

An illustration in shades of green and orange. In the center, a white silhouette of the African continent is set against a bright orange sunburst background. In the foreground, several stylized figures are shown from behind, looking towards the continent. One figure on the right has their right fist raised in a gesture of solidarity. The figures are drawn with simple lines and flat colors. The overall mood is one of collective action and hope.

**Expert Consultation on the Draft UN Declaration on the
Promotion, Protection and Full Respect of the
Human Rights of People of African Descent**

Proceedings and Written Submissions

The United Nations Permanent Forum on People of African Descent

**March 7-8, 2024
Cambridge, Massachusetts**

Expert Consultation on the Draft UN Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent

Proceedings and Written Submissions

Organized by the United Nations Permanent Forum on People of African
Descent

Hosted by the Human Rights Program, Harvard Law School

March 7-8, 2024

Cambridge, Massachusetts

The United Nations Permanent Forum on People of African Descent

On 2 August 2021, the United Nations General Assembly adopted its resolution 75/314, in which it formally operationalized the Permanent Forum as "a consultative mechanism for people of African descent and other relevant stakeholders as a platform for improving the safety and quality of life and livelihoods of people of African descent, as well as an advisory body to the Human Rights Council, in line with the programme of activities for the implementation of the International Decade for People of African Descent and in close coordination with existing mechanisms".

The Human Rights Program at Harvard Law School

The Human Rights Program seeks to inspire critical engagement with the human rights project and to inform developments in the field through impartial, innovative, and rigorous research. As a center for scholarship, the Human Rights Program plans events, directs international conferences and roundtables on human rights issues and publishes working papers, conference proceedings and books.

Front cover: Spumoni Cooperative

We would like to thank Aminta Ossom as well as Chinaza Asiegbu, Edith Amoafoa-Smart and Andrea McGauley for their contributions to the facilitation of the consultation and to the writing of the proceedings. We also thank the interpreters Gabriela Garcia and Wilda Perez. We are particularly grateful to Langston Morrison for taking the initiative in both the facilitation and writing endeavors.

Contents

PREFACE.....	VI
INTRODUCTION.....	VIII
I. EXPERT CONSULTATION PROCEEDINGS	1
SESSION 1: RECOGNIZING AND ADDRESSING SYSTEMIC AND STRUCTURAL RACISM.....	8
SESSION 2: REPARATORY JUSTICE FOR HISTORIES AND LEGACIES OF ENSLAVEMENT, COLONIALISM, AND APARTHEID, POSSIBILITIES FOR A UN REPARATORY JUSTICE COMMISSION OR TRIBUNAL	26
SESSION 3: COLLECTIVE RIGHTS FOR PEOPLE OF AFRICAN DESCENT	40
SESSION 4: EXTRATERRITORIAL HUMAN RIGHTS OF SUSTAINABLE DEVELOPMENT AND RIGHT TO ENVIRONMENT, AND OBLIGATIONS TO, PEOPLE OF AFRICAN DESCENT IN THE CARIBBEAN AND ELSEWHERE.....	53
SESSION 5: ARTIFICIAL INTELLIGENCE, DISAGGREGATED DATA COLLECTION AND DATA-DRIVEN POLICYMAKING	62
II. WRITTEN SUBMISSIONS	76
MARIELA NOLES COTITO	77
DÉBORA MARIA DA SILVA, YANILDA MARÍA GONZÁLEZ, AND RAIANE PATRÍCIA SEVERINO ASSUMPÇÃO	83
TANYA KATERÍ HERNÁNDEZ	91
MARGARETA MATACHE	118
PASTOR MURILLO (SPANISH).....	120
PASTOR MURILLO (ENGLISH).....	132
JOHN ANTÓN SÁNCHEZ	143
III. ANNEXES.....	156
PRELIMINARY SUBMISSION BY THE UN PERMANENT FORUM ON PEOPLE OF AFRICAN DESCENT (DRAFT DECLARATION)	157
EXPLANATORY NOTE TO CONTRIBUTE TO CONSULTATIONS ON THE DRAFT UNITED NATIONS DECLARATION ON THE PROMOTION, PROTECTION AND FULL RESPECT OF THE HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT	173
GAY McDUGALL, UN PERMANENT FORUM ON PEOPLE OF AFRICAN DESCENT - PRESENTATION AND DRAFT DECLARATION	175
PARTICIPANT BIOGRAPHIES.....	188

