

## 13 E PLURIBUS UNUM? RACIAL INJUSTICE IN THE US AND THE INTERNATIONAL RESPONSE

*Thamil Venthan Ananthavinavagan\**

### **Keywords**

UN human rights machinery, prohibition of discrimination, segregation in the US, racial discrimination, UN Human Rights Council

### **Abstract**

The UN issued a scathing report in 2016 stating that “[I]n particular, the legacy of colonial history, enslavement, racial subordination and segregation, racial terrorism and racial inequality in the US remains a serious challenge.” After international slave trade, abolition of slavery, Jim Crow laws, civil rights struggle, ongoing systemic police brutality against African Americans and a prison machinery with a high prison rate with African Americans inmates the question remains: has racial discrimination ever ended in the US? The rising strength of a white supremacist movement poses another significant threat to the national cohesion of different communities in the US. Moreover, it reveals the dormant white nationalism that has awakened in light of policies and rhetoric animated and nourished by leading politicians in the country. To this end, this paper will investigate the following question: what is the impact of the colonial past on the US and how did the UN respond to this past? Finally, what will be the role of the UN to enhance the US human rights infrastructure for African Americans and ameliorate their situation in light of rising white supremacism?

### **13.1 INTRODUCTION**

In 2016 the Working Group of Experts on People of African Descent (Working Group) visited the US, one of the many special procedures under the auspices of the UN Human Rights Council, in order to assess the treatment and situation of people with African Descent in the country. With their report, the Working Group concluded that

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\* Thamil Venthan Ananthavinavagan: lecturer, Griffith College, Dublin.

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“Contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching. Impunity for State violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.”<sup>1</sup>

The current atmosphere in the US reveals a quite blunt manifestation of a deeply divided and troubled society, a society that is haunted by its past and offers a bare view of the remnants of slavery that preoccupies the public discourse and society’s consciousness. The philosopher Frantz Fanon wrote that

“In divided societies, a behavior can be observed characterized by a predominant nervous tension leading quite quickly to exhaustion. Among American Blacks, control of the self is permanent and at all levels, emotional, affective [...] This division, which is called the color bar, is a rigid thing, its ongoing presence has something nagging about it.”<sup>2</sup>

Slavery is over, but the roots of exploitation are still encoded into DNA of the US, revealing dark and twisted memories. The election of Barack Obama did not usher in an era of post-racial justice. On the contrary, it laid bare the unaddressed blood-soaked agonies of the past. In 2018, it seems that the US has never transitioned into a post-racial society as it is divided as ever before. What is, now, the role of the UN human rights machinery to address the past, to provide remedy to human rights violations and to help towards a post-racialized society? The study is relevant and timely, as it inquires the impact of the engagement with the UN, if any, while elaborating upon the potential of the international human rights machinery in light of rising white supremacy in the US. Charleston, Charlottesville and now El Paso are painful evidence of the dormant white supremacist movement that has found encouragement in the public debate.<sup>3</sup> Moreover, the killings of Trayvon Martin, Michael Brown, Eric Garner, Sara Bland and many others sparked a debate on radicalized police violence and the lack of accountability. This, in turn led to decrease in the trust in the police among African Americans<sup>4</sup> and the rise of the Black Lives Matter Movement.<sup>5</sup>

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1 UNGA, *Report of the Working Group of Experts on People of African Descent on its Mission to the United States of America*, A/HRC/33/61/Add.2, para. 68.

2 Frantz Fanon, *Alienation and Freedom*, Bloomsbury Publishing, 2015, p. 524.

3 Vera Bergengruen & W. J. Hennigan, ‘*We Are Being Eaten from Within. Why America Is Losing the Battle Against White Nationalist Terrorism*’, at [time.com/5647304/white-nationalist-terrorism-united-states/](http://time.com/5647304/white-nationalist-terrorism-united-states/).

4 Pew Research Centre, ‘*Deep Racial, Partisan Divisions in Americans’ Views of Police Officers*’, at [www.pewresearch.org/fact-tank/2017/09/15/deep-racial-partisan-divisions-in-americans-views-of-police-officers/](http://www.pewresearch.org/fact-tank/2017/09/15/deep-racial-partisan-divisions-in-americans-views-of-police-officers/).

5 See also Garrett Chas, ‘*The Early History of the Black Lives Matter Movement, and the Implications Thereof*’, *Nevada Law Journal*, Vol. 18, Issue 3, 2018, pp. 1091-1112.

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As the Anti-Defamation League noted, from 2009 through 2018, the far right has been responsible for 73% of domestic extremist-related fatalities.<sup>6</sup> The paper provides an overview and analysis of the colonial past, the slave trade and racial laws and policies, and examines the role of the UN human rights machinery. The article also analyzes a selected interaction between the UN human rights machinery and the US and discusses the current race issue in the US. Finally, the article engages with the majoritarian resistance coming from the US to take heed of recommendations issued by the UN.

