



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination 107th session

### Summary record of the 2899th meeting

Held at the Palais Wilson, Geneva, on Thursday, 11 August 2022, at 3 p.m.

*Chair:* Ms. Shepherd

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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*

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*The meeting was called to order at 3 p.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*  
([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 took places at the Committee table.*

2. **Ms. Taylor** (United States of America) introducing her country's combined tenth to twelfth periodic reports ([CERD/C/USA/10-12](#)), said that, while there was still far to go in building a just and equal society in the United States, the blueprint of the civil rights movement together with the recommendations that would be taken from conversations with the Committee and civil society would show a way forward. Meetings with civil society, such as the one that had taken place the previous day, had illustrated that, even though some members of the delegation were experts on racial injustice, there was still much to learn. Her Government was committed to better serving the American people through continued engagement with civil society. It was deeply committed to fighting discrimination and violence against members of vulnerable groups wherever they occurred. The Administration understood that any pledge to advance human rights around the world must begin with a pledge to advance human rights at home.

3. **A representative of the United States of America** said that she served as the first-ever Special Representative for Racial Equity and Justice of the Department of State. It was her duty to ensure that United States foreign policy protected and advanced the human rights of people belonging to marginalized racial and ethnic groups and to combat systemic racism, discrimination and xenophobia around the world. Her Government endeavoured to ensure that its citizens, in all their diversity, were protected against all forms of discrimination under the Constitution and legislation at all levels. However, it grappled with the gap between its ideals and the lived realities for Americans of colour. It was important to acknowledge the tragic and ugly parts of the country's history and their lingering legacy as factors that contributed to current racial disparities and inequities. To that end, the President had signed Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities, which mandated a whole-of-government approach to remedying racial and other inequities in national policies and programmes. In April 2022, over 90 agencies across the federal Government had released Equity Action Plans. She thanked the civil society organizations for their critical role in ensuring that the Government never lost sight of the fact that its work to combat racial injustice and discrimination was urgent, dynamic and ongoing. While recognizing the very real challenges that the Government continued to face, she hoped that its commitment to eliminating racial disparities and discrimination was clear.

4. **A representative of the United States of America** said that the exponential urban growth of the population of the city of Atlanta, the cradle of the civil rights movement where he was mayor, was accompanied by an increasing responsibility to improve the lives of residents to ensure access to infrastructure and social services, housing, education, health care and safety. In the light of the intersection between global and local affairs, he was committed to finding multilateral solutions to global problems and to building a strong coalition of city and state leaders to shape national and global initiatives.

5. **A representative of the United States of America** said that, despite being the most diverse state in the country, California was not immune to racial discrimination and violence. Data had revealed an increase of around 32 per cent in hate crimes between 2020 and 2021. In response to those issues, the Racial Justice Bureau and the Office of Community Awareness, Response and Engagement had been formed to empower diverse communities and tackle the state's most pressing racial and social justice issues. The Civil Rights Enforcement Section had been established and the Housing Strike Force worked to end racial discrimination in housing. The state's Racial and Identity Profiling Advisory Board was in place to eliminate racial profiling in law enforcement, and the Task Force to Study and Develop Reparation Proposals for African Americans had been set up. There was no single

solution to eliminating racial discrimination but through such efforts the State of California was endeavouring to foster equity to ensure the full realization of human rights.

6. **A representative of the United States of America** said that the National Security Council was one of several bodies working to advance equity and racial justice. Human rights were at the centre of his Government's foreign policy vision. One way it was implementing that vision was through its renewed engagement with the United Nations system, including the treaty bodies. His Government was committed to effective domestic implementation of its obligations under the Convention, which required a collective effort at the federal level and policies at all government levels. The role of numerous state and local human rights institutions in such work was also crucial. Questions nevertheless remained regarding additional steps that could be taken to implement international human rights commitments in the domestic context. The Government sought input in various ways, including through the current consultation process with the Committee and outreach programmes to underserved communities, thus ensuring that government policies were informed by the broadest cross-section of the American people. The robust input from civil society during the preparation for the current dialogue was appreciated and his Government would continue its engagement with it in its follow-up to the Committee's recommendations. It also undertook to ensure that the Committee's recommendations informed the Administration's policy and activities, including its efforts to implement Executive Order 13985.

