

**The United States of America**

**Summary Submission to the UN Universal Periodic Review**

**September 2014**

**22<sup>nd</sup> Session of the UPR Working Group of the Human Rights Council**

**(Apr-May 2015)**

**Submitted by:**

**Africans in the America for Restitution and Repatriation**

**Leslie Sapp**

**(Africans in the America for Restitution and Repatriation)<sup>1</sup>**

**(United Negro Improvement Association)**

---

<sup>1</sup> Organizations for identification purposes only.

## EXECUTIVE SUMMARY

This submission filed by **Africans in America for Restitution and Repatriation (AA4RR)**, advocates from across the country, provides information under Sections A, B, and C as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review (UPR). This submission is for Africans in the United States and Africans in the US have had a long and remarkable history of calling on the international community to obtain redress for racist practices in the United States. From the days of slavery, Jim Crow and Willie Lynch to more modern issues of racial discrimination, the plight of Africans in the United States has continually received world-wide attention. Internationally, race has played a significant role in the human rights regime; respect for fundamental freedoms without distinction of any kind has always been an essential rule of international human rights law. Likewise, race has been a part of the United Nations' ("U.N.") human rights framework from the beginning. With the adoption of the U.N. Charter in 1945, followed shortly after by the U.N. Universal Declaration of Human Rights ("UDHR") in 1948, a strong commitment to equality and nondiscrimination within the international human rights system began to emerge. Accordingly, the U.N. General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") in 1965 and the International Covenant on Civil and Political Rights (ICCPR) in 1966 thereby committed its signatories to eliminate racial discrimination, promote understanding among all races and recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world respectively. International treaties give force to the rights proclaimed in the UDHR. Becoming "party" to international human rights treaties is one of the main means by which States accept legal obligations to promote and protect the rights enumerated in the treaty. One of the most important human rights treaties is ICCPR. It affirms the right to return, stating that: *"No one shall be arbitrarily deprived of the right to enter his own country."* Africans in the United States

The International Convention on the Elimination of All Forms of Racial Discrimination is another treaty that establishes legal obligations for the States parties. It says: *"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to" guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular: ii) The right to leave any country, including one's own, and to return to one's country."*

In becoming parties to a human rights treaty, States pledge to cooperate with the bodies that monitor the implementation of the treaty. The treaties mentioned above created bodies specifically mandated to monitor state compliance with their provisions. These bodies are the Human Rights Committee (HRC) for the ICCPR and the CERD for the respective Convention.

- Section A examines existing frameworks in the U.S. lack of any comprehensive human rights coordination in the United States, and the lack of a body or bodies at both the national and state levels with powers to monitor treaty implementation, issue recommendations to a range of authorities, collect and assess statistics, hold thematic hearings, and undertake promotional and educational initiatives throughout African American communities in the United States.

- Section B highlights some shortcomings in the U.S.' implementation of its human rights obligations, including its obligation to combat and redress discrimination and the historical vestiges of racism against Africans in the US, and the need to do more towards the achievement of economic, social and cultural rights.
- Section C highlights a number of recommendations for actions the U.S. can and should take to promote the rights contained in the UDHR, ICCPR and CERD for the restitution and repatriation of Africans in the U.S. and in fulfillment of its human rights treaty obligations. Also, the U. S. can implement legislation for human rights treaties, whether non-self-executing or not, that *All Governmental Entities at All Levels Are Expected to Honor Human Rights Obligations*.

AA4RR recognizes the U.S. government does not have any permanent institutional mechanisms to facilitate monitoring ICCPR or CERD compliance at the state and local levels, to promote awareness of its protections, or to train state and local authorities about it. Rather, as the U.S. report reveals, compliance is left largely to the unchecked discretion of state and local authorities as demonstrated in the Ferguson riots between African Americans with state and local officials.