Preface

The expert consultation that formed the basis for this publication came out of a number of conversations with two members of the United Nations Permanent Forum for Peoples of African Descent, Michael McEachrane and Justin Hansford, who are committed advocates of the Permanent Forum and its work. As a center for scholarship on human rights doctrine, discourse, and policy, the Human Rights Program at Harvard Law School engaged in this collaboration with great interest. The Draft Declaration on the Rights of People of African Descent, following in the footsteps of the Durban Declaration and Programme of Action, promises to be a significant international initiative, not only in its renewed focus on structural racism and intergenerational justice, but its proposal of novel normative solutions.

Aimed at providing input to the drafting process of the Draft Declaration, the consultation brought together five members of the Permanent Forum and scholars and experts from a diverse set of fields spanning law, diplomacy, history, public health, and the social sciences. Many of the participants had dedicated their careers to researching racism and related historical and social phenomena. Besides local affiliates from more than ten Harvard institutions, participants came from sixteen universities and research centers in Africa, Asia, Europe, and the Americas.

The Human Rights Program's previous template for workshops and resulting publications was adopted with some modifications to account for the unique aspects of the consultation. Some background documents were made available to participants prior to the meeting. Several participants submitted written comments prior to the meeting. The five sessions, which correspond with the chapters of Part I of the present publication, were chaired by Permanent Forum members, with

discussions taking place in English and Spanish through consecutive interpretation.

This publication aims to both capture the essence of the discussion at the consultation and foster future dialogue that can provide continued input to the Draft Declaration. Part I presents a summary of the discussions that took place at the meeting. Participants were provided with a summary of their interventions for review. Part II contains the written submissions. Participants who submitted written comments had an opportunity to amend their submissions to account for the discussions and clarifications at the consultation. Participant biographies and the background documents, including the Draft Declaration submitted to the Intergovernmental Working Group on the implementation of the Durban Declaration, are annexed at the end of the publication.

Besides the Permanent Forum members who continue to work on the subjects covered in the consultation, we are extremely grateful to the participants for taking from their valuable time to be a part of this conversation. We also thank the Rosa Luxemburg Stiftung, New York Office, for its financial support.

Abadir M. Ibrahim
Associate Director
Human Rights Program
Harvard Law School

Introduction

The Human Rights Program of Harvard Law School coordinated with members of the United Nations Permanent Forum on People of African Descent (“Permanent Forum”) to convene an expert consultation on March 7 and 8, 2024, for the purpose of establishing a framework for the elaboration of a United Nations Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent.

The Permanent Forum is a body that emerges from the (first) international decade on people of African descent spanning 2015-2024 which was itself an initiative that emerged from the Durban Declaration and Programme of Action (2001). Launched in 2022, the Permanent Forum has quickly evolved from a United Nations mechanism into a movement unto itself. Specifically, it is a movement that intends to provide a global platform for millions of people seeking human rights throughout the African diaspora and on the African continent. It provides an opportunity for people of African descent themselves to articulate their aspirations for their own communities. Then, it invites the United Nations and its member states and stakeholders to join in making that vision for human rights and dignity a reality.

This report presents a summary of the discussion that took place amongst scholars, activists, and experts in-person and virtually at the March 7 and 8 consultation. It does not attempt to simplify or synthesize the arguments offered into a commonly shared set of conclusions. The experts expressed strong and divergent views on a host of issues, all important for the future of our enterprise and for people of African Descent globally.

