

[2 April 2024]

**CALL FOR INPUTS BY THE OFFICE OF
THE HIGH COMMISSIONER FOR
HUMAN RIGHTS (OHCHR) FOR THE
REPORT PURSUANT TO HUMAN
RIGHTS COUNCIL RESOLUTION 47/21**

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**BRIEF INPUT BY THE EUROPEAN
UNION AGENCY FOR FUNDAMENTAL
RIGHTS (FRA)**

Submitted to ohchr-registry@un.org

FRA Submission and related FRA Publications

1.1. The European Union Agency for Fundamental Rights

The European Union Agency for Fundamental Rights (FRA)¹ provides independent evidence-based assistance and expertise to the European Union and its Member States where these are acting within the scope of EU law. It does this by collecting and analysing comparative, objective and reliable information and data about the situation of fundamental rights across the European Union. Some of the information and data produced are of relevance also for the work of the United Nations High Commissioner for Human Rights which is why the Agency hereby points to a selection of its data and findings that were either already published or are part of upcoming publications and ongoing projects.

¹ <https://fra.europa.eu/en>

2. Purpose of the call

This call for inputs seeks to inform the preparation of the 2024 report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 47/21. The report will be presented to the fifty-seventh session of the Human Rights Council and transmitted to the seventy-ninth session of the General Assembly.

Operative paragraphs 14 and 15 of Human Rights Council resolution 47/21 request the High Commissioner “...to continue to report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, to contribute to accountability and redress and to take further action globally towards transformative change for racial justice and equality...”; and to prepare a written report on an annual basis. Further, OHCHR refers to the High Commissioner’s Four-Point **Agenda towards transformative change for racial justice and equality** (found in the annex to A/HRC/47/53).

2.1. Key questions and types of input/comments sought

To prepare the report, the Office of the United Nations High Commissioner for Human Rights welcomes relevant information, notably about intersectional discrimination against Africans and people of African descent and advancing racial justice and equality through an intersectional approach, including regarding:

- multiple, intersecting and compounding manifestations of systemic racism as experienced by different groups of Africans and people of African descent, in connection with sex, gender, gender identity, sexual orientation, age, nationality, migration status, minority status, disability, religion, socio-economic and other status.
- root causes and drivers of intersectional discrimination against Africans and people of African descent, including relating to stereotypes and other structural, institutional and historical dimensions.
- actions by States and others to advance racial justice and equality through an intersectional approach, including in relation to:
 - the design, implementation and evaluation of laws, policies, programmes, action plans, special measures, processes and other initiatives relating to health, education, employment, housing, law enforcement and the criminal justice system, and other sectors.

- efforts to enhance participation of Africans and people of African descent in public affairs; and
- measures to contribute to accountability and redress, including for the legacies of enslavement and colonialism.

3. Being Black in the EU (2023)

In October 2023, FRA published the second edition of the report [Being Black in the EU](#). The report is part of FRA's third large-scale survey on immigrants and the descendants of immigrants across the EU. It examines the experiences of almost 6,800 people of African descent in 13 EU Member States Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Poland, Portugal, Spain and Sweden. The report revisits the situation since the publication of its first edition revealing that, despite binding anti-discrimination law in the EU since 2000 and significant policy developments since then, people of African descent continue to face racism, discrimination and hate crime.

To tackle racism and discrimination effectively, FRA calls on EU and EU Member states to:

- properly enforce anti-discrimination legislation as well as effective, proportionate and dissuasive sanctions.
- identify and record hate crimes and consider bias motivation as an aggravating circumstance when determining penalties.
- collect equality data, including on 'ethnic or racial origin' to assess the situation and monitor progress.
- ensure that equality bodies have the necessary mandates and resources to tackle discrimination and support victims.
- take steps to prevent and eradicate discriminatory institutional practices and culture in policing, drawing on [FRA's guide on preventing unlawful profiling](#).
- develop specific policies to address racism and racial discrimination in education, employment, housing and healthcare.