We call for the U.S. to develop a permanent (African American) institutional mechanism to monitor domestic compliance with the CERD and ICCPR, conduct awareness-raising in African American communities, and ensure that treaty commitments are in fact being fulfilled by federal, state, and local authorities. This requires a process for review of existing and new legislation, policies and practices, at the federal, state and local levels. Such monitoring and oversight would reveal when new measures were required to ensure the right to non-discrimination, opening the door to a process of domestic debate to determine the best means to implement the treaty.

#### **A. Obligations and Domestic Implementation**

1. The U.S. has failed to adopt appropriate implementing legislation to give treaty guarantees domestic legal effect. Although Article VI of the U.S. Constitution incorporates international treaties as part of "the supreme Law of the Land," binding on all local, state and federal authorities, the U.S. ratified the ICCPR AND CERD. The US has attached numerous reservations to the ICCPR. Some states have charged it with undermining the object and purpose of the treaty as a whole. For example, the US has an RUD to the ICCPR that states the US understands "cruel and unusual punishment" to exclude the death penalty. In another RUD in the CERD, the US basically redefines the understanding of "racial discrimination".
2. The Killing of African men by whites in the United States Is an American Human Rights Disaster. In the United States, a black man is killed by the police or vigilantes every 28 hours. America has a serious human rights and racial discrimination problem at the local, state (Ferguson Riots) and federal level. And it is a question not only of civil rights, but of basic human rights and the nation's failure to meet its obligations under international law.
3. On August 13 and 14 2014 -- only days after the tragic fatal shooting of Michael Brown in Ferguson, Missouri -- the United Nations reviewed the U.S. government's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, or CERD. As a panel of international human rights experts questioned U.S. government officials in Geneva, Switzerland on CERD compliance, a coalition of 80 U.S. civil and human rights advocates were there to hold their country accountable and improve its policies. Among the issues targeted were racial violence and

violence against women of color, gun proliferation, racial profiling, the militarization of the Mexico border, mass incarceration, and the leadership crisis among law enforcement.

4. There are a number of racial tensions flaring up in the United States, including Ferguson, Missouri and issues around violence and political violence directed at African men... which really stems from a culture where the United States government(s) has criminalized the bodies of African men. The tragic shooting of Michael Brown and the events in Ferguson underscored the gap between what the United States constitution requires and what our society currently is confronting in terms of race discrimination. Further, many of the organizations present in Geneva called for the U.S. to create a national plan of action on the implementation of CERD, and a national human rights institution to field human rights complaints. And groups are calling for the Department of Justice to update guidance on the use of race by law enforcement, and close the loophole allowing for racial profiling in national security and immigration matters.
5. Another issue on the minds of human rights activists are "stand your ground" laws in Florida and other states. These laws have resulted in an increase in homicides -- particularly of African in the U.S. who are fatally shot by those who claimed they feared for their lives. Often, the perpetrators avoid prison time when invoking the law, even if they kill innocent bystanders.

As protests continue in Ferguson, Mo., calling for justice in the slaying of unarmed teenager Michael Brown, activists from the United States, most notably Sybrina Fulton, the mother of Trayvon Martin, and Ron Davis, the father of Jordan Davis, were in Geneva as part of a delegation calling for a United Nations committee to review U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.

"I ... wanted the committee to know that [Trayvon] was killed by a person [who] is of non-African-American descent and that the person was 28 years old so that they can understand that this was a 17-year-old child, by U.S. standards, against a 28-year-old adult male, and that Trayvon was considered a threat only because of the color of his skin," Fulton said of her son, who was killed in February 2012 by former neighborhood watchman George Zimmerman. "Although 'Stand your ground' may seem like it's a neutral law on the surface ... it really isn't, the way it is applied in the USA."

The convention to eliminate racial discrimination is a treaty, approved by the U.S. in 1994, which details what countries should do and what standards should be upheld to prevent, eliminate and redress racism and discrimination. The U.N.'s Committee on the Elimination of Racial Discrimination oversees implementation of the convention.

