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**Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action**

## COVID-19, systemic racism and global protests

### Report of the Working Group of Experts on People of African Descent\*

#### *Summary*

Structural racial discrimination exacerbates inequality in access to health care and treatment, leading to racial disparities in health outcomes and increased mortality and morbidity for people of African descent. The COVID-19 pandemic has brought racial disparity and discrimination to the surface in institutions designed to confer justice, equity and redress. In the present report, the Working Group of Experts on People of African Descent analyses the connections between the COVID-19 pandemic, police impunity and global protest, and makes recommendations thereon. The report also includes an overview of the Working Group's activities over the past year.

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## I. Introduction

1. The Working Group of Experts on People of African Descent held its twenty-fifth session from 9 to 13 December 2019 at the United Nations Office at Geneva. Owing to the coronavirus disease (COVID-19) pandemic, the twenty-sixth session of the Working Group will be held from 30 November to 4 December 2020. The present report is submitted to the Human Rights Council in accordance with Council resolutions 9/14, 18/28, 27/25 and 36/23, in which the Council requested the Working Group to submit an annual report on all activities relating to its mandate.

## II. Activities of the Working Group (July 2019–July 2020)

2. During the period under review, the Working Group submitted its annual report to the General Assembly (A/74/274) and participated in an interactive dialogue with the Third Committee of the Assembly on 29 October 2019. The Working Group organized a side event on 31 October 2019 entitled “Addressing negative racial stereotypes and stereotyping of people of African descent”, based on its annual report. At its twenty-fifth session, the Working Group held a private session at which members prepared for upcoming country visits, considered communications, met with various stakeholders and adopted the theme for its twenty-sixth session, at which it will investigate human rights solutions to address environmental injustice, racial disparities, unequal protection and the unique impact of the climate crisis and environmental racism on people of African descent. A panel discussion will also be held on the midterm of the International Decade for People of African Descent. The Working Group decided that, owing to the COVID-19 pandemic, it would postpone the session, originally scheduled for 30 March to 3 April 2020, to 30 November to 4 December 2020. In the light of the ongoing travel restrictions, it was also decided that the twenty-seventh private session of the Working Group, initially rescheduled for 31 August to 4 September, would be held from 23 to 27 November 2020. The Working Group will submit a report on its twenty-sixth and twenty-seventh sessions to the Human Rights Council in 2021.

3. The Working Group conducted a visit to Ecuador, from 16 to 20 December 2019 (see A/HRC/45/44/Add.1), and to Peru, from 25 February to 4 March 2020 (see A/HRC/45/44/Add.2). After each visit, it released a media statement on its preliminary findings and recommendations.<sup>1</sup> The Working Group thanks all Governments that have invited them to visit their countries, and encourages Governments in general to continue to cooperate with it.

4. The Working Group prepared operational guidelines on the inclusion of people of African descent as a tool for United Nations country teams, Member States, financial and development institutions and other stakeholders to assist them in the implementation of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals with a specific focus on people of African descent. During the period under review, the Working Group held technical meetings in Quito (December 2019) and Lima (February 2020) with government departments, national human rights institutions, national mechanisms that address racial discrimination, financial and developmental institutions, operational programmes and specialized agencies of the United Nations, people of African descent, and other stakeholders. The discussions gave the Working Group a clearer insight into work ongoing at the national level to address the situation of human rights of people of African descent, good practices and recommendations. The Working Group expresses its thanks to the organizers of the meetings, which allowed the Working Group to further revise its operational guidelines. A validation meeting is planned for September 2020, after which the guidelines will be publicly available on the webpage of the Working Group.

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<sup>1</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25452&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25452&LangID=E) and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25659&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25659&LangID=E).

5. During the period under review, and in accordance with its mandate, the Working Group sent nine communications<sup>2</sup> under the special procedures communications procedure regarding allegations of human rights violations, including to China, Colombia, Haiti, the Netherlands, the United States of America and the United Kingdom of Great Britain and Northern Ireland.<sup>3</sup> The Working Group also engaged in dialogue with the Government of the Netherlands and offered an *amicus curiae* submission with respect to racial discrimination in child welfare proceedings and human rights. The Working Group urges States to address the human rights violations faced by people of African descent seriously and to take effective measures to end impunity and structural racism.

6. On the occasion of the International Day for the Elimination of Racial Discrimination, the Working Group and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance called upon States to ensure momentum in the implementation of the commitments of the Durban Declaration and Programme of Action, including at its twentieth anniversary commemoration in 2021.

7. On 6 April 2020, the Working Group and several other special procedure mandate holders made an urgent appeal<sup>4</sup> to Governments to commit to racial equity and racial equality in navigating the COVID-19 crisis. The Working Group pointed out that structural discrimination could exacerbate inequality in access to health care and treatment, leading to racial disparities in health outcomes and increased mortality and morbidity for people of African descent. The Working Group also joined in several other statements on human rights-related concerns relating to the COVID-19 pandemic in subsequent months.

8. On 5 June 2020, in the aftermath of a spate of killings of people of African descent, including but not limited to Ahmaud Arbery, Breonna Taylor, and George Floyd, the Working Group and several special procedure mandate holders issued a media release in which they condemned the killings and called for systemic reform and justice.<sup>5</sup> They called upon the Government of the United States to take decisive action to address systemic racism and racial bias in the country's criminal justice system by launching independent investigations and ensuring accountability in all cases of excessive use of force by police. The experts also raised concerns about police responses to anti-racism demonstrations in several American cities, which were marked by violence, arbitrary arrest, militarization and the detention of thousands of protesters. The Working Group also joined in a parallel statement made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.<sup>6</sup>

9. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance delivered a joint statement, also on behalf of the Working Group and joined by the Coordination Committee of Special Procedures,<sup>7</sup> during an urgent debate held by the Human Rights Council at its forty-third session, on 17 June 2020, on the current racially inspired human rights violations, systemic racism, police brutality and the violence against peaceful protest. Together, the mandate holders called upon the Council to conduct an urgent country-specific intervention in relation to the events in the United States and a thematic global investigation, through a commission of inquiry on human rights violations. The Working Group and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance also issued a statement on 19 June 2020, in which they called for the adoption of a strong, substantive resolution to establish the

<sup>2</sup> One joint communication was sent to 33 States on the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Agreement).

<sup>3</sup> The communications sent and replies received are included in the joint communications reports of special procedure mandate holders submitted to the Human Rights Council (A/HRC/43/77 and A/HRC/44/59).

<sup>4</sup> <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25768&LangID=E>.

<sup>5</sup> <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25933&LangID=E>.

<sup>6</sup> <https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>.

<sup>7</sup> [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E).

facts and circumstances relating to systemic racism, alleged violations of international human rights law and abuses against Africans and people of African descent.<sup>8</sup>

10. Pursuant to the midterm review of the International Decade for People of African Descent and in the light of the COVID-19 pandemic, the Working Group issued two calls for submissions. The Working Group thanks all those who sent submissions.<sup>9</sup> The input was extremely useful to the Working Group when preparing the present report, and will also be used for the twenty-sixth session and in its next report.

