

Mandates of the Working Group of Experts on People of African Descent; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
AL USA 13/2018

17 July 2018

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 36/23 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged racism, racial discrimination, afrophobia, xenophobia, and related intolerance faced by African-Americans who are being labelled and possibly targeted by the Federal Bureau of Investigation (FBI) as "Black Identity Extremists" (BIE).

According to the information received:

The FBI Domestic Terrorism Analysis Unit, Counterterrorism Analysis Section (CTAS), of the Counterterrorism Division, issued an Intelligence Assessment on 3 August 2017, entitled "Black Identity Extremists Likely to Target Law Enforcement Officers."

BIEs are defined in the report as "individuals who seek, wholly or in part, through unlawful acts of force or violence, in response to perceived racism and injustice in American society and some do so in furtherance of establishing a separate black homeland or autonomous black social institutions, communities, or governing organizations within the United States. This desire for physical or psychological separation is typically based on either a religious or political belief system, which is sometimes formed around or includes a belief in racial superiority or supremacy. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may not constitute extremism, and may be constitutionally protected."

The report claims the existence of a BIE "movement" and deems it a violent threat to law enforcement. It links six incidents to this "movement," including two to BIE "ideology," and four to a mix of BIE "ideology" and Moorish sovereign citizen extremist (SCE) ideology, a category of SCE ideology.

The report concludes that "BIEs have historically justified and perpetuated violence against law enforcement, which they perceived as representative of the institutional oppression of African-Americans, but had not targeted law

enforcement with premeditated violence for the nearly two decades leading up to the lethal incidents observed beginning in 2014.” The report states “it is very likely this increase began following the 9 August 2014 shooting of Michael Brown in Ferguson, Missouri, and the subsequent Grand Jury November 2014 declination to indict the police officers involved”.¹ It further states “recent lethal violent incidents may be indicative of a resurgence of targeted violence within the BIE movement.”

On 14 November 2017, during an oversight hearing before the House Judiciary Committee, Attorney General Jeff Sessions stated that he had not yet read the FBI Intelligence Assessment. There have been no public comments made by your Excellency’s government on the matter since.

We would like to express concern that the FBI Intelligence Assessment in question erroneously presumes the existence of a violent extremist “movement” against law enforcement that is comprised solely of African-Americans. There are many groups with predominantly black members who take issue with racial injustice, but who do not incite violence against law enforcement or commit terrorist acts. Moreover, these groups have various areas of focus and concerns about the human rights of people of African descent, and there is no indication that there exists one unifying ideology or movement amongst African-American activists or protestors.

The consequences of the dissemination of such a report and any potential measures taken by the Government in association with it are potentially severe. We are concerned that the conclusions of the report may lead to further manifestations of racial discrimination and intolerance as well as surveillance of individuals and groups who are believed to be “black identity extremists”. Many Muslims of African descent, for example, who make up almost 25% of the population of Muslims in the United States, are already subjected to over-surveillance and over-policing. The above-stated allegations have also brought to the fore the need for the US Government to address manifestations of racial discrimination faced by African-Americans within the intelligence, police and justice systems.

During its visit to the US in 2016, the Working Group of Experts on People of African Descent was alerted of the harmful impact of FBI’s Cointelpro program of the 1960s and 1970s, which investigated and intimidated black civil rights groups, including by disseminating false narratives of civil rights leaders of African descent. A Senate committee in 1975 revealed that the Cointelpro program included infiltration and causing dissension within organizations, stoking rivalries, and even placing agent provocateurs inside protest movements to initiate violence. The Working Group is concerned that many of the same consequences will arise as a result of the Intelligence Assessment in question. The issuance of this report may also result in an increase of private violence against black activists, by emboldening a culture of fear and hatred.

¹ See also AL USA 14.2014.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations or concerns.
2. Please provide any additional identifying information on the “BIE groups” discussed in the FBI Intelligence Assessment and on how these groups were selected as fitting the stated definition.
3. Please provide any updates on measures undertaken by the Government pursuant to the Intelligence Assessment in question.
4. Please provide information on the steps taken by your Government to prevent racism, racial discrimination, afrophobia, xenophobia, and related intolerance and to promote and protect the human rights of people of African descent within the intelligence and security service and in its law enforcement policies and practices.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Michal Balcerzak
Chair-Rapporteur of the Working Group of Experts on People of African Descent

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex
Reference to international human rights law

In connection with the above concerns, we would like to draw your attention to your Excellency's Government's obligations under international human rights law. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which the United States of America ratified on 21 October 1994, provides that States Parties undertake "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, equality before the law."

We further remind your Excellency of General Recommendation 35 of the Committee on the Elimination of Racial Discrimination, which, under paragraph 7, states that racist hate speech is "not confined to explicitly racial remarks." The Committee held that speech attacking particular racial groups may employ indirect language to disguise its objectives. In line with their obligations under the Convention, States parties are to give due attention to all manifestations of racist hate speech and to take effective measures to combat them.

We further remind your Excellency of General Recommendation 34 of the Committee on the Elimination of Racial Discrimination, which, under paragraph 27, holds that states shall “take measures to prevent any dissemination of ideas of racial superiority or inferiority or ideas which attempt to justify violence, hatred, or discrimination against people of African descent.” Further, paragraph 31 holds that states shall take action to counter any tendency to stereotype or profile people of African descent on the basis of race, including by law enforcement officials.

We further remind your Excellency of General Recommendation 31 of the Committee on the Elimination of Racial Discrimination, which, under Step A, Part 2, Subsection 4(b), considers the potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism, as well as legislation “that has the effect of penalizing without legitimate grounds certain groups or members of certain communities.” It calls upon States to seek to eliminate the discriminatory effects of such legislation