

## Mandate of the Working Group of Experts on People of African Descent

REFERENCE:  
HR 40, USA

16 February 2021

Dear Congresswoman Sheila Jackson Lee, Subcommittee Chairman Steve Cohen, and  
Chairman Jerrold Nadler,

The UN Working Group of Experts on People of African Descent, one of the Special Procedures of the United Nations Human Rights Council, is an independent fact-finding and monitoring mechanism that operates globally to investigate and assess human rights of people of African descent. In 2016, at the invitation of Your Excellencies' government, the Working Group conducted a fact-finding country visit to the United States and issued conclusions and recommendations based on its findings there. In 2020, the Working Group participated in and commented on the United Nations Human Rights Council Urgent debate on racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests. There and elsewhere, the Working Group has affirmed the right to reparations and the importance of meaningful reparations for people of African descent in the United States.

### *The Right to Reparations and the Reason*

The right to remedy and reparations is well-defined in international law. Yet, the reason for reparations is powerfully illustrated by the ongoing story of people of African descent in the United States. Powerful manifestations of systemic racism in employment, education, health, and in the legal system today might have been avoided had meaningful reparations come to pass for gross violations of human rights suffered by people of African descent.

The urgent need for H.R. 40 is evident in the continued legacy of the United States of America's self-described "original sin" of enslavement. Ongoing systemic racial discrimination is measurable and well-documented with respect to people of African descent and research shows that racial disparities persist throughout U.S. communities and institutions, from medical bias to the mass incarceration. The historical biases that create an enabling environment for racial inequality are evident in institutions, expectations, and norms today. For example, in many communities associated historically with racial terror lynching, the very architects of racial subordination and the political leaders known for commitments to white supremacy are memorialized, while histories of racial terror are whitewashed. The lack of accountability for

racialized misconduct often serves to normalize racial terror as a form of collective punishment and as a social control tactic. H.R. 40 offers one framework to begin to shift that narrative.

Importantly, the racial bias and stark racial disparities that are measurable in many U.S. institutions, might look far different today had reparations come to pass in a timely and meaningful manner, consistent with international human rights law. A meaningful commitment to reparations, as is required under international human rights law, but will have important and immediate impact. H.R. 40 can play an important role in understanding, acknowledging, addressing, and dismantling systemic racism in the United States and promoting racial equity.

### *The Particular Urgency of H.R. 40 Remains Evident Today*

In 2020, it was widely stated that people of African descent navigated two pandemics: systemic racism and COVID-19. Several incidents of police-involved violence toward people of African descent motivated calls for accountability and catalyzed public protest. In several widely-reported cases, the delays, and the role of public demand in initiating even basic investigations, raised questions about the integrity of stated commitments to accountability and justice. The tragic loss of Trayvon Martin, Tamir Rice, Botham Jean, Michael Brown, Sandra Bland, Eric Garner, Philando Castile, Alton Sterling, Terence Crutcher, Ahmaud Arbery, Breonna Taylor, George Floyd, and others raised the question of the role of racial terror in the enforcement of the law in the United States.

At the same time, racial disparities were evident from the earliest days of the COVID-19 pandemic. People of African and Afro-Latinx descent were hardest hit by COVID-19 infections, severity, and mortality, as well as disparities in access to health care, high-quality treatment interventions, and, most recently, vaccination. Today, predictable and avoidable racial disparities persist unabated throughout the pandemic, perhaps because of widespread disinclination to talk about (1) racialized impact of overrepresentation of people of African descent among designated “essential workers”, including home health aides, nursing home personnel, delivery personnel, grocery workers, the increased risk of infection due to dense living conditions, overrepresentation in COVID-19 hotspots, and/or inability to fully quarantine, and lack of access to adequate health care, or overreliance on overcrowded and under-resourced public hospitals; and (2) documented medical bias, in fields relevant to the COVID-19 pandemic. As of February 2021, in the United States, Black people were hospitalized relating to COVID-19 at approximately three times the rate of white Americans and Black people died from COVID-19 at approximately twice the rate of white Americans.<sup>1</sup>

The right to reparations reflects precisely this concern that gross violations of human rights, unaddressed, give rise to ongoing injustice and inequality. For people of African descent, the violation of human rights was legalized policy of the United States for well-over one hundred years and continues to impact individuals, families, and communities profoundly. It is evident that stark racial disparities in COVID-19, and elsewhere, might have been deterred had meaningful reparations ensued after the repeal of enslavement or “Jim Crow” laws.

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<sup>1</sup> [cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html](https://cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html)

*Apparent Lack of Compliance with International Law and Human Rights Treaties*

In its 2016 report to the United States, the Working Group of Experts on People of African Descent identified clear gaps in the supplication of international human rights law. The gross violations of human rights experienced by people of African descent violate international human rights law, including in contravention of the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights (“UDHR”) and Article 6 of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by the United States of America in 1992.<sup>2</sup> In addition, the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination, has issued relevant guidance in this matter, to which the United States is bound as a State party.<sup>3</sup>

*Conclusion*

Thus, for the reasons set forth herein, the UN Working Group of Experts on People of African Descent welcomes the House Judiciary Committee’s hearings on H.R. 40, as well as the broad base of support for the bill within the United States Congress. The Working Group also recognizes the crucial, timely importance of these hearings. Perhaps most importantly, the Working Group encourages this important step, embodied in H.R. 40, toward acknowledging and addressing ongoing legacies of legalized racial discrimination, inequality, and inequity in the United States of America.

Please accept, Excellencies, the assurances of our highest consideration.



Dominique Day

Chair- Rapporteur, UN Working Group of Experts on People of African Descent

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<sup>2</sup> Human Rights Committee, General comment No. 36 (CCPR/C/GC/36):

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

<sup>3</sup> CERD General recommendation No. 31 focuses on the prevention of racial discrimination in the administration and functioning of the criminal justice system. CERD General recommendation No. 34, regards racial discrimination against people of African descent. CERD General recommendation No. 13 focuses on the training of law enforcement officials in the protection of human rights. Each of these general recommendations is relevant to the issues surrounding the incidents alleged here and the protection obligations of United States.