11. On 9 December 2019, the Working Group, together with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Permanent Missions of Bahamas, Barbados, Guyana, Haiti, Jamaica and Trinidad and Tobago and the Mission of the Organization of Eastern Caribbean States organized a special high-level event at the United Nations Office at Geneva with the theme “Ensuring recognition, justice and development”, to raise awareness of, to allow for an exchange of views on, and to galvanize support among Member States, civil society organizations and the general public for the International Decade for People of African Descent and a United Nations declaration on the promotion and full respect of the human rights of people of African descent.

12. In addition, on 11 and 12 February 2020, a member of the Working Group, Sabelo Gumedze, delivered guest lectures on the theme “People of African descent and human rights” at the University of San Martin in Argentina. The Vice-Chair, Dominique Day, participated in several events, including on 19 September 2019 in Nova Scotia, Canada, for the launch of the Nova Scotia action plan for the International Decade for People of African Descent. Since March 2020 following the introduction of COVID-19-related travel restrictions, she has participated in a number of virtual events, including in a seminar held in Brazil on the theme “Post-pandemic horizons”, organized by GIFE, an association of Brazilian social stakeholders; and various panel discussions organized by Afro-Resistance, International Human Rights and Business, the Perry World House (University of Pennsylvania), the World Council of Churches, Law at the Margins, the International Federation of Settlements and Neighborhood Centers, the Sexual Rights Initiative, the US Human Rights Network and OHCHR. On 25 July, Ms. Day also recorded a statement for the International Day for Afro-Latino, Afro-Caribbean and Diaspora Women. Members Ahmed Reid and Ms. Day participated in the Nairobi Summit marking the twenty-fifth anniversary of the International Conference on Population and Development. Mr. Reid delivered a presentation at the United Nations Educational, Scientific and Cultural Organization (UNESCO) expert virtual meeting, held from 13 to 18 May 2020, on the theme “Education as a tool for prevention: addressing and countering hate speech”, and during the United Nations Population Fund global conversation series on the theme “Once again – we shall overcome: COVID-19 and people of African descent”, on 23 July 2020.

### **III. COVID-19, systemic racism and global protests: testing the integrity of the human rights framework**

13. In 1951, an American poet of African descent, Langston Hughes, wrote a poem entitled “Harlem”, in which he asked “what happens to a dream deferred?”. He asked whose rights and freedoms were prioritized, even at the founding of the United Nations and the establishment of the Universal Declaration of Human Rights. In an era of peace, fortune and dream-building, Hughes noted that deferred dreams were the true content of protests, uprisings and resistance. The COVID-19 pandemic has laid bare racial disparity and discrimination in institutions designed to confer justice, equity and redress, posing even more loudly the question of whether these institutions, including law enforcement, operate consistently with, or contrary to, their design. In many ways, for people of African descent, the human rights framework remains a promise unfulfilled, a dream deferred.

<sup>8</sup> <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25977&LangID=E>.

<sup>9</sup> The Working Group received six submissions on the midterm review of the International Decade (five from civil society organizations and one from the Canadian Commission for UNESCO). It received 42 on the COVID-19 pandemic.

14. Systemic racism is at the heart of this persistent reality. Structural racial discrimination exacerbates inequality in access to health care and treatment, leading to racial disparities in health outcomes and a higher rate of mortality and morbidity for people of African descent. The Durban Declaration recognized that social biases and discrimination prevailing in public and private institutions continued to create barriers for people of African descent, including in the realization of human rights. States must recognize the specificity of needs in particular communities, or risk deprioritizing people of African descent as a matter of law and policy.

## **A. Race as the through line connecting COVID-19, police impunity and global protests**

15. Importantly, a taxonomy, or classification system, may hide the racialized impact of certain policy decisions. The COVID-19 pandemic is not exclusively a public health issue where policy decisions fail to prioritize scientific conclusions, but also reflects racialized priorities. Police violence against Black bodies is not exclusively a policing issue where widespread impunity, misconduct and brutality exist within an enabling environment where racialized misconduct persists. To pretend otherwise is to disregard the racialized through line that consistently lowers expectations and worsens outcomes along racial lines. The parallel operation of systemic racism in multiple sectors reflects the historical development of interlocking systems that have exploited, rather than protected, people of African descent.

16. Historically, classification priorities have a dramatic impact on outcomes. The COVID-19 pandemic is no exception. Neglecting race has led to critical failures in the production of knowledge relating to the pandemic, including in scientific fields and despite racially-determined outcomes. Structural discrimination has exacerbated inequality in access to health care and treatment, leading to racial disparities in health outcomes and a higher rate of mortality and morbidity for people of African descent. Most States, however, have failed to consider the social determinants of health.<sup>10</sup> Failure to appreciate the risks that Afrodescendent populations face has facilitated racial disparities in the pandemic.

### **1. Foreseeable risks specific to people of African descent**

17. Even before the outbreak of COVID-19, scientists had suggested that a pandemic would disproportionately affect people of African descent. Racial disparities in exposure, susceptibility, access to health care, and perceptions of discrimination were key factors in the influenza A (H1N1) pandemic.<sup>11</sup> Contrary to popular belief, susceptibility to and the severity of COVID-19 are not wholly attributable to an individual's health. Public health experts note that underlying health conditions ("comorbidities") do not adequately explain the racial disparities seen in COVID-19 infection.<sup>12</sup> Susceptibility to COVID-19 relies on the foreseeable and "pernicious effects of adverse social determinants of health, and the absence of privilege that does not allow a reprieve from work without dire consequences for a person's sustenance, does not allow safe practices, and does not even allow for 6-foot distancing."<sup>13</sup> Universal health care may have mitigated racial disparities in some States.

18. The disproportionate representation of people of African descent in service industries is a source of risk and vulnerability. Widespread quarantining, distancing and mask mandates

<sup>10</sup> See Public Health England, *Disparities in the risk and outcomes of COVID-19* (2020).

<sup>11</sup> See Supriya Kumar et al., "The impact of workplace policies and other social factors on self-reported influenza-like illness incidence during the 2009 H1N1 pandemic", *American Journal of Public Health*, vol. 102, no. 1 (January 2012), p. 34; Sandra Crouse Quinn et al., "Racial disparities in exposure, susceptibility, and access to health care in the US H1N1 influenza pandemic", *American Journal of Public Health*, vol. 101, No. 2 (2011), p. 285; and Philip Blumenshine, et al., "Pandemic influenza planning in the United States from a health disparities perspective", *Emerging Infectious Diseases*, vol. 14, No. 5 (2008), p. 709.

<sup>12</sup> See Richard Opiel et al., "The Fullest Look Yet at the Racial Inequity of Coronavirus", *New York Times*, 5 July 2020.

<sup>13</sup> Clyde W. Yancy, "COVID-19 and African Americans", *Journal of the American Medical Association*, 15 April 2020.

are heavily underwritten by the ongoing availability of an “essential” workforce that enables people to reduce transmission by staying at home. In many States, a disproportionate number of people of African descent work in the service industry, serving as home health aides, carers and grocery and delivery personnel who must work full-time and use public transportation daily.<sup>14</sup> They allow hospitals and health-care systems to focus on serious cases. In the United Kingdom, service personnel – such as security guards, taxi drivers, bus drivers and social care workers – were found to have a significantly higher rate of death from COVID-19.<sup>15</sup> Globally, essential personnel mitigate transmission vectors and the burden on overwhelmed health-care systems.

