



## Introduction

1. **The Association of Mixed Race Irish** is pleased to make this short submission in response to the invitation from the **Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (IGWG)** to Civil Society Organisations, requesting views on the scope of the draft United Nations Declaration on the promotion and full respect of the human rights of people of African descent, and in particular the key human rights and specific guarantees the draft Declaration should include.
2. Given the limited time left to respond and the wide range of issues affecting people of African descent that were raised in the Human Rights Council report A/HRC/47/53 on 1 June 2021,<sup>1</sup> this submission does not attempt to cover everything. Instead, it **focuses on two key areas relating to systemic/structural racism and group rights** (rather than individual human rights).

## Right to Dignity

3. The right to dignity is one of the fundamental bases of human rights as reflected in international law. It is expressed in the Universal Declaration of Human rights which recognises that the inherent dignity and the equal and inalienable rights of human beings is “the foundation of freedom, justice and peace in the world”.<sup>2</sup> It also recognises that all “human beings are born free and equal in dignity and rights”.<sup>3</sup> The Declaration on the Rights of Indigenous Peoples also includes an Article on dignity which states that “Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information”.<sup>4</sup>
4. **Given the systematic de-humanisation of people of African descent for centuries, we believe it is now time to affirm the inalienable right to dignity of the peoples of African descent, for who they are as a people (or as a family of people) rather than, solely for what they do. The right to dignity as an individual or a group right to the dignity of cultures and traditions (as noted in 3 above) is not, on its own, sufficient. In order to start transforming the negative perceptions and prejudices, rooted in the trans-Atlantic slave trade, enslavement and colonialism, the dignity of a group, such as the peoples of African descent, and of their humanity as a people must be recognised. If dignity is about the respect and honour of persons or families, there is no reason why a distinct group, such as peoples of African descent cannot be afforded the same privilege and right.**

---

<sup>1</sup> OHCHR, ‘Annual Report of the United Nations, Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers’ (1 June 2021) UN Doc A/HRC/47/53.

<sup>2</sup> Universal Declaration of Human Rights (10 December 1948) UNGA Res 217 A(III) Preamble.

<sup>3</sup> *ibid* at art 1.

<sup>4</sup> Declaration on the Rights of Indigenous Peoples (Resolution adopted by the General Assembly on 13 September 2007) UN Doc A/Res/61/295, art 15(1).



## Right to Truth

5. The right to truth is linked to the right to dignity discussed above and is often invoked in cases of serious human rights violations, such as in the disappearance of family members by State agents and in armed conflicts. “The right to the truth about gross human rights violations and serious violations of humanitarian law is an inalienable and autonomous right, recognized in several international treaties and instruments”.<sup>5</sup> This right is also linked to accountability and the duty to investigate as well as the right to remedy and reparations.
6. **There should be a specific group right to protection from systemic/structural racism and discrimination directed at people of African descent. However, this group right to protection would be ineffective without a group right to truth. This means that the group should have the right to know how systemic racism is impacting and damaging the group. There must be a right to receive (publicly available) information to explain why the system<sup>6</sup> results in adverse and injurious outcomes for people of African descent. It should also reveal details of substantive/*de facto* discrimination. This would involve the right to receive analysis and disaggregated data by race, ethnicity, gender, disability etc. which would enable remediation and special measures to be put in place.**

## Right to an identity

7. The International Covenant on Civil and Political Rights (ICCPR) states that ethnic, religious or linguistic minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.<sup>7</sup> The Convention on the Rights of the Child (CRC) obliges the State to “undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.<sup>8</sup>
8. **It is important that children of African descent (particularly those born outside marriage), who live in predominantly white societies, are given knowledge about their ancestral backgrounds, histories and African parents and family name (where possible). They should also have the right to have the African parents name officially recorded on their birth certificate, where practicable, and if they wish to have this on the official record. This right is linked to both the right to dignity and the right to truth and is particularly important for children who have been either taken from their families and put in institutions or are placed for adoption with white families. This is a group right to its identity and to know its ancestral histories, which have been systematically denied in many States (Canada, Australia Ireland etc).**

---

<sup>5</sup> UN ECOSOC, ‘PROMOTION AND PROTECTION OF HUMAN RIGHTS Study on the Right to the Truth Report of the Office of the United Nations High Commissioner for Human Rights’ (8 February 2006) para 55, UN Doc E/CN.4/2006/91.