3.1. Selected key findings

3.1.1. Racial discrimination increased in key areas of life

- Overall, almost half of respondents of African descent (47 %) have felt discriminated against in at least one area of life on any ground in the five years preceding the survey and more than a third (36 %) did so in the year before the survey. 'Skin colour' and 'ethnic or immigrant background' were the two most often mentioned grounds of discrimination by respondents (12 months: 28 % and 22 % respectively; 5 years: 38 % and 30 % respectively).

- Overall, the 12-month prevalence of **racial discrimination** in all areas of life has increased for people of African descent by 10 percentage points when compared to 2016 (34 % in 2022 versus 24 % in 2016). The highest 12-month rates of racial discrimination were observed in Austria (64 %) and Germany (64 %), followed by Finland (54 %) and Denmark (43 %).
- The highest rates of **racial discrimination** concern employment - when looking for a job (5-year rate: 34%) and at work (5-year rate: 31%); accessing housing (5-year rate: 31%), and in public spaces, using public transport or entering bars, shops, or restaurants (5-year rate: 24%).
- Discrimination remains a recurring experience: some 29 % said that it happened to them three to five times during the past year, and 26 % experienced it six or more times. Specifically, while one out of five respondents (19 %) faced discrimination once in the year preceding the survey, 11 % said that it happens all the time.
- **Discrimination remains invisible**: overall, only 9% of respondents who felt discriminated against on any ground reported or made a complaint about any of the incidents they experienced in the 12 months preceding the survey.

3.1.2. Multiple or intersecting grounds of discrimination

- More than half of the respondents of African descent who felt discriminated against in at least one area of life say they experienced it on more than one ground. While 40% of respondents who felt discriminated against in the year before the survey mentioned two different grounds, every tenth respondent (11 %) said they have felt discriminated against on three grounds, and another 5 % on four or more grounds in the same period.
- The findings suggest intersecting forms of discrimination: for example, discrimination **on any ground** concerns more often young people, people with higher levels of education, people with disabilities, as well as people who wear traditional or religious clothing in public or self-identify as belonging to a minority in terms of disability, gender identity or gender expression, and sexual orientation or who describe themselves as ‘a person of African descent or as a Black person’. No significant differences were identified between women and men in this regard.
- The results point to a substantial intersection of the grounds ‘skin colour’ and ‘ethnic or immigrant background’ among respondents of African descent. A considerable proportion of respondents (63 %) who felt discriminated against because of their skin colour in the five years preceding the survey, also felt discriminated against because of their ethnic or immigrant background.

Moreover, 12 % of respondents who felt discriminated against because of their 'skin colour' in the five years preceding the survey also felt discriminated against based on their religion or religious beliefs.

3.1.3. Racist harassment remains widespread and underreported

- Nearly one in three respondents of African descent (30 %) experienced racist harassment in the five years before the survey. One in four respondents (24 %) experienced racist harassment in the 12 months before the survey (27 % of women and 22 % of men). The results are like those of the 2016 survey.
- Overall, young respondents, women and men wearing traditional or religious clothing in public are more likely to experience racist harassment than those who do not.
- Only 12 % of the most recent incidents of racist harassment were reported to police or other services (14 % of incidents against women, 10 % of incidents against men).

3.1.4. Racist violence remains largely unreported

- In the five years before the survey, some 4 % of respondents experienced racist violence. The results are like those of the 2016 survey (5 %).
- Overall, over a third of victims (36 %) of racist violence reported the most recent incident to an organisation or service, mainly to the police. The rates for reporting racist violence have not changed since 2016.

Impact of racist violence: most of those who say they experienced racist violence (61 %) suffered negative psychological consequences (e.g., depression or anxiety); a further 22 % were afraid to leave the house or visit places.

3.1.5. Police stops involve racial profiling

- 12 % of respondents of African descent were stopped by the police in the year preceding the survey. Among those stopped, more than half (58 %) perceived the last stop as racially motivated.
- Overall, younger respondents, more women than men respondents perceived the most recent stop as the result of ethnic profiling.

Experiences of racial discrimination, racial harassment and racial profiling substantially undermine trust in all public institutions.