19. In addition, States have declared workers “essential” without including measures to enable persons without a regularized status to perform essential roles. In Spain, domestic workers lacked personal protective equipment and cared for sick and elderly people at significant personal risk. Undocumented essential workers (whose legal status precluded employer travel authorization) navigated extreme risks of arrest, detention and infection. Some 30 per cent of domestic workers were subject to fines and harassment because they did not possess the necessary travel documents. They reported threats, being told to “go back to your own country”, the denial by police of their need to travel to essential workplaces, and fearing to venture out to buy food.

20. No special measures were taken for at-risk populations of people of African descent. Recent research confirms the increased risk of testing positive for COVID-19 among front-line workers, and indicates that health-care systems should develop additional strategies to protect health-care workers from COVID-19, particularly those from Black, Asian and minority ethnic backgrounds.<sup>16</sup>

21. Even in wealthy countries, the consequences of failing to properly assess risk left people of African descent particularly vulnerable. In the United States of America, African Americans disproportionately experienced food insecurity. In predominantly African-American Detroit, some 20,000 children have had no contact with their schools since March 2020, including for food distribution or online learning.<sup>17</sup>

22. In some States, the risks posed by the COVID-19 pandemic are even greater for people of African descent. In Brazil, significant displacement and instability continue throughout the pandemic, with ongoing removal of *favelas*, in part due to gentrification. High unemployment due to the coronavirus has also led to significant homelessness and the establishment of new *favelas*.<sup>18</sup> In the United States, police targeting and violence against people of African descent have been witnessed despite the risk of infection. State actions proceed without public policy or public administration for the benefit of traditionally vulnerable groups, without social programmes or assistance from the Government for residents.

23. In the United States, a 15-year-old girl of African descent with attention deficit hyperactivity disorder struggled with the transition to virtual instruction after schools closed because of the pandemic. In May 2020, she was incarcerated for violating probation for “failure to submit any schoolwork and getting up for school”.<sup>19</sup> She was released from juvenile detention only on 31 July, after an appellate court overruled the presiding judge.<sup>20</sup> In this shocking example of structural racism, an African-American child was held to a higher

<sup>14</sup> See for example Scott M. Stringer, “New York City’s Frontline Workers”, Office of the New York City Comptroller, 26 March 2020.

<sup>15</sup> Public Health England, Disparities in the risk and outcomes of COVID-19, p. 50.

<sup>16</sup> Long H. Nguyen et al., “Risk of COVID-19 among front-line health-care workers and the general community: a prospective cohort study”, *Lancet Public Health*, 31 July 2020 (preprint).

<sup>17</sup> Joseph Llobrera, “Food Security Impacts on People of Color Highlight Need for Aid”, Center on Budget and Policy Priorities, 13 May 2020.

<sup>18</sup> Arturo Rodrigues, “SP mantém remoções e vê nascer favela com ‘desabrigados da quarentena’”, *Folha de S. Paulo*, 11 July 2020 (in Portuguese).

<sup>19</sup> Joe Jurado, “Judge denies release for 15-year-old detained for not doing homework”, *The Root*, 21 May 2020.

<sup>20</sup> Jodi S. Cohen, “Grace, black teen jailed for not doing her online coursework, is released”, *ProPublica*, 31 July 2020.

standard than most adults navigating the COVID-19 pandemic, without additional support. Such disproportionately harsh treatment of children of African descent was a serious concern for the Working Group during its visit to the United States (see A/HRC/33/61/Add.2).

24. In some cases, failure to assess and mitigate the risks associated with the COVID-19 pandemic and systemic racism has led to fatalities. In Brazil, the tragic death of Miguel Otávio Santana da Silva, a 5-year-old Afro-Brazilian child, was such a case.<sup>21</sup> In Brazil, domestic workers are deemed essential. Schools and child-care facilities were closed, so Miguel accompanied his mother, Mirtes Santana, to work. While Miguel's mother walked the dog, her frustrated employer left Miguel in a lift. Unsupervised, the five-year-old child fell to his death when the lift stopped on the ninth floor. Miguel's mother decried the racialized conduct that failed to acknowledge her son's young age, innocence and vulnerability. Many domestic workers in Brazil work six days a week, which would suggest that precarious situations are more the norm than acknowledged, and require risk mitigation in the context of the pandemic.

25. Medical bias also poses ongoing concerns for people of African descent. Researchers have been able to find examples of racial disparity and bias everywhere they look for it. In many cases, the lack of controls sufficient to ensure that the use of discretion does not result in racism facilitates racial bias in decision-making; for example, research shows doctors underdiagnose illness, discount reports of pain, infer lesser pain and suffering for the same conditions and under-prescribe painkillers for people of African descent, including in the case of serious illnesses. Decision-making by doctors, particularly when they are under stress or lacking sleep, demonstrably defaults to anti-Black bias.

26. In many countries, triage protocols impermissibly broaden the discretion of health-care workers, pharmaceutical companies and insurers to prioritize patients with "value to society", to enforce limits based on socioeconomic status or to restrict non-pandemic-related health care and access to pharmaceuticals. People with lupus reported denials of prescription medications redirected for the COVID-19 response. One hospital instructed doctors that time, data or consultation were a "luxury" in critical triage decision-making,<sup>22</sup> without appreciating how social conditioning perpetuates institutional racism and how a lack of protocols to amplify assumptions based on race – particularly at its intersections with disability, chronic illness, gender, sexual orientation, gender identity and poverty – may impair racial equity in the COVID-19 response.<sup>23</sup>

27. The treatment of people of African descent as disposable is reminiscent of historical exploitation and suggests that policymakers are minimizing the needs of and risks to people of African descent in the current crisis. Even where policies appear race-neutral, tolerating risks to people of African descent without a race-centred analysis may facilitate discrimination. Decisions to limit testing to the desperately ill, the failure to include undocumented persons in financial rescue packages, and the failure to recognize the added risks to public safety in carceral practices of arrest and imprisonment have a disproportionate impact on people of African descent in many States. When doctors discount the claims of illness made by people of African descent, which research has shown, another layer of risk is added.

## **2. Influence of systemic racism on prioritization, and consequent harm to people of African descent**

28. Deprioritization and disregard in policymaking throughout the pandemic have compounded harm to people of African descent. In the earliest days of the pandemic, African and Caribbean countries faced disruptions to their supply chains, despite the urgent demand for medical supplies and equipment. In some cases, countries paid for supplies that were then

<sup>21</sup> See Dom Phillips, "Five-year-old's fatal plunge provokes hard questions about Brazil's racism", *Guardian*, 12 June 2020.

<sup>22</sup> See Shalini Ramachandran and Joe Palazzolo, "NYU Langone tells ER doctors to 'think more critically' about who gets ventilators", *New York Post*, 31 March 2020.

