

Geneva International Centre *for* Justice

Independent, non-profit, non-governmental organisation



The United States of America Still not Relieved of Racial Discrimination

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REPORT



The United States of America Still not Relieved of Racial Discrimination

Committee on the Elimination of Racial Discrimination (CERD)

Review of the State of the United States of America

11 – 12 August 2022, concluding remarks revealed 30 August 2022

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Executive Summary

On 11-12 August 2022, GICJ attended the 107th session of the Committee on the Elimination of Racial Discrimination (CERD), which examined the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, the Convention) by the United States of America (USA).

The Committee was concerned about trends in racial discrimination in the USA. Despite the State party's initiatives and policies, the country still suffers from systemic racial behaviour by both private actors and state officials. For instance, among others, data shows an increasing rate of deaths of people of African descent caused by police officers, an increase in hate crimes against people of Asian descent since the outbreak of the Covid-19 pandemic, and the rise of ideas of racial superiority. A committee of independent experts reviewed the USA and raised multiple concerns to the US delegation, which had to answer in the form of an interactive dialogue. Items of discussion included the implementation of the Convention in the domestic legal order, the institutional framework, hate crimes and hate speech, excessive use of force by public officials, armed violence, education, and access to health.

The delegation emphasised the progress made due to multiple policies and executive orders to combat racial discrimination in the United States and reaffirmed the government's commitment to the Convention and to addressing these disparities. Nevertheless, the Committee brought proof of data showing an increase of disparities in several domains of the country, which can be interpreted as a lack of effectiveness or insufficiency of the measures taken by the government. In its concluding observations, the Committee not only summarised its concerns, but also presented concrete recommendations to reduce racial discrimination in the United States of America.

Geneva International Centre for Justice (GICJ) condemns all forms of discrimination and encourages states to adopt legislation and concrete policies that tackle racial discrimination at its root cause. Although we welcome all efforts made by the USA, GICJ regrets the lack of effectiveness as data demonstrates no improvement and increasingly more discriminatory cases against people of African, Asian, and Latin American descent, native Americans, and other minorities, especially since the outspread of the COVID-19 pandemic. Racism and discrimination cannot be eradicated simply by enforcing policies and regulations. It demands a far greater political will to give effect to the rights of people of all backgrounds.

Background

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, the Convention) is a so-called treaty body. Once ratified, the Convention is binding to member states. Every couple of years, states are requested to provide a report on their country's situation regarding racial discrimination, including measures, improvements, and threats. This report is then reviewed by a Committee of independent experts, which is followed by an interactive dialogue between the Committee and the delegation of the country concerned. Finally, concluding observations are published by the Committee to recall their concerns and recommendations to the State party in order to improve their compliance with the ICERD.

The review of the State of the USA by CERD was eagerly awaited. Since the previous report, multiple scandals shade light on racial discrimination in the United States, including discrimination by law enforcement officials. For instance, the murder of George Floyd in May 2020 by a Police Officer in the city of Minneapolis was the spark that ignited the large-scale protest of the *Black Lives Matter* movement. Moreover, following the Trump administration, US communities seem to have become drastically more polarised, leading to an increase in hate speech and crimes.

The USA State review combined their tenth and twelfth periodic reports. An interactive dialogue took place on 11 and 12 August 2022 at the Palais des Nations in Geneva and addressed a number of issues on which the Committee was seeking clarification, which are summarised in this report.



Figure 1: Country Rapporteur Faith Dikeledi Pansy Tlakula

For the interactive dialogue, the USA's delegation was co-led by the Ambassador to the Human Rights Council **Michèle Taylor** and by the Special Representative for Racial Equity and Justice **Desirée M. Cormier Smith**. It was composed of, among others, the Acting Principal Deputy Assistant Attorney General **Johnathan Smith**, the Mayor of Atlanta **Andree Dickens**, and the Special Assistant Attorney-General from the California Department of Justice **Damon**

Brown. The Committee Experts were led by the Country Rapporteur **Faith Dikeledi Pansy Tlakula**, and composed of, among others, the Follow-up Rapporteur **Gun Kut** and the Committee Chairperson **Verene Albertha Shepherd**.

