



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-fifth session

Summary record of the 2299th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 13 August 2014, at 3 p.m.

Chairperson: Mr. Calí Tzay

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

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

Combined seventh to ninth periodic reports of the United States of America
(CERD/C/USA/7-9; CERD/C/USA/Q/7-9)

1. *At the invitation of the Chairperson, the delegation of the United States took places at the Committee table.*
2. **Mr. Harper** (United States of America), introducing the combined seventh to ninth periodic reports of the United States (CERD/C/USA/7-9), said that the United States was a vibrant, multiracial, multi-ethnic and multicultural democracy, in which individuals were protected under the Constitution and federal and state laws against discrimination on grounds of race, colour and national origin. The country's current political leadership was a notable indicator of the progress made towards the elimination of racial discrimination. As recently as 30 years previously, the idea of having an African American president would not have seemed possible. That notwithstanding, much remained to be done and he hoped that dialogue with the Committee would help to identify new ways to address persistent challenges.
3. **Ms. Schriefer** (United States of America) introduced the members of the United States delegation. She said that her Government had been making concerted efforts to strengthen mechanisms for compliance with its international human rights obligations: an equality working group had been established, co-chaired by representatives of the Department of State and the Department of Justice. Steps had been taken, including through the broad dissemination of information about treaty obligations, to improve coordination between efforts at federal, state, local and tribal levels to eliminate racial discrimination.
4. **Ms. Lynch** (United States of America) said that while progress was being made in reforming the United States' criminal justice system, a disproportionate number of the 2.2 million people who remained in detention were people of colour. That situation was a drain on resources and human capital. Further efforts, such as a new "Smart on Crime" initiative, were therefore being made to find alternatives to detention where appropriate. The Attorney General had established a racial disparities working group to identify policies that resulted in disparities in criminal justice and to rectify them as quickly as possible.
5. **Mr. Kappelhoff** (United States of America) said that the work of the United States Department of Justice was guided by three main principles: expanding opportunity for all, safeguarding the infrastructure of democracy and protecting the most vulnerable. Efforts to advance those principles directly enhanced implementation of the Convention. Steps were being taken to challenge discriminatory election laws in certain states, and to ensure that American Indians and Alaska Natives had meaningful access to the polls. The Department of Justice was striving to eliminate racial discrimination in schools and to ensure that equal educational opportunities were provided for all. Particular importance was being placed on overcoming racial disparities in school discipline in order to end the so-called school to prison pipeline.
6. The persistently large volume of housing and employment discrimination complaints served as a stark reminder that although segregation in law had been eliminated, unfair treatment persisted; measures to counter it, which had already brought positive results, for example in a significant employment discrimination case against the New York City Fire Department, must therefore continue.
7. African American and Latino families had been hit particularly hard by the housing and foreclosure crisis in the United States, having been encouraged to take expensive and

high risk subprime loans. The Government had brought legal action to remedy those abuses, which had resulted in the three largest residential lending discrimination settlements in the history of the Department of Justice.

8. Efforts had been made to produce sustainable models for effective, non-discriminatory and constitutional policing and prison systems. Over the past five years, groundbreaking reform agreements had been concluded with police departments across the country to address the excessive use of force and racial profiling. Hate crimes were being prosecuted aggressively. In that regard, in 2009, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act had been signed into law, as a result of which, more than 160 convictions had been made on hate crimes charges.

9. **Ms. Lhamon** (United States of America), speaking on the subject of equality in education, said that discrimination affected students of many different racial and ethnic backgrounds at all levels of the education system. Providing examples of measures taken by the Department of Education, she described those taken to rectify troubling racial disparities in school discipline practices in the Los Angeles Unified School District, which had resulted in a reduction of more than 50 per cent in the suspension rate for black students. Steps had also been taken in the Cleveland Metropolitan School District in Ohio to promote equal access to enrolment at innovative schools by overcoming linguistic barriers for Latino students.

10. The Department of Education had also issued policy guidance for primary and secondary schools on reducing racial isolation, and for higher education institutions on how to voluntarily pursue racial diversity in line with the law. Policy guidance had also been issued on the equal right of all primary and secondary school students to education, regardless of their citizenship or immigration status, as well as on the obligations of schools at all levels to respond to racially motivated bullying and harassment.