Existing international human rights mechanisms like the International Convention on the Elimination of All Forms of Racial Discrimination, the working group of experts on people of African Descent, and the Special Rapporteur on Contemporary Forms of Racism, all play a significant role in seeking to address the particular challenges faced by people of African descent. This consultation at Harvard Law School provoked us to think about crafting creative solutions for positive change that address some of the gaps in the existing mechanisms and human rights treaties. Participants included current and former members of international and regional human rights institutions, dignitaries, and academics from Harvard and other universities within and outside the United States.

I would like to take this opportunity to recognize those whose support and unrelenting commitment made the expert consultation as well as this publication possible. The support of the Human Rights Program, and especially its Director, Gerald L. Neuman, and Associate Director, Abadir M. Ibrahim, was instrumental in the conception and implementation of this undertaking. I want to thank the scholars and members of the Permanent Forum who invested their valuable time to enrich our draft declaration including by travelling for the consultation. Michael McEachrane and Pastor Murillo, as well as Niraj Dawadi at the UN Secretariat, provided much needed administrative support to the consultation. I am also grateful to all of the interns and staff members who made the effort possible with a special thanks to Langston Morrison and Kai Mueller. Finally, I also want to thank the Rosa Luxemburg Foundation for making it possible for us to meet in person.

Marcus Garvey, the Pan-Africanist visionary and anti-colonial leader, is oft quoted as saying “Africa for the Africans. Those at home and abroad.” That sentiment, supported by notions of self-determination, unity throughout the African Diaspora, and self-sufficiency, permeated this

meeting. I hope that sentiment is conveyed in the following pages and serves as an inspiration to those who would support our mission in the future.

Justin Hansford
Member, Permanent Forum
Executive Director & Founder,
Thurgood Marshall Civil Rights Center
Professor of Law, Howard University

I. Expert Consultation Proceedings

Opening Remarks

Opening remarks welcoming the members of the United Nations Permanent Forum on People of African Descent (“PPPAD” or “Permanent Forum”) and the other participants at the consultation were offered by Gerald L. Neuman, Director of the Human Rights Program and the J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law at Harvard Law School, and Ruth Okediji, the Jeremiah Smith, Jr. Professor of Law at Harvard Law School, and Co-Director of the Berkman Klein Center. This was followed by the welcoming remarks of Ambassador June Soomer, Chairperson of the Permanent Forum.

Gerald L. Neuman opened the event by welcoming everyone to the important presentation of PFPAD. Expressing enthusiasm about hosting the event, Neuman mentioned that his role was primarily to facilitate the session, including providing Wi-Fi instructions, which he humorously noted would be the extent of his intellectual contribution for the day. Neuman expressed pleasure in seeing both old friends and new colleagues in attendance, highlighting the collaborative and inclusive nature of the gathering. Following this brief introduction, Neuman handed over the proceedings to Abadir M. Ibrahim, Associate Director of the Human Rights Program, who would be presenting more actively, and then introduced Professor Ruth Okediji, signaling the transition to the core content of the event.

Following Neuman’s introduction, **Ruth Okediji** extended a warm welcome to everyone at Harvard Law School, expressing deep honor in hosting the event at such a prestigious institution. She emphasized the significance of the consultation’s work, underscoring that questions of race are historically pivotal, particularly in the post-colonial struggles

to establish democracies in Africa, as well as in the United States. She highlighted the importance of addressing race and racial equality, noting that it demands attention not only in terms of how the law addresses racism but also in how society defines, engages with, and understands racial subordination and its lingering impacts.

She acknowledged the complex debates within communities of African descent, touching upon issues such as the color line, genocide, ethnic discrimination, and the tensions between North Africa and Sub-Saharan Africa. These fault lines, she noted, are numerous and intricate, necessitating the mission to confront these painful aspects of racial inequality and subordination.

