

## Preliminary Submission by the UN Permanent Forum of People of African Descent

### I. Introduction

This preliminary submission by the UN Permanent Forum of People of African Descent towards the United Nations Declaration on the promotion and full respect of the human rights of peoples of African descent is based on preliminary consultations with civil society and academics. The Permanent Forum is a consultative mechanism for people of African descent with a mandate “to consider the elaboration of a United Nations declaration on the promotion, protection and full respect of the human rights of people of African descent”.<sup>1</sup> As such the Forum envisions long-term and more robust consultations with civil society, academics and other stakeholders on the scope and content of the Declaration.

Below are preliminary proposals from the Permanent Forum for the Declaration. First, the submission begins with general remarks from the Forum on the scope and content of the Declaration. Second, the submission includes three sections with preliminary concrete wording for the preamble, provisions, and conclusion of the Declaration.<sup>2</sup> These three sections should not be regarded as exhaustive suggestions for a full and complete Declaration, and not all the general remarks are reflected in these three sections (and neither are all the concrete suggestions reflected in the general remarks).

### II. General remarks

1. The Forum thinks that it is of utmost importance that the Declaration, in its scope and content, incorporates the concept of *peoples of African descent*. This has been proposed by various actors of the social movements of people of African descent in Latin America. It emphasises the collective rights of people of African descent and that the plurality of people of African descent often are ethnic and national groups with a long history in their countries.
2. The Declaration must recognize the critical importance of addressing the legacy of colonialism and the transatlantic trade in enslaved Africans and many prominent global challenges with a profound impact on the enjoyment of human rights of peoples of African descent – including, climate and other environmental crises, pandemics (such as COVID-19), the phenomenon of large-scale migration and its implications for international peace and security, the deep structural inequities in the global economy and in the institutions of global governance such as the UN and the Bretton Woods institutions.
3. The Declaration should reflect that people of African descent across the world are subject to systemic racism,<sup>3</sup> and that, notwithstanding an agreement to broad abstract statements of equality, discrimination against people of African descent continues to exist. For the Declaration to be effective, States should comprehensively address the systemic forms of racism, racial discrimination, xenophobia, and similar intolerances and closely monitor and document the specific development of the population of people of African descent so as to ensure their full and equal enjoyment of human rights.

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<sup>1</sup> A/RES/75/314

<sup>2</sup> The Forum would like to thank Professor Adelle Blackett and Professor Charles Jalloh for their comments on an earlier draft of this section.

<sup>3</sup> A/HRC/47/53. Para. 9

4. The Declaration should recognise and develop the standards of the collective rights of people of African descent, as provided for in General Recommendation 34 of the Committee for the Elimination of Racial Discrimination (CERD), including the right to practice religions of African origin.
5. The Declaration should encourage States to establish a plan for the economic development of African people and people of African descent, through trade, investment, and other methods, with a view to achieving the SDGs.
6. The Declaration must address contemporary forms of racism and racial discrimination, including those derived from the use of automation tools and artificial intelligence – including algorithmic bias, in line with CERD General Recommendation 36 on preventing and combatting racial profiling, which also addresses algorithmic bias.
7. The Declaration must recognize and develop the right of peoples of African descent to determine the use of their traditional knowledges associated with genetic resources (i.e. any material of plant, animal, microbial or other origin containing functional units of heredity) and the right to equitable participation in the benefits derived from these, as provided for in Article 8.j. of the Convention on Biological Diversity.
8. Regarding the content of the Declaration, it is important to consider the following:
  - i. A set of principles including the reversal of the burden of proof and precaution in crimes of racial discrimination.
  - ii. The *recognition* of the collective rights of people(s) of African descent as subjects within the framework of international law, including the right to be recognized as collective subjects of international law.<sup>4</sup>
  - iii. The right of peoples of African descent in the Americas to recognition of their status as native and/or tribal peoples.
  - iv. The right of people of African descent to recognition and self-determination of peoples of African descent in ancestral territories.<sup>5</sup> This includes the right to property and to the use, conservation and protection of lands traditionally occupied by people of African descent and to natural resources in cases where their ways of life and culture are linked to their use of lands and resources.<sup>6</sup>

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<sup>4</sup> Antón Sánchez, J. (2022, April 29). *What is the Decade about?* [Presentation]. Closing of the African Heritage month, Tegucigalpa, Honduras.