<sup>23</sup> See Charles Camosy, "COVID-19 patient was black and paralyzed, so doctors decided his life wasn't worth saving", *New York Post*, 10 July 2020.

“hijacked”, diverted or blocked.<sup>24</sup> The channels used by donor countries to deliver aid, including in-kind humanitarian and medical supplies, were immediately abandoned.

29. As States began to grasp the highly infectious character and potential severity of the novel coronavirus, some began to hoard medical supplies and to disregard the enhanced risk to vulnerable populations. People of African descent reported disregard and lack of visibility in their access to the right to health, even in wealthy countries. In Canada, civil society reported disregard and long delays in the disbursement of funding for seniors and aggravated risks to food security.

30. In many cases, shipments of all medical supplies, not merely surgical masks or gowns, were withheld by donor countries.<sup>25</sup> One wealthy donor State even sought the return of medical supplies via its humanitarian aid vehicle.<sup>26</sup> On the other hand, Cuba, an outlier, has provided assistance regionally and globally since the early days of the pandemic.

31. In the early days of the pandemic, several Member States legislated individual financial assistance. “Universal” assistance involved stimulus payments, unemployment assistance, and more. Despite the particular vulnerability and precarity of undocumented persons, several States wholly excluded them from financial assistance. This population is disproportionately composed of people of African descent and of persons serving as essential workers.

32. In many States, migrants and refugees continue to be held in conditions that are inhumane and incompatible with COVID-19-related physical distancing requirements. Some States are conducting large-scale deportations, including of persons who may be infected. For example, the United States has conducted hundreds of deportation flights to the Caribbean and Central America, irrespective of COVID-19 status, raising concerns of “exporting the virus” from a global epicentre.<sup>27</sup>

33. Prisons and jails in the United States, Brazil and other States have been COVID-19 hotspots, with high infection rates and few containment or preventative measures by the State. People of African descent in detention are particularly vulnerable to COVID-19. In closed, overcrowded prisons and jails, basic protective measures, such as physical distancing and hygiene rules, are virtually impossible to implement. People of African descent are disproportionately represented among both prison populations and those succumbing to COVID-19 worldwide. Failure to effectively mitigate the resulting risk in places of detention is an issue of racial discrimination and racial justice. Troubling reports have also highlighted disregard for the rights of incarcerated persons, including in the use of inhumane practices, like solitary confinement, to mitigate COVID-19 contagion in prisons in the United States.<sup>28</sup>

34. The lack of uniform, universal disaggregated data also compounds the impact on people of African descent. In Peru, although racial self-identification data are collected administratively in the census, COVID-19 data are not disaggregated by “Afro-Peruvian” status. A law adopted on 30 May 2020 eliminated the term “Afro-Peruvian” from its final text, because there was “no legal requirement” to collect data disaggregated on racial grounds. In Spain, representatives of civil society reported a lack of data disaggregated by

<sup>24</sup> See Jacqueline Charles and Alex Harris, “Caribbean nations can’t get U.S. masks, ventilators for COVID-19 under Trump policy”, *Miami Herald*, 11 April 2020; and Sophia Ankel, “At least 5 countries — including a small Caribbean island — are accusing the US of blocking or taking medical equipment they need to fight the coronavirus”, *Business Insider*, 7 April 2020.

<sup>25</sup> Kim Willsher et al., “US hijacking mask shipments in rush for coronavirus protection”, *Guardian*, 3 April 2020.

<sup>26</sup> Dan De Luce, “Tables turned: USAID asks relief groups around the world for protective gear for U.S. use”, *NBC News*, 3 April 2020.

<sup>27</sup> See Melissa del Bosque and Isabel MacDonald, “Exporting the virus: How Trump’s deportation flights are putting Latin America and the Caribbean at risk”, *The Intercept*, 26 June 2020; and Alter Presse, “Des centaines de militantes et militants de droits humains exigent la cessation des déportations vers Haïti”, *Le Projet d’Information Canada-Haïti*, 19 June 2020.

<sup>28</sup> Walter Palvo, “Bureau of Prisons using solitary confinement as a means to curb Covid-19 contagion”, *Forbes* (16 July 2020). According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), more than 15 days of solitary confinement constitutes cruel, inhumane and degrading treatment rising to the level of torture.

race and ethnicity. In the United States, where disaggregated data are commonly gathered, many institutions fail to keep, maintain or release data disaggregated by race on COVID-19 until coerced by public demand. In Brazil, there is no requirement to register COVID-19 deaths by race, which complicates any understanding of a key metric.

## **B. Abuse of authority and racial bias**

35. Discretion in decision-making, even by people with minimal power, is a significant driver of systemic racism. When unchecked, bias can play a significant role, particularly in decisions made under stress. Inadequate action has been taken to mitigate racial bias in decision-making relating to the COVID-19 pandemic, as is evident in COVID-19 outcomes.

### **1. Racial bias and disparities in COVID-19 infections, treatment and mortality**

36. Throughout the COVID-19 pandemic, disaggregated data (when available) highlight stark racial disparities that have had a disproportionate impact on people of African descent. In its statement of 6 April 2020 on COVID-19, racial equity and racial equality, the Working Group called for immediate attention to the disproportionate risks run by people of African descent. Racial disparities are particularly severe when people of African descent and others lack meaningful access to health care, designation as essential workers and the ability to quarantine, and the experience of bias when seeking care and treatment may have exacerbated these risks. Many States have failed to mitigate foreseeable risks.

37. In the United States, stark racial disparities have been witnessed in COVID-19 infection and mortality. People of African descent of all ages have been more exposed to infection. Compared to white Americans, they experienced triple the rate of infection, nearly five times the rate of hospitalization and twice the rate of death.<sup>29</sup> Such disparities have also been seen in the United Kingdom, where the Office for National Statistics has found that women of African descent and men of African descent were respectively 4.3 and 4.2 times more likely to die of COVID-19 than white people, the largest disparity of any ethnic group.

38. In some States, treatment has been rationed owing to shortages of ventilators and dialysis machines. In the United Kingdom, representatives of civil society reported claims that “do not resuscitate” orders were being inappropriately used in the case of people of African descent. In the United States, in public hospitals largely serving patients of African descent, “treatment rationing” of dialysis had included the abbreviation of sessions and the rotation of patients, leading to at least one death.<sup>30</sup>

### **2. Racial bias and disparity in enforcement of COVID-19-related social restrictions**

39. Many States have enacted COVID-19-related social restrictions to mitigate the community spread of infection. Mandated restrictions have, however, been sometimes used as a pretext for disproportionate enforcement and violence against people of African descent. Police involvement was more likely to end in arrest<sup>31</sup> and law enforcement impunity; the use of violence against people of African descent was also evident in social restriction enforcement. In the United States, police officers distributed masks in parks populated by white people,<sup>32</sup> but used force and violence against people of African descent in the name of enforcing curfew or mask requirements.<sup>33</sup> Similarly, in the United Kingdom, Black and minority ethnic persons were 54 per cent more likely to be fined for violating lockdown

<sup>29</sup> State of Black America Unmasked, National Urban League, 2020, pp. 12-13.