3.1.6. Employment: gaps in quality and security

- About a third (32 %) of the respondents of African descent work in elementary occupations, compared to 8 % of the general population across all 27 EU countries.
- Every third (30 %) employed respondent has only a temporary contract, which is about three times the value for the general population (11 %).
- Respondents of African descent are more often over-qualified for the job they do in comparison with the general population regardless of their citizenship. Every third EU citizen of African descent works in an occupation not corresponding to their level of education (35 % vs. 21 %) and more than half of non-EU citizens of African descent (57 % vs. 40 %).

3.1.7. Rising inflation and cost of living have put people of African descent at higher risk of poverty than the general population

- Every third respondent (32%) faces difficulties or great difficulties in making ends meet, while on average 18 % of the general population in the EU show indicate having financial difficulties.
- Energy poverty affects persons of African descent disproportionately. 14% say they cannot afford to keep their home warm (compared with 7% of the general population).
- Nearly one in two (45 %) respondents live in overcrowded housing – a share that is 2.5-times higher than the share for the general population in the EU-27 (17 % in 2021).

3.1.8. Multiple, intersecting and compounding manifestations of systemic racism as experienced by people of African descent

- The survey results show that people of African descent continue to face racism and discrimination at individual, institutional and structural levels. The findings reveal that racial discrimination amplifies through different institutional systems and can therefore accumulate over a person's lifetime. This becomes particularly visible when studying the interrelations of respondents' experiences of racial discrimination in multiple areas of life. For example, the results show that experiences of racial discrimination in education are closely related to

experiences of racial discrimination in employment (including both looking for work and at work). Furthermore, experiences of racial discrimination at work are closely related with such experiences in access to housing and/or to public or private services. Employment and housing are the areas in which the prevalence rates of racial discrimination are the highest: when looking for a job (5-year prevalence of 34 %) or at work (5-year prevalence of 31 %); accessing housing (5-year prevalence of 31 %); and in public spaces, or when using public transport or entering bars, shops, or restaurants (5-year prevalence of 24 %).

- The survey findings show that many people of African descent in the 13 Member States surveyed recurrently experience racial discrimination in multiple domains of public life. Racial discrimination is not a once-in-a-lifetime experience: some 29 % of respondents say that it happened to them three to five times in the year before the survey, and 26 % experienced it six or more times. Neither it is limited to a single domain: majority of victims of racial discrimination have experienced it in two or more areas (in the past 5 years: 67 %, in the past 12 months: 58 %).
- The results indicate the cumulative and intergenerational nature of racial discrimination. On the one hand, there is a strong overlap of experiences of racial discrimination between different areas of life, and on the other hand parents and children face racial discrimination in multiple institutional settings (such as respondents' own experiences of discrimination in access to employment, housing or health and the experiences of racial harassment or bullying of their child(ren) at school).
- Moreover, nearly every third person of African descent experienced incident of racial harassment, the majority of which are repetitive, multiple incidents. Furthermore, among those respondents who experienced encounters with law enforcement (i.e. were stopped by the police) in the 12 months before the survey, 58 % considered the most recent stop to be a result of racial profiling.
- Additionally, the survey findings provide with evidence that people of African descent with specific sociodemographic characteristics (e.g. young), people who wear traditional or religious clothing in public, and those who perceive themselves as belonging to a minority in terms of disability, religion, gender identity or gender expression, or sexual orientation are at higher risk for racial discrimination or harassment compared with those who do not.
- The survey findings on the educational attainments, quality, and security in employment, as well as gaps among people of African descent regarding the poverty and housing indicators when compared with the general population refer to structural dimensions of inequality across Member States, as illustrated by the findings above.

4. UPCOMING FRA PUBLICATIONS

4.1. FRA (2024), Addressing racism in policing (to be published in April 2024)

4.1.1. Key findings

Few Member States record incidents of alleged racist policing as a dedicated category. Moreover, they use different definitions, categorisations and methodologies to record the incidents. For example, the existing data did not allow for further disaggregation by offence, for example by type, such as excessive use of force, hate speech or physical assault. Therefore, most Member States do not have official data sources on racist incidents and discrimination involving the police.