11. **Mr. McDaniel** (United States of America) said that state attorneys general worked together and with partners at the federal level to combat all forms of racial discrimination. That joint approach had recently resulted in the conclusion of historic litigation to ensure non-discriminatory access to housing: a US\$ 26 billion settlement had been reached with the five largest banks in the United States related to the mortgage fraud that had specifically targeted and disproportionately impacted minority borrowers, who had been more than 70 per cent more likely to lose their homes to foreclosure than non-minority borrowers. In the State of Arkansas, a standard had been set for prohibiting short-term cash advance lenders, who usually targeted minorities, veterans and the elderly.

12. State attorneys general were also working with the Department of Education to investigate the fraudulent and deceptive practices of some private education corporations. In Arkansas, considerable resources had been allocated to using the court system to remedy the shameful history of racial segregation in schools and the inherently unequal school funding system. Particular focus was being placed on providing universal access to early childhood education for low-income and minority families.

13. **Mr. Bell** (United States of America), referring to progress made at the municipal level, gave the example of the City of Birmingham, Alabama, which had previously been part of the segregated south. Some 50 years later, the city had become a thriving example of change, thanks to the bravery of the men and women who had fought for equality. Human rights curricula had been incorporated into all levels of public schooling in the municipality.

14. **Mr. Amir** (Country Rapporteur), referring to the definition of racial discrimination in domestic law, expressed concern about the lack of progress made during the reporting period. He requested examples of recent cases in which courts had applied the disparate impact doctrine. He asked whether the scope of the doctrine reached beyond employment,

housing and voting procedures, and if not, what recourse to justice was available for victims of indirect discrimination in other spheres of life. He wondered whether any plans were in place to develop comprehensive legislation in that regard. The Committee also remained concerned about the lack of prohibition of racial discrimination committed by private individuals, groups or organizations and the State party's reservation to article 2 of the Convention. Although discrimination by private individuals, groups or organizations in areas such as the sale or rental of private property, employment in private businesses and admission to private schools was prohibited under the Constitution and federal laws, he asked what protection existed against discrimination in other areas.

15. While he noted the State party's efforts to strengthen mechanisms to ensure application of the Convention, he wished to know whether it intended to establish a national human rights institution (NHRI), responsible for permanent monitoring of the implementation of international human rights treaty obligations, as recommended by the Universal Periodic Review in 2010.

16. Turning to the issue of special measures, he asked for clarification regarding the implications of the Supreme Court's decision of October 2013 in the case of *Schuette v. Coalition to Defend Affirmative Action*, which had upheld the 2006 Michigan voter referendum, amending the state's constitution to limit affirmative action in public employment, public education and government contracting. He expressed concern that eight states had taken measures against the use of affirmative action in school admissions, resulting in dramatic decreases in minority enrolment. He requested the State party's comments on those measures and asked whether anything was being done to counter any negative impact they might have.

17. On the issue of racist hate speech, referring to the State party's reservations to articles 4 and 7 of the Convention, he said that while the importance given to the rights to freedom of expression and freedom of association in the State party were well known, he wished to underscore that the Committee advocated a careful approach towards protecting those legitimate rights on the one hand and ensuring the eradication of incitement to hatred and discrimination on the other. He drew attention to general recommendation No. 34, adopted by the Committee in 2013, in the light of which he urged the State party to consider withdrawing its reservations. He asked whether measures to tackle racist hate speech had been effective, and whether the delegation could share any statistical data with the Committee in that regard.

18. With regard to the persistent racial disparities at all stages in the criminal justice system, the enactment of the Fair Sentencing Act in 2010 had been a positive step. He remained concerned, however, that racial disparities in sentencing had not been eliminated altogether, and that they continued to persist in the use of prosecutorial discretion, the application of mandatory minimum drug offence sentencing policies, and the implementation of repeat offender laws. He wished to know whether any measures were being taken to rectify that situation. He asked what progress had been made to implement the Committee's previous recommendations (CERD/C/USA/CO/6) and those of the Universal Periodic Review with regard to undertaking studies on racial disparity in the application of the death penalty, preparing effective strategies to overcome discriminatory practices, taking appropriate legislative and practical measures to prevent racial bias in the criminal justice system, and reviewing minimum mandatory sentences to assess their disproportionate impact on racial and ethnic minorities.