<sup>6</sup> The systems include; criminal justice system, police enforcement, education system, social welfare and care system, labour market, health system etc.

<sup>7</sup> International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171, art 27.

<sup>8</sup> Convention on the Rights of the Child (adopted on 20 November 1989 by General Assembly resolution 44/25, entered into force on 2 September 1990) 1577 UNTS 9 (CRC) art 8(1).

## Right to a family life

9. In its preamble the CRC recognises that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.<sup>9</sup>
10. **It is important that the right to a family life, for a child of African descent is not restricted or prevented on the grounds of religion, race, colour or ethnicity. For a child who has lost his or her family or is placed for adoption, the best interest of the child is served by placing a child in a loving family, even if that family is of a different ethnicity, colour or religion. Institutionalisation should never take preference over placement in a loving family environment. The State should ensure special protection for children of African descent.**

## Protection from inhuman treatment and scientific experiments

11. The ICCPR, which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.<sup>10</sup>
12. **The right to freedom from torture and human experiments is particularly important in sites of detention such as in child care institutions and prisons, where people of African descent are at risk of being targeted for scientific experimentation and cruelty. A group right to truth about what happens in detention is of particular importance and disaggregated data about those in detention centres must be a right. As this occurs within detention systems it directly impacts groups (not only individuals) as they are a captive audience under State or institutional control.**

## Freedom from Racial Discrimination

13. Racial discrimination is clearly defined in the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).<sup>11</sup> Despite States signing and ratifying this Convention, not all States have fully incorporated its provisions and full definition or all grounds of racial discrimination into their domestic legal orders.
14. **States should refrain from paying “lip-service” to this important Convention and fully incorporate it into their domestic legal orders. In addition, the concept of systemic racial discrimination, targeted at groups such as people of African descent, and perpetrated by States and large organisations in positions of power must be defined in a declaration and prohibited.**

---

<sup>9</sup> ibid at preamble.

<sup>10</sup> ICCPR, art 7.

<sup>11</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted on of 21 December 1965, entered into force on 4 January 1969) 660 UNTS 195 (ICERD) art 1.



## Protection from Incitement to Racial Hatred and Hate Speech

15. The ICCPR states that any “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.<sup>12</sup> The ICERD also prohibits incitement to racial hatred and prescribes that States should “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin.... Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination”<sup>13</sup> Despite these provisions incitement to racial hatred and hate speech persists today.
16. **For people of African descent and Africans this is a particularly pernicious human rights violation that affects the whole group. Therefore, consideration should be given to the recognition of people of African descent as a “protected group” in need of special measures and protections. This conduct is constant and needs to be stopped, but is consistently denied as a serious offence. This affects all ethnic minority groups in Ireland.**

## Civil Rights and the Right to Group Litigation

17. The International Covenant on Civil and Political Rights (ICCPR) provides that all “persons are equal before the law and are entitled without any discrimination to the equal protection of the law”.<sup>14</sup> Despite the existence of this right, people of African descent still suffer as a group from systemic racial discrimination globally.
18. **We believe people of African descent should be recognised as a protected group with rights to protection from racism and with rights to take group legal action in cases of systemic racism (similar to class actions in the Unites States), against the State or State agencies and private companies. Where systemic racial discrimination persists, group litigation should be a right in all States, which is an extension of the right to freedom of association.<sup>15</sup> Legal actions for systemic and specific racial discrimination suffered by people of African descent, particularly children in State care, should not be proscribed by statute of limitation laws, due to the life-long impact of racism on people of African descent.**

---

<sup>12</sup> ICCPR, art 20(2).

<sup>13</sup> ICERD, art 4.