Okediji emphasized the historical context of black-on-black violence and racial inequality, which extends to the international forum. She posed a critical question: what does it mean to create an international legal instrument for a group of people who have been both subjects and objects of subordination through law? She also highlighted the importance of understanding extraterritoriality and addressing the democratic deficit that exists between different colors and races.

Okediji also mentioned the upcoming *kwibuka* commemoration for the 30th anniversary of the Rwandan genocide, noting the continued issues of xenophobia and other atrocities that affect people of African descent. Despite the daunting and complex nature of the task, she stressed that it is a necessity. She recognized and encouraged the scholars present, acknowledging the courage required to tackle these difficult nuances and expressing confidence that their collective efforts would make a significant impact over the course of the weekend.

Ambassador June Soomer extended “a heartfelt Caribbean welcome”, introducing herself from St. Lucia and acknowledging others from the Caribbean, including PFPAD members Pastor Murillo from Columbia

and Michael McEachrane from Tobago. She expressed the importance of PFPAD's international collaboration with NGOs and governments and emphasized the need to consult with educational institutions and experts in articulating a meaningful declaration.

Soomer highlighted the challenges in drafting a declaration that goes beyond mere platitudes, aiming instead for one that address their specific issues, provides solutions, and includes mechanisms for evaluating and monitoring implementation. She pointed out that many existing declarations fail in this regard, lacking a focus on real change and issues of identity and ethnicity.

She drew attention to two songs that encapsulate the themes they are addressing. The first, a 1977 song by Peter Tosh, with lyrics popularized by the President of Ghana, which asserts that, "As long as you are a black man, you are an African," emphasizing the importance of identity and solidarity. The second song, by Bob Marley, popularizing words from a previous speech by Emperor Haile Selassie I, speaks to the concept of world citizenship, a progressive idea from the 1970s and 80s that resonates with their call for recognition as a group and as individuals, regardless of where they live.

Soomer underscored the significance of their efforts, noting that they are finally addressing issues that have been discussed by conscious people for centuries. She referenced the 60th anniversary of speeches by Martin Luther King Jr. and Haile Selassie, both highlighting the unrecognized humanity of people of African descent and the need for acknowledgment and confirmation.

She concluded by thanking and welcoming the experts, expressing hope that their insights would guide the Permanent Forum's upcoming session in Geneva. She looked forward to engaging in meaningful

discussions in the consultation's academic setting, confident that their collective efforts would lead to substantial progress.

Presentation of Background and Agenda

Michael McEachrane highlighted that this consultation is the first of several consultations on drafting the United Nations Declaration on the Human Rights of People of African Descent ("Declaration" or "Draft Declaration"). This particular consultation focuses on researchers and experts, aiming to initiate a scholarly conversation and build research capacity and networks around the Draft Declaration and the United Nations Permanent Forum on People of African Descent.

McEachrane provided an overview of the Permanent Forum on People of African Descent, established by the General Assembly on August 2, 2021. This Forum serves as a global platform and consultative mechanism to discuss the lives, livelihoods, socio-economic development, and human rights of people of African descent. It offers advice and recommendations to the Human Rights Council, the General Assembly, and other parts of the UN system, focusing on the "promotion, protection, and full respect of the human rights of people of African descent."

McEachrane emphasized the unique position of people of African descent as the only racial or ethnic group with its own anti-racism mechanisms at the UN. They are among the most discriminated against and marginalized groups globally, including in the European Union and the Americas. The definition of people of African descent includes black people of African descent in the diaspora, and the Draft Declaration aims to address the legacies of colonialism, enslavement, apartheid, and genocidal acts.

McEachrane noted that the Permanent Forum is modeled after the Permanent Forum on Indigenous Issues and the Declaration on the

Rights of Indigenous Peoples from 2007. He stressed the potential for the Declaration on the Human Rights of People of African Descent to become a stronger and broader human rights instrument, addressing both domestic and international levels, including issues like reparatory justice for people of African descent.