19. Racial disparities in the treatment of young people from minorities in the criminal justice system remained a cause for concern, as many of those young people were prosecuted as adults, incarcerated in adult prisons and sentenced to life without the possibility of parole. Furthermore, those young people appeared to fall outside the scope of the Juvenile Justice and Delinquency Prevention Act. He asked what the Government was

doing to encourage states to amend laws that allowed or required young people to be tried as adults. He welcomed the Supreme Court decision in *Graham v. Florida*, which held that to hand down a life sentence without the possibility of parole to juveniles who had committed non-homicide offences violated the Constitution's prohibition of cruel and unusual punishment, and the decision in *Miller v. Alabama*, which held that sentencing schemes that mandated life imprisonment without the possibility of parole for juveniles who had been under 18 years of age when they had committed their crime was unconstitutional. However, despite those rulings, juveniles could still be sentenced to life in prison without the possibility of parole and 15 states had yet to align their laws with those Supreme Court rulings.

20. Turning to racial disparities in education, he asked what measures the Government had taken to give effect to the recommendations of the Equity and Excellence Commission, or to enforce the federal requirements relating to the equitable assignment of teachers to students from poor and minority backgrounds and to fair and effective disciplinary policies and practices. Noting that there were still a number of obstacles preventing persons belonging to minority groups from voting, such as voter identification laws, he asked what measures the State party was taking to remedy that situation. Moreover, he would like to know of the measures in place to ensure that convicted felons could exercise their right to vote.

21. The continued use of racial profiling, including stop-and-frisk policies and the surveillance of certain ethnic minorities by law enforcement officials, was also a cause for concern. Noting that the Guidance regarding the use of race by federal law enforcement agencies still provided for exemptions from the prohibition of racial profiling in matters relating to national security, he asked whether the Government had considered taking steps to remove those exemptions from the Guidance. He also wished to know whether a data-collection system for identifying cases of racial profiling had been introduced in law enforcement agencies and of the progress made towards banning racial and religious profiling in law enforcement, including the current status of the End Racial Profiling Act. The Committee was also concerned by reports of the abusive conduct of law enforcement officers and their use of excessive force against persons belonging to ethnic or racial minorities, particularly persons of Latin American and African descent and undocumented migrants crossing the United States-Mexico border. Noting that a large number of persons had been injured or killed as a result of the excessive force used by United States Customs and Border Protection officers, he asked how many of those cases had been investigated, how many officers had been prosecuted or disciplined and whether the families of the victims had been provided with effective remedies.

22. The Committee had received information to the effect that about 50 per cent of homicide victims were African Americans and that the majority of those homicides involved the use of firearms. Noting that the disparate impact of gun violence in the State party was attributable in part to racial bias in shootings and to the proliferation of "Stand Your Ground" laws, he requested additional information on the factors giving rise to that situation and on the practical measures taken to amend gun control laws. He also wished to know of the measures taken to address the discriminatory effect of "Stand Your Ground" laws.

23. Asylum seekers and vulnerable persons were often detained for long periods of time in prison-like facilities without access to adequate health care. The Committee had received reports that, in 2013, it had taken, on average, 111 days to process claims for asylum, despite the deadline of 10 days prescribed by federal law. He asked what measures the Government was taking to remedy that situation and whether it had considered using alternatives to detention. Furthermore, the Committee noted that more than 2 million persons had allegedly been deported from the United States since President Obama had

taken office. The fact that a large number of immigrants were deported by means of expedited removals without appearing before an immigration judge was a cause for concern. He asked what measures the State party had taken to address that situation.

