

**Submission**  
**United Nations Committee on the Elimination of Racial Discrimination**  
**General Comment on Racial Inequalities and Emerging Technologies**

*Contributors:*

**Motse NTLOEDIBE – KUSWANI**, post-graduate student in Diplomacy and International Law at The American University of Paris, critical race theorist. Contact: [motse.kuswani@aup.edu](mailto:motse.kuswani@aup.edu)

**Terre LUNDY**, post-graduate student in Human Rights and Data Science at The American University of Paris, data scientist. Contact: [terre.lundy@aup.edu](mailto:terre.lundy@aup.edu)

*Introduction:*

The American University of Paris’s Human Rights, International Law, and Data Science interdisciplinary body welcomes the Committee’s initiative to prepare a General Comment on the emergence of technology and racial inequalities. We acknowledge the privilege to share our extensive research pertaining to the increasing technological innovations and their sustaining of racial inequalities. Several bodies of literature and data-driven studies have informed the purview of this submission and our belief in the General Comment’s incumbent responsibility to explicitly address the increasing presence of artificial intelligence (*hereafter AI*) systems and deep neural networks in institutional governance that inevitably perpetuates historical racial disparities.

A prevalence of digital innovation reaffirms the reality that technology has significantly driven development in a positive direction, through the introduction of sustainable and bio-friendly infrastructure, information dissemination in rural communities (Lifeline Energy 2022), and more recently large-scale data monitoring of COVID-19 infection and inoculation rates. The surge of autonomous robots plays a substantial role in what social entrepreneurs and development scholars have termed ‘the second-machine age’ or what the World Economic Forum (WEF) has aptly decided is the ‘fourth industrial revolution’. Yet and still, the discourse around artificial intelligence as a branch of technological innovation is drastically different. Automated decision-making and algorithmic usage have silently but profoundly exacerbated existing discriminatory practices toward protected characteristics and racialized identities globally.

The Committee on the Elimination of Racial Discrimination has contributed onerously to State Parties’ regulation and acknowledgment of all human beings’ inherent equality and entitlement to the rights and freedoms of all mankind without distinction based on race or ethnic origin. The nascence of digital technology in human history provides ample opportunity for the discussion of human rights violations under the thumb of such

technologies, namely the discreet violations of Article 2 and 5 of the Convention on the Elimination of Racial Discrimination (CERD) and the United Nations Sustainable Development Goals (SDGs) 3,4,5,8,10, and 16.

*Recommendations:*

We respectfully submit the following recommendations to the Committee:

The General Comment should ***explicitly emphasize the historical roots of racial discrimination that inform AI programming*** allowing our institutions to easily worsen the profundity of our already glaring and harmful economic and socio-political inequalities, especially in majority Black communities regarding recidivism and carcerality.

The General Comment should address the ***responsibility of innovators and corporations in running the risk of creating a systemically racist and prejudiced tech-species*** or ‘e-species’ in the form of flawed and racist AI.

An explicit responsibility should be encouraged upon State Parties to ***legally mandate strict auditing of AI systems to address and review potential algorithmic bias*** powered by racialized data. And thus, strengthening the Conventions application of Article 2(c).

In effect, the implementation of algorithmic systems in national judicial systems should be deemed a violation of “*equal treatment before tribunals and all other organs administering justice*” due to biases that manifest through their innovation.

*The General Comment should explicitly emphasize the historical roots of racial discrimination that inform AI programming allowing our institutions to easily worsen the profundity of our already glaring and harmful economic and socio-political inequalities, especially in majority Black communities regarding recidivism and carcerality.*

The General recommendation on preventing and combating racial profiling by law enforcement officials defines and acknowledges the systematic practice of arbitrary stops, searches, identity checks, investigations, and arrests based on ethnic and racial origin as racial profiling as well as the misuse of algorithmic technologies to perpetuate racial profiling and discrimination (CERD/C/GC/36). We believe that the General Recommendation should focus on the intersection of historical racism and AI innovation

that exacerbates already glaring and harmful economic and socio-political inequalities, especially in racially disenfranchised communities.

Engaging a body of scholarly experts on the issue of how and why data encodes systemic racism is imperative in broadening State Parties' understanding and legal participation in quelling the issue of directly discriminatory algorithms. Regarding, General recommendation No. 36 (2020) there is ample pressure on effective policies to pre-emptively remedy potentially harmful practices once discriminatory algorithms are placed in the hands of equally biased judicial systems. However, we acknowledge the historical bedrock of all modern-day biases algorithmic or societal. In doing so, State Parties are encouraged to adopt a 'path dependent' or backward-looking approach establishing how data-powered algorithms are embedded with systemic racism.