Interactive Dialogue

Convention in the Domestic Legal Order

One of the first aspects addressed by the Committee and by Ms Tlakula was the USA's legal definition of racial discrimination, which does not correspond to the definition in the Convention. According to its first article, paragraph 1, the term racial discrimination "*shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*". The State party's definition of racial discrimination protects people only against acts that are discriminatory *in purpose*. The Committee would therefore see the USA's definition extended to acts which are discriminatory *in effect*.

In addition, the Committee requested information from the USA regarding the provisions in Article 2 of the Convention, which obliges ratifying States to condemn and "pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". However, the delegation did not answer the questions of the Committee about the definition of racial discrimination. It appears that the State party has no will to make the definition of racial discrimination match the one of the Convention, nor to remove the provision of Article 2. Rather, the delegation presented policies and the most recent executive orders designed to reduce racial discrimination.



Figure 2: Special Representative for Racial Equity and Justice Desirée M. Cormier Smith

Institutional Framework and National Action Plan to Combat Racial Discrimination

Another aspect addressed by the Committee is the recommendation that the United States of America establish a National Human Rights Institute. The country does not have an equivalent institution at the national level, and it is believed that this would allow the country to follow coherent and harmonised policies across its entity, as well as allowing for the reporting and adjustment of human rights risks and violations.

The delegation responded that it was aware of this recommendation and that only President Biden could establish such an institute. However, Andree Dickens said that in Atlanta, several similar human rights institutes already exist, such as the Carter Centre and the Centre for Civil and Human Rights. He assured the Committee that every student will visit them at some point and added that training is organised for professionals, including police officers. Damon Brown added that similar human rights committees exist in California, serving the same purpose. However, it seems that for the creation of such an institution, the USA prefers to look at regional or even local levels. A central and unified National Human Rights Institute, pursuing a harmonised goal with a common policy, is still lacking in the US.

Excessive Use of Force by Law Enforcement Officials & Racial Profiling

A particular concern was raised regarding discriminatory behaviour by US law enforcement officials, such as police officers or border patrols. Country Rapporteur Tlakula noted that, contrary to what one might think and especially after the widely reported killing of George Floyd in May 2020, the number of people killed by police officers is steadily increasing in the United States. For example, 2021 was the deadliest year in the US with 1,145 people killed by police officers, and the trend for the first seven months of 2022 shows a similar dynamic. The available data shows that, in the US, people of African descent are almost three times more likely to be killed than white people. This demonstrates the presence of systemic racism on the part of the police, which should be urgently addressed. In addition, it was revealed that ethnic minorities such as indigenous peoples, people of African, Asian and Latin American descent suffer other forms of systemic racism by law enforcement officials. For instance, they are over-represented in the criminal justice system, more likely to be stopped by the police, or stopped by border patrols.



Figure 3: Mayor of Atlanta Andree Dickens

The US delegation responded that the Department of Homeland Security has policies regarding its prevalence of race and gender discrimination, which were updated in 2021 and under which all deaths caused by police officers are investigated in order to properly address all cases and, if necessary, to prosecute them. In addition, the Federal Bureau of Investigation prohibits investigations based solely on racial or religious characteristics and

inspects police departments suspected of racial profiling. The State party further explained that the Office for Civil Rights is responsible for ensuring that government agencies comply with non-discrimination laws, which has investigated approximately 600 cases in the first seven months of 2022 alone. It was also outlined that programmes created to prevent racial profiling are state-sponsored. Finally, the Mayor of Atlanta specified that in his city, police officers are trained to be

aware of racial discrimination, using institutions such as the Carter Centre and the Centre for Civil and Human Rights. Andree Dickens added that California builds data by reporting all vehicles stopped to avoid profiling.