<sup>5</sup> Antón Sánchez, J. (2022, April 29). *What is the Decade about?* [Presentation]. Closing of the African Heritage month, Tegucigalpa, Honduras; Economic Commission for Latin America and the Caribbean and United Nations Population Fund. [CEPAL] [UNFPA]. (2020). *People of African descent and the matrix of social inequality in Latin America: challenges for inclusion*. Project Documents (LC/PUB. 2020/14); Antón, J., Ramos, M., and Alvarado, M. (2022). *Afro-Ecuadorian ancestral territory*. Abya Yala. Quito.

<sup>6</sup> International Committee for the Elimination of All Forms of Racial Discrimination [CERD]. (2011). *General Recommendation No. 34 approved by the Committee on Racial discrimination against people of African descent*. CERD/C/GC/34. Para. 4(a). <https://www.refworld.org/docid/4ef19d592.html>

- v. The right of people of African descent to sustainable development in particular in the areas of equal access to education, health care, housing, employment and digital development.
- vi. The right of people of African descent to their cultural identity and cultural self-determination, to keep, maintain and foster their mode of life and forms of organisation, culture, languages, and religious expressions.<sup>7</sup>
- vii. The right to prior consultation with respect to decisions which may affect their rights, in accordance with international standards.<sup>8</sup>
- viii. The right of people of African descent to access *justice* and the adoption of special measures for people of African descent to protect, promote and fulfil this right.<sup>9</sup>
- ix. The prevention and combating of contemporary forms of racism and racial discrimination against people of African descent in the area of algorithmic biases (including, in artificial intelligence and information technology).
- x. The right of people of African descent to benefit from the underwater cultural heritage and treasures carried by the galleons and ships carrying enslaved Africans and people of African descent.
- xi. The right of people of African descent to expand and consolidate the areas of their own culture by strengthening the autonomous decision-making capacity of a culturally differentiated society to guide its own development and the exercise of self-determination, whatever the level considered – which implies an organisation of power that is equitable and respectful of this right.<sup>10</sup>
- xii. The right of people of African descent to *special measures* to combat systemic racism against people of African descent and to guarantee their full civil, political, economic, social, developmental and cultural inclusion.
- xiii. The right of people of African descent to be free from marginalisation, violence and discrimination, including on the basis of disability, language, age, geographical location, and sexual orientation, gender identity, gender expression, and sex characteristics.

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<sup>7</sup> International Committee for the Elimination of All Forms of Racial Discrimination [CERD]. (2011). *General Recommendation No. 34 approved by the Committee on Racial discrimination against people of African descent*. CERD/C/GC/34. Para. 4(b). <https://www.refworld.org/docid/4ef19d592.html>

<sup>8</sup> International Committee for the Elimination of All Forms of Racial Discrimination [CERD]. (2011). *General Recommendation No. 34 approved by the Committee Racial discrimination against people of African descent*. CERD/C/GC/34. Para. 4(c). <https://www.refworld.org/docid/4ef19d592.html>

<sup>9</sup> Mena, Z., de la Rosa, E., Viáfara, C., Antón, J., and Paschel, T. (2017). Cuarta sesión: Acción afirmativa, etno-reparaciones y otras políticas de distribución. In S. Valero (ed.), *Después de Santiago: El movimiento afrodescendiente y los estudios afrolatinoamericanos. Simposio II* (pp. 112-125). Universidad de Cartagena, Afro-Latin American Research Institute, y Ford Foundation.

<sup>10</sup> UNESCO and FLACSO, 1982 cited in Economic Commission for Latin America and the Caribbean [CEPAL]. (1995). *Ethnodevelopment facing the twenty-first century*. LC/R.1578, p. 6. [https://repositorio.cepal.org/bitstream/handle/11362/30523/S9500133\\_es.pdf?sequence=1&isAllowed=y#:~:text=De%20acuerdo%20a%20Bonfil%20Batalla,para%20directir%20your%20own%20development.](https://repositorio.cepal.org/bitstream/handle/11362/30523/S9500133_es.pdf?sequence=1&isAllowed=y#:~:text=De%20acuerdo%20a%20Bonfil%20Batalla,para%20directir%20your%20own%20development.)

- xiv. The right of people of African descent to have access to the United Nations to advocate that governments implement non-discriminatory laws or policies.

