

Input of the Working Group of Experts on People of African Descent on a United Nations Declaration on the promotion and full respect of the human rights of people of African descent

CONTEXT

The Working Group of Experts on People of African Descent (WG) welcomes the invitation by the General Assembly to the special procedure, to contribute in accordance with its mandate, to the elaboration of a draft United Nations declaration on the promotion and full respect of the human rights of people of African descent.¹

The Working Group was established in 2002 by the Commission on Human Rights resolution 2002/68 (as a Special Procedure). The mandate was subsequently renewed by the Commission on Human Rights and the Human Rights Council in its resolutions (CHR 2003/30, A/HRC/RES/9/14, A/HRC/RES/18/28, A/HRC/RES/27/25, A/HRC/RES/36/23 and A/HRC/RES/45/24)

Following a decade of execution of its mandate, which positions it at the interface with people of African descent, a global pool of experts, and governments, the Working Group is delighted to advance views from an informed stance.

MANDATE

As a Human Rights Council Special Procedure, the Working Group of Experts on People of African Descent constitutes of five independent human rights experts, with the support of the Office of the High Commission for Human Rights (the Secretariat). It is mandated to report and advise on human rights from a thematic or country-specific perspective. The Working Group —

- undertakes [country visits](#);
- acts on individual cases of reported violations and concerns of a broader nature by sending [communications](#) to States and other stakeholders;
- conducts annual thematic studies, seeks information from calls for input and convenes expert consultations;
- contributes to the development of international human rights standards; and
- engages in advocacy, raises public awareness, and provides advice for technical cooperation.

In 2008², Human Rights Council resolution 9/14 entrusted the Working Group:

- a. To study the problems of racial discrimination faced by people of African descent living in the diaspora and, to that end, gather all relevant information from Governments, non-governmental organizations and other relevant sources, including through the holding of public meetings;
- b. To propose measures to ensure full and effective access to the justice system by people of African descent;
- c. To submit recommendations on the design, implementation and enforcement of effective measures to eliminate racial profiling of people of African descent;

¹ A/RES/76/226: A global call for concrete action for the elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, para 11.

² <https://www.ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/Mandate.aspx>

- d. To make proposals on the elimination of racial discrimination against Africans and people of African descent in all parts of the world;
- e. To address all the issues concerning the well-being of Africans and people of African descent contained in the Durban Declaration and Programme of Action;
- f. To elaborate short-, medium- and long-term proposals for the elimination of racial discrimination against people of African descent, bearing in mind the need for close collaboration with international and development institutions and the specialized agencies of the United Nations system to promote the human rights of people of African descent through, inter alia, the following activities:
 - i. Improving the human rights situation of people of African descent by devoting special attention to their needs through, inter alia, the preparation of specific programmes of action;
 - ii. Designing special projects, in collaboration with people of African descent, to support their initiatives at the community level and to facilitate the exchange of information and technical know-how between these populations and experts in these areas;
 - iii. Liaising with financial and developmental institutional and operational programmes and specialized agencies of the United Nations, with a view to contribute to the development programmes intended for people of African descent by allocating additional investments to health systems, education, housing, electricity, drinking water and environmental control measures and promoting equal opportunities in employment, as well as other affirmative or positive measures and strategies within the human rights framework.

STEPS TAKEN

The Working Group of Experts on People of African Descent is seized of its responsibility to contribute to the elaboration of a draft United Nations declaration on the promotion and full respect of the human rights of people of African descent in all in its mandated activities. It has gathered, and articulated a wealth of knowledge, based on the lived experiences of people of African descent, state practice, policy and the law, which could support standard setting and the advancement of norms. This comprehensive body of work addresses an extensive array of areas and peculiarities including citizenship and identity, administration of justice, law enforcement, culture, education, health, family life, employment, as well redress for legacies of the past such as the trade and trafficking in enslaved Africans, colonialism and racial segregation.

During its twenty-second session, held in Geneva from 19 to 23 March 2018, the Working Group focused on the “Framework for a declaration on the promotion and full respect of human rights of people of African descent”. As part of the preparatory work, the Working Group sent a note verbale to all Member States and a call for submissions to civil society, requesting submissions on the scope of the declaration. The Working Group asked for input on the key human rights and specific guarantees that the draft declaration must include. It received 5 submissions from Member States and 20 from civil society.³

³ A/RES/76/226: A global call for concrete action for the elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, para 40.

In December 2020, the Working Group adopted the [Operational Guidelines on the Inclusion of People of African Descent in the 2030 agenda](#). The guidelines are intended as a tool to assist stakeholders in a human rights based approach to implementation of the SDGs as they relate specifically to Africans and people of African descent.