24. Despite the efforts made by the State party to address the challenges facing indigenous peoples, their plight remained a serious matter of concern. The Committee was alarmed by the high rate of suicide and unemployment, as well as the prevalence of gender-based violence, within indigenous communities. Moreover, the State party continued to expropriate the ancestral lands of indigenous peoples and often failed to respect the treaties that it had signed with the Indian Nations. He asked what measures the State party had taken to address those issues and whether those measures had proven effective. He requested additional information on the procedures for dealing with crimes committed on reservations, especially violent crimes committed against indigenous women. Noting that a large number of tribes were still not recognized by the Government, he asked what measures the State party had taken to facilitate the recognition of those tribes and to ensure that the free, prior and informed consent of indigenous peoples was obtained in matters affecting them; and whether there were mechanisms in place to provide appropriate remedies to indigenous communities adversely affected by the economic activities of corporations. In that connection, he asked what measures the State party had taken to ensure the accountability of American corporations operating nationally and abroad which infringed the rights of indigenous peoples and ethnic minorities.

25. The fact that defendants in civil proceedings, which included deportation proceedings, had no right to legal counsel was a major cause for concern and could disproportionately affect impoverished individuals from ethnic and racial minorities. In addition, the legal counsel provided to impoverished persons from minority groups in criminal proceedings was often inadequate. He asked how the Government planned to guarantee impoverished individuals access to legal counsel in both civil and criminal proceedings.

26. Despite the commitment made by President Obama to close all detention facilities at Guantanamo Bay, foreign nationals were still being detained there and denied access to justice. He invited the delegation to comment on the situation at Guantanamo Bay and on the measures taken to ensure that the detainees in question had recourse to justice.

27. **Mr. Murillo Martínez** said that the disproportionate number of persons from minority groups in the criminal justice system was a clear indication that those groups faced structural discrimination. The high rate of delinquency of those groups and their tendency to commit petty crimes and drug-related offences could be attributed to the fact that they were marginalized and not well integrated into society. In addition, the non-white communities tended to be more affected by poverty and had a higher incarceration rate. Many prisoners still faced difficulties in exercising their right to vote. The African American community continued to be underrepresented in the judiciary. The habitual use of racial profiling in the State party remained a major cause of concern for the Committee, as it had led to the wrongful killing of innocent people on account of the colour of their skin. He requested clarification on whether the death penalty could be prescribed to minors and to persons with mental disabilities. Noting with concern the high prevalence of child labour within the African American and Latin American communities, he asked what measures the Government was taking to curb that phenomenon.

28. The Committee had received reports that the 2009 executive order concerning the right of indigenous peoples to free, prior and informed consent, which did not have the force of law, was routinely disregarded by public officials. He invited the delegation to comment on those reports. Lastly, he enquired as to the role the United States would play in the United Nations Decade for People of African Descent.

29. **Mr. Diaconu** said that the Committee welcomed the efforts made by the State party to give effect to its previous concluding observations and recommendations. However, it was clear from the State party report and the reports submitted by civil society organizations that there was still much progress to be made in that regard. The rights of racial and ethnic minorities were still being violated throughout the United States. Recalling that the Government had undertaken to adopt appropriate measures to ensure the fulfilment of the Convention, he expressed concern at the fact that the Convention was still not known in some states. That fact could be attributed to a general lack of coordination in the efforts to disseminate the Convention throughout the national territory. The United States could consult other federal States with a view to identifying good practices in that area. The State party needed to take a more systematic approach to the implementation of the Convention and to the elimination of racial discrimination throughout the national territory.

30. He asked what measures the Government envisaged taking to address the issue of racist laws in Arizona. Noting that a number of federal bodies had been able to amend local regulations by challenging them in court or by concluding agreements with the local institution in question, he asked how long those agreements remained valid. The Committee welcomed the adoption of special measures in the area of higher education but noted that such measures were also necessary in the areas of primary and secondary education. The State party should also consider adopting special measures to assist minority groups.

31. Certain minority groups continued to be adversely affected by pollution caused by industries operating in the areas in which they lived. The Government should take appropriate action to minimize the health risks to those minority groups without jeopardizing the interests of the industry in question. Pollution caused by American multinational companies operating in foreign States was also covered by the Convention, as such pollution was detrimental to persons of a different national origin. The State party should pursue the efforts outlined in paragraph 144 of its report.

32. The fact that minority groups often experienced difficulties in accessing justice, particularly in cases concerning the termination of parental rights, employment or social benefits, or deportation, could be attributed to a lack of financial and human resources. He asked what the Government was doing to improve access to justice for those groups.

