

Inputs for the Draft Declaration on the Promotion, Protection, and Full Respect of Human Rights for People of African Descent

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1. SCOPE

To begin with, we recommend the Draft Declaration makes reference to the Durban Declaration and Programme of Action (DDPA) 2001, 2030 Agenda for Sustainable Development, and the African Union's Agenda 2063. In that regard,

- A. Acknowledging the centrality of universal human rights to achieve the 2030 Agenda for Sustainable Development, we advocate promotion and protection of human rights in accordance with the Vienna and Durban Declarations. That is, for all members of the African diaspora without exception based on gender, sexual orientation, nationality, disability, or other status. This is pursuant to A/HRC/19/41 which states "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (HRC, 2011).
- B. Acknowledging that ASPIRATION 2 of Agenda 2063 aspires to an integrated and politically united AU, based on the ideals of Pan-Africanism and the vision of Africa's Renaissance, we advocate development of dynamic and mutually beneficial links between the AU and its Sixth Region including management of cross-border resources through dialogue. This evolving relationship can be facilitated by UN organs such as the Permanent Forum for people of African Descent (PFPAD), to enable circular migration of African professionals, and our democratic representation in decision making structures and processes.

2. PREAMBLE

The Preamble to the Draft Declaration should highlight obstacles to the African diaspora's social, economic and environmental development in fulfilling civil, political, economic, social and cultural rights," as outlined in the Right to Development (UNGA, 1986). Therefore, acknowledging the importance of Universal Declaration of Human Rights (UDHR) 1948, International Convention for the Elimination of Racial Discrimination (ICERD) 1965 and the DDPA 2001, we suggest the Preamble refers to

- A. **The Outcome Document of the Regional Meeting between OHCHR and international civil society** held in 2017 which,
 - I. reaffirmed principles of equality and non-discrimination in the UDHR 1948 and encouraged respect for universal human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - II. underlined the importance of the full implementation of the ICERD 1965 and its universal ratification as a central and effective instrument to address Afrophobia.
 - III. reaffirmed the commitments contained in the DDPA 2001 with regard to people of African descent.
 - IV. reiterated the importance inter alia:
 - a. to ensure effective implementation of comprehensive anti-discrimination legislation, and as appropriate, adopt or strengthen legislation in this regard;

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- b. to recognize the value and diversity of our cultural heritage, and to ensure our full integration into social, economic and political life with a view to facilitating our full participation at all levels in the decision-making process;
- c. to adopt and implement policies and programmes that provide effective protection for, and review and repeal all policies and laws that could discriminate against people of African descent facing multiple, aggravated or intersecting forms of discrimination based on other related grounds, such as sex, language, religion, political or other opinion, social origin, disability or other status;
- d. to ensure our full access to effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination, and the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination
- e. to implement and enforce effective measures to eliminate any practice of “racial profiling”;
- f. to collect, compile, analyse, disseminate and publish reliable fully disaggregated statistical data, in accordance with international standards at the national and local levels, and take all other related measures necessary to assess regularly the situation of Afro-descendant victims of racism, racial discrimination, xenophobia and related intolerance;
- g. to establish or strengthen, as appropriate, local, national and/or regional mechanisms to promote and protect the universal human rights of victims of Afro-phobia;
- h. to combat effectively prejudices and harmful and wrongful stereotypes which may lead to racism, racial discrimination, xenophobia and related intolerance and, in this regard, to implement educational, cultural and awareness-raising programs aiming at promoting a greater knowledge of and respect for our diverse heritage, culture and contribution.

IDPAD Coalition UK’s submission to the UN OHCHR Regional Meeting between the WGEPAD and civil society in 2017 recommends,

i) the Declaration is introduced within the legal framework of “the DDPA which reasserts the principles of equality and non-discrimination as core human rights, thus transforming victims of discrimination into rights-holders and States into duty-bearers; whilst acknowledging the importance of active involvement of international and non-governmental organizations, political parties, national human rights institutions, the private sector, and other stakeholders” (World Conference Against Racism, 2002).

ii) Focus on challenging Afri-phobia/Afro-phobia & Reparatory Justice

The DDPA 2001 “recognizes that colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans (...) were victims of colonialism and continue to be victims of its consequences (...) that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today” (World Conference Against Racism, 2002). Consequently, arguments for reparations have recently gained momentum globally including HR 40 in the USA, and the UK’s All Party Parliamentary Group for African Reparations in 2021, as well as the CARICOM Ten Point Plan.