The drafting of the Declaration is led by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (DDPA), with contributions from the Permanent Forum and the Working Group of Experts on People of African Descent. McEachrane highlighted the importance of collective rights, addressing systemic racism, and recognizing the legacy of colonialism and the transatlantic trade in enslaved Africans.

Five themes were identified for discussion: collective rights, systemic racism, reparatory justice, extraterritorial obligations, and the impact of artificial intelligence (AI) and the collection of disaggregated data. McEachrane emphasized the need for the Draft Declaration to be innovative and not merely reiterate existing human rights provisions. He pointed out the necessity of addressing systemic racism, the inclusion of reparatory justice, and the importance of extraterritorial obligations, particularly for people of African descent in the Caribbean.

Finally, McEachrane mentioned the potential for AI to both negatively and positively impact racial disparities, highlighting the importance of regulating AI and using it to aid disaggregated data collection. He suggested that the Draft Declaration should be accompanied by a program of activities to ensure its practical implementation and concluded by expressing eagerness for the discussions to come.

June Soomer added some points that she noted were not mentioned in McEachrane's introduction. The first was in connection with language usage. She noted that it is important to understand, and explicitly

recognize, the colonial nature of the language used in one's self-definition and in defining the issues and challenges one faces. Recognizing and addressing the colonial, beginning in the way the issues are articulated, she emphasized, is a very critical first step.

The second issue is that of Haiti. Haiti brings a certain amount of specificity to the contents of the Draft Declaration and indicates the potential outcomes of the Declaration that should not be generic. The destruction of Haiti, she noted, was a planned one because there is no way that a black state would have been allowed to survive during the enslavement of African people in the Americas. The past destruction of Haiti and the continued destruction of Haiti, despite the resilience of its people, is a demonstration to the world that black states cannot survive on their own.

Soomer also added that one sees the same logic being reapplied today with the emergency of conversations calling for a recolonization of Africa. Because black people cannot manage the resources that they have, they need "us" to come in and manage the resources for them. So, it is a whole cycle that is repeating itself. Referring to a consultation held the previous day with the student body and members of the public, she recalled that a participant made a comment about the far right coming to the fore again. "But the far right was never dead," she retorted. Adding that "the far right was like a sleeper cell that just found new breath." She reiterated the challenge of racism may be about the past, but it is also about our present, as it is about the future.

Soomer added a third point on AI, which was raised in McEachrane's introduction. Asking if people who are programming AI are racist, she mentioned a study which showed how AI could not generate a black male doctor treating white children, when most of the doctors in the United States are from Africa. She concluded we have a challenge if AI is also being programmed to be racist. She added that the

disaggregation of data that the PFPAD is seeking will not be realistically attained today. Thus, the discussion on disaggregation is one about the future.

Session 1: Recognizing and addressing systemic and structural racism

Gaynel Curry (session moderator) began the session with a short poem. She noted that she composed the poem because it spoke to who she was, and what she thought and felt with respect to issues around racism and racial discrimination.

*Navigating spaces, negotiating to enter
And thrive in work and social places,
Hoping to receive as I give good graces.*

*But often rejected, disrespected, undervalued,
Invisible on the basis of the skin I'm in.
Black, Caribbean, woman, daughter, mother, sister.*

*Descendant of the African continent,
Resilient, empowered, and uplifted
Because of the shoulders on which I stand.*

*Persistent in my call for all human rights,
For all human beings.*

*Persistent in my call for nondiscrimination,
An urgent end to systemic and structural racism
And equality between the sexes.*

*Women and their rights must remain central
In all discussions and all settings around racism.
Persistent in my call for recognition, development,
And justice, for black people, for black communities,
And for black countries.*

*Wherever there are traces of faces that look like me,
My call is for justice.
Economic justice, climate justice, reparatory justice.*

Curry then picked up on Soomer's comments about Haiti and noted that it is impossible to speak about reparatory justice without speaking about Haiti. She stated that in her home country of the Bahamas, Haiti is referred to as the North Star, a starting point when it comes to discussions of reparatory justice.

