

## IOM INPUTS TO THE DRAFT UN DECLARATION ON THE PROMOTION AND FULL RESPECT OF HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT

### Overview:

Migrants of African descent witness racism, discrimination, and challenges leading to human rights violations. For instance, choices about who is granted access into a country are connected to ideas of belonging reflecting prejudice about group identities, particularly race. This situation persists regardless of their immigration status despite the robust provisions of human rights instruments as well as by several branches of international law.

The declaration on the promotion and full respect of human rights of people of African descent provides an opportunity to bring a racial justice lens to multilateral discussions on migration governance.

### International Instruments:

The branches of international law of relevance to migrants which provides for their rights include Human Rights Law, Transnational Criminal Law, International Labour Law, International Humanitarian Law, International Refugee Law, Law related to statelessness, Law of the Sea, and Diplomatic and Consular Law.

It is important to also note global frameworks of relevance:

1. The Durban Declaration and Programme of Action (DDPA 2001),
2. The 2030 Agenda for Sustainable Development,
3. The Global Compact for Safe, Orderly, and Regular Migration (GCM) - A global cooperative framework to improve migration governance. The GCM contains a promise of people-centered and human rights-based migration governance. **OBJECTIVE 17:** Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration. The objective captures the commitment of States to eliminate all forms of discrimination, condemn and counter expressions, acts, and manifestations of racism, racial discrimination, violence, xenophobia, and related intolerance against all migrants in conformity with international human rights law.

### Examples of how racism manifests in migration governance include:

1. **Closure of borders and/or imposing travel restrictions affecting predominantly African countries.** Examples of this practice abound intensifying under the COVID-19 pandemic where travel bans against several African countries were imposed even in the absence of any scientific evidence to support the act<sup>1</sup>. Recently, there were also reports of discriminatory practices by border officials against Africans and people of African descent in the wake of the Ukrainian war<sup>2</sup>.

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<sup>1</sup> As Omicron Variant Circles the Globe, African Nations Face Blame and Bans by Benjamin Mueller and Declan Walsh - New York Times Published Nov. 27, 2021, Updated Nov. 30, 2021.

<sup>2</sup> Ukraine: UN experts concerned by reports of discrimination against people of African descent at border, OHCHR Press release - 03 March 2022.

2. **Racial discrimination in accessing health care:** Healthcare systems are inundated with inequalities that have a disproportionate impact on people of African descent and other marginalized groups. These inequalities contribute to gaps in health insurance coverage, uneven access to services, and poorer health outcomes among African migrant populations<sup>3</sup>.
3. **Toxic narratives that fuel hatred, xenophobia, hate crimes, and violence against migrants:** Racist and xenophobic speech and violence including hate crimes against African migrants have risen in the past years. Such narratives have led to violent attacks, criminalization, and even dehumanization by policies and rhetoric, eroding their human rights<sup>4</sup>.
4. **Longer detention lengths and harsher treatment of migrants of African descent:** Similarly, as people of African descent are more targeted by the police and more likely to be incarcerated than their non-African counterparts, migrants of African descent are more likely to be targeted for punitive migration enforcement<sup>5</sup>.
5. **Racial profiling for immigration enforcement purposes:** Prejudiced perceptions of threat result in migrants of African descent being disproportionately stopped and questioned or searched in immigration and police checks<sup>6</sup>. In the 2019 report on Preventing and Countering Racial Profiling of People of African Descent Good Practices and Challenges, the Office of the High Commissioner for Human Rights (OHCHR) notes the link between racial profiling and migration governance and calls it “incompatible with the protection of human rights”<sup>7</sup>.
6. **Racial and ethnic discrimination in labour markets:** Although statistical data is often lacking, there is sufficient evidence showing inequality faced by people of African descent regarding access to education and vocational training, continuing, or increasing high unemployment rates, over-representation in low-skilled and informal jobs, low representation in top management, as well as in leadership positions in workers’ and employers’ organizations<sup>8</sup>.
7. **Removals without due process affecting mostly Black migrants:** Most times migrants of African descent find themselves victims of removal processes that do not follow due process<sup>9</sup>. A recent example is the removals of migrants without due process under the guise of public health protection. In some regions, during the COVID-19 pandemic, the most affected have been migrants coming from African nations and the Caribbean<sup>10</sup>.

<sup>3</sup> People of African descent and COVID-19: unveiling structural inequalities in Latin America - COVID-19 REPORTS; January 2021.

<sup>4</sup> S. Priya Morley et al., “There is a Target on Us” – The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border (2021). Amnesty International public statement 26 October 2021 UAE: mass arbitrary detention and deportation of Africans and

<sup>5</sup> How do we address the treatment of Black immigrants in the US asylum system? – International Rescue Committee Press Release \_ New York, NY, February 16, 2021.

<sup>6</sup> Black Immigrants to the U.S. Deserve Equal Treatment – Bloomberg Law March 11, 2022.

<sup>7</sup> Preventing and Countering Racial Profiling of People of African Descent Good Practices and Challenges. Published by the Department of Global Communications and the Office of the High Commissioner for Human Rights (2019),

<sup>8</sup> Rosita Fibbi, Didier Ruedin, Robin Stünzi & Eva Zschirnt (2022) Hiring discrimination on the basis of skin colour? A correspondence test in Switzerland, *Journal of Ethnic and Migration Studies*, 48:7, 1515-1535, DOI: 10.1080/1369183X.2021.1999795.

<sup>9</sup> USA: UN experts condemn collective expulsion of Haitian migrants and refugees, OHCHR.

<sup>10</sup> COVID-19 and Black Immigrants: The Pandemics of Racism, Nativism, and Transnational Crises by Orly Clergé and Zophia Edwards – EQUITY RESEARCH INSTITUTE.

