

28 March 2022

**Open Letter from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Co-facilitators of the Intergovernmental Consultations to agree on the International Migration Review Forum Progress Declaration**

Excellencies,

I have the honour to address you in my capacity as the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

I have reviewed the zero draft of the International Migration Review Forum Progress Declaration (“Zero Draft”) with great interest and take this opportunity to share some recommendations from my mandate on integrating key international human rights principles regarding racism, racial discrimination, xenophobia and related intolerance into the proclamation.

I welcome the Zero Draft’s emphasis on countering discrimination and xenophobia, alongside the recognition of migration inequality fomented by gender, age, economic resources, and other social statuses. A glaring omission, however, is any reference to racial discrimination or racism, including the systemic forms of racism that are embedded in laws and structures of border enforcement. The recent [international condemnation](#) of racialized treatment of persons displaced by Russia’s unlawful invasion of Ukraine is [an urgent reminder of how race, colour, national origin, ethnicity and descent](#)—all protected grounds under the International Convention on the Elimination of Racial Discrimination—continue to affect the human rights of non-nationals. U.N. Member States have recently pledged, in various fora, to renew efforts to address systemic racial injustice in all its forms in the wake of the global racial justice uprisings of 2020. By failing explicitly to name and engage with racial discrimination and systemic racism, in its current form, the Zero Draft is currently out of step with one of the most transformative human rights developments of our time.

I wish to emphasize, as I have in several other interventions,<sup>1</sup> that migration governance all over the world is deeply intertwined with racial discrimination and systemic racism. In her 2021 report on systemic racism in law enforcement, the High Commissioner for Human Rights defined systemic racism as

the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de

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<sup>1</sup> E.g. A/HRC/38/52.

facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin.<sup>2</sup>

Systemic racism violates international human rights law's prohibition against racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which is explicitly referenced in footnote 1 of the Global Compact on Migration, prohibits indirect and *de facto* forms of racial discrimination, as well as direct and *de jure* racial discrimination. The Committee on the Elimination of Racial Discrimination has explained that “differential treatment based on citizenship or immigration status will constitute [racial] discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of [ICERD], are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”<sup>3</sup>

From the perspective of my mandate, it is apparent that much of the racial discrimination that occurs within the context of migration regulation and enforcement is systemic in nature. Globally, immigration law and its enforcement are often mechanisms through which migrants are discriminated against on the basis of their race, ethnicity, national origin and religion. Access to citizenship, refugee protection, and even visa mobility are often disproportionately apportioned according to race, colour, descent and national or ethnic origin. In 2001, the participants in the World Conference against Racism in Durban, South Africa recognized that “xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices”.<sup>4</sup> Objective 17 of the Global Compact on Migration reiterates the international community's commitment to countering racism and xenophobia as they manifest in migration enforcement.<sup>5</sup>

For these reasons, the Zero Draft's inclusion of xenophobia and discrimination against migrants, with no mention of systemic racism and racial discrimination in particular, is insufficient. Failure explicitly to name racial discrimination and systemic racism risks de-prioritizing the urgent task of combatting forms of intolerance and discrimination that play an outsized role in violating the rights and equal human worth of all migrants. Globally, while much of immigration law and enforcement may be neutral on its face, the burden of irregularity, forced displacement, dangerous passages and violent border enforcement is borne disproportionately by particular racial, ethnic and national groups. These burdens and their subsequent harms—which include grave human rights abuses—are significantly, though, of course, not wholly, attributable to systemic racism in migration governance. Even where seemingly neutral policies are in place, these policies, in effect, often single out specific racial, ethnic, national and religious groups

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<sup>2</sup> A/HRC/47/53, para. 9. “Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.” Ibid.

<sup>3</sup> CERD/C/GC/30, para. 4.

<sup>4</sup> Durban Declaration, para. 16.

<sup>5</sup> “We commit to eliminate all forms of discrimination, condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against all migrants in conformity with international human rights law.” Global Compact for Safe, Orderly and Regular Migration, para. 33.



for disproportionate exclusion. In addition, racial profiling remains pervasive in immigration enforcement. Naming systemic racism alongside xenophobia as a key driver of migration governance is vital.