There are no agreed official definitions of racial profiling, criteria for reasonable, necessary, or proportionate stop and search or identity checks, or understanding of what is considered excessive use of force across Member States. Only the Netherlands provided FRA with some of the data the police, prosecution services and courts have collected.

4.1.2. Case law

Establishing racial or ethnic bias in police offences has a high threshold of proof, ECtHR case-law shows. However, the ECtHR has condemned several Member States for breaching their positive obligations to conduct effective investigations into allegations of racial or ethnic profiling or excessive use of violence on account of a person's race or ethnicity.

The ECtHR has delivered judgments on racial profiling and police violence under Article 3 (prohibition of torture or ill treatment) and has scrutinised the racial and ethnic grounds of offences under Article 14 (prohibition of discrimination) in conjunction with the substantive aspect of Article 2 (right to life). Moreover, ECtHR case-law has assessed national authorities' positive obligations to investigate allegations of racial and ethnic discrimination under Article 14 in conjunction with Article 3 or Article 8 (right to respect for private and family life) (i).

4.1.3. Violence and ill treatment

Several instances of police violence against Roma were severe enough to amount to ill-treatment or violation of the right to life, the ECtHR determined. Nevertheless, most cases did not violate Article 14 in conjunction with the substantive aspects of Articles 2 and 3, it found. This was on account of the high threshold of proof of the causal link between police offences and racial or ethnic discrimination.

4.1.4. Racial and ethnic profiling and racial motivation in police conduct

The ECtHR has reached similar conclusions in multiple racial profiling instances. The ECtHR acknowledged the complaint concerning the Spanish police's racially motivated identity checks in a recent case against Spain. However, it ultimately held that the applicant's argument, namely that the officers did not check anyone from the 'Caucasian population' on the same street, could not be taken as an indicator of the identity check's discriminatory motivation without other circumstances showing that an ethnic bias motivated the identity checks ⁽ⁱⁱ⁾.

Obligation to investigate racist motivation in criminal offences involving the police

The ECtHR also assesses national authorities' positive obligation to investigate if racism plays a role in police offences. Criminal authorities not ensuring an effective investigation into whether ethnic hatred could have played a role in the violence the Hungarian police inflicted on a Roma man constituted a violation of Article 14 in conjunction with the procedural limb of Article 3, the ECtHR stated ⁽ⁱⁱⁱ⁾.

National case-law examples

FRA collected national case-law and second instance decisions related to discriminatory policing on the grounds of racial and ethnic origin for 2011–2021. Like the ECtHR, national courts tend to impose a high threshold of proof for ethnic or racial bias driving police action. The burden of proof mostly lies with the complainant.

Another barrier relates to the differential weight given to the testimonies of the victims and the testimonies of the police.

4.2. Upcoming report on the EU LGBTIQ Survey III results (2023) - to be published on May 17, 2024 (CONFIDENTIAL)

The Survey results that LGBTIQ respondents who identify with other minority groups tend to be at higher risk of hate-motivated violence in the last 5 years than those who do not, for example 33 % of LGBTIQ respondents who are asylum seekers and 20 % and 19 % of those who self-identify as a minority in terms of religion or disability and skin colour, respectively. (Compared to 13 % for all LGBTIQ groups).

- 2 % of all respondents who were victims of violence said the perpetrator of the violent attack was a policy officer or border guard and 1 % said the perpetrator was another public official or civil servant.
- Among all respondent groups, more than 3 % of non-binary and gender-diverse respondents said that the perpetrator was a police officer or border guard.
- Similarly, hate-motivated harassment incidents are more frequent among LGBTIQ respondents who are asylum seekers or refugees (66 %) or who self-identify as belonging to a minority group in terms of disability (63 %), religion (63 %), ethnicity or migrant background (61 %) or skin colour (60 %). (Compared to 54 % for all LGBTIQ groups).

(i) For more information, see FRA (2018), [Unmasking Bias Motives in Crimes: Selected cases of the European Court of Human Rights](#), Publications Office of the European Union, Luxembourg (updated version forthcoming).

(ii) ECtHR, [Muhammad v Spain](#), No 34085/17, 6 March 2023.

(iii) ECtHR, [M.F. v Hungary](#), No 45855/12, 5 March 2018.