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**Hate Speech and Hate Crime in the United States of America in 2017**

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**Introduction**

Thank you for the opportunity to address this prestigious body. The issue before us today could not be more timely. This is the case particularly coming from the perspective of the United States. Recent debates, protests, and tragedies have called into question the country’s current practices regarding freedom of speech, hate speech, and hate crime regulation. In these short remarks, I want to first discuss the legal context and some of the recent events that have transpired. Then I will provide three recommendations. The recommendations will be to 1) *Engage in the debate over the removal of racist symbolism and monuments,* and work to replace those symbols with art, education, and monuments to historic men and women who have promoted the cause of human dignity and racial justice; 2) *Engage in the debate over hate speech in social media*, recognizing that we cannot rely on governmental actors that we cannot trust to enforce hate speech laws in ways that respect both freedom of speech and racial equality norms. Instead of law, we should turn to those who run the internet: organizations like Facebook, Twitter, and Google. 3) *Promote an international forum for the Decade for People of African Descent,[[1]](#footnote-1) not just more regional forums,* as this will be the most effective mechanism to engage global civil society actors on racial injustice, particularly as it effects people of African descent. The forum should include discussion of the goal *of cutting mass incarceration in half by the end of the Decade,***[[2]](#footnote-2)** in the process eliminating the stigma that serves as material grounds in the minds of some for continued expression of hate speech against people of color.

**Existing Law on Hate Speech and Hate Crime**

Point 147 (e) of the Durban Declaration Programme of Action calls for states to consider, “while taking fully into account existing international regional standards on the question of freedom of expression,” and “while taking all necessary measures to guarantee the right of freedom of opinion and expression,” the need to “consider a prompt and coordinated international response to the rapidly evolving phenomenon of the dissemination of hate speech ad racist material through the new information and communications technologies, including the Internet; and in this context strengthening international cooperation.”[[3]](#footnote-3)

In the interim between the programme of action created in the 2001 Durbhan declaration and today, hate speech and hate crime have continued to rise. In one of the most recent assessments, in June of 2017, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and related intolerance noted in point 19 of its report that “With the development of technology, hate [web]sites grew both in number and sophistication and extremist groups found the internet to be a very useful tool for recruiting new members . . . Nonetheless, legal, regulatory, technical and other practical challenges remain a barrier to the fight against racism and incitement to racial hatred and violence on the Internet owing to the lack of clarity in legal terms, differing laws and trans-border nature of the Internet.”[[4]](#footnote-4)

In the United States, the First Amendment may be "the Constitution's most majestic guarantee," but it is nonetheless a limited guarantee.[[5]](#footnote-5) Defamation, obscenity, and speech which threatens the social order—bomb threats, incitements to riot, and "fighting words"—are all limited by law.[[6]](#footnote-6)2 In the world of business, false advertisements, insider information, and suggestions that prices be fixed, are also off limits. In the world trademark, speech that too closely resembles that of a successful writer or producer of can violate a trademark and be punished. Yet hate speech—expressions which abuse, insult, or belittle a person because of his or her race, ethnicity, national origin, gender, religion, sexual orientation, or physical abilities—is still tolerated and even protected.[[7]](#footnote-7)[[8]](#footnote-8)3

**Recent Events in the United States on Hate Speech and Hate Crime**

Almost exactly three years after the Ferguson uprising, race, protest, and the First Amendment collided again at the “Unite the Right” protest against the removal of the Robert. E. Lee confederate monument in Charlottesville, Virginia. Where three years earlier Ferguson protesters had arrived sometimes with babies in strollers, chanting “Hand Up Don’t Shoot,” armed with only our empty, raised hands, three years later Neo Nazi protesters arrived with semi-automatic weapons and in full camouflage, and according to Virginia’s governor, more heavily armed than the police.[[9]](#footnote-9) The rally was organized in conjunction with online white nationalist websites, social media, twitter and Facebook. People chanted anti-Semitic slogans, and when one of the protesters drove a car into a crowd of people, killing protester Heather Heyer and seriously injuring dozens of others, we were reminded that “hate speech” is not a question of offense alone, but a question of life and death.

