



WHAT ARE HUMAN RIGHTS?

DONATE

HOME

ABOUT US

ISSUES

HUMAN RIGHTS  
BY COUNTRYWHERE WE  
WORKHUMAN RIGHTS  
BODIESNEWS AND  
EVENTSPUBLICATIONS AND  
RESOURCES

English &gt; News and Events &gt; DisplayNews



## **Statement to the media by the United Nations' Working Group of Experts on People of African Descent, on the conclusion of its official visit to USA, 19-29 January 2016**

WASHINGTON D.C. (29 January 2016) - The Working Group of Experts on People of African Descent thanks the Government of United States of America for its invitation to visit the country, from 19-29 January 2016, and for its cooperation. This visit is a follow up to the 2010 visit of the WGEPAD and includes other cities. We thank in particular the Department of State for arranging the visit and the local authorities who met with the Working Group during our visit to Washington D.C., Baltimore, Jackson-Mississippi, Chicago and New York City. We would like to give special thanks to the hundreds of civil society representative organizations, lawyers and individuals from the African American community for sharing their concerns and recommendations with our delegation. We also thank numerous human rights defenders and activists who reached out to us from other parts of the country that we could not visit.

The Working Group regrets that it did not receive access according to the terms of reference for special procedure mandate holders to visit Mississippi State Penitentiary Parchman. It also regrets that it was not possible to meet with all of the high level state and local level authorities requested.

The views expressed in this statement are of a preliminary nature, our findings and recommendations will be presented in our mission report to the United Nations Human Rights Council in September 2016.

During the visit, the Working Group assessed the situation of African Americans and people of African descent and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance that they face. We studied the official measures and mechanisms taken to prevent structural racial discrimination and protect victims of racism and hate crimes as well as responses to multiple forms of discrimination. The visit focused on both good practices and challenges faced in realising their human rights.

We welcome the work of the Civil Rights centers, in all Government departments, and the Equal Employment Opportunities Commission that implement the Civil Rights legislation through investigation of complaints, litigation, issuance of guidance and remedies including compensation.

We also acknowledge the work of the Department of Justice Civil Rights Division regarding access to justice, investigations of excessive use of force by the police and patterns of discrimination.

We welcome the recent steps taken by the Government to reform the criminal justice system and combat racial discrimination and disparities through the following initiatives:

- The Fair Sentencing Act.
- The Justice Department's "Smart on Crime" initiative.
- The report and recommendations of the Task Force on 21st Century Policing to strengthen community-police relationships across the country.
- The new Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Or Gender Identity
- The Guidance for consideration of arrests and conviction records in employment decisions under title

## VII of the Civil Rights Act 1964

- During our visit, the Government adopted an executive order to reduce the use of solitary confinement at the federal level by prohibiting solitary confinement of juveniles, diverting inmates with serious mental illness to alternative forms of housing and establishing that inmates should be housed in the least restrictive setting, among other issues. These changes are part of a larger effort to pass criminal justice reforms now pending in congress.
- White House Initiatives such as My Brother's Keeper and on Educational Excellence for African Americans, aimed at addressing opportunity gaps and improving educational outcomes for African Americans.
- The new report from the Charles Colson Task Force on Federal Corrections that punitive mandatory sentences for drug crimes represents the primary driver for prison overcrowding.

We welcome the abolition of the death penalty in three additional states since the Working Group visit to the US in 2010 as this form of inhumane punishment is disproportionately used against African Americans.

One of the most important developments in the area of health has been the adoption of the Patient Protection and Affordable Health Care Act which has allowed 2.3 million African American adults to gain medical health insurance.

The Working Group was also informed about some positive steps at the state level:

In New York, we welcome measures that prohibit employers from asking about criminal history until an employee is hired, and that make possible the issuance of municipal identification cards for undocumented immigrants, and that create a policy of desk appearance tickets for certain offenders as an alternative to imprisonment for a misdemeanour offence. We also note the decision to end the policy of stop and frisk.

In Chicago, we welcome the steps taken to combat the home foreclosure crisis that had especially impacted African Americans. We also welcome the measures taken by the mayor to foster accountability in the police department following the Laquan McDonald's case.

The US has a growing human rights movement which has successfully advocated for social change. Following the epidemic of racial violence by the police, civil society networks calling for justice together with other activists are strongly advocating for legal and policy reforms and community control over policing and other areas which directly affect African Americans.

Despite the positive measures referred to above, the Working Group is extremely concerned about the human rights situation of African Americans.