We therefore affirm the right to freedom for African peoples to assemble, regarding the aforementioned evolving relationship between the African Union and its Sixth Region, bearing in mind maltreatment we face from border controls and law enforcement when we do. In addition, we recommend this right should facilitate convenings/meetings exclusively for African people.

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B. We advocate the Draft Declaration is framed by **the UDHR 1948**, acknowledging,

Article 1, asserts all human beings are born free and equal in dignity and rights, defines basic assumptions of the Declaration that the right to liberty and equality is man's birthright and cannot be alienated, and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2, asserts the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Existing international human rights norms should be strengthened by the Draft Declaration, e.g. the principle of equality and non-discrimination based on race, colour, descent, ethnic, or national origin is enshrined in the ICERD 1965. We recommend reference be made to the Vienna Declaration 1993 without exception, highlighting state parties' failure to protect universal human rights of members of the African diaspora equally, generally and globally in accordance with UDHR 1948 & ICERD 1965.

Article 3, in the **Universal Declaration of Human Rights 1948**, is a fundamental freedom and first generation human right which proclaims the right to life, liberty and security of person in the International Bill of Rights. It is an essential human right for the enjoyment of all other rights and introduces Articles 4 to 21, which sets out civil and political rights, including freedom from slavery and servitude, from torture and cruel, inhuman or degrading treatment and punishment. The Declaration should protect the universal human rights of individuals facing the death penalty in UN member states where it is still applied, and challenge those seeking to reintroduce the death penalty. For example disproportionate numbers of African Americans face the death penalty in the USA, as well as Africans on the basis of same sex orientation, in some AU states including Sudan, Mauritania, parts of Somalia and Nigeria. In that regard, we advocate promotion and protection of the right to life, free from torture and inhumane treatment as a fundamental human right of all members of the African diaspora. *We therefore recommend the Declaration include the right to life for all, without fear of harassment, intimidation, and or discrimination from law enforcement and border control agencies.*

C. We concur that the **DDPA 2001** should introduce and legally frame the Draft Declaration. For example, the DDPA requests that "States promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in compliance with the UDHR 1948, and their statutory obligations under international human rights instruments, regardless of the migrants' immigration status" African immigrants often remain marginalised from fulfilling human rights, in countries of transit and destination countries. The recent public killing of **Aliko Ogorchukwu** in Italy, inhumane living and working conditions, and deaths in Mediterranean transit countries in the AU and EU, highlight disproportionate human rights violations encountered by African migrants.

Similarly, African diaspora communities in the Americas remain vulnerable to marginalisation and exclusion from universal human rights. Following the change in the US administration, Proclamation 10141, ended discriminatory bans on entry to the United States in January 2021, thereby revoking Executive Order 13780 and other proclamations which prevented certain individuals from entering the United States from primarily Muslim and African countries. Nonetheless, the controversial Title 42 immigration policy continues to disproportionately impact Afrodescendant asylum seekers and migrants to the USA, who also face widespread anti-Black violence and discrimination in Mexico and Latin American transit countries. In October 2021, US Customs and Border Protection (CBP) agents were photographed physically beating back Haitian migrants on the Mexico-U.S. border in order to prevent them from entering the U.S.A. to obtain asylum; and the Department for Homeland Security has removed more than 20,000 Haitian migrants on over 200 expulsion and deportation flights to Haiti since the new administration took office.

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Global Risks such as socioeconomic polarisation within and between countries, pose significant risks to social, economic and environmental development of the African diaspora, and should therefore be highlighted in the Draft Declaration. Populism can be linked to growing inequality and polarisation since the 1980s, e.g. nationalism and anti-immigrant sentiment within neoliberal economies fuels Afrophobia. In that regard, SDG 10 of the 2030 Agenda for Sustainable Development facilitates policy interventions to reduce inequality. For example, migration and integration policies which adversely impact African migrant communities can be analysed for invisibility due to lack of fully disaggregated statistics that monitor key social indicators, such as health, education, and housing.

Therefore, calling to mind human rights violations including inhumane conditions in immigrant detention centres and disproportionate loss of African lives, the Draft Declaration should uphold the DDPA's recommendations "to ensure that African and African Diaspora migrants, regardless of their immigration status, detained by public authorities are treated with humanity and in a fair manner, and receive effective legal protection (...) in accordance with the relevant norms of international law and human rights standards, particularly during interrogation" (World Conference Against Racism, 2002).