Data and Analysis to Power Social Change - USC Dornsife Published April 20, 2021.

8. **Social and cultural ties of migrants of African descent (African Diaspora) are subjected to ambiguous attitudes and policies:** Due to negative attitudes to African culture, the African diaspora struggles to construct and retain their own ethnic identity in the face of prejudice at workplaces, schools, etc.
9. **Detention to deportation pipeline:** There are records to show the disproportionate application of detention and its impact on migrants of African descent. Immigration enforcement collaborates with law enforcement leading to incarceration followed by deportation, resulting from systemic racism<sup>11</sup>.

### **Recommendations:**

The declaration should reaffirm:

1. The principles of equality and non-discrimination in line with the Universal Declaration of Human Rights and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, (...) national (...), or other status.
2. The importance of the full implementation of all relevant international and regional instruments in the field of human rights, including the International Convention on the Elimination of All Forms of Racial Discrimination and its universal ratification as a central and effective instrument to address racial discrimination affecting people of African descent. Apart from international and regional standards, national legislation and relevant migration law instruments at a domestic level should be considered, in particular those upholding human rights for migrant populations.
3. The commitments contained in the Durban Declaration and Programme of Action regarding people of African descent.

Specifically, it should provide that:

1. People of African descent have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, international and regional human rights law.
2. People of African descent are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights that is based on their race or identity. Specific focus should be ensured regarding the needs and rights of communities and groups in vulnerable situations, including unaccompanied and separated children, youth, victims of human trafficking, people with disabilities, women alone and/or with children, and the elderly.
3. People of African descent have the rights to life, physical and mental integrity, liberty, and security of person as well as freedom from arbitrary arrest and detention.

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<sup>11</sup> Juliana MorganTrostle and Kexin Zheng - The State of Black Immigrants part II: Black Immigrants in the Mass Criminalization System - Black Alliance for Just Immigration (BAJI).

4. People of African descent have the right not to be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
5. People of African descent are equal before the law with all and are entitled without any discrimination to equal access to justice, including effective remedies and reparations for victims of hate crimes and other acts of violence that target migrant communities.
6. Torture or cruel, inhuman, or degrading treatment or punishment is prohibited, and people of African descent must not be subject to it.
7. People of African descent have the right to a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control.
8. State Parties to recognize the right of people of African descent to the enjoyment of the highest attainable standard of physical and mental health.
  - Take steps to ensure that there is no disparity in access and quality of health care with focus on these four broad policy areas for addressing racial and ethnic health care disparities:
    - Raising public and providing awareness of racial/ethnic disparities in health care.
    - Expanding health insurance coverage.
    - Improving the capacity and number of providers in underserved communities; and
    - Increasing the knowledge base on causes and interventions to reduce disparities<sup>12</sup>.
- 9 State parties to recognize and enforce freedom for people of African descent from being stereotyped or profiled based on race, ethnicity, or nationality. Ethnic profiling by law enforcement, border controls, educational institutions, recruiters, etc. clearly violates many of the freedoms in the International Bill of Rights. Interventions could include capacity-building actions as well as institutional awareness-raising campaigns, using tools such as IOM's Integrated Border Management Training Manuals for border officials using a human rights-based approach.
- 10 State parties to enact, implement or ensure effective implementation of legislation that penalizes hate crimes and aggravated hate crimes targeting migrants. In this sense, guarantee that all acts and manifestations of all forms of racial discrimination racism, and xenophobia are effectively addressed, and empower migrants to report on these acts while ensuring there is available information on existing redress mechanisms.
- 11 People of African descent shall have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health, and social security.

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<sup>12</sup> Eliminating Racial/Ethnic Disparities in Health Care: What are the Options? Published: Oct 20, 2008.

- 12 States shall take effective measures and, where appropriate, special measures to ensure continuous improvement of their economic and social conditions.
- 13 Migrants of African descent shall have the right not to be subjected to forced assimilation or destruction of their culture.
  - States shall take measures to ensure that migration procedures shall not be constructed in a way that they violate cultural rights; provide effective mechanisms for prevention of, and redress for: (a) Any form of forced assimilation or integration; (b) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them while promoting efforts such as the Global Migration Media Academy (GMMA), initiative led by IOM which seeks to tackle misinformation, promote diverse perspectives on migration and balance narratives that fuel the stigmatization and discrimination that migrants face around the world.
- 14 State parties to review, assess and amend if necessary domestic legislation in line with international standards as well as migration policies in order to identify and report on racial discrimination informing or resulting from these policies. This should include the establishment of transitional justice processes that would provide for the full investigation of all incidents of racial and related violence against migrants; provide compensation and reparations to victims as well as take active measures for accountability and guarantees of non-repetition.
- 15 State parties to prioritize the voices of African migrants and foster their participation in policy processes that result in a meaningful role in decision-making. In this line, develop and implement social cohesion and integration policies at national and local levels, with a particular focus on children and youth inclusion.
- 16 State parties enjoined to develop action plans to address racial discrimination identified through intersectional racial justice analysis, including prevention and remedy. Priorities will be specific to the context in each country, but actions could include:
  - Implement measures to address national and/or transnational policies and perceptions that can potentially lead to racial profiling.
  - Develop campaigns that combat racist, xenophobic, and discriminatory narratives to transform public perception and encourage fact-based and balanced reporting on migration.
  - Ensuring border closures and travel bans on grounds of pandemic control are based on public health analysis and needs.
  - Decriminalize irregular migration as part of dismantling interlinked discriminatory perceptions of migration status, race and criminality and avoid feeding inaccurate narratives of migrants.
  - Expand regular migration pathways and regularization channels as means of addressing increased risk arising from intersections between racial discrimination and other situations of vulnerability as well as enhancing durable integration solutions for these migrant populations.