### 13.2 THE IMPACT OF SLAVE TRADE, JIM CROW AND THE RISE OF WHITE SUPREMACY

Slavery was introduced in the territories that today represent the US in the 16th century, much later than in Spanish South America and Brazil. The scope was to replace European and African indentured servants as the main source of plantation labor, at the time mostly employed for the cultivation of rice and tobacco. Between 1675 and 1695 the import expanded rapidly.<sup>7</sup> As the British Archives reveal

“Portugal and Britain were the two most ‘successful’ slave-trading countries accounting for about 70% of all Africans transported to the Americas. Britain was the most dominant between 1640 and 1807 when the British slave trade was abolished. It is estimated that Britain transported 3.1 million Africans (of whom 2.7 million arrived) to the British colonies in the Caribbean, North and South America and to other countries. The early African companies developed English trade and trade routes in the 16th and 17th centuries, but it was not until the opening up of Africa and the slave trade to all English merchants in 1698 that Britain began to become dominant.”<sup>8</sup>

Slavery’s diffusion escalated throughout the next centuries, with an estimated 645,000 slaves brought in mostly from Africa. Initially slaves were forcibly settled in the coastal southern colonies, while between the American Revolution and the American Civil War most were relocated in the inland regions. By the 1860 census the slave population of the US amounted to four million, *i.e.* about 13% of the population, and was distributed within 15 slave states, mostly belonging to the south. The American Civil War led to the abolition

6 ADL, ‘*Murder and Extremism in the United States in 2018*’, at [www.adl.org/media/12480/download](http://www.adl.org/media/12480/download).

7 Graziella Bertocchi, ‘The Legacies of Slavery in and out of Africa’, *IZA Journal of Development and Migration*, Vol. 5, 2016, pp. 13-14.

8 *The National Archive, Britain and the Slave Trade*, at [www.nationalarchives.gov.uk/slavery/pdf/britain-and-the-trade.pdf](http://www.nationalarchives.gov.uk/slavery/pdf/britain-and-the-trade.pdf).

of slavery in 1865.<sup>9</sup> British colonialism, in the end, did not use slavery for the creation of a colonial state on the back of cheap labor, but it created the conditions of white supremacy.<sup>10</sup> British colonialism has not designed slave trade – it was white British colonialism that was designed by and benefitted from slave trade. The wealth of the British Empire was built upon the racism and white supremacy – the seeds that flourish in the contemporary society of the US.

The evolving Jim Crow law, subsequently, was a racial segregation system, which operated mostly in southern and border states, between 1877 and the mid-1960s. Jim Crow was more than a series of strict anti-black laws: it was a way of life. Under Jim Crow, African Americans were given the status of second-class citizens.<sup>11</sup> Jim Crow helped to make anti-black racism appear right. Many Christian ministers taught that whites were the Chosen people, blacks were cursed to be servants, and God supported racial segregation. Many scientists and teachers at every educational level, supported the belief that blacks were intellectually and culturally inferior to whites. Pro-segregation politicians gave persuasive speeches on the great danger of integration: the destruction of the purity of the white race. Newspaper and magazine writers routinely referred to blacks as niggers, coons, and darkies; and worse, their articles reinforced anti-black images and ideas.<sup>12</sup> Two incidents in US history marked a change in race relations, namely *Brown v. Board of Education* and the brutal killing of Emmett Till.<sup>13</sup> In a climate of internationalization of the race issue, the world took more and more notice of the struggle of African Americans, with the forum of the UN.<sup>14</sup> As it is written,

9 See also Ira Berlin, *Generations of Captivity: A History of African American Slaves*, Harvard University Press, 2003.

10 David Olusoga, 'The Roots of European Racism Lie in the Slave Trade, Colonialism – and Edward Long', at [www.theguardian.com/commentisfree/2015/sep/08/european-racism-africa-slavery](http://www.theguardian.com/commentisfree/2015/sep/08/european-racism-africa-slavery).

11 Aldon D. Morris, 'A Retrospective on the Civil Rights Movement: Political and Intellectual Landmarks', *Annual Review of Sociology*, Vol. 25, 1999, pp. 517-539.

12 Ta-Nehesi Coates, 'The Case for Reparations', at [www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/](http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/). Aldon Morris explains further that the Jim Crow regime was a major characteristic of American society in 1950 and had been so for over seven decades. Following slavery, this became the new form of white domination, which insured that Blacks would remain oppressed well into the twentieth century. Racial segregation was the linchpin of Jim Crow, for it was an arrangement that set Blacks off from the rest of humanity and labeled them as an inferior race. Elsewhere I characterized Jim Crow as a tripartite system of domination, because it was designed to control Blacks politically and socially, and to exploit them economically. In the South, Blacks were controlled politically because their disenfranchisement barred them from participating in the political process. As a result, their constitutional rights were violated because they could not serve as judges nor participate as jurors. Id.

