assisting victims in accordance with the Violence Against Women Act and the Trafficking Victims Protection Act. Under the directive, Immigration and Customs Enforcement would exercise prosecutorial discretion to facilitate access to justice.

67. As the result of a recent policy amendment, a medical review was now conducted whenever a person held in the custody of Immigration and Customs Enforcement died, in order to assess the standard of the health care that the deceased individual had received. The Office of Professional Responsibility also conducted an independent inquiry into the time spent by the person in detention and the facts and circumstances surrounding his or her death. Similar inquiries could also be undertaken in cases where someone had died shortly after leaving custody. All reviews were submitted to the senior management of Immigration and Customs Enforcement and to the Office for Civil Rights and Civil Liberties, and, in the name of transparency, notifications of all deaths were published online and sent to Congress, non-governmental organizations and the media.

68. **A representative of the United States of America** said that her Government fully supported the United Nations Declaration on the Rights of Indigenous Peoples and was firmly committed to maintaining true and lasting nation-to-nation relationships with tribal nations. The federal Government had adopted a series of policies and programmes aimed at addressing social ills that disproportionately affected indigenous peoples, such as poverty, unemployment, environmental degradation, health-care gaps, violent crime and discrimination. At the constitutional level, the State's recognition of Indian tribes as political entities with inherited rights of self-governance was consistent with the Declaration's definition of the right to self-determination. The Supreme Court had recognized the undisputed existence of a general trust relationship between the United States and the Indian people and a series of federal statutes and treaties had been signed to ensure the protection of indigenous lands and the provision of health care, education and other services to indigenous peoples.

69. With regard to free, prior and informed consent, the President had directed federal agencies to consult with tribal nations with a view to formulating updated plans of action aimed at implementing the policies and directives established under Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments. In that regard, a tribal advisory committee tasked with strengthening engagement with tribal nations had recently been created within the Department of the Interior, which had announced that it would seek input from tribal leaders on its efforts to strengthen its consultation policy, to establish a model for seeking tribal consensus, to require staff to undergo training before participating in consultations, and to establish a record of all consultations.

70. **A representative of the United States of America** said that the missing and murdered indigenous persons crisis and the disproportional rates of violent crimes against Native Americans were being discussed at highest levels of the federal Government by people with direct experience of those issues. In November 2021, the President had issued an executive order directing federal agencies to develop a strategy to improve public safety and justice for Native Americans and to address the missing and murdered indigenous persons crisis. The Department of Justice, the Department of the Interior, the Department of Health and Human Services and the Department of Homeland Security had been tasked with issuing recommendations aimed at addressing specific law enforcement issues and supporting indigenous peoples in their own response. Following a series of tribal consultations held over the previous year, those agencies were in the process of drafting reports on the development of a comprehensive law enforcement strategy to respond to the crisis, including by improving support for tribal courts, addressing child abuse and neglect, developing data collection and analysis and strengthening survivor support services.

71. The Administration had allocated \$1.5 million to establish the Joint Commission on Reducing Violent Crimes Against Indians. Over the following 18 months, the 40 members of the Joint Commission – which included several survivors and family members of victims – would issue recommendations on how the federal Government could identify and combat

violent crimes against Native Americans. Over the same period, the White House Council on Native American Affairs was scheduled to organize a series of symposiums on the impact of economic and health issues on indigenous women and two-spirit persons. A first such symposium had been held in April to mark the reauthorization of the Violence Against Women Act.

72. A new unit on missing and murdered persons had been inaugurated under the Office of Justice Services of the Bureau of Indian Affairs. Through the work of the unit, the Department of the Interior could draw on resources from across the federal Government to coordinate its investigations into both active and unresolved cases. A member of the unit had been appointed at each of the 17 offices of the Bureau and a website had been set up to facilitate information-sharing and case coordination. The Department had also taken part, along with Canada and Mexico, in the fourth meeting of the Trilateral Working Group on Violence Against Indigenous Women and Girls. The Working Group had consulted with indigenous women and tribal leaders from all three countries on the subjects of strengthening access to justice, addressing the root causes of gender-based violence and advancing indigenous women's leadership.

73. **A representative of the United States of America** said that the United States considered that it had acted in compliance with its obligations under the Convention with regard to the situation of the Western Shoshone peoples. Under the Western Shoshone Judgment Claims Act, over \$188 million had been distributed among the 5,362 persons deemed to be eligible recipients under the judgment.

