

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the human rights of migrants; and the Working Group on discrimination against women and girls

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the human rights of migrants; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/35, 34/21, and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the increase in racist attacks and other xenophobic incidents, including physical and verbal violence against Asian descendants in the United States, as well as alleged lack of measures by the U.S. authorities to effectively combat such incidents.

According to the information received:

Racially motivated violence and other incidents against Asian-Americans have reached an alarming level across the United States since the outbreak of COVID-19. Chinese Americans and other Asian-Americans, including Korean, Japanese, Vietnamese, Filipino, and Burmese descent, among others, have been subject to racist, xenophobic attacks. In March 2020, the Federal Bureau of Investigation reportedly warned of a potential surge in COVID-19-related hate crimes against Asian-Americans. Indeed, more than 1,800 racist incidents against Asian-Americans in the United States have been reported over an 8-week period from March to May 2020. This also has a very negative impact on migrants of Asian origin.

Attacks included physical assaults, vandalism, verbal harassment, denial of access to services and public spaces. Reportedly, victims experienced being spat on, blocked from public transportation, discriminated against in workplaces, shunned, beaten, stabbed, and insulted as transmitters of the coronavirus. Women were reportedly harassed more than twice than men.

Please find below a non-exhaustive list of anti-Asian racist and xenophobic incidents against Asian-Americans reported by individuals affected by the above-mentioned circumstances.

Physical attacks:

Reported physical attacks generally occurred on public streets, public transportation, at schools, and in the neighborhoods of residence. The attacks ranged from pushing, spitting, and punching, to stabbing in severe cases, and attacks with a variety of weapons.

One submission reported that perpetrators struck victims from behind or approached them in their cars, throwing objects and yelling racial slurs.

Based on another report, an Asian man was slammed to the floor by his neighbor who had lost his job in the wake of the COVID-19 pandemic. The attacker yelled, “I lost my job [be]cause [of] Asians.” In another case, an older white man pushed a seven-year-old biracial (half-white, half-Asian) girl from her bike in the park and yelled at her white dad: “Take your hybrid kids home because they’re making everyone sick.” A fatal attack took place in March when a man stabbed members of an Asian family inside a supermarket in Texas. Believing the family to be Chinese and “carriers” of the coronavirus, the attacker assaulted the family members allegedly in order to stop them from infecting others. This nationally known case has left Asian-American communities fearful for their safety.

Vandalism:

Asian-American communities, including those in Seattle, San Francisco, Los Angeles and New York, have reportedly experienced racially motivated vandalism. Many businesses owned by Asian-Americans have had their windows shattered and sprayed with racist slurs, such as “stop eating dogs” and “chink.”

Other offensive slogans have included a sign in an apartment building entrance that read “the China virus kills people” and “NO ASIAN PARKING” in the parking garage of a drug store.

Refusal of service and access:

Asian-Americans have reportedly been barred from accessing public facilities or refused services. Victims reported that they were discriminated against at restaurants, stores, and public transportation. A resident’s access to their apartment elevator was blocked by another resident, who said, “No, don’t you even think about getting on,” while allowing other white residents to enter. In another incident at a store, a customer was verbally harassed by the cashier, who, along with other employees and customers, shouted at the customer to leave, saying, “You Chinese bring the virus here and you dare ask people to keep social distance guidelines.” In several cases, ride-sharing service drivers refused to transport Asian-Americans or asked them about their ethnicity before allowing them to enter their vehicles.

Verbal Harassment:

The majority of hate incidents against Asian-Americans comprise racist verbal harassment with anti-Chinese or anti-Asian comments. In approximately 27 per cent of incident reports collected as part of a nationwide campaign to stop anti-Asian racism related to COVID-19, respondents reported that their assailants mentioned the term “China” or “Chinese.” Victims reported being subject to racist slurs and profanities based on perceived descent or ethnicity such as “fucking Chinese,” “die Chink die,” “yellow n---r,” and “go back to China, bitch!”

Verbal attacks on racial stereotypes of Chinese culture also pervade online. The recent surge in racist attacks against Asian-Americans in the U.S. is allegedly linked to public statements and social media posts that refer to the virus as the “Chinese virus,” “Wuhan virus,” or the “Kung Flu,” including by President Donald Trump. In particular, rhetoric blaming Chinese culture and people continues to spread in social media. In one post, a graduate student wrote: “There is a special place in hell reserved for the fucking Chinese and their archaic culture. . . . [President Trump’s] description of COVID-19 as the Chinese virus is the most accurate thing he has ever said.”

Some reported incidents of verbal harassment exemplify anti-immigration sentiment associated with anti-Asian racism arising from the COVID-19 outbreak. Victims were reportedly harassed with comments such as: “You fucking Chinese spread the coronavirus to this country; you should all leave this country!”. The underlying racism and xenophobia permeating U.S. immigration, has been persistently used to deter and discourage further migration. Such practices, *by their very nature* inflict intentional harm upon migrant populations, including children.