6. Ms. Fulton noted regarding her testimony before the UN in Geneva. Fulton added that stand your ground -- which she urges the federal government to repeal or amend "so people of color have a future" -- is a violation of Articles 2, 5 and 6 of CERD. At this point, Africans in America for Restitution and Repatriation is planning a march on the United Nations calling for a United Nations committee to review U.S. compliance with the ICCPR and CERD as it pertains to Africans in the United States.
7. Stand your ground is a human rights violation because it allows people to take action against those who are unarmed and doing them no harm based on an ambiguous standard of "reasonable fear." For decades, African in the U.S. has connected the dots between the domestic fight for civil rights and the international struggle for human rights. For example, Dr. Martin Luther King, Jr. was a recipient of the Nobel Peace Prize, and Malcolm X suggested taking the plight of African Americans

to the UN. The advocates and organizations who attended the CERD review at the UN are continuing in that tradition. Meanwhile, as the United States preaches to other nations about human rights, it needs to get its own house in order on racism.

**B. Highlights some shortcomings in the U.S.' implementation of its human rights obligations.**

8. The U.S. has failed to systematically review government policies and practices, and with the full participation of civil society partners, to identify gaps in protection and to monitor levels of compliance, including at the state and local levels. Meaningful implementation of CERD and ICCPR requires a permanent institutional mechanism to monitor domestic compliance with the CERD and ICCPR, conduct awareness-raising on it, and ensure that treaty commitments are in fact being fulfilled by federal, state, and local authorities. It also requires a process for review of existing and new legislation and policy, at the federal, state and local levels. However, the United States lacks any national mechanism to review systematically government policies and practices for compliance with the CERD and ICCPR.
9. The U.S. has failed to raise awareness of the Convention's guarantees to Africans in the United States. Directly related to the need for a comprehensive system of collecting information from the states is the need to actively promote understanding of CERD and ICCPR obligations to state officials, as well as federal agencies, judges, and in the African American community. Domestic implementation of the treaties obligations relies on public knowledge about the treaty and the rights it protects. The U.S. has failed in this respect by not educating government officials, judges, or the public about the Convention's obligations.
10. The U.S. has failed to review its reservations, understandings and declarations (RUDS) to determine their continuing necessity or relevance. Although the Policy Coordination Committee on Democracy, Human Rights, and International Operations has a mandate to oversee an annual review of U.S. reservations, declarations, and understandings (RUDS) to human rights treaties to determine their continuing relevance, no effort has been domestically publicized or reported to the Committee that the U.S. government has undertaken any such review. This type of review is an essential tool for progressing toward a more sophisticated understanding of the governmental actions needed to implement the treaty's standards.
11. Despite these important accomplishments, a significant gap exists between the goals the United States has set and the efforts made to meet those goals. As a result, Africans in the United States have struggled to recognize the promises and rights of the CERD's international standards.

**C. As it pertains to Africans in the United States, the U.S. Governments should immediately implement legislation that honors the intent of fully-negotiated human rights treaties and if necessary to discuss 42 USC § 1983, which on its face appears to be an already-existing vehicle to enforce African in the United States and especially their right of return.**

12. Congress do not have to strip human rights treaties of non-self-executing RUDs, collectively, Africans in the United States whose treaty rights have been violated can seek redress through the federal courts and the United Nations, ostensibly through 42 U.S.C. § 1983. Commonly referred to as the "Ku Klux Act," the statute was enacted as part of the Civil Rights Act of 1871. One reason for its passage was to provide civil remedies against abuses being committed against former slaves in southern states or Africans in the United States. Section 1983 is not a source of substantive rights. It

provides a method for redress where rights conferred in the Constitution and federal laws have been breached.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