**I recommend that subsequent drafts of the Progress Declaration include specific condemnation of systemic racism as manifested in transnational migration regimes.** By way of actionable recommendations I offer the following:

- Xenophobia is mentioned twice in the Zero Draft, and it is the primary focus of paragraph 40.<sup>6</sup> In addition to these paragraphs, I suggest additional paragraphs be added which directly recognize the manifestations of systemic racism in migration governance and commit to challenging these manifestations. I recommend that the Progress Declaration include commitments to analyze racial inequality through regional and national reviews of progress. As part of this process, the Zero Draft's recommendation on disaggregated data collection should include specific calls for data disaggregated by race, ethnicity and national origin with full regard for applicable human rights principles.
- In addition to reaffirming the linkages between the Global Compact and other U.N. initiatives such as the 2030 Agenda, I recommend that special commitments be made for connecting the Global Compact review process with pre-existing bodies with special expertise in issues of racial equality, including the Committee on the Elimination of Racial Discrimination, the Permanent Forum on Indigenous Issues, the Permanent Forum of People of African Descent, and the Special Procedures of the Human Rights Council. In addition, special emphasis should be placed on consultation with directly affected migrant groups, particularly those most subjected to the harms of systemic racism and racial discrimination. Migrants themselves, as rights-bearers and autonomous persons, must be represented in any substantive review of transnational migration governance, and I believe the Global Compact review process provides a useful mechanism for enabling this representation.
- I welcome the Zero Draft's affirmation of migrants' safety, dignity, human rights and fundamental freedoms without discrimination. In order to turn this affirmation into action, I recommend that systemic racism in migration governance be explicitly recognized as a key barrier to progress, and I urge the review forum to adopt clear and actionable global commitments for challenging manifestations of systemic racism in migration law, policy and practice.

I refer you to the submissions of civil society actors whose inputs include insightful and practical recommendations for specific revisions to the Zero Draft. For example, one civil society recommendation shared with my mandate suggests that the language of paragraph 37 be modified to read "Multiple and intersecting discrimination, racism, racial discrimination, xenophobia, and related intolerance misinformation and stigma against migrants or minorities associated with migration remain widespread,

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<sup>6</sup> "We will accelerate efforts to develop and implement policies, practices and discourse to confront xenophobia and disinformation on migration and migrants, including by promoting open and evidence-based public discourse on migration and migrants, in partnership with local actors and migrants, with a particular focus on the role of migrants as agents of sustainable development."



including narratives that falsely associate migrants with criminal activities or heighten anti-immigrant anxieties.” The same submission provides additional, important language for inclusion that explicitly recognizes systemic racism in migration governance:

Recognizing the impact systemic racism has on migration governance, we are determined to prevent and address human rights violations and abuses stemming from racial discrimination, we will accelerate efforts to review, develop and implement policies, practices and discourse to confront racism, racial discrimination, xenophobia and related intolerance and disinformation on migration and migrants, including by promoting open and evidence-based public discourse on migration and migrants, in partnership with local actors and migrants, that promotes the human rights of migrants, their well-being and valuable contributions to their communities.

This suggested language would go a long way to filling the gaps in the Zero Draft, and I recommend that language such as this form the basis for subsequent revised drafts.

If I can offer any clarification on the above, or if I can be of further assistance on any issues related to my mandate, please do not hesitate to contact me through the Office of the High Commissioner for Human Rights (Ms. Eleanor Robb, [eleanor.robbs@un.org](mailto:eleanor.robbs@un.org)). I look forward to further collaboration as you finalize the Progress Declaration with an eye toward fulfilling international human rights obligations regarding non-discrimination and racial equality.

Please accept, Excellencies, the assurances of my highest regard.

A handwritten signature in black ink, appearing to read "T. Achiume".

E. Tendayi Achiume  
Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination,  
Xenophobia and Related Intolerance