7. **A representative of the United States of America** said that the Department of Justice was using every tool in its arsenal to challenge acts of hate and discrimination, and to reform systems that perpetuated racial injustice and inequality. In 2021, with a view to protecting the right to vote, the Attorney General had doubled the Department's voting enforcement staff. More recently, restrictive voting laws and discriminatory redistricting plans had been challenged. With a view to strengthening economic and racial justice, laws had been reinforced to promote fair housing, equal employment and educational opportunities. A new initiative had been launched to combat redlining and other forms of lending discrimination, and the Office of Environmental Justice had been established to protect communities who were victims of pollution and the climate crisis. Efforts were also being made to reform the criminal justice system. Since 2021, several investigations addressing allegations of racial discrimination, abuse of power and systemic misconduct by law enforcement agencies had been opened. Law enforcement officers who wilfully deprived persons of federal rights had been charged, and convictions had been secured against the officers involved in the killing of George Floyd. Hate crimes were being combated and convictions had been brought, for example for the killing of Ahmaud Arbery. Approximately \$4 billion was awarded annually to organizations providing law enforcement training as part of actions being taken to build trust between law enforcement and communities. The Office for Access to Justice had been re-established to increase access to legal systems, including improving legal representation for the accused in criminal matters, and identifying causes and solutions for the overrepresentation of people of colour in such matters. Measures were being taken to address unlawful prison conditions for inmates, who were disproportionately people of colour. Progress was being made in addressing racial disparities in sentencing and corrections. Legislation facilitated the reintegration into the community of prisoners, and the federal prison population was currently at its lowest level since 2000.

8. **A representative of the United States of America** said that the pursuit by the Department of Homeland Security of the goals of equality and equity was reflected in efforts to fight racially and ethnically motivated domestic violent extremism, including through the new Center for Prevention Programs and Partnerships. The Inter-agency Task Force on the Reunification of Families had facilitated the reunification of hundreds of families who had previously been separated at the border between Mexico and the United States. The Department had made successful efforts to terminate the "remain in Mexico" policy, officially known as the Migrant Protection Protocols. In addition, it had led investigations into complaints against it concerning civil rights and civil liberties. For example, it had looked into complaints against Customs and Border Protection in relation to the treatment of Haitian migrants in Texas in 2021. That agency's Office of Professional Responsibility had also carried out an investigation and released a report and, as a result, institutional changes and a disciplinary process were under way.

9. **A representative of the United States of America** said that the Government's commitment to confront systemic racism was reflected in the fact that several positions in the Department of the Interior, including the Secretary, were held by indigenous peoples. The tide was turning in her country with efforts being made to combat legacy pollution, safeguard natural landscapes and strengthen nation-to-nation relationships with Indian tribes and Alaska Native villages. Her Government recognized its special legal relationship with Indian tribes, Alaska Native villages and the Native Hawaiian community, built on Indian treaties and centuries of Supreme Court case law. It also maintained meaningful engagement with other indigenous peoples in other territories. Her Government was committed to making the changes necessary to improve human rights, for example by investigating the United States historical role in the federal Indian boarding school system and advancing indigenous co-management of federal lands.

10. **A representative of the United States of America** said that, in order to address complex environmental justice issues, her Government was refocusing its efforts to bring justice to communities experiencing the worst effects of environmental pollution and public health crises. The Environmental Protection Agency was responsible for protecting human health and the environment for all persons by funding capacity-building of underserved communities, investing in resilient, equitable infrastructure, supporting efforts of states and tribes and enforcing civil rights laws.

11. **A representative of the United States of America** said that the coronavirus disease (COVID-19) pandemic had highlighted long-standing racial disparities in health outcomes and access to health care. The Department of Health and Human Services was committed to addressing inequities by changing policies and processes and institutionalizing a focus on equity over time. To that end, it was conducting equity impact assessments before implementing budget and policy changes and reconsidering how to effectively build capacity and fund organizational partners that were intermediaries for people experiencing inequities.

12. **A representative of the United States of America** said that, with a view to ensuring racial equity, federal civil rights laws in education were vigorously enforced. The Department of Education investigated and resolved thousands of cases of racial discrimination in schools every year. It redressed racial harassment, ensured schools supported English learners' equal access to education and combated discrimination in access to rigorous curricular offerings. Funds were also provided for education, which in 2021 included more than \$130 billion under the American Rescue Plan to mitigate the pandemic's impact on underserved students, among other things. The Government was working with the relevant bodies nationwide to leverage those resources to expand equity.

13. **A representative of the United States of America** said that her Government's focus on equity was important to address the country's history of racially discriminatory housing policies that contributed to segregated neighbourhoods and inhibited equal opportunities and the chances of building wealth for people of colour and other underserved communities. Legacies of residential segregation persisted in society, as did systemic barriers to safe and affordable housing for people of colour. The wealth gap and homeownership gap between white and black families were currently greater than in 1968, when the Fair Housing Act had been adopted. Housing insecurity disproportionately affected people of colour and rental costs had become prohibitive for many people. Efforts were therefore being made, including to end housing discrimination and provide relief to victims, eliminate racial bias and other forms of discrimination at all stages of home buying and renting, and secure equal access to safe, affordable and accessible housing for all.

