



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 2300th meeting

Held at the Palais Wilson, Geneva, on Thursday, 14 August 2014, at 10 a.m.

Chairperson: Mr. Calí Tzay

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

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

Seventh to ninth periodic reports of the United States of America (continued)
(CERD/C/USA/7-9; CERD/C/USA/Q/7-9; HRI/CORE/USA/2011)

1. *At the invitation of the Chairperson, the delegation of the United States of America took places at the Committee table.*
2. **The Chairperson** invited those Committee members who had not had the opportunity to speak at the previous meeting to share their comments with the delegation of the United States of America.
3. **Ms. Dah** expressed regret at the fact that, 20 years after having ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the United States of America was still not a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). It was all the more regrettable insofar as around 300 NGOs would otherwise not have been forced to turn to the Committee members to denounce situations that fell within the remits of other treaty bodies. The delegation was invited to explain why the State party had ratified the two Optional Protocols to the Convention on the Rights of the Child but not the Convention itself. The Committee could only reiterate the recommendation made in 2010 by many States on the occasion of the Universal Periodic Review concerning the establishment by the United States of America of an independent national human rights institute in accordance with the Paris Principles.
4. Pointing out that the United States of America still administered three non-self-governing territories, namely the United States Virgin Islands, Guam and American Samoa, she recalled that, under article 15 of the Convention, the Committee had a duty to submit expressions of opinion and recommendations on petitions received during the consideration of petitions from the inhabitants of trust and non-self-governing territories relating to matters covered by the Convention. The Committee was unable, however, to fulfil that part of its mandate because neither the State party's periodic report nor the core document common to all the treaty bodies contained a chapter on the implementation of the Convention in those three territories. The State party was invited to remedy that situation in its next report.
5. **Mr. Yeung Sik Yuen**, referring to the October 2013 decision of the Supreme Court of the United States upholding as constitutional a law approved by referendum in 2006 banning the consideration of race or gender in university admissions procedures in the State of Michigan, asked the delegation to confirm that the universities of eight other States had since ended the practice of affirmative action in higher education, which had significantly reduced the number of students from ethnic minorities attending university. He also asked the delegation to provide information on the "settlement" concluded in 2012 between the Department of Justice, the Juvenile Court of Memphis and Shelby County in Tennessee to address the disproportionate representation of African-American children in almost every phase of the juvenile justice system (para. 19 of report CERD/C/USA/7-9). Lastly, recalling that, prior to independence in 1968, his home country, Mauritius had been illegally deprived of part of its territory, namely the Chagos Archipelago, including Diego Garcia where the United States had set up a military base, forcing most of the Mauritian/Chagossian residents into exile, he asked the State party to consider paying compensation to the Chagossians for the losses they had suffered.

6. **Ms. January-Bardill**, recalling the concern voiced by several Committee members and numerous NGO representatives regarding the disproportionate number of African Americans imprisoned for drug trafficking, asked whether the State party would not be better advised to approach the problem from a therapeutic rather than a repressive angle. Such an approach would be sure to benefit the 1.7 million or so children left to their own devices because one of their parents was serving a lengthy prison sentence. Likewise, the American authorities would be well advised to make illegal immigration an ordinary, rather than a criminal, offence. It would be interesting to know whether the authorities took into account the disproportionate effects of the global economic crisis, and, more specifically, the so-called “sub-prime” crisis, on the housing situation of ethnic minorities, and whether they had taken steps to combat the sexual violence to which women belonging to ethnic minorities were often subjected.

7. **Mr. Khalaf** asked what the American Government felt lay behind the widespread malaise affecting persons of African and indigenous origin and migrants and whether it intended to end the practice of transporting terrorism suspects to extraterritorial locations, thereby excluding them from the fundamental safeguards offered by American legislation in the national territory. He wished to know whether an investigation had been launched following the discovery, in June 2014, of mass graves in a cemetery in Texas containing the remains of 110 unidentified migrants and what measures were being planned to treat migrant workers in an irregular situation, and, more specifically, children of migrants from Honduras, Guatemala and El Salvador, with humanity and dignity.

8. **The Chairperson** asked whether section 289 of the Immigration and Nationality Act complied with the provisions of the Convention.