THE SCOPE OF THE DECLARATION FOR FULL RESPECT OF THE HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT

The Working Group's session on the "Framework for a declaration on the promotion and full respect of human rights of people of African descent" expressed the aspiration that the draft declaration should —

- recognize the cultural, economic, political, and scientific contributions of people of African descent;
- highlight the interconnectedness of past to present, mainly of the legacy of the transatlantic trade in enslaved Africans and colonialism with the persistence of racism, racial discrimination, Afrophobia, xenophobia, marginalization and related forms of intolerance against people of African descent today.
- Acknowledge and combat multiple and intersecting forms of discrimination faced by people of African descent through the framework of the 2030 Agenda for Sustainable Development.
- Promote efforts to implement the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent by all relevant stakeholders.⁴

Expected aim

Formulate a comprehensive instrument detailing the fundamental rights of people of African descent.

Expected objectives

- Ensure the full and effective participation of people of African descent in the process of drafting the declaration.
- Consolidate the pillars of the International decade of people of African descent: recognition, justice and development into norms and elevate their profile in international, regional, and domestic policy.
- Encapsulate individual and collective; social, economic and political rights of people of African descent in one authoritative framework. It is also an opportunity to elaborate rights that are not yet enshrined in the international legal framework and that are specific to the experiences of people of African descent.⁵

⁴ A/HRC/39/69: Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions, p.1.

⁵ Ibid para 64.

- Ensure the right of people of African descent to remain distinct and pursue their own priorities in economic, social and cultural development.
- Advance an instructive standard against racism, racial discrimination, Afrophobia, xenophobia, marginalization and related forms of intolerance against people of African descent.
- Rally a consolidated effort towards full restoration of the dignity of people of African descent by confronting and addressing the legacies of the past.

KEY HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR INCLUSION IN THE DECLARATION FOR THE FULL RESPECT OF THE HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT

Preamble

The preamble to the declaration should clearly indicate that the rights of people of African descent are already recognized in the international human rights system. The declaration only serves to elaborate the respective rights in the specific cultural context and distinctive identities of people of African descent.

The declaration should also categorically call out racism, racial discrimination, xenophobia and Afrophobia as the major historical impediment to the realization of human rights among people of African descent and direct the focus of stakeholders to removing that impediment.

The right of people of African descent to the full enjoyment of all human rights and fundamental freedoms as recognized in international human rights law

The rights of people of African descent are human rights and human rights are rights of people of African descent; they are indivisible and inter-dependent. People of African descent are entitled, in equal measure, to the full enjoyment of all the rights and fundamental freedoms recognized in international human rights law. States should promote the effective implementation of national and international legal frameworks among all domestic structures of governance.

Abstract classification of people of African descent as minorities in certain societies, without collecting racially disaggregated data has obscured their human rights situation. States should collect and utilize racially disaggregated data to develop policies that address the concerns of people of African descent.

The right of people of African descent against racism, racial discrimination, Afrophobia, xenophobia, marginalization and related forms of intolerance

The principal aspect of the draft declaration should be made clear: that people of African descent are particularly vulnerable to structural discrimination and various forms of inequity with respect to the enjoyment of human rights.⁶ Even among the most developed countries with good human rights records, people of African descent are barred from benefiting from

⁶ Ibid para 63.

gains in such societies. States should adopt or strengthen comprehensive anti-discrimination legislation and ensure its effective implementation. They should establish and/or strengthen national mechanisms or institutions with a view to formulating, monitoring and implementing policies to combat racism, racial discrimination, xenophobia and related intolerance, and promoting racial equality.

The declaration should address violent manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance through extremist ideologies, hate speech and incitement to hatred. States should promote positive perceptions of migrants to the public, including the presentation of facts and studies that include the contribution of migrants to society.⁷

The right of a person of African descent to security of the person and protection against violence or bodily harm

People of African descent experience several forms of violence or bodily harm including ethnic or racial profiling, inappropriate bodily searches, enforced disappearances, extrajudicial executions, and torture. Such violence is inflicted by government officials, individuals, groups or institutions including law enforcement and sometimes the judiciary.⁸ Of note is police brutality especially against men and boys of African descent.

The declaration should therefore explicitly guarantee the right of people of African descent to security of the person and protection against violence or bodily harm.

The right of a person of African descent to human dignity

People of African descent need to have their dignity respected and protected. The right to dignity is a core human rights value which constitutes the justification for a variety of universally accepted fundamental rights such as the rights to privacy, the right to a name, the right to physical, mental and moral integrity, and the prohibition of cruel and unusual punishment and of slavery, servitude and forced labour. It is codified in certain Constitutions such as Germany and South Africa. The poverty faced by many people of African descent is itself a violation of human dignity.