14. **A representative of the United States of America** said that improving working conditions and economic opportunities for people of colour was vital. The Department of Labor was therefore engaged in combating pervasive racial inequities by, for example, ensuring equity in the awarding of grants, understanding and improving equity data collected, putting underserved communities at the centre of rule-making processes and holding itself accountable for results.

15. **A representative of the United States of America** said that the Equal Employment Opportunity Commission enforced federal workplace anti-discrimination laws to prohibit not only intentional discrimination but also facially neutral conduct that had a disparate impact

and intersectional discrimination on various grounds. The Commission enforced such laws by investigating charges, facilitating settlements, litigating selected cases and providing guidance to stakeholders. It worked with state and local governments and oversaw the Government's compliance with employment anti-discrimination laws.

16. **Ms. Tlakula** (Country Rapporteur) said that the State party, in its response to the request from the Office of the United Nations High Commissioner for Human Rights for additional information regarding the High Commissioner's report on the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers ([A/HRC/47/53](#)), had stated that entrenched disparities in the country's laws and public policies, and in public and private institutions, had frequently denied equality of opportunity to individuals and communities, particularly people of African descent. It had pledged to address systemic racism and to eliminate racial discrimination and the use of excessive force in policing. She therefore encouraged the State party to engage in a permanent dialogue with people of African descent, indigenous peoples and other ethnic minorities, as well as civil society organizations and other stakeholders, on effective procedures for implementing the Committee's recommendations.

17. The Committee had repeatedly expressed concern that the definition of racial discrimination in federal and state legislation and in court practice was not in line with article 1 (1) of the Convention. She therefore wished to know what steps had been taken to amend the definition so that it prohibited all forms of racial discrimination, including practices and legislation that might not be discriminatory in purpose but were discriminatory in effect.

18. The Committee noted that the State party had limited means to ensure that state and local governments implemented the Convention, that it had not yet adopted legislation to give effect to the Convention and that its provisions had been declared at the time of ratification to be non-self-executing. It would therefore appreciate information on measures taken by the State party to identify ways of promoting compliance with the Convention at the federal, state and local levels, incorporate the Convention into domestic law and ensure that effective remedies were available for violations of its provisions, including those that did not constitute a violation of domestic law.

19. Executive Order 13985 was not binding and contained no reference to the State party's obligations under the Convention. In addition, the racial equity plans issued by federal agencies in early 2022 to implement the executive order failed to mention those obligations. She therefore wished to know what measures had been taken to ensure that federal agencies incorporated compliance with the Convention into their policies, plans and procedures and to ensure that information, training and technical assistance was provided to federal, state and local governmental entities to enable them to understand and implement the Convention.

20. The Committee had expressed concern in its previous concluding observations ([CERD/C/USA/CO/7-9](#)) about the lack of progress in withdrawing or narrowing the scope of the State party's reservation to article 2 of the Convention. It would therefore be useful to know what steps had been taken to withdraw or narrow the scope of its reservation and broaden the protection afforded by the law against discriminatory acts perpetrated by private individuals, groups or organizations.

21. The case law of the Supreme Court and the measures adopted by several states against the use of affirmative action, particularly in school admissions, had limited the permissible use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms. In light of the State party's obligation under article 2 (2) of the Convention, the Committee wished to know what measures had been taken or were planned to promote the use of special measures as a tool to eliminate such disparities and to ensure the adequate development and protection of members of racial, ethnic and national minorities. It would also like to hear about special measures adopted in areas other than education to address racial discrimination in accordance with article 2 (2).

22. She wondered whether the State party had adopted legislative measures aiming at prohibiting racial profiling by federal, state and local law enforcement officials, including racial profiling through the use of artificial intelligence, in accordance with the Committee's general recommendation No. 36 (2020). She would also be grateful for information on any

other measures taken to end the profiling of racial or ethnic minorities and illegal surveillance by federal, state and local law enforcement officials.

23. The Committee was interested in hearing about the current status of the End Racial and Religious Profiling Act and the George Floyd Justice in Policing Act, and about the impact of the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.

24. The Committee was concerned that the Guidance for Federal Law Enforcement Agencies Regarding the Use of Race Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity was not applicable to the Customs and Border Protection agency and the Transportation Security Administration. Moreover, it had been informed that the Federal Bureau of Investigation was permitted to continue its extensive data gathering and mapping of particular communities at airports and border regions based on their race, ethnicity or religion and regardless of their connection to criminal activity. The Committee wished to know what measures had been taken or were planned with a view to repealing those exceptions.

25. The Committee would be grateful for an update on the measures taken to implement the recommendation in its previous concluding observations to end immigration enforcement programmes and policies that indirectly promoted racial profiling, such as the Immigration and Customs Enforcement 287 (g) Program.