13. The plain language of both § 1983 and the U.S. Constitution's Supremacy Clause implies that enforcement of human rights treaties under § 1983 is possible. The Supremacy Clause explicitly states that "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."
14. Because ratified treaties are federal law, it would seem to follow that, given the plain language of § 1983, the violation of any rights secured under a particular treaty would automatically be an actionable claim under § 1983, especially for displaced Africans in America whose ancestor were slaves.
15. The ICCPR and CERD Treaties are Enforceable Under § 1983 in the United States. The ICCPR human rights treaty has explicit language enumerating individual rights, while the CERD, appear, on their face, to be contracts between the State parties. Of the human rights treaties ratified by the United States, this dichotomy is best exemplified by comparing the ICCPR with CERD. The ICCPR states in unambiguous language that every person possesses the rights enumerated in the treaty. For example, Article 6 of the ICCPR states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."<sup>302</sup> Similarly, Article 12 (4) of the ICCPR states: "4. No one shall be arbitrarily deprived of the right to enter his own country." UN General Assembly Resolution 3236, passed on 22 November 1974 declared the right of return to be an "inalienable right".
16. In November 1999 the Human Rights Committee, the authoritative U.N. body for interpreting the ICCPR, produced a thorough and comprehensive commentary on Article 12. General Comments of the Human Rights Committee represent the most authoritative interpretation of the Covenant available to State Parties. They are produced by the Committee as authoritative guidance in order to assist States in fulfilling their reporting requirements (1). The General Comment concluded:
17. "The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence"
18. Even the preamble has language discussing individual rights: The States under the United Nations Charter "realize that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant." Because these examples contain an "unambiguously conferred right," it would seem if the ICCPR were self-executing, that § 1983 could be a vehicle to enforce individual rights contained within it.

19. By comparison, CERD uses contracting language addressing State parties rather than language conferring individual rights. For example, Article 5 (d) (ii) 2 of CERD states: The right to leave any country, including one's own, and to return to one's country;
20. Another example, Article 2 of CERD states: States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
21. Accordingly, because CERD places obligations on State parties to act, rather than conferring unambiguous individual rights, it is unlikely that § 1983 could be used as a vehicle to protect violations of CERD, even if CERD were self-executing. Therefore, Africans in the United States can raise treaty-based human rights claims relying on federal or state statutory or common law to establish a private cause of action claims under 42 U.S.C.
22. The Executive Branch, President Obama, has the primary responsibility within the U.S. government for ensuring U.S. compliance with its treaty obligations. Therefore, the Executive Branch should take steps to bring the United States into compliance with its obligation to ensure that petitioner who raise non-frivolous, nonredundant petitions under these treaties receive a hearing before an impartial tribunal. (There have been several petitions to President Obama for the restitution and repatriation of Africans in America pursuant to international treaties)
23. The best way to ensure U.S. compliance with its treaty obligations would be to enact legislation to create a private cause of action in federal court for all treaty-based human rights claims. With vigorous lobbying by the President Obama, it is conceivable that the U.S. Congress will enact such legislation. If the President cannot persuade the U.S. Congress to enact legislation to create a private cause of action for treaty-based human rights petitions, then legislation in specific areas in which the United States falls short of substantive international norms should be advocated. Given the President's duty to "take Care that the Laws be faithfully executed," the President should lobby Congress for restitution and repatriations of Africans in the United States to conform with the requirements of Article 12 (4) of the ICCPR. In addition to lobbying Congress, the Executive Branch should act upon and execute the Petition for restitution and repatriation of Africans in the United States where petitioners raise treaty-based human rights claims.
24. As discussed above, even though § 1983 could arguably be used to implement human rights treaties, if treaties are to be truly integrated into U.S. law, it is better for Congress to enact legislation that makes absolutely clear to the judiciary that the treaties ratified by the United States are enforceable.
25. It is well settled that once a country ratifies a human rights treaty, the country is obligated to enforce that treaty at every level of government. The United States fully understands this obligation. Indeed, in 2010, the U.S. State Department's Legal Adviser, Harold Koh, who is charged with, among other things, reporting to the United Nations on the United States' compliance with its obligations under international treaties, sent two letters to state officials taking precisely this position. In a May 3, 2010 letter sent to "State and Local Human Rights Commissions," Koh states, in pertinent part:

26. I am writing concerning three human rights reports that the United States will be submitting to the United Nations (UN) in 2010 and 2011. These reports concern implementation of U.S. obligations under the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and International Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).
27. As you may be aware, implementation of U.S. human rights treaty obligations is carried out not only by the federal government, but also by state and local governments, through work such as that done by your commissions. The UN committees to which these reports will be submitted are interested in receiving information on programs and activities undertaken by states, counties and other local jurisdictions in the human rights area. Thus, we are reaching out to you for information on your programs and activities relevant to these three reports. Additionally, a January 20, 2010 memorandum that Koh sent to all state governors states, in pertinent part: This electronic communication contains information on several human rights treaties to which the United States is party, and which are implemented through existing laws at all levels of government (federal, state, and local). To promote knowledge of these treaties in the United States, we would appreciate your forwarding this communication to your Attorney General's office, and to the departments and offices that deal with human rights, civil rights, housing, employment and related issues in your administration.
28. Because implementation of these treaties may be carried out by officials at all levels of government (federal, state, and local) under existing laws applicable in their jurisdictions, we want to make sure that the substance of these treaties and their relevance to the United States is known to appropriate governmental officials and to members of the public. Many Human rights experts have disagreed with Koh's message that treaty obligations can be met with existing law.<sup>342</sup> But Koh's letters are instructive in that they state, unequivocally, that treaties must be enforced at every level of government.
29. The second provision of the proposed legislation gives federal courts the power to issue injunctive relief to remedy treaty violations. There are several reasons why it is preferable to empower courts to issue only injunctive relief rather than also award money damages paving the way for restitution or compensation of Africans in the U.S.
30. Africans in the U.S., whose human rights are violated in the United States, have recourse through treaty law to remedy violations. In order for the United States to fulfill its obligations to Africans in the U.S. and abide by the conditions of the human rights treaties that it has ratified allows victims (African Americans) to seek remedies for human rights violations in U.S. courts and the U.N. As this submission discusses, one way to provide a remedy for human rights treaty violations is by the U.S. Senate advice and consent to treaties and making them enforceable. The U.S. RUDS to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992) listed below the U.S. Senate's advice and consent is subject to the following reservations:
31. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Covenant:

That the Constitution and laws of the United States guarantee all persons equal protection of the law and provide extensive protections against discrimination. The United States understands distinctions based upon race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status - as those terms are used in Article 2, paragraph

1 and Article 26 - to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination, in time of public emergency, based "solely" on the status of race, color, sex, language, religion or social origin not to bar distinctions that may have a disproportionate effect upon persons of a particular status.

*That the United States understands the right to compensation referred to in Articles 9(5) and 14(6) to require the provision of effective and enforceable mechanisms by which a victim of an unlawful arrest or detention or a miscarriage of justice may seek and, where justified, obtain compensation from either the responsible individual or the appropriate governmental entity. Entitlement to compensation may be subject of the reasonable requirements of domestic law.*

32. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

Nothing in this Covenant requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

**The international community must recognized** the right to restitution, compensation and rehabilitation for victims (Africans in the U.S.) of grave violations of human rights and fundamental freedoms. The Commission on Human Rights resolution 1998/43 guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action, reaffirming that, pursuant to internationally proclaimed human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation. (2003/34)The Commission on Human Rights, Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action (A/CONF.157/23),

**Reaffirming** that, pursuant to internationally proclaimed human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation.

33. Although arguably § 1983 can be used as implementing legislation and enforcing human rights treaties for Africans in America. In this submission, AA4RR propose universal implementing legislation and discuss why this legislation that would apply to all treaties is superior to having the U.S. Congress enact specialized implementing legislation for each human rights treaty that is ratified. The implementing legislation proposed in this submission is a necessary step in integrating the U.S. international human rights treaty obligations into the U.S. legal framework as it applies to Africans in the U.S. The proposed legislation provides a clear path for strengthening the rule of law by fulfilling the United States' treaty obligations both under the Constitution and the treaties it has ratified. It also provides a means and effective mechanism to stop human rights abuses against Africans in the U.S. that occur within the United States, in a way that will benefit society as a whole.