Similar to a chain of responsibility design pattern, historically racialized discrimination is the key to effectively enforcing policies that aim to remedy flawed AI. Existing research executed by public-interest and non-profit organizations such as *ProPublica* identifies formulaic prediction equations within algorithmic systems as predetermined to carry out acts of bias through, *inter alia*, justice systems [recidivism predictions], insurance premium calculations, and medical triage (*ProPublica, 2017*). Organizations like *ProPublica* implicitly address a particular phenomenon whereby historically overt and often legally mandated racist and discriminatory practices became an undertone for socio-political conventions and discreetly yet profoundly influence institutional data by means of stratification through race-linked proxies such as *housing, education, healthcare, social security, and interactions with penal systems*. Though oversight mechanisms can be instated at the national level within State Parties, the mechanisms are only as effective as the contexts they operate within. The existing research on AI and predictive risk assessments such as the Correctional Offender Management Profiling for Alternative Sanctions (*COMPAS*)<sup>1</sup> in the United States does not *explicitly* code for race — because such is not necessary to perpetuate racial biases. Predictive indexes are gauged through surveys that question domestic makeup, neighborhood and setting and political affiliations (*ProPublica, 2017*). Acknowledging that these proxies stem from social sectors that have been under the control and discretion of individuals that are guided by personal agendas and bias undoubtedly informs racial discourses and helps State Parties effectively craft policies and working bodies which address the crux of racial discrimination that legislation and training programs, though effective may not be able to.

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<sup>1</sup> Recidivism algorithms

In progressing astronomically with artificial intelligence, humanity has created an ‘e-species’. A unique form of organized intelligence with a worldview informed by coder preferences and prejudices, the greater the presence of artificial intelligence as an ‘e-species’ the harder the separation between this form of intelligence and our governments’ systemic racial disparities. We suggest that the General Comment emphasize the importance of equity and inclusivity within education to empower marginalized populations and their upward mobility within innovative spaces and thus increase representational participation. With only 2% of Silicon Valley’s high-tech workforce identifying as Black, Black workers are the least represented minority group within top firms. At the crux of this representational dilemma lies inequitable access to education within racialized communities.

We suggest that Article 5(e)(v) should acknowledge the seminal nature of the right to education in our dilemma and furthermore should be worded to declare *‘the right to equal, fair, and **quality** education.’* Historical analyses inform us that assured civil rights are incomparable to **equally** assured civil rights, whereby, for example, the right to property though technically assured for all racial and marginalized groups may not be equal in terms of quality and protection. Equal education in this sense creates fair access to opportunities within the technology industry and mitigates the risk of creating systemically unjust artificial intelligence.

Leading critical race scholars have long since advocated for the importance of inclusive workspaces as prejudicial practices can be pre-emptively mitigated at the innovative stage. Nonetheless, we believe State Parties have a responsibility to assure modern-day innovators and corporations must undergo rigorous and thorough checks for bias against all forms of protected characteristics should innovation interact in any capacity with the public.

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State Parties should effectively perform their due diligence when using artificial intelligence in correctional and justice systems, facial recognition, and healthcare. Algorithmic decision-making systems (ADMS) can and have had life-altering and far-reaching consequences for undeserving ethnic and racial minorities. We therefore would like to highlight the imperative nature of legally mandated audits and periodic reviews to rectify possible algorithmic biases. Investigations carried out are surprisingly

and often performed by the same developers responsible hence we believe the General Comment should suggest externalized audits by public-interest non-profit groups.

To reinforce auditing initiatives, artificial intelligence models such as in the case of Northpointe or COMPAS and the nature of calculations used in their manufacturing should be publicly available information. State Parties have a responsibility to disclose predictive calculations that drive algorithmic decisions. In the case of risk assessments in judicial systems, such calculations, assessment indices and all measures used to obtain predictive scores must be available to defendants to reinforce due process legislation. We believe that concealing such crucial information is a threat to the *'right to equality before the law'* and the fairness of trial for any implicated human as it opposed judicial transparency. It is recommended that where such technology is used defendants are provided with full, open-court proceedings where assessments are a fraction of the sentencing and plea-bargain process.

To conclude, we believe the burden of responsibility to rectify the racialized biases and ills perpetuated by technologies and artificial intelligence lies dually on State Parties and innovators. Acknowledging histories mired with racially oppressive legal doctrines that informed our statistics which ultimately powers our intelligence systems is one task but effectively mitigating the unjust reverberations of such historical doctrine through inclusive and quality education for all is a harder yet more effective task. Furthermore, the institutionalization of these technologies requires complex checks to ensure such historical biases are not silently and further corrupting political, social, and economic spheres.