13 Id.

14 Jacquelyn Dowd Hall, 'The Long Civil Rights Movement and the Political Uses of the Past', *The Journal of American History*, Vol. 91, Issue 4, 2005, pp. 1249-1250.

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“on balance, historians have emphasized the effectiveness of this strategy and viewed the movement’s successes in the 1950s as ‘at least in part a product of the Cold War.’ Seen through the optic of the long civil rights movement, however, civil rights look less like a product of the Cold War and more like a casualty. That is so because antifascism and anticolonialism had already internationalized the race issue and, by linking the fate of African Americans to that of oppressed people everywhere, had given their cause a transcendent meaning.”<sup>15</sup>

The Civil Rights Movement, indisputably, had a decisive impact on the enhancement of the status of African Americans, with a wide range of successes to present: the Civil Rights Act, Voting Rights Act and the Fair Housing Act are the few milestones among the many which can be contributed to the constant pressure exerted by the Civil Rights Movement.<sup>16</sup> Nonetheless, it is Antony Anghie who points out that

“slavery was crucial to the making of the U.S. and, more broadly, the modern world. And yet, international law’s attempts to deal with that past and its aftermath seem inadequate and inapposite, whatever the progress that has been made in abolishing slavery. The experience of slavery offers us an epistemology, a framework for imagining a different world and a lens from which to continue to think of how oppression operates in the world.”<sup>17</sup>

To this end, what is the role of the UN to rectify the ills of British colonialism inflicted upon the US that is still pertinent in its *modus operandi*?

## 13.3 THE ROLE OF THE UN HUMAN RIGHTS MACHINERY AND THE US

The UN human rights machinery consists of two strands, the charter-based and treaty-based bodies.<sup>18</sup> The US has signed nine human rights treaties, while ratifying five of them. It has accepted the inquiry procedure to one treaty, namely the inquiry procedure under

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15 Id.

16 Douglas S. Massey, ‘The Past & Future of American Civil Rights’, *Daedalus – the Journal of the American Academy of Arts & Sciences*, Vol. 140, Issue 2, 2011, p. 42.

17 Antony Anghie, ‘Slavery and International Law: The Jurisprudence of Henry Richardson’, *Temple International Law and Comparative Law Journal*, Vol. 31, Issue 1, 2017, p. 23.

18 Sir Nigel Rodley, ‘United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights: Complementarity or Competition?’, *Human Rights Quarterly*, Vol. 25, Issue 4, 2003, p. 883.

the Convention against Torture.<sup>19</sup> The focus of treaty bodies is to monitor the compliance of state parties to the human rights treaties and provide guidance and interpretation of international human rights standards.<sup>20</sup> In particular, the US has signed the Convention on the Elimination of All Form of Racial Discrimination on 28 September 1966, yet they had ratified this Convention only on 21 October 1994. One of the most important articles and an international standard to tackle racial discrimination is Article 2 of the Convention.<sup>21</sup>

The second strand is the charter-based body, *i.e.* the UN Human Rights Council (succeeding the UN Human Rights Commission) which was created in 2006. At its inception in 2006, the Bush administration refused to join the UN Human Rights Council due to various reservations the administration had towards this new body.<sup>22</sup> The UN Human Rights Council offers a wide array of human rights tools, – *inter alia* – the Universal Periodic Review, Special Sessions, Complaint Procedure and Special Procedures.

The latter mechanism will be subject to further investigation in this article. To this end, the UN Human Rights Council is entrusted to promote and protect human rights globally with its wide spectrum of human rights tools.<sup>23</sup> The US joined the UN Human Rights Council under the Obama administration and was elected three times to it.<sup>24</sup> In June of 2018 the Trump administration decided to leave the UN Human Rights Council.<sup>25</sup>

Meanwhile, the Office of the High Commissioner for Human Rights (OHCHR) has streamlined activities for the promotion of human rights.<sup>26</sup> Promotional activities are weaved through all parts of the UN human rights machinery, charter- and treaty-based bodies alike. Fact-finding, information sharing, cooperation, constructive dialogue, technical assistance, capacity building, peer support and review, can be effective tools in promoting human rights within states.<sup>27</sup> The problem, of course, is the human-rights protection

19 Ratification status for the US at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN).

20 Rodley 2003, p. 888.

21 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969.

22 See also Rosa Freedman, 'The United States and the United Nations Human Rights Council: An Early Assessment', *St. Thomas Law Review*, Vol. 23, Issue 1, 2010, pp. 89-128.

23 UNGA Resolution 60/251 paved the way for the creation of the UN Human Rights Council. UNGA, A/RES/60/251.

24 See the list of past members of the Human Rights Council at [www.ohchr.org/EN/HRBodies/HRC/Pages/Past-Members.aspx](http://www.ohchr.org/EN/HRBodies/HRC/Pages/Past-Members.aspx).