<sup>30</sup> Fred Mogul, “Shortage of dialysis equipment leads to difficult decisions in New York ICUs”, *WNYC*, 20 April 2020.

<sup>31</sup> “Racial disparities in NYPD’s COVID-19 policing”, New York City Legal Aid Society, May 2020.

<sup>32</sup> See for example Joseph Goldstein and Corey Kilgannon, “Balmy weekend presents a challenge: New Yorkers rushing to parks”, *New York Times*, 2 May 2020.

<sup>33</sup> See for example Josiah Bates, “Police data reveals stark racial discrepancies in social distancing enforcement across New York City”, *Time*, 8 May 2020); Ashley Southall, “Scrutiny of social-distance policing as 35 of 40 arrested are black”, *New York Times*, 7 May 2020.

regulations than white people.<sup>34</sup> In Spain, 70 per cent of people of African descent surveyed reported being targeted by the police because of race. In China, police enforced orders of eviction people of African descent from apartments, and prohibited them from staying in hotels or from frequenting restaurants. Some stakeholders noted that action by the State in Guangzhou to curb this misconduct failed to repair the reputational harm caused to people of African descent.

40. Intersectional populations have witnessed significant police interventions during the COVID-19 pandemic. The Working Group was informed that, in Spain, people of African descent living with mental illnesses have been subjected to particular insensitivity, force and violence from the police. A man of African descent was violently arrested while informing police that he had a mental illness. When a woman of African descent tried to tell the police that her son lived with mental illness, they reportedly replied, “even the crazies have to stay at home”.

### 3. Police violence during the pandemic

41. During the COVID-19 pandemic, people of African descent in many States have reported a rise in police violence, particularly under the pretext of enforcing social distancing requirements. The Working Group was informed that, in Spain, 70 per cent of people of African descent stopped by police reported force or brutality. One young man of African descent heading to a pharmacy was harassed, fined and threatened by police when he defended his right to purchase medicine. A woman of African descent was barred from entering a police station to file a complaint on threat of being beaten by police officers, who took a photograph of her complaint on the street. Many of those harassed by law enforcement officials reported not leaving their homes again, even for emergency reasons, such as to procure food or medicines. In some cases, police violence against citizens was caught on video, which was also a reason given to justify the detention and arrest of witnesses to police violence. In Spain, the National Police has been labelled a key human rights violator, although other law enforcement entities have been involved in incidents.

42. In Brazil, representatives of civil society informed the Working Group about an increase in the presence of the military operating in *favelas*, resulting in more deaths and violence. In the past three months, they reported a 36 per cent increase in police killings, including of a large number of children. Brazilian persons of African descent complain of impunity and their lack of recourse. In Colombia, civil society sources refer to a sharp rise in police violence and the disproportionate enforcement of COVID-19-related restrictions against people of African descent.

43. The Working Group has called the killings of Ahmaud Arbery, George Floyd and Breonna Taylor tragedies that evoke the very terror that the lynching regime in the United States was intended to inspire, noting that that the history of policing in the United States started with slave patrols and social control, where the human property of enslavers was “protected” with violence and impunity against people of African descent. In the United States, this legacy of racial terror remains evident in modern-day policing.<sup>35</sup>

44. The abuses of authority that have been witnessed during the pandemic also set the stage for global protest at systemic racism in law enforcement and quasi-law enforcement in the killings of several people of African descent. Globally, widespread protests have illustrated how people of African descent and others recognize their lack of visibility, and the disregard and police violence of which they are victim in local practices in their own communities. Mass demonstrations were held for weeks in capitals around the world, including in all 50 States of the United States.

<sup>34</sup> Chris Baynes, “Coronavirus: Police twice as likely to fine young Bame men for breaching lockdown rules”, *Independent*, 27 July 2020.

<sup>35</sup> OHCHR, “UN experts condemn modern-day racial terror lynchings in US and call for systemic reform and justice”, press statement, 5 June 2020.

#### 4. Impact of systemic racism on therapy and vaccine development

45. Equal protection requires States to consider who is disregarded as well as who is protected. Interventions that appear neutral may actually license or facilitate racial bias and stereotypes if specific efforts are not made to counter them. In the COVID-19 pandemic, all front-end planning and protection efforts have failed to address public health issues specific to people of African descent. Dramatic racial disparities have ensued.

46. The above-described situation raises a parallel concern that research and knowledge production in response to the crisis may fail to investigate racialized barriers to care or to recognize the racially discriminatory intent or impact of policy. In the United States, some early vaccine research lacks meaningful representation of people of African descent despite the stark racial disparities that have emerged during the pandemic and the siting of the trials in Atlanta, a city with a largely Black population.<sup>36</sup>

47. In many States, high-level decision-making relating to the crisis lacks the representation, expertise and understanding necessary to responsibly plan on behalf of communities of African descent. Navigating the COVID-19 pandemic requires understanding rather than denying diversity. For example, in a submission to the Working Group, representatives of civil society questioned the propriety of all-white leadership teams at hospitals in London. States have the opportunity to leverage existing civil society expertise to define key concerns and to implement policy effectively. In the United States, the first vaccine set for phase III trials was developed by a woman doctor of African descent. An authentic understanding of Afrodescendent communities, with the participation of the persons affected and diverse voices at every level, should help to inform and drive innovation.

48. Without targeted efforts to contain systemic racism, States may instrumentalize people of African descent for scientific innovation by default. In 2019, in the United States, major commercial health-care algorithms recommended less treatment, intervention and care for people of African descent than for identically situated white people (on the basis of different risk scores).<sup>37</sup> In scientific research, factors including “study design” and “logistics” operate to exclude people of African descent. In Brazil, hydroxychloroquine, a drug promoted by the United States, was provided to indigenous populations and advertised as curative before and after being discovered to be ineffective against COVID-19.

49. The use of people of African descent as “lab rats” for research on COVID-19 was publicly discussed in April 2020 during a televised broadcast by the head of intensive care at a large public university hospital in Paris and the director of research at the French National Institute of Health and Medical Research (INSERM). One doctor offered Africans for vaccine testing, referring to their lack of access to masks, treatment and resuscitation. The other doctor discussed plans to conduct just such studies. Amid public uproar, the latter subsequently apologized but failed to take responsibility for any misconduct or to acknowledge the substantive racism or the colonialist tropes invoked, instead apologizing for any “hurt feelings” from his remarks. The Director General of the World Health Organization condemned the original statements, unequivocally stating that “Africa cannot and will not be a testing ground for any vaccine. The hangover from colonial mentality has to stop.”

50. The above-mentioned “hangover from colonial mentality” has created barriers to the human rights of people of African descent. For example, in Haiti, the rationale for policies denying access to expensive HIV medications originated from bias, not cost considerations. In 2001, the Government of the United States opposed timed HIV medications for Haitians, stating they did not wear watches. Some United Nations officials stated that babies should drink HIV-tainted breast milk because supplying formula was “creating dependencies” that were not “cost-effective” or “efficient”.<sup>38</sup> Researchers had to prove that Haitians could follow

<sup>36</sup> See for example Lisa A. Jackson et al., “An mRNA Vaccine against SARS-CoV-2 – Preliminary Report”, *New England Journal of Medicine*, 14 July 2020.