### **III. Preamble**

9. Acknowledging the historical roles of people of African descent in affirming and promoting the inherent dignity of the human person, and the unequivocal, full equality of all human beings in the enjoyment of dignity, universal rights, and fundamental freedoms – including through abolitionist, decolonial, human and civil rights movements.
10. Addressing the specific forms of racism, racial discrimination, xenophobia, and related intolerances that people of African descent are subjected to – also known as afrophobia, afriphobia and anti-Black racism – including through interpersonal, social, cultural, institutional, and systemic forms of racism, discrimination, xenophobia, and related intolerances.
11. Addressing the multiple and intersectional discrimination that people of African descent are subjected to, including on the basis of their race, sex, colour, ethnicity, national and/or social origin in combination with, inter alia, their gender, sexual orientation, gender identity, gender expression, sex characteristics, age and disability status.
12. Mainstreaming a gender perspective when designing and monitoring public policies, taking into account the specific needs and realities of women and girls of African descent, including in the area of sexual and reproductive health and reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and the outcome documents of their review conferences, and ensure adequate access to maternal health care.
13. Recognizing the lasting impacts that colonialism, enslavement, the transoceanic trade and trafficking in enslaved Africans and of people of African descent have had on the enjoyment of human rights of people of African descent.
14. Recognizing the lasting impacts that exploitation, dehumanisation, embedded notions and practices of racial superiority, racial domination, racial and ethnic inequity, ethnocentrism, ethnic and racial nationalism have had on the enjoyment of human rights of people of African descent.
15. Expressing grave concern about the lack of commitment and progress shown in terms of reparatory justice and elimination of all forms of racism and racial discrimination, xenophobia and related intolerance against people of African descent. Urging the international community to recommit to, respond to, take responsibility for and repair the full and equal enjoyment of human rights of people of African descent across the world.
16. Highlighting evidence of the consequences of colonialism and the transatlantic trade in enslaved Africans and persisting forms of racism, racial discrimination, xenophobia and related intolerance, including as demonstrated by the rise of manifestations of racial superiority ideology, ethnic and racial nationalism, and hate crimes.

17. Affirming the standards of the UN Charter and the Universal Declaration of Human Rights, and that equality and non-discrimination are fundamental human rights principles on which all universal human rights are based. Recalling that the Universal Declaration of Human Rights asserts the right of all people to a social and international order in which human rights can be fully realised.
18. Recognizing that the International Convention for the Elimination of All Forms of Racial Discrimination commits States to the elimination of systemic racism, and any unequal enjoyment of human rights of people of African descent across all spheres of public life – including in education, employment, housing, health care, participation in public life, and criminal justice.
19. Affirming that speedy elimination of all forms of racial discrimination requires recognition and redress of group-based forms of discrimination, including through special measures and reparations.
20. Recalling that the international community committed to eradicate all forms of racism, racial discrimination, and related intolerance at the 2001 World Conference Against Racism in Durban, South Africa. Acknowledging the framework set by the Durban Declaration and Programme of Action. Reiterating that all States, and, in particular former colonial powers, have a moral obligation to take appropriate and effective measures to reverse the lasting consequences of enslavement, the trade and trafficking in enslaved Africans and of people of African descent, apartheid, colonialism, genocide, and past tragedies.
21. Honouring the International Decade for People of African Descent 2015-2024 and its theme of “recognition, justice and development.”
22. Reaffirming the urgent need for sustainable development – including in its social, economic and ecological dimensions. Recalling that States have committed to the purposes and principles of the UN Charter and to the 2030 Agenda for Sustainable Development. Reaffirming the principles of equality within and among countries, and of leaving no one behind. Supporting Agenda 2063 of the African Union, which is focused on economic development, political integration, peace, security, democracy, and justice in Africa, and is integral to Agenda 2030. Further promoting multilateralism, international cooperation, and an ethic of global citizenship.
23. Welcoming the roles that the United Nations, CARICOM, the African Union, and civil society have played in advocating for the promotion and full respect of the human rights of people of African descent.

#### **IV. Provisions**

##### *A. Recognition*

24. People of African descent have the collective and individual right to recognition of the specific forms of racism, racial discrimination, xenophobia, and related intolerances that they are subjected to – also known as afrophobia, afriphobia and anti-Black racism – through interpersonal, social, cultural, institutional, and systemic forms of racism, discrimination, xenophobia and related intolerances, including the right to accurate and

precise descriptions of the specific forms of racism, racial discrimination, xenophobia, and related intolerances that people of African descent are subjected to and the broader social, international, and historical contexts of these forms of racism, racial discrimination, xenophobia, and related intolerances.