Although we do not wish to prejudge the accuracy of the information made available to us, we wish to express our serious concern over the rising wave of racist and xenophobic attacks and other incidents against Asian-American communities and individuals, in particular Asian-American women who are reported to be the majority of victims. According to the reports we have received, U.S. authorities have utterly failed to take the steps required to detect, monitor, and prevent racist and xenophobic incidents. One result of this state of impunity is that, many victims of such attacks are reportedly reluctant to seek justice.

We are further concerned by the documented increase in hate and misogynist speech, including incitement to hatred and racial discrimination in public places and online, and the contribution of the President of the United States in seemingly legitimizing these violations. In light of the far-reaching human rights harms inflicted upon Asian-Americans that have resulted from this surge, we urge your Excellency’s Government to take all necessary measures to combat anti-Asian racism and xenophobia, and to provide effective remedies to those affected.

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 be grateful for your observations on the following matters:

1. Please provide any additional information your Excellency's Government may have on the abovementioned allegations.
2. Please indicate what measures your Excellency's Government has in place to prevent racist and xenophobic incidents, especially in light of the surge in these incidents associated with the COVID-19 pandemic and to enable the filing of formal complaints, confidentially and without retaliation.
3. Please indicate measures taken to collect data on hate crimes, including data disaggregated by type of offence, bias motive, ethnicity, sex and gender.
4. Please provide detailed data on investigation and prosecution rates for cases involving anti-Asian racism and xenophobia, as well as data on the outcomes of any such investigations and prosecutions.
5. Please provide information on penal, disciplinary or administrative sanctions imposed on alleged perpetrators. Please also provide information on measures to ensure rights to effective remedies for victims of hate crime and their families.
6. Please provide information on the measures taken to prevent the recurrence of racist and xenophobic acts, to foster tolerance, mutual understanding and social harmony, and promote respect for cultural diversity.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. We would like to remind to your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights which is ratified by your Excellency's government in 1992, in particular Articles 2, 20 and 26 that address applicable States' obligations.

Article 2 (1) establishes that States must respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 20 (2) provides that States must prohibit by law and to ensure full enforcement of the law against every incident of advocacy of hatred that constitutes incitement to discrimination, hostility or violence. Furthermore, article 26 enumerates State's obligation to ensure rights of all persons without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We wish to also refer to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by USA in 1994. Article 4 in its paragraph (a) and (b) stresses needs to criminalize the "dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as incitement to such acts against any race or group of persons of another colour or ethnic origin"; and provides for the illegality and prohibition of propaganda activities promoting and incite racial discrimination. Article 5 of the CERD stipulates States' obligations to protect persons' rights to security, protection against bodily harm, and protection of a number of political and civil rights. Finally, article 6 describes how States must assure every person within its jurisdiction effective protection against racial discrimination and access to remedies.

The Committee for the Elimination of Racial Discrimination in its General Recommendation No. 35 on Combating racist hate speech also highlights, "Racist hate speech can take many forms and is not confined to explicitly racial remarks and speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and objectives". (para 7) In this regards, States is obliged to give due attention to all manifestations of racist hate speech and take effective measures to combat them. Moreover, the Committee reiterates its particular concerns over racist expressions emanating from such authorities or institutions that exacerbate hate speech against racial and ethnic minorities. (GR No 35, para 22)

We also recall the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance that addresses threats posed by nationalist populism to the fundamental human rights principles of non-discrimination and equality. (A/HRC/73/305) In the report, she notes that nationalist populism advances exclusionary or repressive practices and policies that harm individuals or groups on the basis of their race, ethnicity, national origin and religion. She further stresses “Nationalist populism shapes the climate of national discourse and can convert public political platforms into vehicles for spreading prejudice and intolerance and even inciting discrimination and violence.” She urged States to “remain vigilant in their identification of racist expression in national climates in which certain groups are openly committed to spreading and enforcing intolerance.”

While not a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United States, as signatory to this instrument since 1980, is bound to ensure that nothing is done which would defeat the object and purpose of the treaty, pending a decision on ratification. Gender-based violence against women constitutes discrimination against women under Article 1 of the CEDAW Convention and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. Article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. That obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole¹ and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.

In General recommendation No. 28 and General recommendation No. 33, the CEDAW Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudence, has highlighted the fact that such factors include women’s ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.

¹ Ibid., para. 13.

In its General Recommendation 35 on Gender-based violence against women, the CEDAW Committee considers gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard. The Committee recommends to develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men.

Finally, in the report on its visit to the United States (A/HRC/32/44/Add.2), the Working Group on discrimination against women and girls expressed concern at the disproportionate number of women from ethnic minorities who are subjected to heightened levels of violence. The experts noted that The United States, which is a leading State in terms of formulating international human rights standards, is allowing its women to lag behind in the respect for these standards. While all women are victims of these "missing" rights, women who are poor; Native American, African-American, Hispanic and Asian women; women who are members of ethnic minorities; migrant women; lesbian, bisexual, transgender or intersex persons; women with disabilities; and older women are in a situation of heightened vulnerability. The Working Group recommended addressing the legacies of racism and persistent forms of racial discrimination and ethnic disparities in every sphere of life.