26. According to the April 2022 report of the Legal Studies Corporation, entitled “The Justice Gap: The Unmet Legal Needs of Low-Income Americans”, 92 per cent of low-income United States citizens failed to receive sufficient legal aid and had been disproportionately affected by the COVID-19 pandemic. She wished to know what concrete action had been taken to implement the presidential memorandum to expand legal representation and access to the courts of 18 May 2021. She would also appreciate further information about measures taken to address inequalities in access to public legal aid, particularly during the COVID-19 pandemic, and to ensure effective access to legal representation for non-citizens and indigent persons belonging to racial and ethnic minorities in criminal and civil proceedings.

27. The Committee had expressed concern in its previous concluding observations at the lack of an institutionalized coordinating mechanism to ensure the effective implementation of the Convention at the federal, state and local levels. It wished to know whether the mechanisms mentioned in paragraph 12 of the State party’s report monitored the implementation of the Convention and what measures had been adopted or were planned to create a permanent and effective coordinating mechanism at the federal level, such as a national human rights institution established in accordance with the Paris Principles.

28. The Committee had requested the State party in its previous concluding observations to provide detailed information on the implementation of the Convention in the non-autonomous territories administered by the United States. The information provided in paragraph 136 of the State party’s report failed to respond to the Committee’s request. She therefore asked what measures had been taken to ensure that the guarantees enshrined in the Convention were applicable to the non-autonomous territories and to monitor the implementation of the Convention in the territories.

29. While the Committee appreciated the State party’s participation in the Voluntary Principles on Security and Human Rights Initiative in support of the business and human rights agenda, it would welcome information on progress made towards the adoption of a comprehensive national plan of action or strategy to combat structural racial discrimination, in consultation with all relevant stakeholders and in all sectors of society affected by racial discrimination.

30. **Mr. Payandeh** (Country Task Force) said that the Committee was concerned about reports of a dramatic rise in the dissemination of ideas based on racial superiority, white supremacy and racial hatred and of incidents of hate speech, in particular against people of African and Asian descent, members of the Muslim and Jewish communities, and other ethnic and religious minorities, indigenous peoples and immigrants. It therefore wished to know what measures had been taken or were planned in order to address and combat racist

hate speech, to protect members of groups that were vulnerable to hate speech, to react to incidents of hate speech, and to declare illegal and prohibit organizations that promoted and incited racial discrimination.

31. The Committee also wished to hear about measures taken or planned to combat racist hate speech on the Internet, particularly in the social media. It would be useful to know whether the State party had considered enacting legislation or regulations concerning online hate speech, including mandatory procedures for its deletion, criminal prosecution, and regulation of the responsibility of platform operators. While the State party had briefly discussed hate speech in its report, it had not provided statistical information concerning trends in instances of racist hate speech, as requested by the Committee. Could the State party explain the lack of such information, in particular statistics regarding hate speech?

32. The Committee had been informed of a significant rise in hate crimes against ethnic minorities, in particular people of African and Asian descent and of Hispanic or Latino origin. It was not clear what accounted for the vast degree of underreporting of law enforcement officials to the Federal Bureau of Investigation, although such reporting was voluntary, the decrease in participation in the Bureau's Uniform Crime Reporting Program and the reluctance to participate in its National Incident-Based Reporting System, the fact that only a fraction of cases reported as hate crimes were qualified as such by the police and the decline in federal prosecution of hate crimes. He wondered whether the State party had considered providing additional funding for law enforcement agencies involved in the prevention and prosecution of hate crimes and whether it adopted a systematic and human-rights-oriented approach to hate crimes that involved consultations with and participation of the communities that were affected by such crimes.

33. The Committee wished to know what measures the State party had taken or considered taking in order to ensure that education covered the various forms and consequences of racial discrimination and racism and that the school curriculum encompassed the history of slavery and its legacies, and the history and culture of indigenous peoples, including indigenous languages. As education should, more generally, seek to promote understanding and tolerance and respect for diversity and diverse cultures, the Committee asked whether the State party had introduced or had considered developing and adopting federal standards, guidelines or recommendations for that purpose.

34. The Committee wished to know how the State party proposed to address developments in some states aimed at keeping questions of racism and racial discrimination, the history of slavery and racial discrimination, as well as indigenous history, culture and languages out of the curriculum.

35. **Mr. Guissé** (Country Task Force) said that United Nations human rights mechanisms and civil society organizations in the State party had expressed concern about the excessive use of force, mandatory detention and deportation of non-citizens without access to justice and legal representation. He asked what measures the State party had taken to address and investigate allegations of excessive use of force by Customs and Border Patrol personnel and Immigration and Customs Enforcement personnel, particularly in cases involving the killing of non-citizens, and the use of violence against migrants and asylum-seekers of African descent, such as migrants from Haiti and Cameroon.