33. The State party should prioritize the implementation of article 4 of the Convention and refer to the Committee's general recommendation No. 35 on combating racist hate speech, as it could provide valuable insights into how best to address that issue.

34. **Mr. Avtonomov** asked why the United States had voted against United Nations General Assembly resolution 67/154 (A/RES/67/154) on the inadmissibility of certain practices that contributed to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. He also wished to know how the Government planned to combat discrimination against non-recognized tribes. Noting that Executive Order 13567 called for an annual review of the efforts to transfer certain detainees from Guantanamo Bay to other detention facilities, he asked whether the committee responsible for conducting the annual review had met and, if so, what its findings were. He would also like to know of the measures in place to guarantee the right of detainees to habeas corpus and to legal counsel.

35. He requested additional information on the new wave of anti-Semitism said to be sweeping the United States. Noting that voter identification laws often prevented members of minority groups from voting, he asked what steps the Government had taken to remedy that situation. Given that school curricula tended not to cover topics such as discrimination, xenophobia and intolerance, he would be interested to know whether the Government envisaged amending school curricula to address those issues. There was also a need to ensure that students and teachers were familiar with the Convention.

36. **Ms. Crickley** expressed concern at the State party's reservation to general recommendation No. 35, especially in the light of the reported increase in hate groups in the United States, which currently numbered 939. She asked what the State party intended to do to address that situation, and whether and if so how the State party collected disaggregated data on hate crimes. She also highlighted the need for disaggregated data on ethnicity-related disparities in health, education and homelessness.

37. She expressed grave concern over the implicit and structural bias in the child welfare system. Indigenous children in foster care were reportedly prevented from access to their culture and the Committee had received alarming reports of bias in private adoption arrangements. Given that the legacy of residential school arrangements continued to affect indigenous communities and nations, she asked whether the State party intended to rescind any existing laws in that respect and to provide appropriate responses, remedies and compensation.

38. In the light of the particular role the State party had played historically as a country of immigration, she was gravely concerned that border crossing had been made a criminal offence. She requested the delegation to explain why border crossing could not be dealt with in the civil justice system; why people who did what the ancestors of many American citizens had done 100 years earlier were not guaranteed adequate consideration of their case; and why families and children were being held at border crossing points. Although the current Government's immigration reform proposals were commendable, pitting pathways to citizenship against more effective border controls was not useful. So-called "border defense" had erected a wall that affected indigenous peoples on both sides of the border disproportionately. Shooting and killing people who merely tried to improve their possibilities of making a living by moving from one country to another, or to rejoin their families, was not acceptable.

39. Supported by Mr. Lahiri, she expressed concern about the H2B visa process for guest workers, which gave employers excessive control, left much room for discrimination, and restricted employees' possibilities to withdraw from abusive situations. The general trend to criminalize migration and the associated denial of migrants' rights was disturbing. She would welcome additional information on employment rights of undocumented workers, and on regulations facilitating the employment of children from the age of 10 in agricultural work, which particularly affected migrants.

40. The adoption of the Affordable Health Care for America Act was a major achievement, although millions had been left without coverage in the 21 states that had decided to opt out. She asked whether, in those states: Section 1557 on non-discrimination would be fully enforced; whether the Act's family planning programme would be extended to persons who did not qualify for Medicaid; and whether additional Medicaid clinics would be set up to close the gaps. How did the State party make sure that undocumented migrants who were not eligible for either scheme had access to health care?

41. She commended the State party on the progress made in eliminating discrimination, but encouraged additional efforts. It might be useful to establish a partnership between all key agencies and civil society organizations representing the groups covered by the Convention. In an advanced democracy, civil society organizations should have the right to dissent, to inform policy, and to act as partners in policymaking.

42. **Mr. Kemal** said that despite the progress made in the upper echelons of government, much remained to be done to eliminate racial discrimination lower down. Persistent structural discrimination of African Americans and excessive health, education and income disparities should be remedied. Education was vital in that regard and the Committee looked forward to seeing the special measures for diversity in education being implemented on the ground. Another matter of concern was the widening gap between rich

and poor, with ethnic minorities being overrepresented in the latter group. The reduction of both income disparities and racial disparities in the administration and functioning of the criminal justice system should be made a priority.