Curry then proceeded to make introductory remarks on the Draft Declaration's approach to recognizing and addressing systemic and structural racism, in part by exemplifying it in its connections with COVID-19 and climate justice. She introduced the topic by making reference to how, in her more than 20 years of experience at the UN, she has learned that the issue of systemic and structural racism faces immense pushback.

She noted that such pushback is prevalent, including in the treaty bodies and in the branches of the UN that work on issues connected with racial discrimination. The intensity of the pushback is such that it also includes resistance to having an understanding of what systemic and structural racism is and what it means. This was one of the reasons it was important for the Permanent Forum to single out structural and systemic racism as an important topic of focus for the Draft Declaration. In addition to achieving a clearly and unequivocally articulated understanding of systemic and structural racism, the Draft Declaration would also be one that is about people of African descent in more than one way. It will be a declaration that is "about us, for us, and by us."

Pulling together examples and statements from earlier comments by McEachrane and Soomer, as well as from her poem, Curry pointed out that systemic and structural racism is neither hypothesized nor imagined. It is something that is real and unfortunately it is often thought that you are, as a black person, imagining experiences of discrimination—something she has experienced in every single

workplace over the last 20 years. Including a clear articulation or definition of systemic and structural racism in the Draft Declaration would thus have the effect of not allowing it to remain a vague concept that merely exists in individual minds.

She then proceeded to exemplify what she was describing in reference to the Covid pandemic. She pointed out that the barriers to vaccine access faced by people on the periphery, black states, black communities, black people, was not just one bad event or an incident where things went awry. It was the manifestation of broader phenomena connected with economic discrimination, issues connected with sustainable development, and the economic structures that keep specific groups on the periphery. Not being central to the discussion, not being a part of those systems that determine how resources are distributed, only leads to further harm, further marginalization, creating a vicious circle.

Turning to a second example, Curry noted that climate justice is a reality for people from the Caribbean and many other black communities. People from the Caribbean understand the issue of dealing climate change, not only as climate action, but as including climate justice. When we speak about economic justice, we have to be speaking about development. We cannot have real development until we speak about justice, until we speak about the climate, until we speak about reparations.

People in the Caribbean, after being devastated by Hurricane Dorian, for example, had to go door to door looking for support from the international community. The support of the industrialized countries could be interpreted as an act of generosity but only if you do not look at the source of this challenge. It is not just that the greenhouse gas emissions come from the wealthy countries, this challenge comes from events and climate harms that start with the industrial revolution.

Despite having little to no contribution to causing the climate disaster, the Caribbean states must plead “support us” only to be told “pull yourself up by your bootstraps,” or “we can give you a loan at a very high interest rate to deal with the impact of our emissions.” Once the loans are secured, they will come with conditionalities which, if not met, result in the blacklisting of the victimized states and communities. Black states, black communities, black people do not get to determine who gets loans, what the percentages or conditionalities are, and who is blacklisted or why. They have no say in these decisions and do not even know what goes into these processes because they are not in the meetings and committees where these decisions are made. If they did, it probably would not even be called a “blacklist.” It could very well be a “whitelist.”

Noting that systemic and structural racism is a challenge that appears in many international economic and development issues, Curry invited Pastor Murillo to briefly comment on what the discussion has been on systemic and structural racism, what positions and concerns have been expressed by parties to the negotiations, and what concrete societal improvements are being sought, in the context of negotiating the contents of the Draft Declaration on structural and systemic racism.

Pastor Murillo proceeded to clarify some foundational elements concerning the Draft Declaration. He noted that the roots of the Draft Declaration trace back to the Declaration of Rights of the Negro Peoples of the World, which was initiated by Marcus Garvey in 1920. He mentioned that in 2021, the Committee for the Elimination of Racial Discrimination (“CERD”) recommended that the UN create a declaration specifically addressing people of African descent. This recommendation led to the General Assembly empowering the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action in 2022.