The colonial history, the legacy of enslavement, racial subordination and segregation, racial terrorism, and racial inequality in the US remains a serious challenge as there has been no real commitment to reparations and to truth and reconciliation for people of African descent. Despite substantial changes since the end of the enforcement of Jim Crow and the fight for civil rights, ideology ensuring the domination of one group over another, continues to negatively impact the civil, political, economic, social and cultural rights of African Americans today. The dangerous ideology of white supremacy inhibits social cohesion amongst the US population. Lynching was a form of racial terrorism that has contributed to a legacy of racial inequality that the US must address. Thousands of people of African descent were killed in violent public acts of racial control and domination and the perpetrators were never held accountable.

Contemporary police killings and the trauma it creates are reminiscent of the racial terror lynching of the past. Impunity for state violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.

Racial bias and disparities in the criminal justice system, mass incarceration, and the tough on crime policies has disproportionately impacted African Americans. Mandatory minimum sentencing, disproportionate punishment of African Americans including the death penalty are of grave concern.

During this country visit, the experts observed the excessive control and supervision targeting all levels of their life. This control since September 2001, has been reinforced by the introduction of the Patriot Act. We heard testimonies from African Americans based on their experience that people of African descent are treated by the State as a dangerous criminal group and face a presumption of guilt rather than innocence.

The state is also not acting with due diligence to protect the rights of African American communities, as evidenced by the lack of gun control and stand your ground laws, among others. Hate crime groups, including the neo-naziist Ku Klux Klan, are still active in the US targeting the Black community.

including white supremacist terror groups are still active in the US targeting the Black community as was seen in the attack at the church in Charleston in 2015. The Confederate flag is considered as a symbol of hate for many African Americans and they have led campaigns to have it removed however it still is used by some local authorities.

The persistent gap in almost all the human development indicators, such as life expectancy, income and wealth, level of education and even food security, among African Americans and the rest of the US population, reflects the level of structural discrimination that creates de facto barriers for people of African descent to fully exercise their human rights.

Disparities in the enforcement of policies, can be found in the different approaches adopted by states to address issues such as racial profiling, the presence of police in schools, the criminalization of homelessness, the limitations on the use of lethal force by law enforcement officials, the use of solitary confinement and the trial of juvenile offenders, among others.

The Working Group is concerned about the alarming levels of police brutality and excessive use of lethal force by law enforcement officials committed with impunity. In addition to the most recent and well-known cases of killings of unarmed African Americans, such as the cases of Eric Garner, Michael Brown, Tamir Rice, Walter Scott, Freddie Gray and Laquan McDonald, the Working Group also received information about many other similar cases. The Working Group met with a considerable number of relatives of African Americans killed by police officers that are still seeking justice for their loved ones including Tyron West, Tyron Lewis, Jonathon Sanders, Oscar Grant, Tony Robinson, Marlon Brown, India Kager, Ronald Johnson, Mohamed Bah and Alonso Smith.

Despite some efforts made by the Department of Justice, there is still a lack of an official national system to track killings committed by law enforcement officials. Unofficial sources, such as The Washington Post and The Guardian, identified between 38 and 75 cases of unarmed African Americans killed by the police in 2015.

However, the Working Group is deeply concerned about the low number of cases where police officers have been held accountable. The Working Group identified that the lack of initial investigations conducted by independent and external bodies from police departments, the wide discretion of attorney generals to determine when and how to present charges and the state and county regulation that are not in line with international standards on the use of the force and firearms are some of the main barriers to police accountability.

Racial profiling is a rampant practice and seriously damages the trust which African Americans have in relation to law enforcement officials.

Some media portray African Americans as criminals and this negatively impacts on the perception which the American society in general has in relation to African Americans.

With 2.3 million people incarcerated and 4.8 million on parole or probation, mass incarceration has had a disproportionately impact on People of African descent. The Bureau of Justice Statistics (2014) shows that 36% of the sentenced state and federal prisoners are African Americans. One in three African American men will go to prison or jail if current trends continue. African American women are also increasingly being targeted by the criminal justice system.

The costs of mass incarceration practices must be measured in human lives, and particularly the generations of young Black who serve long prison sentences and are lost to their families and communities. We also heard how mass incarceration of Black men and women has had devastating effect on their children.

We express deep concern on the continued existence of death penalty in 31 states and at the federal level. African Americans represent 41.7 percent of death row population and out of 28 inmates executed in 2015, 10 were African Americans.

State laws that established mandatory minimum sentences and zero tolerance policies have been applied with racial bias. Thousands of young African Americans have been placed in detention centres without addressing the root causes of crime, or guaranteeing better security to their communities; nor have they been offered effective rehabilitation.