3. AGENDA 2063 & the African Union's Sixth Region

Pan African Structures and Processes are key to the African Diaspora's survival and development. following the Covid 19 pandemic and global economic lockdown, as well as the rise in nationalist populism and armed conflict in some UN Member states. The DDPA 2001 advocates, "the United Nations, international financial and development institutions and other appropriate international mechanisms (should) develop capacity-building programmes intended for the African Diaspora, (World Conference Against Racism, 2002). We believe that the Declaration should facilitate the legal spirit of Pan Africanism enabling sustainable development through efficient functioning of the UN Permanent Forum for People of African Descent and its Working Group from international civil society, for dialogue on political, economic, and social issues affecting the AU and its Sixth Region. *We therefore recommend that the Declaration includes the right(s): to strengthen Pan African structures and processes: for development of the African Diaspora as proposed in the Draft Framework for Inclusion of the African Diaspora in AU Structures and Processes, and the Charter for African Cultural Renaissance.*

Self Determination and Development of the African Union's Sixth Region

The DDPA 2001 "urges States to facilitate the participation of people of African descent in all political, economic, social and cultural aspects of society (...) and to promote a greater knowledge of and respect for their heritage and culture" (World Conference Against Racism, 2002). In that regard, SDG 16 of the 2030 Agenda asserts states and statutory bodies enable democratic participation for peace, justice, & good governance. We recommend that the Declaration advocates a legal framework of national action plans to eliminate Afri-phobia. For example, fully disaggregated equality data collection and analysis as advocated by UN GA Res. 68/261, through democratic community participation to address Afri-phobia in access to universal human rights. With this in mind, we advocate implementing SDG Target 17.18, i.e. fully disaggregated equality data collection and analysis to address existing gaps between theory and praxis of anti-discrimination norms, that exacerbate systemic racism. For example, national action plans should be implemented to address Afro-phobia, as asserted by the DDPA 2001 and UN GA Res. 68/261. States with sizable African diaspora populations in the Global North e.g. the USA, UK, France and other European metropolises should complete fully disaggregated equality data collection to plan, analyse and monitor implementation of more inclusive policies for sustainable development. This can help facilitate IDPAD 2015-2024's thematic objectives of recognition, justice, and development. *The Draft Declaration should therefore include the right(s) to participate in inclusive and sustainable development for Pan African empowerment, in accordance with Agenda 2063 and the DDPA's recommendations:*

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Reparations and Reporative Justice

The Declaration should assert that significant harms were committed during the transatlantic trade in enslaved Africans, and during colonialism that still impacts African diaspora communities globally today. This should be addressed with remedies through reparatory measures both materially and symbolically. Moreover, the Declaration should challenge intergenerational neocolonial structures and processes that impoverish African peoples globally, for the benefit of globalised neoliberal capitalist economies and monopolies. E.g. where social, economic, and environmental abusive (under) development of African states rich in mineral resources occurs, for their land, labour and capital.

Therefore, bearing in mind the ethnocide, dispossession, and capitalistic overexploitation of enslaved Africans during the Maangamizi (making note of both the Trans Atlantic and Indian Ocean Trade), *it is imperative that the Declaration gives a right to reparations and other forms of reparative justice for descendants of enslaved and colonised Africans.* For example, UN organs and member states should facilitate multi-level multi-stakeholder knowledge exchange and circular migration of African and African diaspora professionals to enable social, economic, and environmental development of Africa and its peoples. *With this in mind, the Declaration should assert the right for members of the African diaspora to know about and memorialise truths of past wrongdoings during colonialism and thereafter; and participate in decision-making on how historical sites are maintained and protected. This includes, a right for reclaiming and having returned, plundered cultural artefacts belonging to African Union states and peoples, e.g. recently returned artefacts from European collections to AfriKa.*

4. Other Key Human Rights in the International Bill of Rights

A. Protection of the universal human rights of vulnerable groups such as people with disabilities, women, elders, sexual minorities, youth and children from forced labour, sexual exploitation, and other human rights violations should be imperatively addressed in the Declaration. We recommend more efficient, fair and just remedies for people of African descent that are implemented equally, generally and globally; e.g. where the universal human rights of African immigrants are breached in countries of origin, destination and transit countries. *The Draft Declaration should therefore strengthen human rights bodies and instruments for the protection of members of the African Diaspora from systemic racism, modern day slavery, and slavery related practices, including our criminalisation and imprisonment for capitalistic exploitation.*