<sup>37</sup> See Ziad Obermeyer et al., “Dissecting racial bias in an algorithm used to manage the health of populations”, *Science*, vol. 366, No. 6464 (25 October 2019).

<sup>38</sup> David A. Walton et al., “Integrated HIV prevention and care strengthens primary health care: lessons from rural Haiti”, *Journal of Public Health Policy*, vol. 25, No. 2 (28 April 2004).

drug protocols – namely, be equally invested in their own survival – to gain access to life-saving medicines.<sup>39</sup>

51. State responses to the COVID-19 pandemic must also balance other existential threats to their population. In Africa and Latin America, several States where the informal economy is of primary importance locked down in step with wealthier Western countries, despite the likelihood of malnutrition and starvation. In Haiti, the COVID-19 pandemic has not had a per capita impact anywhere near that of cholera, which infected nearly 1 million people and killed 10,000 after being brought in by United Nations peacekeepers. The cumulative consequences of the said cholera outbreak and the 2010 earthquake have left the State poorly positioned to cope with the added challenges posed by COVID-19.<sup>40</sup>

### C. Race as the through line

52. An analysis of systemic racism reveals how bias is embedded in practices and policies that structure operations, industries, economies and mindsets. Historically, systemic racism was used to rationalize colonialism and trade and trafficking in enslaved Africans by embedding justifications throughout the societal fabric. Enslavers and colonizers developed elaborate social, economic and moral justifications, constructing whiteness as a valued commodity, a site of superiority and unquestioned moral authority. The social construct of race was normalized everywhere. These practices, and the trade in enslaved Africans, are some of the earliest existing examples of globalization and global cooperation; indeed, today's global economy is founded on trafficking in persons and on the enslavement and exploitation of people of African descent. Although modern laws prohibit enslavement, trafficking and racism, legacy mindsets persist and relevant analogues abound. In the course of the COVID-19 pandemic, the global response and the aftermath, these mindsets are still apparent, as is their deep connection to historical exploitation, including in the area of medical and scientific research. Some people of African descent in the diaspora refer to this as the line connecting 1619 to COVID-19.

#### 1. Medical abuse and exploitation in the name of scientific innovation

53. In addition to the exploitation of bodies, labour, land and resources for economic gain, people of African descent have experienced significant legalized exploitation in the name of scientific innovation and progress. This has included medical exploitation and experimentation, the display of Black bodies for public spectacle, the development of surgical techniques using people of African descent as test subjects, dissection, and the infecting and re-infecting of people of African descent to study illness and disease, including radiation sickness and sexually transmitted infections.<sup>41</sup> Scientists engaged in eugenics and experimentation sought to “prove” that people of African descent were of a lesser species, and often conducted research on persons lacking effective capacity to consent, including children, and enslaved or incarcerated persons.<sup>42</sup>

54. Examples of this abound. Perhaps the most well-known is the Tuskegee syphilis study, the counter-example underlying ethics protocols in human experimentation today. From 1932 to 1972, African Americans were injected with syphilis and deliberately left untreated to study the nature and progression of the disease. In Belgium, people of African descent were used several times to populate “human zoos”, most recently in 2002 (A/HRC/42/59/Add.1, para. 10). Sara Baartman, known as the “Venus Hottentot”, was forcibly removed from modern-day South Africa, enslaved, subjected to sexual assault and exploitation (including “experimental” impregnation) and publicly displayed in Europe, for

<sup>39</sup> See for example Paul Farmer et al., Community-based treatment of advanced HIV disease: introducing DOT-HAART (directly observed therapy with highly active antiretroviral therapy), *Bulletin of the World Health Organization*, vol. 79, No. 12 (2001).

<sup>40</sup> See for example Sandra Wisner and Beatrice Lindstrom, “COVID-19 brings renewed urgency to remedies for cholera in Haiti”, *Al Jazeera*, 22 May 2020.

<sup>41</sup> See Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* (New York, Random House, Inc., 2006).

<sup>42</sup> *Ibid.*

observation and study, even after her death, until the late 1970s. Baartman learned multiple European languages, famously refused to allow scientists to study her genitalia, but was never seen as having agency or humanity.

55. In the United States, doctors used free and enslaved persons for dissection and experimentation. One doctor measured the susceptibility of people of African descent to heatstroke, to determine the outside limits for enslaved Africans' work in the summer sun.<sup>43</sup> Another, Dr. Marion Sims, famously conducted experiments on women of African descent with vaginal fistulas without the benefit of anaesthesia or painkillers, and documented his brutality, and the women's agony at having to endure up to 30 invasive interventions.

56. People of African descent were also exploited openly in the name of scientific progress. Henrietta Lacks, the source of the immortalized "HeLa" cell line, was poor and African American. Researchers nonetheless made millions of dollars from her cells, cultured without her knowledge or consent. Medical experimentation, including human clinical trials for medications, protocols and treatments, have long been conducted in sub-Saharan Africa, Haiti and other countries. Routinely, however, people of African descent in the countries where medications have been tested and perfected struggle to gain access to life-saving treatments.

## 2. International human rights framework and systemic racism

57. The exploitation of people of African descent as "scientific innovation" or "necessary" and systemic racial discrimination have existed in parallel to a robust human rights framework. Equality, including the right to freedom from discrimination, is at the core of the human rights framework, and included in all human rights instruments. Article 2 of the Universal Declaration of Human Rights provides for equal enjoyment of rights and freedoms "without distinction of any kind, such as race ...". Article 20 (2) of the International Covenant on Civil and Political Rights prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

58. The International Convention on the Elimination of All Forms of Racial Discrimination acknowledges systemic racism and obliges States parties to actively combat it. In its general comment No. 34 (2011) on discrimination against people of African descent, the Committee on the Elimination of Racial Discrimination reiterated that people of African descent should enjoy all human rights and fundamental freedoms in accordance with international standards, in conditions of equality and without any discrimination.

59. Adopted in 2001, the Durban Declaration and Programme of Action reasserts the principles of equality and non-discrimination, and assigns primary responsibility for combating racism, racial discrimination, xenophobia and related intolerance to States, as duty bearers, while also calling for active involvement by international and non-governmental organizations, political parties, national human rights institutions, the private sector, the media and civil society.<sup>44</sup> The Durban Declaration recognized that social biases and discrimination prevailing in public and private institutions continued to create barriers for people of African descent, including in the realization of human rights. As the twentieth anniversary of the Durban Declaration and Programme of Action approaches in 2021, States have the opportunity to recommit to addressing the legacy of the past, and to truth and reconciliation reparatory justice for crimes against humanity.

<sup>43</sup> See V. N. Gamble, "Under the shadow of Tuskegee: African Americans and health care", *American Journal of Public Health*, vol. 87, No. 11 (1997), p. 1773.