The Working Group is concerned about inadequate conditions of detention and in accessing quality health care, including for mental health. Reportedly, inmates were either misdiagnosed or over-medicated. African American communities highlighted that the privatization of prisons might tend to privilege the earning of profits, by sacrificing adequate detention conditions.

We are also concerned about the criminalization of poverty which disproportionately affects African

we are also concerned about the criminalization of poverty which disproportionately affects African Americans. There has been an increase in imprisonment of people for minor offences and those who are unable to pay debts due to an increase in fines and fees. They are detained in debtor prisons and made to work off their debt. As the Justice Department has shown in the investigation of the Ferguson Police Department, in other counties the imposition of fines is a way to secure revenues than a public security issue. This creates numerous problems for the individual and family.

There is also an excessive punishment of poor children for minor offences.

The devastating impact of the "war on drugs" has led to mass incarceration and is compared to enslavement, due to exploitation and dehumanization of African Americans.

While noting the recent Executive order on solitary confinement, we remain concerned about its use in prisons, juvenile detention centres and foster care, at both federal and state levels. We are particularly concerned about its negative impact on children.

People that served their time in prison continue to be stigmatized when they are released. Their criminal records impedes them from finding a job, getting adequate housing or accessing social programmes, and voting. Some re-entry programmes are not well-funded and are not present countrywide.

We are concerned about the underage prosecution of children as adults in the USA. Children are detained in adult jails and prisons putting them at risk of sexual assault and abuse. These practices are a violation of children's human rights and should be eliminated. Juveniles should be treated as juveniles no matter what crime they are alleged to have committed and must be held in a juvenile facility.

The Working Group was also concerned that voter ID laws with increased identification requirements in several states served to discriminate minorities such as African Americans contrary to the spirit of the 1965 Voting Rights Act.

The cumulative impact of racially-motivated discrimination faced by African Americans in the enjoyment of their right to education, health, housing and employment, among other economic, social, cultural and environmental rights, has had serious consequences for their overall well-being. Racial discrimination continues to be systemic and rooted in an economic model that denies development to the poorest African American communities. More than ten million (26%) of African Americans remain mired in poverty and almost half of them (12%) live in what is known as "deep poverty". The Working Group is particularly concerned about the fact that 48% of the households headed by African American women live under the poverty line.

The Working Group noted that a number of factors contributed to the disparities faced by African Americans in the realization of the right to health, including access to health insurance coverage, lack of access to preventive services and care, and lack of diversity and cultural competency of the care. While the implementation of the Affordable Care Act has led to a 17.6 million people getting health insurance coverage, states with some of the widest health disparities in the country have rejected Medicaid expansion, one of the main tools to cover the uninsured. Nine out of ten people who fall into the coverage gap live in the South and Black adults are more likely than any other racial group to be affected. The impact of social determinants such as access to quality and healthy housing conditions, lack of education and employment, transportation barriers also continued to serve as barriers to the full enjoyment of right to health.

The Working Group learnt that African Americans have limited access to food variety including healthy food as they are concentrated in poor neighbourhoods with food outlets selling unhealthy and even expired food. African Americans have the highest rates of obesity which is linked to "food deserts". Racial discrimination impedes the ability of Black women to maintain overall good health, control their sexuality and reproduction, survive pregnancy and child birth, and parent their children. Black women in the USA die from pregnancy-related complications at a rate three to four times higher than White women.

We were informed that across the country there are police in the schools arresting children for minor offences. The police have authority to detain, frisk and arrest children in school. Zero tolerance policies and heavy-handed efforts to increase security in schools have led to excessive penalization and harassment of African American children through racial profiling. African American children are more likely to face harsh disciplinary measures than White children. This phenomenon has been sadly described as "the school to prison pipeline".

The Working Group was concerned by the under-funding and closure of schools that are particularly in

poor neighbourhoods with significant African American population. We were concerned to learn that there are threats to close the Chicago State University, a historically Black university.

In school curricula, the historical facts concerning the period of colonization and enslavement are not sufficiently covered in all schools. This history, crucial in the organization of the current American society is taught differently by states, and fails to adequately address the root causes of racial inequality and injustice. Consequently, this contributes to the structural invisibility of African-Americans.

We have received information about de facto segregation schools. Segregation appears to be nurtured by, a culture of insufficient acknowledgement of the history of enslavement and the Jim Crow Law. There is also a lack of attention to the matter of reparatory justice for enslavement and its effects.

We are concerned about the persistence of a de facto residential segregation in many of the metropolitan areas in the US. A series of maps, generated by the Department of Housing and Urban Development, shows not only stark levels of concentration of African-American families in low income neighbourhoods and districts, but also the correlation between racial segregation and disparities in access to health, education and even access to adequate food among them and the White population.