<sup>14</sup> International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171, art 26.

<sup>15</sup> *ibid* at art 22.

## Economic, Social and Cultural Rights

19. This is now the time for States to commit to special measures for people of African descent. Affirmative and Special Measures are required to rebalance the legacy of inequity inherited by people of African descent as a group. Particular attention should be given to “the right of everyone to the opportunity to gain...living by work”<sup>16</sup> and to ensuring that the special measures of “protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation”.<sup>17</sup>
- 20. It is crucial that States provide opportunities for people of African descent to fulfil their full potential and to ensure full protection and development of children of African descent. This requires bold and innovative steps to be taken by political leaders, which will involve equitable rebalancing of resources on a group-wide basis. For example, this could include the establishment of an organisation, similar in scope to the World Health Organisation (WHO), that is resourced by the international community with a mandate to treat systemic racism as a global phenomenon with health and security risks linked to the legacies of oppression noted above. This organisation could potentially be supported by regional agencies with targeted programmes to address inter-generational development of African peoples and communities.**
- 21. It is important that States eliminate substantive/*de-facto* discrimination (indirect and direct) in the areas of housing, education, work, health and sanitation etc. which affects all members of the African and ‘people of African descent’ group.<sup>18</sup>**

## Gender and Intersectionality

22. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>19</sup> addresses the discrimination against women on the grounds of sex, however it does not address the multiple forms of discrimination they face, such as intersection between sex and race, or other grounds such as “colour, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>20</sup>
- 23. It is important that consideration is given to elaborating on intersectionality and the implications in terms of multiple and concurrent violations. Multiple and concurrent discrimination happens systematically within institutional structures, processes and procedures and therefore needs a systematic response and group protection, as well as group reparation when identified. This issue needs elaboration and study in the context of the experiences of people of African descent. An example of this is the systematic differential treatment of unaccompanied girls of African descent in orphanages and institutions or black women in prisons.**

---

<sup>16</sup> International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27) 993 UNTS 3, art 6(1).

<sup>17</sup> *ibid* at art 10(3).

<sup>18</sup> UN ECOSOC, ‘General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (22 May 2009) UN Doc E/C.12/GC/20.

<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted by General Assembly resolution 34/180 of 18 December 1979, entered into force on 3 September 1981) 1249 UNTS 13.

<sup>20</sup> UN CCPR, ‘General Comment No. 28: Article 3 The Equality of Rights Between Men and Women’ (29 March 2009) CCPR/C/21/Rev.1/Add.10 para 30.



## Right to Reparations and Remedies

24. The right to a remedy is well established as a human right in several instruments and international law, however people of African descent continue to struggle to achieve full and comprehensive justice for racial discrimination. In Ireland, this is partly due to the denial of systemic racial prejudice, also the inability to take group legal actions.
- 25. It is important that people of African descent have a right to aggravated damages for violations of human rights associated with racial discrimination. The impact of racial discrimination needs to be emphasised and reasons why protection against it, as a non-derogable right, should be stressed. The issue of reparations for the legacy of enslavement of African people also needs to be considered, this may be an issue that could be addressed by some world body suggested in note 20 above.**

## Summary

26. In general, the two issues of group rights and systemic racial discrimination have historically been challenging areas for international human rights law. For people of African descent, it is difficult to receive comprehensive protection and enjoyment of human rights as long as violations are dealt with on a piece-meal and individualised basis. We believe systemic violations can only be met by systemic remedies and group rights/protections. This may be rejected by some States who are concerned about their own authority. However, the Declaration on the Rights of Indigenous Peoples has shown that it is possible to deal with intractable issues such as self-determination<sup>21</sup> and historical land rights.<sup>22</sup> The above rights and protections are but a few of the many rights that affect our group in Ireland and no doubt will be recognised by most people of African descent worldwide.

---

<sup>21</sup> Declaration on the Rights of Indigenous Peoples (Resolution adopted by the General Assembly on 13 September 2007), art 4.

<sup>22</sup> *ibid* at art 26.