Racist Hate Crimes, Hate Speech & Gun Violence

Another consideration reported by the Committee concerned the topics of hate crimes, hate speech and gun violence, which disproportionately affect ethnic minorities. Driven by the availability of lethal weapons, gun violence in the US resulting in murder increased by 44.6% between 2019 and 2020, and it was reported that this type of violence primarily affects men of African descent. Hate crimes against people of Asian descent have also increased, especially since the outbreak of



Figure 4: Acting Principal Deputy Assistant Attorney General Johnathan Smith

the COVID-19 pandemic, with a 70% increase in the rate of physical attack, while the Committee estimates that only 3% of hate crimes attacks would be prosecuted in New York. Finally, hate speech is also reported to have increased in American societies. The Committee expressed concern about ideas of racial superiority and hate speech flourishing in the United States, as it seems that the divide between communities continues to grow. Social media and the internet function as platforms for uninhibited exchange, which encourages the proliferation of ideas of racial superiority and hate speech, which are too often uncontested and uncontrolled.

The delegation responded to these concerns by presenting the Community Relations Service, which mediates between individuals from different communities to “discourage hate”. However, further explanation from the State party delegation concerning concrete measures implemented or planned by the USA to tackle these issues was lacking. No precise details were given by the delegation despite such measures being recommended by the Committee.

Education to Combat Racial Discrimination

The importance of education was explained as a major tool to combat racial discrimination and the proliferation of racial superiority discourse. It was also identified as a tool to enhance tolerance between different communities and, as such, the hate crimes that might ensue. However, it was reported that segregation still occurred in the US public school system, which is believed to lead to a distortion of opportunities. The Committee regretted the lack of information and data on the

State's efforts to strengthen the fight against racial discrimination in the educational system and asked for further details.

The delegation responded that the Biden-Harris administration has addressed this issue by implementing policies to support teachers from discriminated communities and stated that it has provided \$770 million to fund reviews of inequities in the US education system. \$130 billion was allocated to schools to recover from the COVID-19 pandemic. Finally, a special task force was launched to combat online discrimination.

Right to Health & Impact of the COVID-19 Pandemic

The Committee discussed the disparities that affect the US population in terms of access to health, housing and other services essential for a dignified life. Concerns were raised about the increasing health disparities, particularly since the outbreak of the COVID-19 pandemic and the resulting economic damage to the country. Since the beginning of 2022, the inflation that is driving up the price of basic commodities is also affecting marginalised communities struggling to access a healthy and dignified life. All of these causes have led to discriminated communities, particularly people of African, Asian and Latin American descent, indigenous populations, and other minorities, having reduced access to health services.



Figure 5: USA's Ambassador to the Human Rights Council Michèle Taylor

In addition, the commission mentioned the regression of abortion rights since the Supreme Court overturned *Roe v. Wade*, which guaranteed the federal right to abortion. The Commission is concerned that this change in legislation will affect discriminated communities extensively and describes it as a serious rollback of an existing right that would endanger women's health and lives. It is believed that people of discriminated communities will suffer more drastically from this change of legislation. It is, moreover, already known that women of African descent are three times more likely to die from pregnancy than women of European descent, while their children are more than twice as likely to die in childhood.

The US delegation responded that the federal government has implemented more than 50 actions to improve maternal health care, stating that it is committed to strengthening economic and social support for pregnant women during and after pregnancy. In addition, access to reproductive services has been increased through executive orders issued immediately after the overturning of *Roe v. Wade*. Finally, it was explained to the Committee that emergency medical care is available to all in the United States, including non-citizens and undocumented persons.

Indigenous Peoples

Particular emphasis was placed on the discrimination faced by indigenous peoples in the United States. Indigenous communities continue to face systemic discrimination, including in access to social services and economic opportunities within communities, threatening the survival of their traditions and cultures.

Although 130 schools and 37 universities are fully controlled by indigenous communities, the State party's delegation acknowledged that indigenous children are too often forced to leave these schools and enter others where they may face discrimination. However, it was explained that Executive Order 14053 was implemented in response to the crisis of missing or murdered indigenous Americans, while it was explained that a record number of indigenous people are currently employed by the Biden Administration.