25. People of African descent have the collective and individual right to recognition of the lasting impacts on their enjoyment of human rights of colonialism, enslavement, the transoceanic trade and trafficking in enslaved Africans and of people of African descent, exploitation, dehumanisation, embedded notions and practices of racial superiority, racial domination, racial and ethnic inequity, ethnocentrism, ethnic and racial nationalism.
26. People of African descent have the collective and individual right to public recognition of their domestic and international histories and heritages, cultural and other contributions to societies. People of African descent also have the collective and individual right to awareness of and education on their histories, heritages, cultural and other contributions to societies.
27. People of African descent have the right to recognition of the historical contributions of people of African descent to the growth and development of the global economy.
28. People of African descent have the right to recognition and self-determination of ancestral territories, including the right to property, and to the use, conservation and protection of lands traditionally occupied by people of African descent, and to natural resources in cases where their ways of life and culture are linked to their use of lands and resources.
29. People of African descent have the right to their cultural identity and cultural self-determination, to keep, maintain and foster their mode of life and forms of organisation, culture, languages, and religious expressions.
30. People of African descent have the right to the protection of their traditional knowledges and their cultural and artistic heritage, including the right to:
  - i. Recognition and valuation of their traditional use of genetic resources, their derived products, and their associated intangible components.
  - ii. Self-determination over their traditional knowledges, innovations and practices associated with genetic resources (i.e. any material of plant, animal, microbial or other origin containing functional units of heredity) and the right to equitable participation in the benefits derived from these, as provided for in Article 8.j. of the Convention on Biological Diversity.
  - iii. Recognition of its historical contribution to biological diversity, its conservation and development and the sustainable use of genetic resources, as well as the benefits that said contribution generates.
  - iv. Recognition of the existence of a close interdependence of indigenous, Afro-American and local communities with biological resources that must be strengthened, based on the conservation of biological diversity and the economic and social development of the same and of the Member Countries.

- v. Fair and equitable participation in the benefits derived from access to genetic resources, associated with their traditional knowledge.
- vi. Exchange among themselves and for their own consumption, their genetic resources, their derived products, the biological resources that contain them, or the intangible components associated with them, recognition and valuation of the rights and the power to decide over their knowledge, innovations and traditional practices related to genetic resources and their derived products.
- vii. Prior consultation with respect to decisions which may affect their rights, in accordance with international standards.

31. People of African descent have the right to:

- i. Be included in demographic surveys.
- ii. Public data collection disaggregated by grounds and factors relevant to the equal enjoyment of human rights of people of African descent – *inter alia*, by race, ethnicity, sex, income, gender, sexuality, age, migratory status, disability, geographical location, and other characteristics relevant in national contexts.
- iii. Reliable and timely disaggregated data and gender statistics that are conducive to the better execution of public policies in relation to people of African descent.
- iv. Careful and systematic monitoring of the equal enjoyment of all human rights as experienced by people of African descent, and the specific forms of racism, racial discrimination, xenophobia, and related intolerances that people of African descent are subjected to – also known as afrophobia, afriphobia and anti-Black racism – including through interpersonal, social, cultural, institutional, and systemic forms of racism, discrimination, xenophobia and related intolerances. This monitoring should be done by States and as relevant by the United Nations.
- v. Be included in disaggregated data relevant to people of African descent within contexts of monitoring sustainable development – *inter alia*, as related to vulnerability to climate change, climate related disasters, environmental degradation, large-scale migration, and social and economic development.

25. States have an obligation to promote, protect and ensure the full respect of the human rights of people of African descent, including by implementing national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance against people of African descent.

#### B. *Justice*

26. People of African descent have the collective and individual right to corrective and special measures needed to guarantee that they fully and equally enjoy all human rights and fundamental freedoms across all spheres of public life. Measures that would ensure this right include:

- i. Undertaking systemic and institutional transformation needed to guarantee the full and equal enjoyment of the human rights of people of African descent.
  - ii. Mainstreaming equality and non-discrimination considerations of people of African descent into all relevant policy making, across all spheres of public life.
  - iii. Special measures for people of African descent.
  - iv. Measures to establish a social and international order in which the human rights of all people of African descent can be fully realised – including, equity and democracy in the international order as it is relevant to the full and equal enjoyment of human rights of people of African descent.
  - v. The provision of overseas development assistance, including debt relief, technical assistance and technology transfer, to countries impacted by colonialism, and to people of African descent in the diaspora.
  - vi. Reparatory justice for people of African descent that recognizes, seeks to redress, rectify, and heal the lasting consequences of colonialism, enslavement, the transoceanic trade and trafficking in enslaved Africans and of people of African descent, exploitation, dehumanisation, embedded notions and practices of racial superiority, racial domination, racial and ethnic inequity. Here the past legal support for colonialism, enslavement and systemic racial discrimination is part of the injustice to be redressed, rectified, and healed, as is the lack of legal and other institutional support mechanisms to pursue reparatory justice.
27. People of African descent have the right to equality before the law, to access to justice and to equal protection by the justice sector. States should undertake systemic and institutional transformation of criminal justice systems, carceral practices, immigration law and policy, and national security systems to protect the human rights of people of African descent to non-discrimination and equality of dignity and rights. States should also guarantee accountability for police brutality, racial profiling, and discriminatory law enforcement conduct.