9. **Ms. Hohueto** inquired about the status of international instruments in the domestic legal systems of the federal states and, with reference to paragraph 78 of the core document, asked whether the way in which the Committee’s recommendations were implemented varied from one state to another. She wished to know whether the State party compiled statistics on the rate of school attendance among children belonging to racial or ethnic minorities in preschool establishments and primary schools. Noting that in 2013, 49 schools had been closed in Chicago, 16 of which were located in disadvantaged neighbourhoods where a majority of the students were African Americans, she asked whether the public authorities intended to inquire into the matter and take steps to prevent further closures. She requested the delegation to comment on reports of an excessive prescription of psychotropic substances for young people belonging to ethnic minorities, of the sterilization of female detainees belonging to ethnic minorities without their prior, informed consent, and on statistics indicating that 40 to 60 per cent of African American women had been raped at least once during their lifetime. The delegation was requested to describe the steps taken by the federal and local authorities in cases where areas inhabited by indigenous communities were polluted as the result of the activities of mining companies or had been affected by a tornado.

10. Noting that the right to legal assistance was recognized only in criminal proceedings, she asked whether the State party intended to adopt a national legal aid programme to ensure that the most vulnerable groups could receive counsel in civil matters as well, such as when they were under threat of expulsion or were involved in a dispute with a credit agency. Lastly, recalling that in Trayvon Martin case, the man responsible for the young man’s death had been released, she asked whether the justice system would have shown the same clemency had Trayvon Martin been the murderer.

11. **Mr. Kut** asked whether there were specific mechanisms in place to monitor the fulfilment of Covenant obligations by state governments and local, tribal and territorial authorities and whether the State party had set up a system of checks to ensure that nationality revocation procedures were not subject to discrimination. Noting that some

racially oriented Internet sites used service providers based in the United States to avoid prosecution in their countries, he asked whether the State party might adopt a mechanism to combat that sort of practice.

12. **Mr. Busby** (United States of America) said that, although the United States did not have a national human rights institution, multiple complementary protections and mechanisms had been set up, including a high-level inter-agency policy committee on human rights that oversaw the implementation of the international human rights instruments ratified by the United States. As stated in the report, the United States had adopted a variety of measures on the accountability of corporations whose operations had an impact on the rights of indigenous and ethnic minorities. For example, the United States had recently enacted a law prohibiting the inclusion in federal contracts of clauses that might facilitate trafficking in persons.

13. **Ms. Rajpal** (United States of America) said that the Periodic Review Board had held nine hearings so far to determine whether the continued confinement of certain detainees in Guantanamo Bay was justified and that, in four cases, it had found that confinement was no longer necessary. The Convention could not be directly invoked by national courts because the United States had made a declaration upon ratification of the Convention, stating that its provisions were non-self-executing. That declaration did not, however, limit the scope of the country's obligations. It covered only the way in which the United States perceived the implementation of the Convention, in other words through the application of constitutional guarantees and state, local, tribal and territorial laws prohibiting racial discrimination. The purpose of the reservation regarding the provisions of article 2, paragraph 1 (d), of the Convention was to cover certain situations where the Convention was likely to conflict with domestic legislation. It did not imply that the United States tolerated racial discrimination committed by individuals or non-State actors, as demonstrated by the extensive legislation in that respect. Concerning the reservation regarding article 4, she stressed that banning hate speech was not an effective means of promoting tolerance and that general recommendation No. 35 on article 4 went beyond the requirements of the American Constitution. It was preferable to endure racist speech than to sacrifice freedom of expression.

14. **Mr. Kappelhoff** (United States of America) said that under the 2009 law on the prevention of hate crimes, proceedings were initiated against persons who propagated hate speech, including on the Internet, whenever there was a true threat of violence. Since 1990, statistics had been collected on hate crimes disaggregated by gender, sexual orientation and age. As of January 2015, the data would also be disaggregated by membership of the Sikh, Hindu and Arab minorities.

15. Regarding the recent riots in Ferguson, Missouri, following the death of a young black man shot by police, he said that the Department of Justice had opened a parallel investigation to the one currently being conducted by the local authorities. A federal investigation was also under way in the Trayvon Martin case. Whenever the Department of Justice observed structural discrimination in areas such as employment, housing and education, it brought legal proceedings to instigate reforms in the affected sectors, leading either to consent decrees or to settlement agreements. All consent decrees were prepared on a case-by-case basis to take account of problems arising during the investigation and after consultations with the local authorities concerned. In the past five years, 14 settlement agreements had been reached concerning police department reforms.