The zip code can determine to some extent the future development of young African Americans. People from Black poor neighbourhoods are more likely to face lower education achievements, more exposure to violence and crime, a tense interaction with the police, less employment opportunities, environmental degradation and low life expectancy rates as well.

In many cities African Americans are facing a housing crisis, in which people are not able to pay their rents or mortgages, and even less to purchase a new house. In addition, the Working Group was informed about the destruction of public housing on some cities; at the same time, public funding for new houses appears insufficient to meet the demands of new housing.

The Working Group was informed that African Americans are more likely than White people with similar borrowing profiles to be victims of predatory lending and to receive higher cost loans.

In addition, the process of gentrification has a heavy impact on African Americans who are being displaced from city centers under the argument of the need for new investment and development. In particular, the Working Group was alarmed by incidents of eviction, demolition and conversion of Barry Farm public housing in Washington D.C.

According to the U.S. Department of Housing and Urban Development in 2015, Of over half a million homeless people in the US, African Americans constituted 40.4 percent. They also constituted 30.4% of the homeless people that were unsheltered.

Despite the recovery of the US economy, the impact of the 2008-2009 economic recession had on African Americans is still very present. The unemployment rate among African Americans is twice the national unemployment rate. The Working Group is especially concerned about the level of unemployment among young African Americans without a high school degree. In 2014 the annual income for African-Americans was almost half the income of White Americans who are not Hispanic.

People of African descent continue to be underrepresented in higher level working positions. In 2013 they only represented the 7% of the senior level employers. Instead, their participation on temporary jobs with lesser security and lower salaries has been on the increase in recent years. Nearly half a million African Americans earn the minimum wage.. The Equal Employment Opportunity Commission (EEOC) continued to receive more than 30,000 complaints a year concerning racial discrimination.

The highest polluting industrial facilities, across a range of sectors from farming, mining to manufacturing, are more likely to be situated in poor and minority neighbourhood, including those of people of African descent. For instance, we are concerned about the possible health risks to people of African descent on account of the incinerator project in Curtis Bay, Baltimore and the lead contaminated water in Flint, Michigan. African American communities are calling for environmental justice as they are concerned that they are disproportionately exposed to environmental hazards impacting their health and standard of living.

We also studied intersectionality of the different forms of discrimination and heard experiences of discrimination based on skin colour, ethnicity, religion, socioeconomic status, sex and gender identity. In particular we are concerned by the increasing level of violence and murders of transgendered women.

The complexity of the organisation of the legal system with independence of federal, state, county and

tribal jurisdiction and lack of direct applicability of international human rights law and federal law and policy creates gaps that impacts deeply on the human rights of African Americans.

The Working Group acknowledges that Civil Rights federal legislation, put in place in the 1960's and the 1970's, has had a positive impact redressing individual and even institutional cases of racial discrimination. However, hearing the testimonies of African American communities in different parts of the country, the Working Group is concerned about civil rights laws implementation not being sufficiently effective to overcome and transform the structural racial discrimination against African Americans.

The Working Group is concerned that African Americans do not have the possibility to bring their cases or individual complaints to regional and international bodies when they have exhausted all domestic remedies at the state and federal level as they are not party to the protocols which would allow them to bring complaints. Furthermore International human rights treaties cannot be invoked in national courts as there is no enabling legislation and they have been declared non-self-executing.

#### Recommendations

The following recommendations are intended to assist the United States of America in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance:

The Working Group reiterates the following recommendation made after its visit to the United States in 2010:

- Establish a national human rights commission, in accordance with the Paris Principles. The Government should establish within this body a specific division to monitor the human rights of African Americans.
- In addition to the above, the Working Group urges the Government of the United States to consider the ratification of the core international human rights treaties to which the United States is still not a party, with a view to remove any gaps in the protection and full enjoyment of rights therein. It also encourages the USA to ratify regional human rights treaties as well as review reservations related to the treaties it has signed or ratified.
- Federal and state laws should be adopted incorporating the International Covenant on Civil and Political Rights and other international human rights treaties.
- There is a profound need to acknowledge that the transatlantic slave trade was a crime against humanity and among the major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance and that Africans and people of African descent were victims of these acts and continue to be victims of their consequences. Past injustices and crimes against African Americans need to be addressed with reparatory justice.
- Monuments, memorials and markers should be erected to facilitate this important public dialogue. Education must be accompanied by acts of reconciliation, which are needed to overcome acts of racial bigotry and legacies of injustice. To accelerate the process of desegregation, federal and state legislation should be passed recognizing the experience of enslavement.
- During the International Decade for People of African Descent public forums or hearings should be held with African American communities to enter into a constructive and open dialogue in which organizations, social movements have access to share experiences and to engage with the policy makers and institutions and local state and federal government on ways to address the current crisis.
- We encourage congress to pass the H.R. 40 -Commission to Study Reparation Proposals for African Americans Act - Establishes the Commission to examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies.
- We encourage the US government to elaborate a National Action Plan for Racial Justice to fully implement the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and comprehensively address racism affecting African Americans.
- The Government should increase engagement with human rights organizations and civil society at large with an aim to implement the Universal Periodic Review recommendations made to and accepted by the USA.
- We urge the Government to ensure that recent policies undertaken to address racial disparities will be further implemented at the federal and state levels.
- The Working Group urges Congress to expedite the passing of all pending criminal justice reform bills