### *C. Development*

28. People of African descent have the right to social, economic, cultural, political, and environmental development, in which all human rights and fundamental freedoms can be fully realised.
29. People of African descent have the right to comprehensive and holistic measures to address any systemic, institutional and social conditions preventing the full and equal enjoyment of the human rights of people of African descent across all spheres of public life.
30. People of African descent have the right to be included and actively participate in the development of policies towards the full and equal enjoyment of the human rights of people of African descent.
31. People of African descent have a right to education, equal opportunities and access to quality education. Measures that would ensure this right include:

- a. Free access to quality primary and secondary education and equal access for boys and girls.
  - b. Extra resources and support for schools populated primarily by students of African descent.
  - c. Education that nurtures and supports the whole person of students of African descent, and that nurtures their academic, social, psychological, cultural, and physiological development.
  - d. Education that reflects, includes, and nurtures the identities, backgrounds, interests, and aspirations of students of African descent.
  - e. Measures to ensure equal opportunities and access to higher education of students of African descent, *inter alia*, through positive or affirmative action measures, mentorship programs, and university curriculums that reflect their needs and interests.
32. People of African descent have a right to employment, equal opportunities and access to employment. States should develop and implement strategies to guarantee sustainable livelihoods of people of African descent, including those facing multiple and intersecting discrimination.
33. People of African descent have a right to housing, equal opportunities to housing and access to adequate shelter. People of African descent also have a right to measures to ensure equal enjoyment of human rights to compensate for the negative impacts of residential segregation. States should combat systemic discrimination in the housing sector, including for those facing multiple and intersecting discrimination.
34. People of African descent have a right to equally access resources. Measures that would ensure this right include:
- i. Monitoring of access to public services, including water, electricity, and transportation.
  - ii. Efforts to combat environmental racism.
  - iii. Elimination of barriers prohibiting people of African descent from equally accessing banking and financial sectors.
  - iv. Respect for land customarily inhabited by communities of African descent.
35. People of African descent have a right to health, equal opportunities and access to health. Measures that would ensure this right include:
- i. Addressing specific factors that affect the health and wellbeing of people of African descent, including factors related to historical trauma, poverty and systemic racism.

- ii. Addressing disparate health outcomes, including high rates of hunger, exposure to infectious and non-communicable diseases, high infant, child and maternal mortality rates, and high morbidity rates among populations of people of African descent.
- iii. Guaranteeing the sexual and reproductive health and rights of all people, and particularly of women and girls regardless of gender identity or expression.
- iv. Provision of health care information and treatment in languages accessible to people of African descent, including sign language.
- v. Respect for traditional medicines and healing practices.

## **V. Conclusion**

- 36. The Declaration should call for the establishment of a Fund for the Development of People of African Descent.<sup>11</sup>
- 37. The Declaration should call for a second International Decade of People of African Descent to take place from 2025 to 2034.
- 38. The Declaration should promote multilateralism and call for solidarity and closer collaboration within and between States, and with other stakeholders, in the fight against all forms of racism, racial discrimination, xenophobia and related intolerance against people of African descent.
- 39. The Declaration should call for faithful implementation of the Durban Declaration and Programme of Action, the International Convention on the Elimination of All Forms of Racial Discrimination and the present Declaration following its adoption.
- 40. The Declaration should invite the UN Secretary General and/or the High Commissioner for Human Rights to submit annual reports on the implementation of the present declaration and request a review every five years.

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<sup>11</sup> Here it is important to consider that in 2011, the Organisation for Community Ethnic Development (ODECO) of Honduras convened the First World Summit of Afro descent, which was held that same year in La Ceiba (Honduras). At this summit, held within the framework of United Nations resolution 64/169, under which the International Year for People of African Descent was proclaimed, the commitment to continue promoting local, national, and international actions that would mean substantial improvements for People of African Descent. The action plan approved at the summit included, among others (...) designing and promoting the establishment of an Afro-descendant development fund in the United Nations, as a mechanism to guarantee the rights of People of African Descent and overcome disparities in their development. This Fund would contribute to guaranteeing conditions to combat poverty, access to education, employment, health, and housing, from the perspective of the right to ethnodevelopment of Afro-descendant communities.