36. He wished to know what measures the State party was taking to abolish the criminal prosecution of migrants for breaches of immigration laws, as reflected in policies such as the Criminal Consequence Initiative and Operation Lone Star, to address the deportation of undocumented non-citizens without access to justice and legal representation, particularly those deported to areas where they were at risk, to abolish the mandatory detention of non-citizens and to address the inadequate conditions and treatment in detention centres, including lack of access to health care.

37. The Committee would appreciate updated information on progress made towards the reunification of migrant families, the opportunities for such families to pursue permanent legal immigration status, and other measures to provide redress to persons who had been affected by the former "zero tolerance policy" on unauthorized immigration.

38. As the suffering of asylum-seekers, particularly at the southern border, had been well documented and denounced by several institutional stakeholders, he asked what measures the State party had taken or was planning to take to guarantee access to fair and effective asylum procedures without discrimination and to combat the collective expulsion of non-citizens, including asylum-seekers. It would also be useful to know how the State party responded to allegations of systemic targeting and collective expulsion of certain racial and ethnic groups of non-citizens, in particular people of African descent.

39. Referring to the Supreme Court decision of 30 June 2022 in *Biden et al. v. Texas et al*, he would like to know what steps the State party was taking to end the implementation of the Migrant Protection Protocols and to halt the expulsion of migrants and asylum-seekers under Title 42 of the United States Code, dealing with public health, a practice that had reportedly had a disproportionate impact on migrants and asylum-seekers of African descent and on persons of indigenous and Hispanic or Latino origin, particularly from Central America, the Caribbean and Africa. In addition, exemptions to Title 42 had allegedly been applied adequately to Ukrainian nationals but not to migrants or asylum-seekers of other nationalities who were also fleeing from conflict and violence.

40. The Committee would appreciate data, disaggregated by race and ethnicity, on the detention of asylum-seekers and other migrants during the past five years, including the average length of detention. It would welcome information concerning measures taken by the State party to bolster legislation aimed at protecting migrants from abusive working conditions, at providing adequate remedies against unlawful conduct and at ensuring access to social and health-care services.

41. It would be helpful to have further information on the steps the State party was taking to address the situation of children, in particular Hispanic or Latino migrant children, who were reportedly employed in the agricultural industry and worked in dangerous conditions. He wished to know what measures had been taken to raise the minimum age for hazardous work in the agricultural sector to 18 years and to improve child labour monitoring.

42. He asked what steps had been taken or were planned to establish a statelessness determination system so that the more than 200,000 stateless persons living in the country, especially children, could regain citizenship and enjoy effective protection of their human rights. He also wished to know whether the State party had taken steps to ratify the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

43. The Committee would like to hear about measures taken to ensure the closure of the Guantanamo Bay facility, to end the administrative detention of non-citizens without charge or trial and to guarantee detainees' right to a fair trial and equal access to the regular criminal justice system.

44. **Mr. Kut** (Follow-up Coordinator) said that the State party had submitted its report on follow-up to the Committee's previous concluding observations ([CERD/C/USA/CO/7-9/Add.1](#)) in due time. Although the report contained detailed information in response to the Committee's recommendations on the excessive use of force by law enforcement officials, the follow-up had been assessed as inadequate, particularly with regard to Customs and Border Protection officers. The Committee had noted the low number of criminal indictments against police officers despite a high number of fatal shootings and reiterated its recommendations.

45. Given that breaches of immigration law continued to fall under the criminal justice system and that Operation Streamline, currently called the Criminal Consequence Initiative, was ongoing, the Committee considered that the information on follow-up to its recommendations on the rights of non-citizens did not adequately address its concerns and reiterated the recommendations. The State party's periodic reports addressed the issue at length, including by reference to article 1 (2) of the Convention on the exclusion from the scope of the Convention of distinctions between citizens and non-citizens. That article should be read in its totality and could not be interpreted as allowing States parties to discriminate against non-citizens. The Committee's general recommendation No. 30 (2004) provided extensive guidance on the difference between the differential treatment of non-citizens and distinctions that amounted to discrimination against them. Given the State party's assertion



in its periodic reports that it acted in the spirit of the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and Minimum Age Convention, 1973 (No. 138), he wondered why ratification of those Conventions was not being considered. Lastly, since the periodic reports provided identical information to the follow-up report regarding the State party's failure to close the Guantanamo Bay detention facility, the Committee's recommendation in that regard remained in place.

46. **The Chair** said that she would be interested to hear the State party's position on racial discrimination resulting from the use of artificial intelligence algorithms and any related action being taken. She would appreciate a response from the delegation to reports that state laws prohibiting the teaching in public schools of critical race theory deterred teachers from covering the history of race in the United States and to know what was being done to advance understanding of disagreements on the study of racial injustice.