The Nazis and white nationalists brutally beat counter protesters with poles[[10]](#footnote-10) and shot their guns at people.[[11]](#footnote-11) They were never tear gassed. No tanks appeared. None were shot with rubber bullets. Very few were arrested, compared to the Ferguson protesters. In fact, one young African American man beaten with a pole was himself charged with a felony.[[12]](#footnote-12)

Hate speech and hate crime has also affected our college campuses. In May, a Black Bowie State University Senior, Richard Wilbur Collins III, was fatally stabbed by a white university of Maryland student while on the University of Maryland campus waiting for an Uber to arrive. The white student was a member of a Facebook group called “Alt-Reich: Nation.[[13]](#footnote-13)” At American University, bananas were hung from a tree by nooses across from a black sorority.[[14]](#footnote-14) These are only a smattering of the many racist incidents that have sparked outrage on college campuses across America.

In response, our federal government in the United States has played an antagonistic role in the fight against hate speech. After Charlottesville, the President of the United States commented that some of the “Unite the Right” protesters were “very fine people.” The white nationalists received the quality of treatment that ideally the First Amendment would provide to anyone who engages in protected political speech. In contrast, the White House called for the firing football players who seek to protest racial injustice,[[15]](#footnote-15) or television personalities like Jemelle Hill[[16]](#footnote-16) who speak out on twitter.

In light of efforts to respond to campus acts of hate speech and hate crime, the attorney general of the United States recently delivered an address my alma mater Georgetown University Law Center and argued that free speech was under attack by “an echo chamber of political correctness” on college campuses and decried the “fragile egos” of college students.[[17]](#footnote-17) Recent media reports have also revealed that the FBI has lessened its focus on White Nationalists generally[[18]](#footnote-18) and created a category called “Black Identity Extremists,” whereby they intend to focus federal surveillance instead on those who speak out against racial injustice.[[19]](#footnote-19)

I say this not to promote gloom and doom but to remind this body that, even if empowered with progressive anti-hate speech and hate crime legislation, national governments still have the discretion to administer the law according to their own priorities. If they so choose, a government can play a negative role in the fight against hate speech and hate crime. To that end I highlight some of the work of other groups on this issue.

**Recommendations to the Working Group**

1. **ENGAGE IN THE DEBATE OVER THE REMOVAL OF RACIST SYMBOLS**. In the United States, we have seen a wave of efforts to remove racist symbols from student groups, activist organizations, and even local governments. Many cities and states have removed confederate flags and memorials.[[20]](#footnote-20) At elite universities like Harvard[[21]](#footnote-21) and Yale,[[22]](#footnote-22) student protest efforts led to the condemnation of confederate symbols the installation

I want to add here that the students constituted the vanguard in their focus on symbols and monuments. Words disappear, but logos and flags endure. Unlike hate speech that endures only in individual memory, or in cyberspace that must be accessed online, people must walk by monuments and symbols everyday.

There are hundreds and perhaps over a thousand confederate memorials around the United States,[[23]](#footnote-23) local communities continue to fight for their removal one by one. I myself testified just last week at a city council session in Washington DC proposing to install a memorial instead to Charles Hamilton Houston, the historic civil rights lawyer, amongst parallel efforts to remove a statue of a confederate general.[[24]](#footnote-24) And as a member of the broader Black Lives Matter movement, I continue to take pride in the protest actions of Bree Newsome,[[25]](#footnote-25) who took down the confederate flag from the statehouse in South Carolina, of students and young people who have opposed confederate monuments and confederate flags around the United States, and the work of death penalty lawyer Bryan Stevenson to erect a monument to lynching in the south.[[26]](#footnote-26) Symbols do more than simply constitute background noise in a landscape. They are sites of remembering, and occasions during which stories will be retold about a community’s history.