Private Actors

The accountability of private actors within the USA for racial discrimination was also raised. The State party has a reservation to Article 2 of the Convention regarding the condemnation of individuals and private actors for racial discrimination. However, the Committee reiterated the discriminatory "behaviour" of private hold artificial intelligence algorithms, which have been constantly shown as being discriminatory vis-à-vis certain communities. The delegation specified that many statutes already exist to prevent racial discrimination by private actors, and the example of a firm being sued for \$20 million was presented in support of their response.

Other Issues

Finally, other topics remained unanswered by the US delegation, such as the question regarding the work of children in the agricultural sector, in respect of which the Committee requested the USA to raise the minimum age for employment to 18 years old. Also, it is estimated that more than 200.000 people are currently stateless within the USA. Moreover, the closure of the Guantanamo Bay facility was noted due to serious concerns for its respect for human rights' within the facility. Notwithstanding the seriousness of these issues, the US delegation did not provide an answer to these further concerns raised by the Committee.

Concluding Observations

On 30th of August 2022, the Committee on the Elimination of Racial Discrimination published its concluding observations on the combined tenth to twelfth reports of the United States of America.

The Committee recalled its concerns regarding the **absence of the Convention in most of the US Federal and State legislation** and recent policies designed to eliminate racial discrimination. In particular, the Committee regrets the non-compliance of the definition of racial discrimination given by Article 1 paragraph 1 of the Convention, and the USA's reservation to Article 2 regarding discriminatory acts perpetrated by private entities, including individuals, groups, and organisations. The concluding observations report therefore reiterates the Committee's recommendation to take the necessary steps to ensure compliance of the national legislation with CERD, and to narrow the US reservation. Finally, the Committee requested the USA to detail information regarding the implementation of the provisions of the Convention in its next periodic report.

It was further regretted that **no independent national institution** was established nor is planned in the United States. Moreover, no national plan of action to combat systemic racism and structural racial discrimination appears to be planned by the State party, as the delegation did specify about this topic. The Committee therefore strongly recommends the USA to create such an institution and draft national plans, in order to enable a harmonised progression toward the extinction of racial discrimination in the State party.

Regarding the **excessive use of force and racial profiling by law enforcement officials**, including police officer, the Committee welcomes all efforts presented by the delegation, and in particular Executive Order 14074 of 25 May 2022. This Executive Order establishes the creation of a national database of police misconduct to facilitate accountability. Nevertheless, police brutality and excessive use of force still leads more frequently to death and disproportionately to the death of people belonging to a racial or ethnic minority. Therefore, the Committee urges the USA to adopt or review federal and state legislation to stronger regulate the use of force and of weapons by police officers. Moreover, the State party is recommended to improve the reporting of excessive use of force cases, to guarantee and enhance the independent oversight bodies responsible for ensuring accountability, and provide the continuous training of law enforcement officials, especially regarding racial discrimination and excessive use of force. Furthermore, the Committee welcomes the precisions that racial profiling is illegal in law enforcement sectors. Nevertheless, it still occurs too often and therefore the Committee recommends the State party to intensify its efforts to combat racial profiling, including by adopting and implementing legal grounds similar to the George Floyd Justice in Policing Act and undertake stronger and more in-depth investigations of alleged racial profiling.

The Committee is further concerned about **racist hate crimes**, **hate speech** and **gun violence** which appears to increase in the State party. Ideas of racial superiority, hate speech on the internet, and harassment are only some examples of issues that can lead to physical confrontation, murder, and mass shootings. However, the Committee is concerned regarding the tenor of this kind of speech by politicians or public figures, which can be considered as the trigger of this chain of violence. Linked to this, the Committee requests the USA to narrow its reservation lodged in respect of Article 4 of the Convention, which condemns propaganda by any organisation conveying ideas of racial superiority. Moreover, the Committee recommends the State party to create a comprehensive data-collection system on racist hate speech, intensify actions to tackle the conveyance of these ideas, especially on the internet, and declare illegal any organisation promoting or inciting racial hatred. The Committee further urges the USA to take actions to reduce the accessibility of guns in public areas. Recommendations offered range from enhancing background checks of people willing to carry an arm, banning assault weapons, forbidding the carrying of arms in public venues, increased transparency regarding gun violence and crime, and to review the “stand your ground” laws to guarantee the principle of proportionality when using lethal weapons.