47. **Mr. Yeung Sik Yuen** said that he would like to know whether the State party would consider withdrawing its reservation to article 4 of the Convention regarding the criminalization of promotion of ideas of racial superiority and incitement to racial hatred, especially in view of the recent adoption of the COVID-19 Hate Crimes Act. He would appreciate clarification on the status of the Ku Klux Klan, given the obligation under article 4 (b) of the Convention to prohibit organizations that promoted and incited racial discrimination.

48. **Ms. Li**, noting that there were reports of over 700 people killed in the United States by law enforcement officers in 2022 to date – more people in the first seven months of the year than any other year on record – said that she would be grateful if the delegation could comment on information that persons of colour continued to bear the brunt of discriminatory and deadly policing, that police continued to kill black, Hispanic or Latino people and indigenous people disproportionately, as much as 350 per cent more frequently than white people, and that more than half of police killings were not reflected in the official statistics. It might also comment on assertions made by non-governmental organizations that the President's executive order aimed at reducing racial inequalities was not sufficient to meet the State party's obligations under the Convention, including its obligation to end racial and religious profiling, particularly in the light of the failure of the Congress to pass legislation on the matter. She wondered whether the State party had taken or envisaged any further measures to combat racial profiling.

*The meeting was suspended at 4.45 p.m. and resumed at 5.15 p.m.*

49. **A representative of the United States of America** said that, although the prohibition on discrimination under some laws, including the Constitution, was limited to disparate treatment or intentional discrimination, many other federal, state and local laws prohibited discrimination on the basis of the disparate impact, or the adverse effects of facially neutral policies. Examples included Title VII of the Civil Rights Act of 1964, on employment discrimination, the Fair Housing Act, the Equal Credit Opportunity Act and Section 2 of the Voting Rights Act. Federal agencies actively enforced legal prohibitions on discriminatory practices that had a disparate impact. The use of disparate impact did meet the obligations of the United States under the Convention.

50. A number of statutes prohibited discriminatory conduct by private actors, whether in the context of housing, employment and other areas. For example, the Department of Justice had recently secured a \$20 million settlement against a private entity for its practice of redlining, or not providing lending opportunities in communities with a majority of persons of colour.

51. Regarding affirmative action, or special measures, the Supreme Court had repeatedly affirmed that universities had a compelling interest in obtaining the educational benefits that flowed from student body diversity and that it was permissible for them to consider race as part of a holistic approach to achieving that goal. The Court had recently agreed to hear cases addressing the use of affirmative action by Harvard University and the University of North Carolina. The United States had filed amicus briefs in both cases, arguing that the institutions' use of race in higher education admissions was not only permissible but critically important for achieving robust and meaningful diversity at the universities, and would represent those positions before the Court.

52. The Small Business Association of the Department of Commerce had a programme, under which federal contracts worth billions of dollars annually were reserved for businesses owned by minorities, women and other historically underrepresented communities. The Department of Justice had filed many briefs stating that such federal programmes were not only sufficiently tailored to meet the standards set by the Supreme Court but vitally important to ensure that the targeted groups had access to government contracting, recognizing the role that the federal Government had historically played as a passive participant in facilitating discrimination in the allocation of contracts.

53. **A representative of the United States of America** said that the Department of Education continuously clarified the permissible use of affirmative action and the lawful use of race in schools, which had remained unchanged for decades. It also ensured related enforcement, including in currently ongoing investigations. The Department used the concept of disparate impact in its practice. For example, it had found that the policies of one school district, which had not intended to discriminate on the basis of race, had an unjustified disparate impact on black students by excluding them from access to rigorous academic coursework. Under the resolution agreement reached with the school district, access to the courses had been expanded by increasing the number of students who could participate. In another school district, where black students were almost seven times more likely to be subject to in-school suspension than white students, the Department had found that the discipline policies used were in violation of state law and did not help achieve the identified goal of consistency. It had found that the policies had an unlawful disparate impact and had guided the district to come into compliance with the law and ensure that its students did not experience racial discrimination in the area of school discipline.

54. **A representative of the United States of America** said that the Equal Employment Opportunity Commission applied the concept of disparate impact to enforce civil rights laws. For example, it had issued guidance on the use of arrest and conviction records in employment decisions, which could lead to a disparate impact on African American and Hispanic men, who were much more likely to have a criminal record. The guidance for employers on how to tailor screening procedures had resulted in some progress regarding the hiring of persons with criminal records. Pursuant to the Fair Chance Act, which prohibited the federal Government from requesting information about the criminal history of applicants for employment with federal agencies before making a conditional offer, the Office of Personnel Management had issued a proposed rule to require agencies to establish a complaint mechanism that would investigate and assess penalties for violations of the Act.