<sup>44</sup> The Durban Declaration and Programme of Action calls upon States to adopt and develop comprehensive national action plans. An increasing number of States have established equality bodies and policies to combat racial discrimination, although the implementation of the law also requires vigilance and activism from civil society. As at 2017, however, only 14 States members of the European Union had adopted action plans against racism, racial/ethnic discrimination and related intolerance.

## D. People of African descent in the diaspora seeking redress for systemic racism within the United Nations

60. People of African descent have sought redress from the United Nations before.<sup>45</sup> As the United Nations was being established, the National Association for the Advancement of Colored People (NAACP) and W.E.B. Du Bois, an African-American sociologist and thought leader, petitioned the nascent intergovernmental body for recognition of systematic violations and the denial of the human rights of people of African descent faced in the United States.<sup>46</sup> The initiative immediately actualized an early, stated concern of the United States, namely that the creation of the United Nations might offer redress to people of African descent in the United States, which at the time tolerated legalized racial discrimination, manifested in, inter alia, considerable exploitation, violence and inequality. The petition was rejected with the knowledge of Eleanor Roosevelt, NAACP board member and key figure in the drafting of the Charter of the United Nations.

61. In June 1946, the National Negro Congress in the United States petitioned the United Nations Secretariat for redress for systemic racism, submitting *A Petition to the United Nations on Behalf of 13 Million Oppressed Negro Citizens of the United States of America*, for consideration by the Economic and Social Council. Although systemic racism faced by African-Americans was well-established and enshrined in law, the Secretary-General indicated that the Organization could not consider the petition without more data.<sup>47</sup> The International Court of Justice has never offered an advisory opinion on the legality of the institutionalized systemic racism evident in many Member States.<sup>48</sup>

62. The midterm review of the International Decade for People of African Descent and its programme of action and activities, adopted by consensus by the General Assembly, is an opportunity for Member States to demonstrate their commitment by addressing racial injustice for people of African descent, implementing the programme of activities, establishing a permanent forum and starting work on a declaration for the protection of the human rights of people of African descent.

63. The urgent debate held by the Human Rights Council at its forty-third session, in June 2020, was an opportunity for States Members of the United Nations to address systemic racism against people of African descent globally, particularly at the hands of law enforcement. Several States made a commitment to racial justice, while expressing their concern at the legacy of the trade and trafficking in enslaved Africans and colonialism. In its resolution 43/1, the Council acknowledged systemic racism as a grave violation of human rights, strongly condemned the continuing racially discriminatory and violent practices perpetrated by law enforcement against Africans and people of African descent, deplored the recent incidents of excessive use of force and other human rights violations by law enforcement officers against peaceful demonstrators, requested the United Nations High Commissioner for Human Rights, with the assistance of relevant special procedures of the Council, to prepare a report, on systemic racism, violations of international human rights law against Africans and people of African descent and government responses to anti-racism protests, and called upon Member States and stakeholders to cooperate in the preparation of that report.

64. The urgent debate also brought to mind a previous unsuccessful attempt to seek redress using international human rights system. In 1964, under the pressure of the United States, African States were dissuaded from taking up the urgent appeal made by American civil rights activist Malcolm X for the United Nations to conduct an investigation into the situation of African Americans.<sup>49</sup>

<sup>45</sup> See Ursula Tracy Doyle, "Strange fruit at the United Nations", *Howard Law Journal*, vol. 61, No. 187, 2018.

<sup>46</sup> An Appeal to the World: A Statement of Denial of Human Rights to Minorities in the Case of citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress (1947).

<sup>47</sup> See Doyle, "Strange fruit at the United Nations", p. 226.

<sup>48</sup> *Ibid.*, p. 235.

<sup>49</sup> See OHCHR, Statement on the Human Rights Council Urgent Debate Resolution, 19 June 2020.

65. On 12 June 2020, the Committee on the Elimination of Racial Discrimination issued an early warning and urgent action procedure with regard to the United States, calling upon the State inter alia to comply with its treaty obligations, to mitigate police misconduct, to recognize structural discrimination, to desist in calling the military in against peaceful protesters, and to enact policing reform and eliminate racial profiling.

## IV. Conclusions and recommendations

### A. Conclusions

66. **The Working Group welcomes the current attention to the issue of systemic racial discrimination that people of African descent face, and thanks the Black Lives Matter movement and anti-racism protestors for turning a spotlight towards this urgent matter. It is now time for Member States to take real action to ensure that the roots of the problem are effectively addressed, that international human rights law is implemented and that justice is provided. Positive steps at the local levels must continue until equal justice is finally achieved.**

67. **Evidence suggests that this moment has been a complex test for the human rights system, including its ability to address grave violations and States' commitments to compliance with and enforcement of human rights law. With respect to people of African descent, the COVID-19 pandemic has shown that systemic racism touches the lives of people of African descent broadly. Structural racial discrimination exacerbates inequality in access to health care and treatment, leading to racial disparities in health outcomes and increased mortality and morbidity for people of African descent. These racial disparities suggest that the precarity that many people of African descent experience, particularly in intersectional populations, will increase.**

68. **COVID-19 outcomes have been overtly socially-determined, centring race as a significant factor, despite popular narratives that the virus was race-neutral and assurances that "we are all in this together". Policymakers neither acknowledged nor corrected existing social determinants of health, creating even greater risks for people of African descent. Racial disparities ensued, and persist. Recent research confirms the importance of taking proactive measures to protect frontline workers of African descent, a high-risk category within the high-risk category of frontline workers.<sup>50</sup>**

69. **Racial discrimination cannot be resolved merely by ignoring race and assuming that the legacy mindsets of colonialism and that trade and trafficking in enslaved Africans have vanished.<sup>51</sup> This is of particular relevance in the context of the COVID-19 pandemic, where there is a risk that knowledge production will baseline white experiences as standard, that is, fail to question the impact of systemic racism in this context as a feature of the pandemic that must be addressed rather than merely narrow the gaps between people of African descent and a white-defined norm.**

70. **As anti-racism protests continue, many State and non-State institutions have embraced symbolic changes and echoed key tag lines. This is, however, only a first step. The toxic effects of systemic racism can be dismantled only through substantive efforts to curb police violence, address impunity and ensure racial equity and equality.**

71. **Disaggregated data are also an important, politicized resource in the COVID-19 pandemic. The failure to keep disaggregated data facilitates and conceals human rights violations against people of African descent globally. Some States nonetheless fail to keep or publish such data. In the case of the pandemic, existing disaggregated data highlight the stark racial disparities in rates of infection and mortality. Racial**

<sup>50</sup> See Nguyen et al., "Risk of COVID-19 among front-line health-care workers".

<sup>51</sup> An African American author, Toni Morrison, expressed this concern in 1975 when she identified the function of racism as one of 'distraction', "a device that "keeps you from doing your work. It keeps you explaining, over and over again, your reason for being."

disparities are also apparent in the enforcement of COVID-19-related social restrictions.

72. Some States have politicized the current public health emergency to evade their human rights obligations, and made troubling public statements alleging a need to suspend civil rights and human rights, including by instituting indefinite detention, denying access to asylum, suspending affirmative action and environmental regulations, and curtailing reproductive rights. Such measures facilitate severe violations of the human rights of the people of African descent. States must navigate the COVID-19 pandemic without escalating or creating additional crises for people of African descent.