25 See also 'The Art of the Empty Gesture: America's Spat with the UN Human Rights Council', *The Economist*, Vol. 414, 2018; *The United States and the Human Rights Council – A Tumultuous Relationship?*, Heinrich-Boell-Stiftung North America, at [www.us.boell.org/2017/09/13/united-states-and-human-rights-council-tumultuous-relationship](http://www.us.boell.org/2017/09/13/united-states-and-human-rights-council-tumultuous-relationship).

26 UNGA Resolution, A/RES/48/141.

27 Henry J. Steiner, 'International Protection of Human Rights', in Malcolm D. Evans (ed.), *International Law*, Oxford University Press, 2018, p. 797.

mandate. Developing and promoting human rights are aimed at the medium- to long-term. They require dialogue, cooperation and constructive engagement. Protecting human rights focuses on the short-term. States are far less willing to engage with protection activities because they impact upon the immediate situation within a country.<sup>28</sup> And a key weakness of UN human rights bodies is that, while they are set up for dialogue and engagement, they lack the teeth to effectively protect rights where a state is not willing to cooperate. Unlike the UN Security Council, human rights bodies do not have enforcement powers. Unlike international financial institutions, the UN human rights machinery does not have any leverage over states that fail to comply with their obligations. That is one main flaw in the system, and one that cannot easily be resolved. Ever since its establishment, the UN has attempted to rectify past ills to a certain extent, especially it tried to overcome the persistent ills created by colonialism and create favorable conditions for all human beings regardless of race, gender and creed. In this context it is necessary to highlight one passage of the Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the UNESCO at its twentieth session, on 27 November 1978, which highlights that the member states are

“mindful of the process of decolonization and other historical changes which have led most of the peoples formerly under foreign rule to recover their sovereignty, making the international community a universal and diversified whole and creating new opportunities of eradicating the scourge of racism and of putting an end to its odious manifestations in all aspects of social and political life, both nationally and internationally.”<sup>29</sup>

It was Malcolm X who saw the potential force of rigorous human rights engagement and the international forum to advance the African American issue. In particular, his strategy was to dismantle the African perception of Black Americans as US citizens, while creating an identity of African Americans who are subjected to racial oppression and who are colonized by white people.<sup>30</sup> Malcolm X enunciated at a founding rally of an organization he wanted to create that it was essential to internationalize the raise issue by

28 Kirssa Cline Ryckman, ‘Ratification as Accommodation? Domestic Dissent and Human Rights Treaties’, *Journal of Peace Research*, Vol. 53, Issue 4, 2016, p. 583.

29 Declaration on Race and Racial Prejudice, Adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978, at [www.ohchr.org/EN/ProfessionalInterest/Pages/RaceAndRacialPrejudice.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/RaceAndRacialPrejudice.aspx).

30 William W. Sales Jr., *From Civil Rights to Black Liberation: Malcolm X and Unity*, South End Press, 1999, p. 101.

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“taking advantage of the Universal Declaration of Human Rights, the United Nations Charter on Human Rights, and on that ground bring it into the UN before a world body wherein we can indict Uncle Sam for the continued criminal injustices that our people experience in this government.”<sup>31</sup>

This article does not warrant a lengthy discussion surrounding the UN human rights machinery at large and a discussion of the historical evolution from the UN Human Rights Commission to the UN Human Rights Council. The article will however, focus on two more recent engagements of the UN human rights machinery with the US: interactions with the Committee on the Elimination of All Forms of Racial Discrimination in 2014 and the visit of the Working Group to the US in 2016, its subsequent outcome and its potential impact of these engagements against the background of the past and in light of current developments.

#### 13.4 THE ENGAGEMENT WITH THE INTERNATIONAL HUMAN RIGHTS MACHINERY

##### 13.4.1 *The Appearance before the Committee on the Elimination of All Forms of Racial Discrimination*

Ever since the US ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1994, it has submitted its state reports only on three occasions: 2001, 2008 and 2014. Long had been resistance in the US to adhere to international human rights standards – as Bradley points out,

“some conservatives in the United States, especially in the South, were concerned that the national government would use international human rights law to achieve civil rights reform that was otherwise beyond the scope of either Congress’s authority or what the Constitution mandated.”<sup>32</sup>

During an appearance during the Obama era, the state delegation pointed out to the protections in place in the US to safeguard aforementioned Article 2 of the Convention. To this end, the state delegation stated *inter alia* that

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31 Malcolm X, ‘The Founding Rally of the OAAU, 28 June 1969’, in *By Any Means Necessary, Speeches, Interviews and A Letter by Malcolm X*, Pathfinder Press, 1970, p. 59.