The Working Group urges Congress to expedite the passing of all pending criminal justice reform bills including the End Racial Profiling Act, the Second Chance Reauthorization Act and welcomes the bipartisan support for the Sentencing Reform and Corrections Act, which among other things proposes to drastically reduce the use of mandatory minimum sentencing.

- In imposing the sentence, the welfare of the family of the accused should be taken into account, with particular attention to the best interests of the child.
- Appropriate measures should be adopted to prevent excessive bail. Alternatives to detention should also be explored.
- Community policing strategies should be developed to give the community control of the police which are there to protect and serve them. It is suggested to have a board that would elect police officers they want playing this important role in their communities.
- Before non-payment of a court fine or fee is treated as civil contempt of court charge it must first be determined whether the individual has the ability to pay. Imprisonment should not be offered as a way of paying off the debt. If the debt cannot be paid the fee should not be levied.
- We also recommend that part of the prison reforms processes and policies include specific policies to address increasing rate of incarceration of African- American women.
- Solitary confinement should be banned absolutely for being in violation of international human rights law standards particularly those found in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Standard Minimum Rules on the Treatment of Prisoners.
- The Working Group recommends to the Government to allow independent monitoring of places of detention in the United States and in this connection consider inviting Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Working Group on Arbitrary Detention.
- International human rights standards should be observed in the criminal justice system. We recommend the abolition of the death penalty throughout the United States.
- The Working Group calls upon the Government to ensure that all states repeal laws that restrict the voting rights. In particular it urges reinstatement of voting rights of persons convicted of felony who have completed their sentences.
- Targeted measures should be developed with the community to raise awareness and reduce crimes against LGBTQI community, in particular against transgendered women.
- The Working group recommends improving reporting of violations involving the excessive use of force and extra-judicial killings by the police, and ensure that reported cases of excessive use of force are independently investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with remedy.
- The Working Group recommends to the Government to step up its efforts to prevent excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Security policies in schools should be revisited. Policing in schools should be abolished.
- Misdemeanour laws should be repealed, such as the misdemeanour law in South Carolina where school disturbance constitutes a misdemeanour.
- The use of restraint and seclusion in schools should be prohibited. Early counselling should be given to students with mental health issues. Special attention and protection must be given to students with autism, ADHD and other similar disabilities.
- We recommend the Government develop guidelines on how to ensure school discipline policies and practices are in compliance with international human rights standards. Positive Behavior Intervention and Support (PBIS) and restorative practices in school discipline should be used for reducing disciplinary incidents and improving learning in schools.
- Males should be separated from females in detention. Younger prisoners should be separated from adults. Alternatives to imprisonment for youth such as intervention and diversion should be explored.

- The Working Group recommends that health policies and programmes should place particular priority on access to quality and affordable health care with targeted goals to reduce maternal mortality of African American women.
- Consistently, the school curriculum in each state should reflect appropriately the history of the slave trade.
- The Department of Education should study zero tolerance policies and its disparate impact on African American students. A Taskforce should be created to specifically focus on realigning and reengaging students who have been dismissed from educational institutions as part of a zero tolerance policy.
- The Working Group recommends upholding the right to adequate standards of living including the right to food, right to water and the right to adequate housing. The Government should immediately halt the demolition of public housing without guaranteeing replacement units. All such activities must be undertaken only through prior and informed consent and participation of the communities affected.
- 
- The Working Group urges the government to strengthen the implementation of Executive Order 12898 including through the allocation of adequate resources.
- The US government should undertake a review of policies to improve protection and ensure environmental justice is provided.
- The Working Group encourages the government to undertake impact-oriented activities in the framework of the International Decade for People of African Descent (2015-2024).

The Working Group welcomes the cooperation and engagement with the international human rights system to combat racial discrimination. We hope that our report will support the Government in this process and we express our willingness to assist in this important endeavour.

END