16. The United States were deeply committed to the right to vote and were determined that all citizens should enjoy that right without discrimination. The Government shared the Committee's disappointment regarding the Supreme Court's decision in the case of *Shelby County v. Holder*, which had abrogated provisions designed to effectively combat discrimination against certain categories of voters. It was nonetheless resolved to continue

fighting such discrimination, for which it planned to invoke other federal legal provisions. Lastly, in cases of police brutality and racial profiling the Department of Justice had the power to bring criminal proceedings against any law enforcement officers involved. Since 2009, some 300 police officers had been prosecuted for misconduct.

17. **Ms. Lynch** (United States of America) said that the Department of Justice collected data on interactions between the public and the police as a means of detecting practices associated with racial profiling. In order to rebuild trust between the public and the police, the Department of Justice had established the National Centre for Building Community Trust and Justice, which was responsible for conducting research that would be used to improve relations between those two groups. Since 2003, the Department of Justice had been meeting regularly with representatives of the Sikh, Arab and Muslim minorities, whose members had been frequently subjected to police checks since the attacks of 11 September, 2001. Since 2010, prosecutors had been taking part in activities organized with those minorities in order to rebuild a climate of trust and to offer them protection against hate crimes, harassment and other forms of discrimination.

18. Measures had been taken to correct the overrepresentation of minors, especially African-American youths, in the criminal justice system. In 2013, the Department of Justice had requested that federal prosecutors refrain from seeking non-suspended prison sentences except in the most serious drug trafficking cases, while steps had been taken to lessen penalties and offer convicted persons the possibility of applying for a reduced sentence. The authorities had put in place strategies to ensure that the children of parents serving prison sentences were not adversely affected by their parents' situation. The Department of Health and the Federal Bureau of Prisons were developing a range of tools to better assist child protective services and corrections departments to preserve the bond between parents and their children. Regarding "Stand your ground" laws, the Attorney General had ordered all jurisdictions that had adopted such laws to review them in order to ensure that the use of lethal force was restricted to cases of legitimate self-defence. Furthermore, such laws were being reviewed by the United States Commission on Civil Rights, the American Bar Association and other bodies concerned. The authorities had launched an access to justice initiative to provide legal aid to disadvantaged persons involved in civil suits, including over housing disputes. Lastly, regarding the prosecution of migrants in an irregular situation, she assured the Committee that such persons enjoyed all guarantees of a fair trial, including the possibility of receiving legal counsel.

19. **Mr. McDaniel** (United States of America) said that, being closer to those directly affected, state authorities were in a better position to protect minorities from labour code and consumer rights violations. A number of laws had been enacted in various states to allow prosecutors to defend consumers against illegal practices, such as predatory lending, which were mainly targeted at minorities. The law protected all consumers, but specific measures were in place for the most vulnerable groups, including help with debt renegotiation.

20. **Ms. Lhamon** (United States of America) said that, following the report of the Equity and Excellence Commission, the Department of Education had developed an ambitious 300 million-dollar programme that focused on four areas, namely, school funding, teacher equity across all schools, high rigour course work and reforms of academic disciplinary measures. Regarding the Supreme Court decision in *Schuette v. Coalition to Defend Affirmative Action*, the Department of Education had published a number of policy papers on how to guarantee diversity at all levels of the education system and achieve academic desegregation. Although quotas were no longer applied, there were other means of ensuring that minorities were represented in higher education, including in the eight states that had discontinued affirmative action measures following the Supreme Court decision. The Department of Education was extremely concerned about school closures and

36 inquiries were being conducted across the country, including in Chicago, in order to determine whether such measures had been taken on discriminatory grounds and whether the options offered to students for continuing their education were satisfactory.

21. **Mr. Harper** (United States of America) said that tribes had the authority to independently decide who was or was not a member or citizen of a tribe. Having federal recognition enabled tribes to exercise the powers assigned to them under the relevant laws and treaties. The finding that Native American women were more subject to violent crime than any other category of women had led, firstly, to the adoption of the Tribal Law and Order Act, which enhanced the resources of federal and tribal law enforcement bodies to both combat violence and collect the data needed for defining best practices and, secondly, to the decision to give tribal jurisdictions the possibility of also prosecuting non-Native American offenders.