32 Curtis A. Bradley, ‘The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism’, *Chinese Journal of International Law*, Vol. 9, 2010, p. 325.



“racial discrimination by the government is prohibited at all levels. Prohibitions cover all public authorities and institutions as well as private organizations, institutions, and employers under many circumstances. For a description of the general legal framework and policies addressing racial discrimination, see paragraphs 142-175 of the common core document.

18. Recent laws relating to discrimination, including discrimination based on race, color, and national origin, or minority groups, include: (i) The Lilly Ledbetter Fair Pay Act, signed by President Obama in 2009, provides that the statute of limitations for bringing a wage discrimination claim, including claims; (ii) alleging wage discrimination based on race or national origin, runs from the time an individual is ‘affected by application of a discriminatory compensation decision including each time wages, benefits, or other compensation is paid.’ The law overrides a Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 500 U.S. 618 (2007). [...]”

Rebuking this, however, Racial Justice Now! stated that

“42. The United States has violated Article 2-1(a)19, 2-1(b)20, 2-1(d)21 by not eliminating all forms of racial discrimination. The Court of the United States interpretation of Title VI of the Civil Rights Act of 1964 is that it forbids intentional discrimination. The law permits all other forms of discrimination including negligent discrimination. There is nothing on in the constitution that explicit limits discrimination law to intentional. Since most discrimination is based non-intentional conduct, the law permits most discrimination.

43. Furthermore, United States has blocked direct access to the court for disparate impact discrimination. In 2001, in *Alexander v. Sandoval*, the Supreme Court held that individuals could not sue for disparate impact discrimination because it was a right of action created through regulation. The Court held that the only recourse was to file a complaint with the appropriate government regulation. This could have been remedied by the passage of a law granting direct access to the courts. However, in the 13 years since that decision there has been no attempt to solve this problem by any president or the congress. This is devastating since most discrimination is disparate impact or negligent discrimination based on implicit bias rather than intent. Thus, the United States

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has allowed a law to stand that perpetuates racial discrimination rather than eliminate it.”<sup>33</sup>

Echoing this, the Committee noted in its concluding observation that

“it thus reiterates its previous concern that the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect (para. 10). The Committee expresses further concern at the lack of progress in withdrawing or narrowing the scope of the reservation to Article 2 of the Convention and in prohibiting all forms of discriminatory acts perpetrated by private individuals, groups or organizations (para. 11) (Arts. 1(1), 2 and 6).”<sup>34</sup>

What becomes evident is that, while the US has enacted different laws to ameliorate the state of African Americans (and other minorities) this has rarely translated into feasible results. On the contrary, the heritage of white colonialism became an impeding grain in the state apparatus. Following this, the article will amplify the most recent human rights engagement on race issues, namely the visit of the UN Working Group of Experts on People of African Descent to the US in 2016.

#### 13.4.2 *The Visit of the UN Working Group of Experts on People of African Descent to the US*

The Working Group was established in 2002 by the Commission on Human Rights with its Resolution 2002/68, one of the many Special Procedures under the UN Human Rights Council.<sup>35</sup> The creation of this Special Procedure was triggered by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa in 2001. When it adopted the Durban Declaration and Program of Action, it requested the Commission on Human Rights

33 Response to the Periodic Report of the United States of June 12, 2013, accompanied by the Common Core Document and Annex submitted on December 30, 2011, to the UN Committee on the Elimination of Racial Discrimination, submitted by Racial Justice Now!

34 Concluding Observations, CERD/C/USA/CO/7-9, p. 2.

35 OHCHR, E/CN/4/RES/2002/68.

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“to consider establishing a working group or other mechanism of the United Nations to study the problems of racial discrimination faced by people of African descent living in the African Diaspora and make proposals for the elimination of racial discrimination against people of African descent.”<sup>36</sup>

The Working Group’s mandate, as established under the aforementioned resolution was renewed by five more resolutions.<sup>37</sup> In 2008, the UN Human Rights Council entrusted the Working Group

“(a) To study the problems of racial discrimination faced by people of African descent living in the diaspora and, to that end, gather all relevant information from Governments, non-governmental organizations and other relevant sources, including through the holding of public meetings with them; [...]  
(e) To address all the issues concerning the well-being of Africans and people of African descent contained in the Durban Declaration and Program of Action;  
(f) To elaborate short-, medium- and long-term proposals for the elimination of racial discrimination against people of African descent, bearing in mind the need for close collaboration with international and development institutions and the specialized agencies of the United Nations system to promote the human rights of people of African descent [...]”<sup>38</sup>

At the invitation of the Government of the US, the Working Group of Experts undertook a visit to the country from 19 to 29 January 2016. The members of the delegation were Mireille Fanon Mendès-France, Sabelo Gumedze and Ricardo Sunga III.<sup>39</sup> On this opportunity, the Working Group visited Washington, D.C.; Baltimore, Maryland; Jackson, Mississippi; Chicago, Illinois; and New York City. The Working Group met with representatives of several government departments and offices.<sup>40</sup> They also met hundreds of African Americans from communities with a large population of people of African descent living in the suburbs, as well as with lawyers, academics and representatives of non-governmental organizations.<sup>41</sup> The Working Group was, however, not given access, contrary to the terms of reference for special procedure mandate holders, to the Mississippi State Penitentiary

36 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Section II. Victims of Racism, Racial Discrimination, Xenophobia and Related Intolerance, p. 23.