Those responsible for implementing the Durban declaration should take a more forceful position condemning monuments that uncritically celebrate purveyors of racial injustice. Instead, we should provide support to those who would erect counter monuments that provide a more evenhanded narrative, or celebrate the contributions of disempowered communities.

1. **ENGAGE IN THE DEBATE OVER HATE SPEECH IN SOCIAL MEDIA.** “Unite the Right” was organized using online localized forums like 4chan and Reddit, which purveyors of race speech use to communicate with each other, not simply Twitter, Google and Facebook. In places like the United States that either take absolutist position on free speech, or implement hate speech regulations in ways that disproportionately harm the most vulnerable, it may be impossible to completely eliminate the presence of hate speech online. Still, the UN has a unique opportunity to help promulgate standards for social media sites that platforms throughout the world will adopt. Also, as platforms like Facebook and Twitter seek to establish a stronger international presence in countries that adopt more firm regulations against hate speech,[[27]](#footnote-27) I can assure that members of civil society in the United States will push to ensure that hate speech standards adopted elsewhere apply in the United States as well.

Those responsible for implementing the Durban declaration should help to draft sample hate speech terms of agreement for users of social media websites, the violation of which will result in the suspension of users’ accounts. The prestige of the United Nations will aid in the adoption of these terms in those areas where the government cannot enforce adoption through law.

1. **PROMOTE AN INTERNATIONAL FORUM FOR THE DECADE OF PEOPLE OF AFRICAN DESCENT, NOT JUST REGIONAL FORUMS.** The debate around hate speech and hate crimes continues to implicate a balance between freedom of speech and basic equality and human dignity. Groups can engage in these debates best during international forums that allow for ideas to be exchanged in an honest manner. There, they can ask questions that they might not ask otherwise: Some questions include: can Blacks engage in hate speech against whites? Women against men? Perhaps not, if we define hate speech as speech that builds on existing stereotypes and stigma that further instill power imbalance. How important of a factor is the relative power of the person who utters a politician, and does it dramatically impact the severity of the hate speech f the speaker is a politician or a person with a large platform? Must hate speech happen in a one on one context, or can broad statements such as calling all Mexicans “rapists and murders” quality?

Those responsible for the Durban declaration should support initiatives like the decade that can provide a forum where affected populations can consider these important questions.

Thanks so much for your time and consideration of these recommendations.