74. The Government had declared that at least 40 per cent of the overall benefits of certain federal investments in extractive activities should go to disadvantaged communities. To help those communities address the long-standing effects of pollution and climate change, billions of dollars had recently been invested in clean water infrastructure and ecosystem restoration, and a historic \$4.7 billion had been pledged for orphaned well site plugging, remediation and restoration. In response to the Committee's specific question on the Arctic National Wildlife Refuge, the President had signed an executive order placing a temporary moratorium on oil and gas activity on that site. All activities had been suspended and the Department of the Interior had recently declared that it intended to publish a supplementary environmental impact statement in November 2022.

75. **A representative of the United States of America** said that the Department of Justice was committed to ensuring that all eligible voters could cast the vote, that all lawful votes were counted and that all voters had access to accurate information on elections. Under the Constitution, individual states were responsible for determining voter eligibility and the standards used for assessing eligibility therefore varied across the country. The Department of Justice had recently published a guide laying out standards for voter registration for prisoners and persons with criminal convictions, so that individuals could easily find out what rights were available to them.

76. At a more general level, the Department of Justice had repeatedly maintained that the repeal of section 5 of the Voting Rights Act had deprived it of its most effective tool for addressing voter disenfranchisement and discrimination within the voting system. However, it remained committed to using all the remaining tools at its disposal to address the issue. Under section 2 of the Voting Rights Act, it had filed challenges to practices limiting voting rights on the basis of race in North Carolina, Georgia and Texas, and it had lodged a further challenge against the state of Arizona under the National Voter Registration Act. The Administration also supported the passing of the Washington, D.C. Admission Act, which would give the right to vote to residents of the District of Columbia.

77. **Ms. Tlakula** said that, on behalf of the members of the Country Task Force, she wished to thank the delegation for its replies. However, the Committee had not received a satisfactory reply to its questions concerning the action taken by the State party to do the following: bring the definition of racial discrimination used at the federal and State levels into line with article 1 (1) of the Convention; establish an independent national human rights institution and a permanent coordinating mechanism; combat the discriminatory use of surveillance tools and other technologies to monitor and obtain data on ethnic minorities; withdraw or narrow the scope of its reservation to article 2 of the Convention; adopt a national

plan of action to combat structural racial discrimination; address concerns regarding the development of petrochemical facilities and methanol complexes in areas inhabited by people of African descent; address the situation of indigenous peoples in so-called Cancer Alley in Louisiana; preserve the burial rights of former enslaved people; and provide reparation for the historical wrongs inflicted on people of African descent. Nor had the delegation responded to the Committee's requests for statistical information, disaggregated by the race and ethnicity of victims, on the murder rate and reported cases of excessive use of force by law enforcement officials. She urged the delegation to provide written responses to those questions and requests within 48 hours.

78. **Mr. Payandeh** said that he would welcome a written reply from the delegation to his questions concerning the criminal justice and juvenile justice systems.

79. **Mr. Yeung Sik Yuen** said that, with reference to the State party's reservation to article 4, it would be useful to receive further information in writing about the specific ways in which the State party addressed the issues covered under that article of the Convention. In particular, he wished to know how the United States dealt with serial racists who had a history of inciting racial hatred and promoting ideas of racial superiority.

80. **The Chair** said that there were other Committee members who had wished to put questions to the delegation but who had not had the opportunity to do so. She wished to apologize to those members for not having had the time to give them the floor.

81. **Ms. Tlakula** said that the Committee had welcomed the delegation's open and constructive approach to the dialogue. The scourge of racism could only be laid to rest by acknowledging its existence and engaging in what were sometimes difficult and uncomfortable conversations. However, those conversations must be accompanied by action. She therefore hoped that the State party would carry on holding consultations with civil society in order to develop the mechanisms required to facilitate continued progress with its practical implementation of the Committee's recommendations.

82. **Ms. Taylor** (United States of America) said that the delegation had appreciated the opportunity to outline the specific ways in which her Government was meeting its obligations under the Convention. The Committee had heard about the many positive initiatives that were being undertaken at both the state and local levels. However, there was still much work to be done. The regular inter-agency policy meetings convened by the White House served as the ideal forum in which to raise the matters that had been discussed during the dialogue and formulate policies aimed at implementing the Committee's recommendations. The Administration also stood ready to listen closely to those most affected in order to understand the urgency of the need to combat racial discrimination in all its forms.

83. **Ms. Cormier Smith** (United States of America), speaking as co-head of delegation, said that she thanked the Committee for the robust dialogue on her country's implementation of the Convention. Challenges lay ahead, but the United States was committed to carrying out coordinated action on the basis of the Committee's recommendations. She was also particularly grateful to civil society organizations for their vibrant and robust contribution to the review process.

The meeting rose at 1.05 p.m.