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Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 May 2021]

* Issued as received, in the language(s) of submission only.

The United States Government Must do More to Protect Asian Americans From Discrimination

Human Rights Now (HRN), a Tokyo-based international human rights NGO, stands in support with Asians and Asian Americans in the United States (US) facing increased discrimination and attacks and stresses the need for raising awareness of the problem and establishing appropriate initiatives to better protect the community. HRN calls on the US government to offer better legal protection to Asians and Asian Americans in the US for both hate crimes and hate speech, and to support community-led initiatives aimed at education, dialogue, and restorative justice.

1. Hate Crimes against Asian Americans

Over the last year and a half, Asian Americans in the US have faced an increase in discrimination and violence. This is part of a global rise in anti-Asian hate crimes and harassment since the onset of the COVID-19 pandemic. In a report by Pew Research Center, 32% of Asian American Adults reported fear that they would be physically attacked and 81% said that violence against them is rising.[1] The Center for the Study of Hate and Extremism reported that hate crimes against Asian Americans grew 149% from 2019 to 2020.[2] President Trump encouraged such discrimination by referring to the virus with Asian slurs (“Chinese virus”, “Kung flu”, etc.), which measurably contributed to Anti-Asian sentiment on Twitter and which he has continued using in messages to his followers even after his presidency, leaving a legacy of hate.[3] It is important that his social media presence continue to be restricted as long as he promotes discrimination against Asians or any group.

In August 2020, three special rapporteurs (for racial discrimination, migrants, and discrimination against women and girls) of this Council sent a letter to the US concluding that “Racially motivated violence and other incidents against Asian Americans have reached an alarming level across the United States since the outbreak of COVID-19,” including physical attacks, vandalism, refusal of service and access, robberies against their businesses and community centers, and verbal harassment.[4] Unemployment rates for Asian Americans have also surged, with Asian American-owned businesses going from 2.8%, one of the lowest unemployment rates, to over 15% by May 2020, one of the highest, and the rates have remained high since.[5]

The US government recently passed the “Covid-19 Hate Crimes Act” dedicated to expediting the review of COVID-19 related hate crimes and to introduce guidance for law enforcement.[6] While the bill increases funding and education for local police departments, there is no nation-wide standard for what constitutes a hate crime, and reporting by local police departments remains voluntary.[7] Three states in the US continue to not have any form of hate crime statute at all.[8]

Additionally, hate crimes targeting Asian Americans can be difficult to prosecute as current US legal standards define the intent element narrowly, leaving out forms of discrimination that do not appear “hateful” but can still motivate violence.[9] For example, Asian Americans are often stereotyped as a “model minority”, weak, or (in the case of women) over-sexualized, which has motivated discriminatory violence against Asians without a traditionally “hateful” intent. This gap is evidenced by recent crimes targeting Asians or Asian Americans, such as the recent Atlanta shooting of Asian women in Atlanta which appeared to be motivated by over-sexualizing Asian women, which did not lead to “hate crime” prosecution. This gap calls for a broadening of the intent element to cover other forms of discrimination motivating violence.

2. Hate Speech against Asian Americans

Online hate speech against minorities, especially Asian Americans, has also increased with the pandemic.[10] Social media has been linked to racially motivated violence, providing

actors with both a platform and a source of radicalization.[11] Despite this, social media companies do not have consistent standards to address and delete content motivating attacks on minorities, nor is there legislation in the US requiring them to.[12]

Although it is a party to CERD, which contain obligations to combat all forms of racial discrimination and punish hate speech, the US government has adopted RUDs barring citizens from bring claims under the treaty to courts to enforce its duties and rejecting the punishment of hate speech.[13] Accordingly, since ratification the government has not enacted legislation to bring the country in line with these provisions.[14] The US government has also defined discrimination based on intent rather than according to CERD's standard which focuses on disparate impact.[15] This creates a high burden of proof which severely curtails the government's ability to address racial discrimination and stop hate speech and incidents.[16] The US has also continued to maintain a RUD for the ICCPR which permits it to reject the Article 20(a) duty to prohibit hate speech.[17]

These RUDs rejecting the punishment of hate speech are based on the US Constitution freedom of speech; however, the constitutional courts of many other developed countries have developed an appropriate balance between protecting free speech and punishing hate speech. The US Supreme Court should review these examples and re-consider its jurisprudence in light of modern social norms, as it has for other norms, and allow the government to end these RUDs. The well-established ability to punish speech inciting violence may also be further developed to cover more hate speech acts, given the growing evidence of a link between hate speech and violence.[18]

Many of the biggest global social media companies including Facebook and Twitter are based in the US, giving the US government a unique opportunity to enact legislation to curtail the rise of online hate speech and violence around the world.

3. Recommendations

HRN joins the calls of other Asian American activist organizations to combat hate crimes and discrimination against Asians and other minorities. We offer the following recommendations to the US government (including state governments and courts) which go beyond the recently passed "Covid 19 Hate Crimes Act".

1. Develop a consistent standard for hate crimes and encourage all states to adopt it. Reform current hate crime laws to cover and deter a wider range of discrimination-based crimes, such as by targeting disparate impact rather than only discriminatory intent and broadening the scope of intent to other forms of discrimination which motivate violence.
2. Consider updating freedom of speech jurisprudence to modern standards (by judicial decision); remove hate speech related reservations to the CERD and ICCPR; enact legislation to bring the US in line with obligations on prohibiting and punishing hate speech; and establish laws that allow citizens to bring forward legal claims under these obligations.
3. Implement policies and dedicate resources for public education on the history of discrimination in the US, and promote inter-ethnic dialogue and understanding to combat such discrimination.
4. Consider regulations which facilitate claims against social media platforms for online hate speech and encourage US based social media platforms to adopt a framework to deter hate speech based on international standards and obligations

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- [3] AJPH, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2021.306154>.
- [4] Mandates of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, 12 Aug. 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25476>.
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- [16] Id
- [17] U.S. Reservations on CERD, above, note 12; U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights.
- [18] Brandenburg v. Ohio, 395 U.S. 444 (1969).