55. Federal agencies were required to identify barriers to equal employment in their own hiring programmes, create plans to address and eliminate such barriers and report on them annually to the Equal Employment Opportunity Commission. The Commission reviewed the reports, produced action summaries and advised the agencies on ways to achieve a more diverse and inclusive hiring programme.

56. Private employers who did business with the federal Government were required to establish affirmative action programmes, subject to review by the Department of Labor. All private employers could be required to engage in affirmative hiring as a remedy if it was found that they had a systemic history of refusing to hire on a prohibited basis.

57. **A representative of the United States of America** said that the Department of Homeland Security had been working hard to address racial profiling, which it viewed as wrong, ineffective and intolerable. A thorough review of policies governing the Department's use of race, ethnicity, national origin, religion, gender and other individual characteristics was under way and action was being taken. For example, in 2021 the Department had adopted guidelines for the enforcement of civil immigration law, which prohibited the use of a non-citizen's race, religion, sex, sexual orientation or gender identity, national origin, political association or exercise of a first amendment right in decisions on enforcement action. Unfortunately, owing to litigation, the guidelines could not be applied.

58. The Department was conducting a review of law enforcement training techniques and curricula with a view to introducing a data-driven approach that was consistent with key principles such as the protection of civil rights and promoting the prohibition of racial profiling and the use of de-escalation techniques.

59. The 287 (g) Program remained operational. Although Immigration and Customs Enforcement considered the Program an example of successful coordination between the federal Government and state and local law enforcement agencies, it recognized that the Program was not universally regarded as the appropriate model for all stakeholders or in every jurisdiction and therefore exercised strict oversight over its implementation. Following a review conducted in 2021, a number of improvements had been made to the Program. For example, comprehensive guidelines for the immigration and customs officers who supervised partnerships under the Program had been issued and additional supervisors had been deployed to the field.

60. **A representative of the United States of America** said that the Government fully believed that racial profiling had no role in law enforcement. The practice was not only illegal but also ineffective, as it eroded trust in the authorities. The Federal Bureau of Investigation had a policy that prohibited targeting people solely on the basis of their religious beliefs or ethnic heritage and conducting investigations based solely on the exercise of rights protected by the First Amendment to the Constitution. The Community Relations Service of the Department of Justice sponsored a number of programmes that were designed to prevent racial profiling and to facilitate dialogues between government officials and the communities that had historically been affected by racial profiling. The Department also investigated law enforcement agencies that were suspected of racial profiling and provided training and resources to agencies that were found to have engaged in that practice in order to ensure that it was no longer used.

61. **A representative of the United States of America** said that the federal Government strongly supported the bill to end racial profiling and the George Floyd justice in policing bill, which had unfortunately not yet been passed by Congress. Pending their adoption, the President had issued an executive order on advancing effective, accountable policing and criminal justice practices, under which federal law enforcement agencies were required to assess the implementation and effects of the 2014 Guidance for Federal Law Enforcement Agencies regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity and to propose changes to the guidance where necessary. Although that guidance did not apply to non-law enforcement personnel such as military or diplomatic officials, the activities of such persons must be consistent with the Constitution and federal law and were subject to oversight. The executive order also required law enforcement officers to complete training on implicit bias and the need to avoid profiling based on perceived race or other characteristics.

62. **A representative of the United States of America** said that, as the Mayor of Atlanta, he could confirm that racial profiling in the area of law enforcement was condemned not only at the federal level but also at the local level. In order to reduce racial profiling in Atlanta, efforts had been made to ensure that the police force was diverse and that its composition reflected that of the local population. The Police Executive Research Forum had conducted an analysis of police activities in Atlanta and had made recommendations on a range of issues, including racial profiling and the use of force. In addition, the Mayor's Office of Violence Reduction had been established with the aim of tackling violence through non-police measures such as community healing.

63. **A representative of the United States of America** said that the State of California had passed a law on racial and identity profiling in 2015 and had set up the Racial and Identity Profiling Advisory Board to review policies and practices, make recommendations on the elimination of racial profiling, conduct evidence-based research on implicit bias and review the training provided by the Commission on Peace Officer Standards and Training. Law enforcement agencies in California were required to report all pedestrian and vehicle stops. The resulting data showed, for example, that black Californians were twice as likely to be searched as white Californians but were less likely to yield contraband or other evidence of criminality. The data were published online in an annual report and would be used in the formulation of legislation to better protect against racial profiling.