The right of a person of African descent to equality before the law

States should guarantee equality before the law and equal protection of the law to people of African descent. They should particularly prohibit any racial discrimination under the law and maximise the power of the law to counter racial discrimination. Formidable normative frameworks should be complemented by effective implementation mechanisms.

The right of a person of African descent to full and effective participation in and access to justice

The Working Group notes the gaps in frameworks and inadequacy of structures for addressing racism and racial discrimination often leading to further victimization of victims other than ensuring accountability of perpetrators.

The Working Group recommends that States guarantee quality legal aid to facilitate access to justice in all areas, as well as timely review and support for mechanisms of alternative dispute

⁷ A/HRC/39/69: Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions, para 23.

⁸ A/HRC/39/69: Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions, para 43.

resolution, which often prove to be particularly effective in dealing with racism against people of African descent.⁹

The Working Group urges States to adopt special measures to facilitate increased representation of people of African descent in the judiciary and in law enforcement.¹⁰

The right of a person of African descent to life and a livelihood

The right to life broadly concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.¹¹

People of African descent should not be subjected to arbitrary deprivation of life such as summary executions, and racialized imposition of the death penalty.

An important aspect of the right to life is the right to livelihood because as expressed by the Supreme Court of India, no person can live without the means of living.¹² If a person is deprived of a livelihood, they are deprived of life.¹³ States should also take measures to ensure the sustainable access by people of African descent to means of securing the necessities of life including adequate food, clean water, and adequate shelter. People of African descent experience disproportionate malnutrition and food insecurity.¹⁴

Freedom of a person of African descent to movement

‘Liberty of movement is an indispensable condition for the free development of a person’.¹⁵ States should eliminate racially discriminatory migration policies and practices and ensure equality in citizenship rights and identities.

Freedom of a person of African descent to expression, and association

The declaration should address the freedom of a person of African descent to express themselves. This includes the freedom to ‘impart information and ideas of all kinds’ on one hand, and the freedom to receive them regardless of frontiers and in whatever medium, either orally, in writing or in print, in the form of art, or through other media of their own choice.¹⁶

States should promote the involvement of people of African descent as producers of content in mainstream media. There is need for further investment in foras that disseminate independent scholarship and content by people of African descent.

The right of a person of African descent to a cultural life

States should guarantee the right of a person and people of African descent to enjoy their culture, practice their religion, and use their language(s).

⁹ Operational Guidelines on the Inclusion of People of African Descent in the 2030 Agenda, Working Group of Experts on People of African Descent, 09 December 2020, p.75.

¹⁰ Ibid.

¹¹ CCPR/C/GR/36: General Comment No. 36. The right to life, Human Rights Committee, 03 September 2019, para 3.

¹² *Olga Tellis and Others v Bombay Municipal Corporation and Others* 1986 AIR 180.

¹³ Ibid.

¹⁴ Operational Guidelines on the Inclusion of People of African Descent in the 2030 Agenda, Working Group of Experts on People of African Descent, 09 December 2020, pp.10 -11.

¹⁵ CCPR General Comment No. 27: Article 12 (Freedom of Movement) CCPR/C/21/Rev.1/Add.9, para 1.

¹⁶ General comment No. 10: freedom of expression, Para 2.

People of African descent face prejudice based on their cultural identity. States should facilitate the development of programmes to increase the visibility for the history and culture of people of African descent.

There is need to invest in the scientific development and formal use of the languages of people of African descent.

Freedom of a person of African descent to religion

A person of African descent should have the right to freedom of thought, conscience and thought including holding beliefs. The Human Rights Committee describes this right as encompassing freedom of thought on all matters, personal conviction, and the commitment to religion or belief, whether manifested individually or in community with others.¹⁷ The others may be of similar or distinct identities.

The Working Group has heard accounts of people of African descent being required to join religious sects of persons of other identities to demonstrate their willingness to integrate or assimilate as a condition for grant of residence and citizenship rights. It is disproportionately difficult for congregations of persons of African descent in the western to be registered and obtain independent licences for places of worship, without white patronage. Existing entities are often subjected to investigation, policing and stringent regulatory measures. Similarly, some people of African descent that have joined sects of persons of other identities experience isolation.

States should outlaw racially discriminative regulatory measures in the area of religion.

The right of people of African descent to development

States should undertake measures to facilitate sustainable development among people of African descent. This should include the right to reparation for legacies of slavery, colonialism and apartheid that enriched many economies and plunged people of African descent into intergenerational deprivation.

The right of a person of African descent to the highest attainable standard of physical and mental health

The Working Group has observed that people of African descent often lack access to preventive health services, receive lower-quality care and experience worse health outcomes for certain conditions.¹⁸

States should take appropriate steps to ensure that people of African descent are fully and effectively included in the schemes of universal health coverage and the public health systems.¹⁹ States should adequately invest in research and development of interventions in ailments that are peculiar to people of African descent.