37 For more information see CHR 2003/30, 2008/HRC/RES/9/14, 2011/HRC/RES/18/28, 2014/HRC/RES/27/25 and A/HRC/RES/36/23.

38 UNGA, 2008/HRC/RES/9/14, paras. a-f.

39 UNGA, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, A/HRC/33/61/Add.2, para. 1.

40 Id. para. 2.

41 Id. para. 3.

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(Parchman Farm).<sup>42</sup> Concluding this visit, the Working Group issued its report to the international human rights community by presenting it to the UN Human Rights Council at its 33rd Session between 13 and 30 of September 2016.<sup>43</sup> The Working Group, not only describes the situation, highlights good practices, identifies the main challenges, but also makes concrete recommendations. This is, evidently, an important aspect of the Special Procedures: they provide an impartial and unbiased view of an independent expert view on human rights issues, offering an important venue also for lawyers to lodge urgent appeals and engage directly during on-site visits to increase the international attention of domestic cases.<sup>44</sup>

When issuing the report after its visit to the US, the Working Group acknowledged that experiencing racially motivated discrimination is routine for African Americans and it hinders their effective enjoyment of economic, social and cultural rights.<sup>45</sup> The fact is that a particularly heavy share of the burden of current economic changes is borne by poor African Americans, which is not simply an artifact of the uncompetitive labor market position of many black workers and the civil rights revolution of the 1960s has by no means eradicated racial discrimination in American social and economic life.<sup>46</sup> For example, the Working Group, through authoritative interaction with governmental entities and non-governmental organizations, established that the racialized history has its reverberating impact on the contemporary human rights violations. By way of example, the Working Group ascertained that

“the cumulative impact of racially motivated discrimination faced by African Americans in the enjoyment of their rights 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.”<sup>47</sup>

Not only here, but the Working Group ascertained problematic issues such as, inter alia, ‘racial steering’ leading towards gentrification of neighborhoods, limited access to healthy

42 Id. para. 5.

43 UN Human Rights Council, at [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages/33RegularSession.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages/33RegularSession.aspx).

44 OHCHR, Urgent appeals, at [www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Appeals.aspx](http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Appeals.aspx); *A Guide for Engaging with UN Special Procedures Mandate Holders*, FLAC Ireland, at [www.flac.ie/download/pdf/guide\\_for\\_engagement\\_with\\_un\\_special\\_procedures\\_mandate\\_holders.pdf](http://www.flac.ie/download/pdf/guide_for_engagement_with_un_special_procedures_mandate_holders.pdf).

45 UNGA, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, A/HRC/33/61/Add.2, para. 43.

46 Id. paras. 50-54.

47 Id. para. 43.

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food and precarious employment of African Americans.<sup>48</sup> But in particular, the Working Group dedicated an extended examination and observation of the justice system, by pointing out at one point out that

“killings of unarmed African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system. The Working Group heard testimonies that African Americans face a pattern of police practices which violate their human rights: they are disproportionately targeted for police surveillance, and experience and witness public harassment, excessive force and racial discrimination.”<sup>49</sup>

International standards offer a yardstick, a clear indication of what needs to be achieved to improve human rights in the US. It was Malcolm X who had enunciated that by referring to human rights (rather than invoking civil rights), Black Americans were in a position to internationalize their movement and take their grievances beyond the domestic jurisdiction of the US.

“All the nations that signed the charter of the UN came up with the Declaration of Human Rights and anyone who classifies his grievances under the label of ‘human rights’ violations, those grievances can then be brought into the United Nations and be discussed by people all over the world. For as long as you call it ‘civil rights’ your only allies can be the people in the next community, many of whom are responsible for your grievance. But when you call it ‘human rights’ it becomes international. And then you can take your troubles to the World Court. You can take them before the world. And anybody anywhere on this earth can become your all.”<sup>50</sup>

The Special Procedure mandates, to this end, to provide a “microcosm for the issue of rights proliferation.”<sup>51</sup> The key aspect for them is to have some effect and provide guidance in a short time frame.<sup>52</sup> For this purpose, the Working Group concluded their visit with

48 Id. paras. 49, 51 and 55.

49 Id. para. 24.

50 Malcolm X, *Not Just An American Problem, But A World Problem*, Address delivered in the Corn Hill Methodist Church, Rochester, New York, 16 February 1965, at [www.nationalhumanitiescenter.org/pds/maai3/community/text10/malcolmxworldproblem.pdf](http://www.nationalhumanitiescenter.org/pds/maai3/community/text10/malcolmxworldproblem.pdf).