22. **Mr. Roberts** (United States of America) said that the Bureau of Indian Affairs was currently engaged in reforming the federal recognition of tribes to make the process more transparent, efficient and flexible. One of the key laws in terms of guaranteeing the integrity of tribes and the well-being of their children was the Indian Child Welfare Act, which set forth the authority of tribal jurisdictions in matters of child custody. In order to improve enforcement of the Act, the Department of the Interior was working in consultation with tribes to adopt regulations. The Obama Administration's priority was to help tribal communities improve their children's education as a means of escaping poverty and unemployment. It was also focused on recovering land for transfer to tribal ownership, for which purpose it had purchased over 107,000 hectares of land. Moreover, the Government had completed the distribution of funds to settle the land claims of the Western Shoshone, in compliance with a law adopted in 2004.

23. **Ms. Gracia** (United States of America) said that the governmental framework for the reduction of health disparities was based on the following three pillars: the Affordable Care Act; the Action Plan to Reduce Racial and Ethnic Health Disparities; and the recognition of the importance of collaboration among federal, state and local authorities and civil society to effectively combat health disparities. In the more specific area of mental health, the Government advocated the timely administration of psychotropic medication to treat mental, emotional and behavioural disorders. It also ran a national suicide prevention plan targeting Native American peoples.

24. **Ms. James** (United States of America) said that the Affordable Care Act contained specific provisions on fighting health disparities, that required the introduction of standards to strengthen data collection on parameters such as race, ethnic origin and gender. All persons on American soil, including undocumented persons, were entitled to emergency health care. Immigrants in an irregular situation could take out medical insurance and, after a period of five years, could apply for Medicaid. In 29 states, the District of Colombia and the Commonwealth of the Northern Marianas, exceptions to the waiting period could be made for low-income pregnant women and children. Immigrants had access to community health centres, which treated over 20 million people each year, many of whom belonged to racial or ethnic minorities. The Act provided for increased funding for community health centres in order to open additional centres in areas with poorer health-care facilities.

25. **Mr. Bell** (United States of America) drew attention to the Minority Health and Health Disparities Research Centre, which was working to eliminate the physical, social and cultural barriers that minorities faced in accessing health care.

26. **Mr. Greene** (United States of America) said that the Government had prepared draft regulations relating to the Affirmatively Furthering Fair Housing programme and provided financial support to states and local authorities that had enacted legislation promoting fair practices. In 2013, it had adopted regulations formalizing the disparate impact rule under

the Fair Housing Act. A number of federal bodies were collaborating to put an end to discriminatory loan practices, such as home loan frauds targeting African-Americans and Hispanics.

27. **Ms. Ow** (United States of America) said that, in an effort to facilitate access to legal counsel in immigration proceedings, the Government had drawn up a list of providers of free legal services and worked in close cooperation with non-profit organizations to ensure that the persons concerned were informed of their rights and opportunities for appeal. Since June 2014, some 100 lawyers and paralegals had been appointed to represent unaccompanied minors in immigration proceedings. In response to the humanitarian crisis stemming from the irregular entry into American territory of many unaccompanied minors from El Salvador, Guatemala and Honduras, the Government had adopted a multidimensional approach, which consisted in breaking up smuggling operations and in consultation with the governments of those countries, addressing the root causes of underage migration.

28. **Ms. Venture** (United States of America) said that the average length of administrative detention was not 111 days but 47.3 days. Immigration and Customs Enforcement ensured that detention facilities met federal standards, under which detainees were entitled to adequate health care, legal assistance and leisure activities. Regarding the use of force at the border, the Department of Homeland Security imposed a rigorous code of conduct on its employees and service providers and investigated all deaths resulting from the use of force.

29. **Ms. Garrido** (United States of America) said that the Fair Labour Standards Act, which regulated the employment of children in agriculture, applied to all children, regardless of their racial background. The Department of Labour enforced labour laws in relation to all workers, irrespective of their migration status. In 2012, it had set new rules to enhance the protection of guest workers and to require employers to inform their staff of the terms and conditions of their employment. However, the rules were being appealed.

30. **Mr. Gogal** (United States of America) said that, in response to the environmental damage caused by uranium extraction in Navajo territory, the federal, state and tribal authorities were taking joint action by analysing water samples to confirm or invalidate contamination.

The meeting rose at 1.10 p.m.