The right of a person of African descent to adequate housing

The declaration should stipulate the right of a person of African descent to adequate housing.

¹⁷ General Comment No. 22: The right to freedom of thought, conscience and religion. CCPR/C/21/Rev.1/Add.4, para 1.

¹⁸ Report of the Working Group of Experts on People of African Descent, 2 August 2019, A/74/274.

¹⁹ Ibid para 45.

The Working Group has found that migrants of African descent in several countries faced structural racial discrimination in housing and rental markets.²⁰ Competition for housing rentals offers considerable latitude to property owners in selecting their tenants, which may facilitate racial bias. In many States, people of African descent are forced to live in slums and inadequate housing often formally classified as insecure, sensitive or dangerous. The Committee on Economic, Social and Cultural Rights stresses that the right to housing should be seen as the right to live somewhere in security, peace and dignity.²¹

The right of a person of African descent to education

People of African descent should have the right to education that is available, accessible, acceptable and adaptable. They should also be positively centered in education as informers and reformers of narratives. This includes their peculiarities including culture, language, and history, among others.

The right to a person of African descent to family life

Families of African descent are highly regulated and subjected to culturally incoherent judgements. This has led to disproportionate legalized separation of families and institutionalization of children.

Racially discriminatory migration policies and their implementation has led to disproportionate levels of family separation among people of African descent.

Persons of African descent should have the right to found and live as families. States should respect these families and ensure diversity among social workers and cultural competence of necessary interventions.

The right of a person of African descent to equal access to work and the benefits of work

People of African descent must be accorded equal opportunity to develop skills and literacies to apply themselves to gainful and innovative work.

Employment should also be available to people of African descent without discrimination, as required by the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

States should address the significant disparities in wages and salaries that disadvantage people of African descent in the workforce globally.

The right of people of African descent to environmental justice

People of African descent continue to be subjected to environmental racism and are disproportionately affected by the climate crisis. Environmental racism refers to environmental injustice in practice and in policies in racialized societies. It is a measurable

²⁰ Report of the Working Group of Experts on People of African Descent on its visit to Argentina, para 45, U.N. Doc. A/HRC/42/59/Add.2 (August 14, 2019); WGEPAD, Report of the Working Group of Experts on People of African Descent on its visit to Belgium, para 60, U.N. Doc. A/HRC/42/59/Add.1 (August 14, 2019); WGEPAD, Report of the Working Group of Experts on People of African Descent on its mission to Germany, para 43, U.N. Doc. A/HRC/36/60/Add.2 (August 15, 2017).

²¹ CESCR General Comment No.4: The Right to Adequate Housing, E/1992/23, para 7.

contemporary manifestation of racism, racial discrimination, xenophobia, Afrophobia and related intolerance.²²

States should seek climate solutions that also serve to rectify historical inequities.²³ Racial impact assessments should be a part of human rights due diligence efforts for all climate and environmental action, and there should be accountability for human rights violations and environmental damage, including reparations.²⁴ This includes mainstreaming corporate responsibility.

The right of a person of African descent to effective redress

The draft declaration should assert the individual and or collective right of descendants of enslaved Africans to reparations and reparatory justice within the legal framework of the Durban Declaration and Programme of Action and of the International Convention on the Elimination of All Forms of Racial Discrimination.²⁵ The Working Group has endorsed the CARICOM ten point programme for reparatory justice, which outlines the path for justice for victims and descendants of the trans-Atlantic trade and trafficking in enslaved Africans. The programme advocates for full formal apology, repatriation, a development programme to rehabilitate affected indigenous peoples, development of community institutions to advance knowledge the historical crimes of slavery and colonialism, public health interventions, implementing educational programmes that promote African knowledge and eradicate illiteracy, psychological rehabilitation of African descendant populations, technology transfer and sharing of scientific knowledge, and debt cancellation.

States should facilitate effective preventive and remedial approaches to contemporary forms of slavery, racism, racial discrimination, Afrophobia, xenophobia and related intolerances.

The right of people of African descent to self-determination

People of African descent have the right to self-determination even within existing state entities. By virtue of that right, they freely pursue their political, economic, social, and cultural development. In exercising that right, they have the right to autonomy or self-government in matters relating to their internal and local affairs.

People of African descent have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they choose, in the political, economic, social and cultural life of the State.

²² A/HRC/48/78: Environmental justice, the climate crisis and people of African descent, 21 September 2021, para 55.

²³ Ibid para 82.

²⁴ Ibid.

²⁵ A/HRC/39/69: Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions, para 42.