Murillo highlighted that the president of this group, the Ambassador of Rwanda, was tasked with overseeing the declaration project discussed over the past three sessions. Initially, the project aimed to address issues beyond racial discrimination; however, some states opted to focus solely on the language discussed in Durban. This shift has introduced complications, as the Draft Declaration is not intended to be a new International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Racism is merely one aspect, while the rights of African descendants encompass a broader spectrum that extends beyond racial discrimination.

Murillo pointed out some of the significant obstacles in formulating the Draft Declaration. For instance, he pointed out that states have expressed opposition to recognizing African descendants as holders of the rights to self-determination and self-governance. These states challenge the notion of Afro-descendants as collective subjects and deny their collective rights, insisting that the Draft Declaration should only address individuals.

Looking ahead, Murillo mentioned that the project for the Draft Declaration will reconvene next May, with subsequent updates to be provided to the General Assembly. He expressed concern that the current version of the Draft Declaration does not fully address systemic racism. Although states acknowledge the historical impacts of slavery and the transatlantic slave trade, there is hesitancy regarding the issue of reparations. He cited the situation in Haiti as an example where systemic racism and its manifestations are still inadequately addressed. Additionally, there is resistance to recognizing the intersectionality of race and the importance of intergenerational trauma.

Pastor emphasized the need to establish standards for Afro-descendants that encompass a comprehensive range of rights, including the third generation of rights related to reparations. He called

for an expanded understanding of systemic racism, incorporating contemporary issues such as AI and algorithmic bias, to ensure that the declaration fully addresses the multifaceted nature of racism and supports the development and rights of Afro-descendants.

Gaynel Curry then emphasized the importance of understanding these issues, particularly in the context of structural racism, which is deeply rooted in history, including enslavement, the transatlantic slave trade, and colonialism. This racism morphs but lingers, manifesting in a multidimensional manner today.

Curry noted that there is significant pushback against addressing intersectionality in the Draft Declaration, which is crucial for recognizing that racism does not affect all black individuals uniformly. She stressed that factors such as gender, age, nationality, wealth, educational level, and geographic location influence how racism is experienced. The Draft Declaration must encompass this spectrum of experiences to be effective.

She illustrated this with a personal anecdote about attending a UN event celebrating progress in gender equality, where she was the only black woman present. This highlighted the need to address the specific needs of all demographics, not just certain groups, and to consider disparities in areas such as maternal mortality. She pointed out that the trauma of the transatlantic slave trade has left a lasting impact, and this trauma persists in the Americas.

Curry also raised concerns about educational inequalities, noting that in her country, girls are graduating at higher rates than boys. She argued that building a society requires the participation of both men and women and criticized the excessive use of incarceration for black men and boys. She also highlighted the issue of black women being

disproportionately incarcerated instead of receiving alternative treatments.

In concluding, Curry underscored the necessity of addressing these concerns in the Draft Declaration negotiations. She warned against allowing pushback to weaken the Draft Declaration, as described by Soomer, stressing that the final document must effectively address and incorporate all relevant issues.

Justin Hansford began by conveying his excitement and gratitude on behalf of UNPPPAD and emphasized the importance of listening to the experts' perspectives. He acknowledged the extensive groundwork laid by CERD, special rapporteurs, and working groups of experts. Hansford then posed a fundamental question: What can the Declaration, through the mechanism of the platform, contribute that is not already covered in existing UN documents? He stressed that this is the core question that needs to be addressed.

Hansford expressed concern that, despite significant discussions on anti-racism, there has been little change for people of African descent. He attributed this to a prevalent misunderstanding of racism as colorblindness—treating everyone as equal without recognizing racism as a legacy of colonialism, slavery, and caste systems, rather than merely as interpersonal discrimination.