B. Fundamental freedoms outlined in **the International Convention on Civil and Political Rights, 1966**, include: the right to recognition everywhere as a person before the law; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proven guilty; and the right to a nationality. Ethnic profiling by law enforcement, border controls, and other statutory institutions clearly violates many of the freedoms in the International Bill of Rights. *The Declaration should therefore include a right to freedom from being stereotyped or profiled on the basis of racial, ethnic or national origin (presumed or otherwise).* The ICCPR also includes the right to participate in elections free and unfettered. Policies and laws that seek to suppress and curb the voting rights of persons of Africa diaspora are in contravention of this. *The Declaration should therefore reinforce the rights of all eligible persons to freely participate in their nation's electoral process, equally and fairly.*

Notably, women and girls of people of African descent suffer from multiple forms of discrimination on account of their race, gender, class and other identities in all areas of life and their specific human rights concerns must be addressed. SDG 5 of the 2030 Agenda advocates gender equality, and various UN organs urge member states to eradicate the multiple forms of discrimination and oppression faced by women and girls of African descent according to the concept of intersectionality in all areas of the SDGs. For example UNCTAD engages in programmes to address gender inequality in AU states. In that regard, SDG Target 5a requires “undertaking reforms to give women equal rights

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to economic resources, access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws" (IAEG-SDGs: 2017). *With this in mind, it is imperative that the Declaration address all forms of inequality affecting African diaspora women and girls as a consequence of their intersectionality.*

Other first generation rights in the ICCPR 1966 include freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association. Vulnerable Africans belonging to sub cultural groups such as LGBTQI+ communities remain excluded and marginalised from universal human rights. E.g. "widespread human rights violations perpetrated, too often with impunity, against individuals based on their sexual orientation and gender identity (...) hundreds of people have been killed and thousands more injured in brutal, violent attacks (...) violations include torture, arbitrary detention, denial of rights to assembly and expression, and discrimination in health care, education, employment and housing." (HRC, 2015). *The Declaration should therefore include the right to freedom of expression with harassment from law enforcement agencies, and advocate protection to the aforementioned sub-cultural minorities.*

Moreover, the Declaration should assert repeal of discriminatory laws for the protection and promotion of universal human rights." (HRC, 2015). For example, the coronavirus pandemic, ensuing economic downturn, and "monkeypox" health emergency contributes to increased homophobia and transphobia against intersectional Africans. In accordance with A/HRC/29/23, the ECtHR, and the Inter-American Court of Human Rights several judgements affirming the rights of LGBT persons to equal treatment and protection under the law, *We therefore advocate the Draft Declaration "condemns violence and other human rights violations based on real or imputed sexual orientation and gender identity".*

C. International Convention on Economic, Social and Cultural Rights, (ICESCR) 1966

Employment

ILO Convention 111 asserts states parties promote access to decent work for people of African descent in key occupations and economic sectors, without any discrimination. However, narratives from organisations working in the Global North indicate qualifications and experience of African migrants within labour markets are often not recognised, illustrating breaches of the right to adequate employment i.e. Article 23, UDHR 1948. In that regard, the term 'migrant' is sometimes used to describe all Afro Descendants in some Mediterranean states, e.g. Cyprus, Greece and Malta including to describe individuals born in those countries (ENAR: 2015). For example, SDG 8 of the 2030 Agenda aims to achieve decent employment and economic growth; SDG Target 8.8 can be implemented to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants and those in precarious employment. *It is imperative that the Draft Declaration include a right to economic and social mobility without discrimination that strengthens compliance with anti-discrimination norms, to secure and maintain employment appropriate to the qualifications and/or professional experience of Afro-descendants, and with appropriate remuneration for our skills and expertise.*

Health

African diaspora communities suffer disproportionately poor health outcomes, e.g. high rates of maternal mortality: as a result of social determinants of health including poor diet, systemic racism and environmental pollution, particularly but not exclusively affecting our communities. The COVID-19 pandemic highlighted disparities in addressing African diaspora communities' access to health, in countries of the Global North. Many states do not collect fully disaggregated statistics, which would enable specific health needs in our communities, and ensure adequate measures are implemented to address them. Moreover, where disaggregated equality data collection and analysis occurs, more