The importance of **education** in combatting racial discrimination was also noted in the concluding observations. The Committee regrets and is concerned regarding the access to equitable education and racial and socio-economic school segregation in the State party. In particular, the Committee is concerned about the “private school voucher programs” which enhance educational segregation. Therefore, the Committee recommends the USA develop and adopt a plan to address this segregation, notably by rectifying funding disparities, and expanding federal funding programs for discriminated minorities. Moreover, the Committee is concerned with legislation prohibiting instruction about racism, unconscious bias, discrimination, privilege, and oppression in certain public schools of certain states. Keeping in mind the importance of education to combat racial discrimination and enhance cohesion between communities, the Committee request the State party to take action to limit censored topics in public schools as established in Article 7 of the Convention. Finally, it was required to take measures to guarantee that history of the past, including colonialism and slavery, is part of the school curriculum.

Concerning **access to health** between communities, the Committee welcomes the American Rescue Plan which facilitates all types of access to health. Nevertheless, restrictions to health are still hindering too many people, especially people of discriminated communities and people possessing lower financial capabilities. The Committee therefore urges the USA to expand the existing health care programs to ensure everyone has access to health. Maternal mortality and sexual and reproductive health appear to present challenges within the State party. Despite the White House Blueprint and different Executive Orders intended to enhance access to health of pregnant women, disparities of maternal and infant mortality remain extremely persistent in the USA, and the Committee fears that the removal of the federal right to abortion will have a further negative impact on this racial discrimination. The Committee therefore urges the State party to

develop concrete solutions to guarantee women of discriminated communities to have access to a safe and legal abortion.

The Committee observes efforts by the USA to enhance the rights and freedom of **native Americans**, including Executive Order 13647 to enhance tribal self-determination and to provide assistance to this objective. However, concerned that the effect of colonialism persists unto today, the Committee recommends the USA to further take measures to guarantee the preservation of tribal culture while guaranteeing equal opportunities. Moreover, the Committee requests the State party to refrain from undue resistance to the recognition of Indigenous Peoples in order to fully protect their rights. The State party was further requested to implement stronger measures to protect Native Americans from the impact of extractive industries and infrastructure projects as Native Americans too often are not taken into consideration when deciding the implementation of such works.

Position of Geneva International Centre for Justice

Geneva International Centre for Justice (GICJ) welcomes the work of the Committee's experts in their review of the United States of America. We remain deeply concerned about the systemic discrimination faced by people of African, Asian and Latin American descent, Native Americans and other minority communities in the United States. GICJ regrets the lack of harmonised national positions, policies, and actions to combat racial discrimination. We also urge the State party to take all necessary measures to prevent racial discrimination and profiling by law enforcement officials, including police officers and border patrols.

The delegation sought to present the State party's progress in combating racial discrimination. Nevertheless, GICJ would like to reiterate that, as revealed by the Committee, this progress is hardly reflected in statistics. Several indicators show that racial discrimination in the USA persists and in some cases is even increasing. We are deeply concerned by these indications of increasing racial inequalities, including the rise of hate speech and ideas of racial superiority, the increase of segregation in educational and economic opportunities, hate crimes, and gun violence. We condemn all forms of discrimination and call on the State party to enact concrete legislation and policies to address racial discrimination at its root.

Although the delegation repeatedly emphasised that it is "proud" to represent the USA and the measures taken to combat systemic racism, we recall that disparities are on the rise, proving the ineffectiveness or non-sufficiency of its policies and measures. Racism and discrimination cannot be eradicated by merely implementing policies and regulations. Much greater political will is needed to enforce the rights of people of all backgrounds. We therefore urge the United States of America to heed the Committee's advice and implement more concrete measures to combat racial discrimination.

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GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

Mission

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work with NGOs

GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the Globe. Through these channels, GICJ is able to receive documentation and evidence of human rights violations and abuses as they occur there. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

[Image source]:

<https://www.flickr.com>

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