73. Notably, the human rights framework offers important lessons in the context of global pandemics, where people of African descent risk being left behind in terms of their access to the right to health, including medicines, treatments and vaccines. For example, in South Africa, civil society has situated its call for access to HIV medications within the right to health,<sup>52</sup> which has facilitated reductions in the price of medicines, the prevention of hundreds of thousands of HIV-related deaths, and forced significant additional resources into the health system, and towards people living in poverty in particular.

74. In several cases, citizens and protesters recording serious police misconduct have been fined or prosecuted for recording the misconduct that would not be established without the very recording criminalized. In Spain, this has been a significant feature of enforcement of COVID-19-related restrictions. The deleterious effects of the Law on the Security of Citizens on the rights of people of African descent have reportedly pushed them into self-censorship, resulting in underreporting of discriminatory acts, failure to investigate and prosecute perpetrators and provide redress to victims (A/HRC/39/69/Add.2, para. 21).

75. The COVID-19 pandemic has also shown how discretion licenses systemic racism in education. Globally, for students of African descent, “learning loss” from interruption of the academic year, or lack of resources, may be misdiagnosed as lack of student aptitude, thereby reinforcing the racial bias of educators. The criminalization of school discipline continues. Failure to use “criterion reference assessment” (that is, requiring planning to achieve educational attainment targets irrespective of learning loss) rather than “norm reference assessments” could be a devastating policy decision not to invest in students left furthest behind, masked by satisfaction at student growth rather than student adequacy.

76. In the United States, 17 per cent of students lack adequate Internet access for online learning; a further 18 per cent of students have only one connected device in their homes. In the United Kingdom, where families reported having Internet access, existing computers were prioritized for children’s schoolwork. Students of African descent compete with parents’ and siblings’ online needs.

77. In the United Kingdom, routine underprediction of grades for Black students may strengthen racial discrimination, as student grades were assessed by teacher prediction and then normed. Some 40 per cent of all students saw their grades worsen from teacher assessments, which are themselves on occasion a source of systemic racism.<sup>53</sup> These data have not yet been released disaggregated by race, despite concerns of bias.<sup>54</sup> In the United States, where most essential workers are people of African descent, the sharp decrease in federal financial aid renewals in 2020 points to a likely increase in dropout rates for university students whose presence is required at home.<sup>55</sup>

<sup>52</sup> See Mark Heywood, “South Africa’s treatment action campaign: combining law and social mobilization to realize the right to health”, *Journal of Human Rights Practice*, vol. 1, No. 1, (March 2009), p. 14.

<sup>53</sup> Sean Coughlin, “Why did the A-level algorithm say no?”, *BBC*, 15 August 2020).

<sup>54</sup> Hannah Richardson, “GCSE and A-level results ‘could be affected by bias’”, *BBC*, 11 July 2020.

<sup>55</sup> Madeline St. Amour, “FAFSA renewals down, especially for lower-income students”, *Inside Higher Ed*, 27 May 2020.

78. Remote learning and educational stopgaps during the pandemic have been inequitable. When schools closed, many students disappeared. In the United States, 20,000 (predominantly African-American) children in Detroit had no contact with anyone in school between March and July 2020. In the United States, this is systemic and national: the non-profit College Board, which administers standardized testing, suggested that a student sit for rigorous Advanced Placement exams in the street outside a McDonald's restaurant.<sup>56</sup> The case of a girl of African descent detained for failure to complete school work during the pandemic is a particularly serious example of disparate treatment and structural racism.

## **B. Recommendations**

79. The Working Group recommends that States:

(a) Look specifically at the impact of systemic racism in policing, health care, COVID-19 pandemic policy and other areas of discretionary decision-making on communities of African descent, and explicitly strive to disable taxonomy that obscures or minimizes that impact;

(b) Prioritize human rights, equality and racial equity, even in times of emergency, and take measures to mitigate the impact of racial bias when decisions are made under stress or time pressure;

(c) Prioritize vaccines for essential workers, including in particular frontline workers in health care and home health aides, carers and others enabling widespread quarantines and who continue to take a disproportionate risk;

(d) Launch campaigns to dismantle stereotypes and to dispel social beliefs that people of African descent may be responsible for community spread of COVID-19;

(e) Where people of African descent have experienced disproportionate abuses of authority by law enforcement, review applicable law, practices and policies to determine which reforms lead to future equitable outcomes;

(f) Provide documentation allowing essential workers, including migrants, to travel to and from work unimpeded, while ensuring that migrant populations should receive equal social service assistance;

(g) Remove legal barriers to video recording or disseminating law enforcement conduct publicly.

80. The Working Group also recommends that stakeholders build in reflection requirements to decrease biased decision-making. Unfettered discretion drives institutional racism, even among highly trained and educated personnel. One effective countermeasure to unconscious bias is to build reflection into decision-making, giving less license to the reactive parts of the brain: a mindset of reflection, rather than reaction.

81. Data disaggregated by race should be collected and analysed with respect to the COVID-19 pandemic, including on the enforcement by States of COVID-19-related restrictions.

82. States should reduce prison populations and relocate migrants from detention centres to protect their health and dignity, in accordance with international human rights standards. They should ensure that people of African descent in detention have access to the same standard of health care as is available in the community, regardless of citizenship, nationality or migration status.

83. The Working Group recommends that the United Nations Organization continue to monitor States' compliance with and implementation of international

<sup>56</sup> Stephanie Sun, "Taking an AP test outside McD's: The low-income student's predicament", *New York Daily News*, 18 May 2020.

human rights standards, and hold Member States accountable for the situation of human rights of people of African descent in their countries.

84. States, corporations, institutions and individuals must develop the facility to recognize racial discrimination in order to avoid motivating any rationale for disparate access to medicines, treatment or resources.

85. The Working Group recommends that States immediately ensure equitable access to learning and vocational tools, including broadband Internet access. Regulatory authorities in developed regions, like the Federal Communications Commission in the United States of America and the Body of European Regulators for Electronic Communications in Europe, should compel broadband companies to extend free or heavily subsidized broadband access, hotspots, or equivalent opportunities to children and families. Schoolchildren should be provided with laptop computers or devices to facilitate online learning.

86. In less developed regions, States should ensure free Internet hotspots and subsidize Internet-connected devices, accessible to communities of African descent, and high-quality educational content via mobile telephony or other widely accessible means.

87. States and education stakeholders should act to mitigate student “learning loss”. To avoid further entrenching systemic racism in educational processes, States should consider “criterion reference assessment” methods for students, develop concrete plans, and calibrate resources to ensure educational attainment for students of African descent. States should disrupt patterns that reinforce educator biases. Innovative programmes integrating high school and university to improve educational outcomes, lengthening school days or the academic year, or other strategies should be considered.

88. The Working Group recommends that States support educational institutions traditionally serving students of African descent facing closure due to the pandemic, including historically Black colleges and universities, as the loss of such institutions will permanently compromise access to education for students of African descent.

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