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successful policy interventions are required, e.g. to address disproportionately poor health outcomes afflicting our communities. In addition, climate change, environmental pollution and environmental degradation pose significant global risks for health outcomes of the African diaspora which should be adequately addressed by state parties. The DDPA 2001 requests States, supported by international cooperation as appropriate, to consider positively concentrating additional investments in health-care systems, education, public health, electricity, drinking water and environmental control (World Conference Against Racism, 2002). *Acknowledging culture-related health issues e.g. traditional healing, medicines and other issues affecting the African diaspora, we recommend the Declaration include a right to use traditional medicines and healing practices. Moreover, we re-assert the right to health and wellbeing, acknowledging historical trauma and social determinants of health which adversely affect African populations globally, e.g. poverty, systemic racism, and lack of access to adequate healthcare; whilst highlighting new global risks such as climate change, environmental degradation and pollution, and urban migration.*

Education

The DDPA 2001 “encourages States to promote education on the human rights of migrants (...), including the positive contribution of migrants to the host society and the vulnerability of migrants, particularly those who are in an irregular situation” (World Conference Against Racism, 2002). Current educational curricula generally does not adequately address subjects affecting the African diaspora, such as the intergenerational impacts of the enslavement of Africans and colonialism, or the need for reparations to facilitate equity. Good practice in addressing Afrophobia in education must therefore be promoted from an Afrocentric perspective, by human rights bodies and other stakeholders. In that regard, SDG 4 of the 2030 Agenda for Sustainable Development asserts states should pursue inclusive quality life-long education for all. Interventions such as Art. 2 of the French Loi Taubira that asserts “school curricula and research projects in the fields of history and the human sciences should accord to the subjects of the Negro slave trade and slavery the important place they deserve” must be strengthened. *We therefore recommend, the Declaration include a right to education that re-asserts Article 26, UDHR 1948 in accordance with the Vienna and Durban Declarations, and IDPAD’s Programme of Action, acknowledging the need for reparations for African victims of colonialism and enslavement. Moreover, we recommend the Declaration include a right to preserve African languages through speech and education without facing discrimination.*

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BIBLIOGRAPHY

Economic and Social Council (2017) *A/HRC/29/23: Progress towards the Sustainable Development Goals: Report of the Secretary-General - Supplementary Information* <https://unstats.un.org/sdgs/files/report/2017/secretary-general-sdg-report-2017--Statistical-Annex.pdf> : UN [19/01/18]

Farkas, L. (2017) *The meaning of racial or ethnic origin in EU law: between stereotypes and identities*. Publications Office of the European Union: Luxembourg.

Human Rights Council (2011) *A/HRC/19/41: Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Follow-up and implementation of the Vienna Declaration and Programme of Action: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. UNGA.

Human Rights Council (2015) *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Follow-up to and implementation of the Vienna Declaration and Programme of Action: Discrimination and violence against individuals based on their sexual orientation and gender identity*. UNGA.

Human Rights Council (2017) *Annual report of the United Nations High Commissioner for Human Rights*. UNGA

Inter-Agency and Expert Group on SDG Indicators -IAEG-SDGs (2017) *Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (E/CN.3/2017/2): Revised list of global Sustainable Development Goal indicators*. United Nations Statistical Commission

Linguee Dictionary (2018) <https://www.linguee.com/french-english/translation/loi+taubira.html> : DeepL GmbH, Cologne. [28/01/18]

Nwabuzo, O. (2015) *Afro-phobia in Europe: ENAR Shadow Report 2014-2015*. ENAR

Olaiya, H.B.A. (2017) *People of African Descent and the Sustainable Development Goals Public E-team*. <http://en.unesco.org/inclusivepolicylab/e-teams/people-african-descent-and-sustainable-development-goals> : UNESCO Inclusive Policy Lab. [28/01/18]

UN OHCHR (1996-2018) *Regional Meeting for Europe, Central Asia and North America on the International Decade for People of African Descent, 23-24 November 2017, Geneva*. <http://www.ohchr.org/EN/Issues/Racism/InternationalDecade/Pages/RegionalMeetingEuropeCentralAsiaNorthAmerica2017.aspx> : UN [28/01/18]

UNGA (1986) *A/RES/41/128: Declaration on the Right to Development*. <http://www.un.org/documents/ga/res/41/a41r128.htm> : UN [25/01/18]

UNSD (2017) *IAEG-SDG Reports to the UN Statistical Commission* <https://unstats.un.org/sdgs/iaeg-sdgs/report-iaeg-sdgs/> : UNDESA [19/01/18]

World Conference Against Racism (2002) *Racial Discrimination, Xenophobia and Related Intolerance: Declaration and Programme of Action*. http://www.ohchr.org/Documents/Publications/Durban_text_en.pdf : UN Department for Public Information [25/01/18]

[1] <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>

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