43. The wave of public school closings in the City of Chicago had affected traditionally low-income African American neighbourhoods disproportionately. Displaced students and students in receiving schools faced a considerable reduction in quality. He asked whether the federal Government had entertained the possibility of providing financial assistance to underfunded state or local authorities to prevent the mass closing of schools. Commending the progress made through the adoption of the Affordable Health Care for America Act, he asked how the federal Government planned to assist those who had been excluded because their state of residence had opted out of the scheme.

44. The Committee had heard worrying reports about the impact of pollution on African American and indigenous communities. Sacred sites and ancestral lands were reportedly threatened and he asked the delegation to comment. While he agreed that each country had the right to defend itself, the State party should bear in mind that profiling and surveillance of Muslims could embitter those who had previously been loyal citizens.

45. **Mr. Huang** Yong'an said that some state governments, on the basis of unfounded allegations that Asian American women preferred male over female children and under the pretext of fighting gender-based discrimination, had adopted sex-selective abortion bans which exclusively targeted Asian American women. The Senate of California had recently adopted Constitutional Amendment No. 5, which proposed to eliminate the ban on the use of race, sex, colour, ethnicity or national origin in recruitment, admissions and retention programmes at California public universities and colleges. Currently, Asian American students made up over 30 per cent of the Californian student population and their admission had been based on merit. Under the new rules their representation would be reduced artificially, which amounted to discrimination in education within the meaning of article 5 of the Convention.

46. He noted that the State party saw itself as an international human rights watchdog and prepared annual human rights reports on other countries. It was regrettable that it had never prepared such a report on the situation at home. The ethnic origin of the current State party's President and the diverse composition of the delegation illustrated the progress made. However, the dire reality of many ordinary African Americans, indigenous people and migrants could not be overlooked. Despite its laudable ideals, the State party had no national human rights institution operating in accordance with the Paris Principles and had ratified only a limited number of international human rights treaties. He invited the State party to make greater efforts in that regard and, as a superpower, set an example for others.

47. **Mr. Lindgren Alves** took note of the view of the State party that banning and punishing offensive and hate speech was not an effective approach to combating intolerance, and that suppressing ideas might even raise their profile. While some might share that view, he believed that hate speech should be prohibited.

48. He had noted with interest that the State party had repeatedly mentioned that problems facing minority groups were of a social, rather than race-related nature. He had also noted with interest the emphasis placed on the use of politically correct language such as "African American" instead of "Black", "Hispanic" instead of "Latino", and "Caucasian" instead of "White". Would the effort expended on using politically correct language not be better channelled towards addressing the root problems affecting minority groups?

49. Although the United States Supreme Court had declared mandatory life sentences for juvenile offenders unconstitutional, several states had handed down such sentences since. How did the federal Government intend to address that problem? He had been

surprised to learn that segregation in American schools was currently more widespread than in the 1970s, partly owing to mass closures of schools in mostly African American and Hispanic neighbourhoods. He asked whether the federal Government could not provide financial support in cases where local authorities lacked the necessary means.

50. **Mr. Lahiri** expressed concern over the persisting segregation in housing, education and health. He asked the delegation to comment on the reported criminalization and disproportionate punishment of persons of colour, and the forced administration of untested medicines to prisoners belonging to ethnic minorities. He encouraged the State party to make the Convention better known and to request local, state and federal officials to submit periodic reports on its implementation. He also endorsed the comments made by Ms. Crickley concerning the H2B visa process.

51. **Mr. Bossuyt** enquired about the domestic status of the Convention and asked whether its provisions were directly applicable in domestic law. He was pleased to learn that the State party was exploring options for enhancing the implementation of human rights treaties at all levels of government. However, many state and local officials were largely unaware of the State party's obligations under the international treaties to which it was a party. It would therefore be useful to disseminate the concluding observations of treaty bodies and the universal periodic review recommendations widely. Education and training should be provided to state and local agencies on the obligations under the Convention. They should also be offered guidance and technical assistance. The establishment of a federal focal point that could coordinate with state and local authorities in the implementation of international treaties would be an improvement. State and local governments should also receive funding for human rights monitoring and implementation.

The meeting rose at 6 p.m.