51 Rosa Freedman & Jacob Mchangama, ‘Expanding or Diluting Human Rights? The Proliferation of United Nations Special Procedures Mandate’, *Human Rights Quarterly*, Vol. 38, 2016, p. 192.

52 Rodley 2003, p. 907.

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observing best practices and effective measures in the US,<sup>53</sup> but also offering key recommendations to the US to remedy the domestic human rights violations. A comprehensive reproduction of the recommendations will not be possible here. Among the many important aspects that were stressed, and recommendations were issued upon, however, was the need for transitional justice.<sup>54</sup> One recommendation is of worthy consideration

“Community policing strategies should be developed to give the community control of the police that are there to protect and serve them. The Working Group recommends that communities establish boards that would elect police officers they want playing this important role.”<sup>55</sup>

All in all, by being and “grounding themselves in situations of mural urgency, rapporteurs hold the potential to operationalize abstract human rights norms in specific domestic contexts, giving those norms practical meaning.”<sup>56</sup> As it was illustrated, Special Procedures translate universal principles into localized solutions for change, while also having reverberating effect on the international plane.<sup>57</sup> Finally, visits of the Special Procedures, such as the examined one, make a unique contribution to the international human rights system, identify the crises and provide valuable international expertise to find solution to encounter them.

### 13.5 CURRENT CLIMATE ON RACE IN THE US

Race as a prescriptive schema, as established by early Europeans in the US, was reproduced and reinforced in the institutional and individual sphere. The question of race is also fueled and maintained by the current administration.<sup>58</sup> The former US Supreme Court Justice Thurgood Marshall made a nimble-witted assertion in his dissenting opinion in *Regents of University of California v. Bakke*:

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53 For example, the Working Group welcomed the My Brother’s Keeper and White House Initiative to narrow the educational gaps and increase African American livelihood chances, see UNGA, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, A/HRC/33/61/Add.2, para. 61.

54 Id. paras. 90-93.

55 Id. para. 108.

56 Joanna Naples-Mitchell, ‘Perspectives of UN Special Rapporteurs on their Role: Inherent Tensions and Unique Contributions to Human Rights’, *The International Journal of Human Rights*, Vol. 15, Issue 2, 2011, p. 243.

57 Id. p. 244.

58 Jesse Washington, *African-Americans See Painful Truths in Trump Victory*, at [www.theundefeated.com/features/african-americans-see-painful-truths-in-trump-victory/](http://www.theundefeated.com/features/african-americans-see-painful-truths-in-trump-victory/).

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“For several hundred years Negroes have been discriminated against, not as individuals, but rather solely because of the color of their skins. It is unnecessary in twentieth-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact. It is not merely the history of slavery alone but also that a whole people were marked as inferior by the law. And that mark has endured.”<sup>59</sup>

Two distinct moments in history were missed to remedy the mark of racial injustice: first, the Reconstruction period following the Civil War and, second, the Civil Rights Era.<sup>60</sup> Unsurprisingly, the Working Group had pointed out to impunity, lack of accountability and absence of dialogue which create an atmosphere of distrust and further entrench injustice towards African Americans.<sup>61</sup> With, according to a recent poll, a majority of the population saying that race relations have worsened under the current administration,<sup>62</sup> Connie M. Razza poignantly sums up “social exclusion is a set of decisions and actions” by the “economically and politically powerful” to

“[deploy] white supremacist and racist ideas to further concentrate their wealth and power. They have deputized others – including people who are not white – to enforce the social exclusion of black people through simple and seemingly individual acts, as well as through sweeping rules.”<sup>63</sup>

13.6 **MAJORITARIAN RESISTANCE IN THE US TO INTERNATIONAL HUMAN RIGHTS ENGAGEMENT**

Kathleen Cleaver elucidates that leaders of the US have attempted to “minimize the international, broad concept of human rights that motivated us and turn it into something smaller and less threatening.”<sup>64</sup> Usually, any government will not approve on the report

59 *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 400 (1978), Marshall dissenting.

60 Desmond S. King & Jennifer M. Page, ‘Towards Transitional Justice? Black Reparations and the End of Mass Incarceration’, *Ethnic and Racial Studies*, Vol. 41, Issue 4, 2018, p. 741.

61 UNGA, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, A/HRC/33/61/Add.2, paras. 31, 46 and 47.

62 National Tracking Poll Politico, at [www.politico.com/f/?id=00000165-16f9-d25f-abef-37f8e0ca0001](http://www.politico.com/f/?id=00000165-16f9-d25f-abef-37f8e0ca0001).