64. **A representative of the United States of America**, noting that people of colour were disproportionately affected by systemic inequality in the legal system and a lack of access to counsel, said that the Office for Access to Justice had recently been re-established to work on closing the gap between the need for and the availability of legal assistance and bringing

about policy changes to support the development of quality civil legal aid delivery systems. The Legal Aid Inter-Agency Round Table had been reconvened to ensure that sufficient funding was allocated to providing access to legal counsel. The federal pro bono programme had been granted additional resources for the first time in over 20 years and the federal Government continued to support increased funding for the Legal Services Corporation, which financed over 130 non-profit legal aid programmes. The Office for Access to Justice was committed to supporting public defenders and was working closely with other government departments to increase access to legal resources for persons involved in immigration proceedings.

65. **A representative of the United States of America** said that, in the context of the COVID-19 pandemic, the Eviction Protection Grant Program had been set up to support persons who were facing eviction. Under that programme, 21 legal aid organizations had received additional funding totalling \$40 million. As a result, there were around 100 eviction diversion programmes in place.

66. **A representative of the United States of America** said that, to the extent that the President had the executive authority to establish a permanent federal human rights institution, the Government would give serious consideration to the Committee's recommendation to that effect. It remained committed to continuing its dialogue with the Committee and other stakeholders on the Committee's recommendations.

67. **A representative of the United States of America** said that Atlanta was the proud home of the civil rights movement and several institutions for the advancement of human rights, including the National Center for Civil and Human Rights, a museum that organized immersive exhibitions and educational training programmes. Its activities brought history to life and provided teachers with the tools to educate their students about human rights. All new police recruits in Atlanta were required to complete training on implicit bias and cultural awareness at the Center before starting their work.

68. **A representative of the United States of America** said that many of the measures taken to implement the Convention were taken at the state and local levels. The government of the State of California had established several inter-agency bodies responsible for ensuring that human rights programmes and policies were developed and implemented with due regard for the needs of the local community.

69. **A representative of the United States of America** said that Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad promoted a whole-of-government approach to addressing and mitigating the impact of climate change in ways that furthered equity and justice. The federal Government was making significant investments in the health, equity and resilience of local communities under the Bipartisan Infrastructure Law, thus delivering on a long-standing promise to protect all communities, including the most overburdened and vulnerable. It had also launched the Justice40 Initiative, under which it was required to ensure that at least 40 per cent of the overall benefits of federal investments in certain areas such as clean energy flowed to disadvantaged communities.

70. **A representative of the United States of America** said that the Department of Homeland Security had established a task force for the implementation of Executive Order 13985, which had conducted equity assessments of key programme areas and had identified the barriers that underserved communities might face. It was developing a framework to ensure that equity was a central concern in all decision-making. In 2022, the Department had adopted its first-ever Equity Action Plan, which was based on input from external stakeholders and covered seven areas of focus, including applying for naturalization and accessing humanitarian protection during immigration processing. In response to the recent attacks on the Asian American community, the Department had established a domestic violent extremism equity task force that held policy discussions on civil rights and equity issues and engaged with the communities affected by domestic violent extremism.

71. **A representative of the United States of America** said that protecting all Americans from acts of hate remained a critical priority. The Department of Justice believed that it was possible to apply the First Amendment of the Constitution while also recognizing and responding appropriately to hate speech. The Attorney General had assessed the Department's response to acts of hate and had laid out a comprehensive and robust approach

to combating such acts. There had been a truly horrifying rise in hate crimes across the country in recent years. Acts of hate committed by white supremacist violent extremists were a particular threat and had been identified as one of the Department's top priorities. Individuals had been designated within the Department to review and expedite the prosecution of federal hate crimes. The Department had also redoubled its efforts to tackle less serious acts of hate, classified as hate incidents, for example through collaboration with the civil enforcement authorities. The Community Relations Service used non-legal tools, such as mediation, to respond to acts of hate. Since language minority communities were often targets of hate, the Department had hired a language access coordinator with a view to encouraging those communities to report hate crimes.

72. The collection of hate-crime data remained a challenge. Additional funding had recently been allocated to promoting the use of state hate-crime hotlines and to providing training and support to state and local law enforcement agencies in the area of hate-crime reporting. The Federal Bureau of Investigation had also stepped up its efforts to provide training and technical assistance in that area and to facilitate the reporting of hate crime data to the federal Government.

73. The President had recently established a task force on online harassment and abuse that was responsible for developing a blueprint for improving the prevention of and response to online hate crime. In addition, the Department of Justice had committed significant funding to the development of tools and resources to address online hate and harassment.

74. **A representative of the United States of America** said that the Attorney General of California had established a racial justice bureau to address hate incidents, issue guidance to prosecutors and urge prosecutors to establish a specialized hate crime unit. In 2021, over 610 hate crimes had been reported or referred for prosecution in California and around half of those cases had resulted in convictions. The Office of the Attorney General of California was working with local communities to encourage the reporting of hate incidents and had issued brochures on the assertion of private rights in over 25 languages.

*The meeting rose at 6.10 p.m.*