Respectfully Submitted,

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1. http://www.un.org/en/events/africandescentdecade/ [↑](#footnote-ref-1)
2. [http://www.ohchr.org/EN/NewsEvents/Pages/DoingMoretimeforLessCrime.aspx](https://www.ohchr.org/EN/NewsEvents/Pages/DoingMoretimeforLessCrime.aspx) [↑](#footnote-ref-2)
3. <http://www.un.org/WCAR/durban.pdf> [↑](#footnote-ref-3)
4. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/113/80/PDF/G1711380.pdf?OpenElement> [↑](#footnote-ref-4)
5. See, e.g., Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (fighting words); Brandenburg v. Ohio, 395 U.S. 444 (1969) (clear and present danger); Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (libel). [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. See Mari Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320 (1989) (arguing that the law's ability to recognize the reputational injury to the person who has been libeled or defamed, for instance, "and yet to fail to see that the very same things happen to the victims of racist speech," is selective vision.) In a highly publicized case, the Seventh Circuit considered whether statements of the National Socialist Part, a neo-Nazi group which planned a demonstration in the predominantly Jewish town of Skokie, Ill., could be considered libel. The National Socialist Party maintains that blacks are biologically inferior and that Jewish people are linked to an international community conspiracy. The court held that these assertions are not libel because they are ideas, not factual statements which can be judged true or untrue. Village of Skokie v. National Socialist Party, 373 N.E.2d 21 (Ill. 1978). [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)
9. Dahlia Lithwick & Mark Joseph Stern, *The Guns Won: Charlottesville Showed the Our First Amendment Jurisprudence Hasn’t Reckoned with our Second Amendment Reality*, Slate (Aug. 14, 2017, 7:34 PM), http://www.slate.com/articles/news\_and\_politics/jurisprudence/2017/08/the\_first\_and\_second\_amendments\_clashed\_in\_charlottesville\_the\_guns\_won.html [https://perma.cc/XL74-VFAZ]. [↑](#footnote-ref-9)
10. Lulls-Mae Eleftheriou-Smith, *Charlottesville: Black Protester Deandre Harris ‘Beaten with Metal Poles’ by White Supremacists*, Independent (Aug. 15, 2017 3:48 PM), <http://www.independent.co.uk/news/world/americas/charlottesville-deandre-harris-black-protester-white-supremacists-beat-metal-poles-neo-nazis-a7894916.html> [https://perma.cc/U7Q5-MJXP]. [↑](#footnote-ref-10)
11. Evan Simao-Bednarski, *Man Arrested for Firing Gun at Charlottesville Rally*, CNN (Aug. 28, 2017, 9:08 AM), http://www.cnn.com/2017/08/27/us/man-arrested-gun-charlottesville-rally/index.html [http://perma.cc/P35H-JWEA]. [↑](#footnote-ref-11)
12. <https://www.washingtonpost.com/local/a-black-man-charged-in-his-own-beating-and-charlottesvilles-lasting-hatred/2017/10/12/ba474e5a-af5d-11e7-a908-a3470754bbb9_story.html?utm_term=.aa8bce5b8be6> [↑](#footnote-ref-12)
13. <https://www.theatlantic.com/news/archive/2017/05/a-possible-hate-crime-at-the-unversity-of-maryland/527583/> [↑](#footnote-ref-13)
14. <https://www.washingtonpost.com/local/education/after-bananas-and-nooses-on-campus-heres-how-a-student-body-president-copes/2017/06/26/b8bdf706-5791-11e7-a204-ad706461fa4f_story.html?utm_term=.b083c6cbd5c9> [↑](#footnote-ref-14)
15. <https://www.washingtonpost.com/news/post-politics/wp/2017/09/24/trump-demands-nfl-teams-fire-or-suspend-players-or-risk-fan-boycott/?utm_term=.c86f8719b246> [↑](#footnote-ref-15)
16. <https://www.nytimes.com/2017/09/13/sports/jemele-hill-espn-white-house.html> [↑](#footnote-ref-16)
17. <https://www.vox.com/policy-and-politics/2017/9/26/16368982/sessions-free-speech-college-campuses-trump-on-nfl> [↑](#footnote-ref-17)
18. <https://www.vox.com/policy-and-politics/2017/8/14/16144598/trump-white-terrorism> [↑](#footnote-ref-18)
19. <http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/> [↑](#footnote-ref-19)
20. <https://www.nytimes.com/interactive/2017/08/16/us/confederate-monuments-removed.html> [↑](#footnote-ref-20)
21. <https://theintercept.com/2016/03/07/harvard-law-school-wants-to-remove-slaveholders-crest-from-logo/> [↑](#footnote-ref-21)
22. <https://news.yale.edu/2017/02/11/yale-change-calhoun-college-s-name-honor-grace-murray-hopper-0> [↑](#footnote-ref-22)
23. <https://www.usatoday.com/story/news/politics/2017/05/22/confederate-monuments-new-orleans-charlottesville-removal-race-civil-war/101870418/> [↑](#footnote-ref-23)
24. <http://dcist.com/2017/09/albert_pike_statue.php> [↑](#footnote-ref-24)
25. <https://www.washingtonpost.com/news/post-nation/wp/2015/06/29/why-bree-newsome-took-down-the-confederate-flag-in-s-c-i-refuse-to-be-ruled-by-fear/?utm_term=.12df8dacee2f> [↑](#footnote-ref-25)
26. <https://www.theatlantic.com/magazine/archive/2017/11/a-national-monument-to-america-s-known-victims-of-lynching/540663/> [↑](#footnote-ref-26)
27. https://www.theverge.com/2017/6/23/15852048/germany-hate-speech-facebook-twitter-fine-censorship [↑](#footnote-ref-27)