63 Connie M. Razza, ‘Social Exclusion: The Decisions and Dynamics that Drive Racism’, *Demos*, May 2018, at [www.demos.org/sites/default/files/publications/Social%20Exclusion](http://www.demos.org/sites/default/files/publications/Social%20Exclusion).

64 Susie Day & Laura Whitehorn, ‘Human Rights in the United States: The Unfinished Story of Political Prisoners and COINTELPRO’, *New Political Science*, Vol. 23, Issue 2, 2001, p. 289.

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in its entirety.<sup>65</sup> However, as Mertus stated, the US tends to place its own sovereignty above international human rights standards because it applies those norms in a selective and self-serving manner, both domestically and internationally.<sup>66</sup> Finally, as one commentator notes,

“abroad the US defended human rights in helping defeat brutal dictatorships in the world wars and leading subsequently the free world. Yet no ‘exceptionalism’ is perfect. Today in the US far too much violence and shameful discrimination and social injustice remain.”<sup>67</sup>

With the current administration in power, international human rights engagement becomes even more difficult. The far right is rising in an environment that is stimulated and maintained by white American exceptionalism. The advocates of the view hold the governmental power.<sup>68</sup>

### 13.7 CONCLUSION

Many community members, human rights activists, understand the impact and long-term consequences of trans-Atlantic slave trade, Jim Crow laws, lynchings, housing and labor market discrimination and police brutality, which figure in the contemporary discourse in the US. The international community, predominantly epitomized by the UN human rights machinery, can and must concentrate on decreasing the gravity and scope of racist practices, prevailing racial injustice and the extent to which their effects continue to this day. The UN offers solutions, ideas, innovations in a communitarian spirit where dialogue prevails, and engagement means support and understanding. The impetus provided by the human rights engagement must usher in follow-up efforts on the ground.

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65 US Mission to Geneva, Dialogue with Working Group of Experts on People of African Descent: “[T]he United States has made great progress toward countering racial discrimination, xenophobia, and related forms of intolerance, but we acknowledge much remains to be done. Although we may not agree with all of its factual or legal conclusions, we thank the Working Group for its findings from its constructive visit.”, at [www.geneva.usmission.gov/2016/09/26/dialogue-with-working-group-of-experts-on-people-of-african-descent/](http://www.geneva.usmission.gov/2016/09/26/dialogue-with-working-group-of-experts-on-people-of-african-descent/).

66 Julie Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy*, Routledge, 2014, p. 33.

67 Donald McKale, *Opinion: American Exceptionalism Hijacked by Chauvinism*, at [www.eu.greenvilleonline.com/story/opinion/2018/04/30/opinion-american-exceptionalism-hijacked-chauvinism/559128002/](http://www.eu.greenvilleonline.com/story/opinion/2018/04/30/opinion-american-exceptionalism-hijacked-chauvinism/559128002/).

68 See also Serge Ricard, ‘The Trump Phenomenon and the Racialization of American Politics’, *Revue LISA/LISA e-journal*, Vol. 16, Issue 2, 2018.



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These follow-up efforts, eventually, must translate into local organizing efforts.<sup>69</sup> Lawyers, activists, academics, community organizers *et al.* must be all involved in this endeavor so that international human rights engagement can make meaningful impact. The schism between internationalists and isolationists in the US over the UN's human rights intervention, is largely due to the suspicion over any alien intervention (a prevailing note that is prevalent in other countries as well), a reflex recalling memories of domestic challenge posed by civil rights groups, but in particular also with regards to a certain sense of self-indulged human rights superiority that exists in the US. Malcolm X wanted

“the United Nations project as his monument-wanted said of him that he had renewed the link between black America and the mother continent and so had been able to bring the plight of his people before a tribunal of the nations of the world.”<sup>70</sup>

The ideological basis for Malcolm X's UN project was premised upon the US' historical failure to guarantee civil rights to its citizens of color. In contrast to the US' questionable approach to civil rights, Malcolm X considered the UN Charter, the UDHR, and the Genocide Convention as an uncompromising resource for human rights.<sup>71</sup> Speaking with US Justice Thurgood Marshal, if the mark of racial injustice must vanish from the US, then engagement with the international community is needed more than ever before.

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69 Justin Hansford & Meena Jagannath, 'Ferguson to Geneva: Using the Human Rights Framework to Push forward a Vision for Racial Justice in the United States after Ferguson', *Hastings Race and Poverty Law Journal*, Vol. 12, 2015, p. 154.

70 Peter Goldman, *The Life and Death of Malcolm X*, Harper & Row Publishers, 1973, p. 240.

71 Charles Lewis III Nier, 'Guilty as Charged: Malcolm X and His Vision of Racial Justice for African Americans Through Utilization of the United Nations International Human Rights Provisions and Institutions', *Penn State International Law Review*, Vol. 16, Issue 1, p. 189.