He cited a troubling trend where right-wing perspectives, such as the view from a recent Supreme Court ruling that evading discrimination means simply not discriminating, might influence international discourse. He urged the Forum to use this opportunity to reaffirm the definition of racism as a legacy of slavery and colonialism, rather than as a mere issue of individual behavior.

Hansford concluded by expressing a commitment from all Forum members to approach the conversation with open ears, eager to hear

and address what new, useful, and urgent contributions can be made to the declaration.

Iyiola Solanke reflected on the historical context of the 1968 Race Declaration, which, like the current Draft Declaration, faced significant resistance, including from her own country, the UK. She urged the need to address this resistance with urgency and boldness, suggesting a balance of practicality and audacity.

Solanke proposed a conceptual approach to understanding and addressing discrimination. She advised against pathologizing discrimination as a medical issue but recommended devising a more nuanced action plan. She argued that racism is as deadly as COVID-19, having caused harm for much longer, and should be addressed with similar seriousness. She emphasized the need to view racism from a public health perspective to resolve it effectively.

Solanke presented data highlighting severe disparities faced by black individuals in the UK: black boys and girls are six times more likely to be strip-searched; black and mixed boys are more likely to drop out of school and be incarcerated; only a small percentage of professors are black; black men and women are significantly more at risk of severe COVID-19 outcomes; and black women face a higher risk of maternal death. She also noted the higher likelihood of black and minority people with learning disabilities dying prematurely and experiencing more frequent stops and searches by the police.

She suggested treating discrimination as a virus, advocating for a shift away from individual litigation, which is financially and emotionally draining, and instead adopting a viral approach to address systemic racism. This approach would involve a multilayered strategy, incorporating community, organizational, and environmental actions, making collective action the norm rather than the exception.

Solanke proposed applying a structural analysis of racism similar to how COVID-19 was tackled: identifying the infectious agent (the root causes of racism), the reservoir (where racism breeds), the portal of exit (how racism manifests), the mode of transmission (how it spreads), and the portal of entry (how it impacts individuals). Understanding these aspects would allow for more guided and effective interventions.

She called for a coordinated local, national, and international plan of action to combat racism, emphasizing a multigenerational commitment to change. She cited a recent initiative by the Church of England to create a fund, supported by proceeds from slavery, aimed at assisting black communities globally. This initiative, which seeks up to \$1 billion, represents a significant step towards addressing historical injustices and supporting the lives of black people worldwide.

Erika George expressed surprise that intersectionality was not currently included in the Draft Declaration discussions. She emphasized that the document should build upon the achievements of indigenous peoples, particularly noting their successes in advocating for environmental justice and the moral force of their efforts. She suggested that the Draft Declaration could benefit from a more modest approach inspired by the United Nations Declaration on the Rights of Indigenous Peoples.

George mentioned a draft focused on businesses and proposed that the Draft Declaration could address more complex issues, such as jurisdictional challenges and extending legal protections to broader societal contexts. She highlighted the Draft Declaration's potential as an opportunity for education on these topics.

She also recommended framing racism as a security threat and approaching solutions with the same urgency and comprehensiveness as one would address an unsustainable intervention in security matters.

This perspective would encourage a robust and systemic response to racism.

Mariela Noles Cotito, a professor of political science from Peru, discussed her analysis of some of the reasons the Draft Declaration might face rejection. She proposed incorporating the concept of structural racism into the preamble of the Draft Declaration to strengthen its impact and secure a low dissent or resistance to the concept. Noles Cotito pointed out that states already acknowledge the effects of racism, and thus, the Draft Declaration could include an expanded explanation of structural racism in the non-operative section which could secure its permanence in the document.

She emphasized that the law reflects not just legal statutes but also the broader system of societal structures. Racism, she posited, is not only a set of beliefs but also a systemic ordering system that permeates both society and the legal framework. Addressing racism in this comprehensive way could help avoid making states feel defensive or attacked while preserving their interests.

Yanilda González, noting that more detailed comments were included in her written submission, highlighted police and state violence as key manifestations of systemic racism in Latin America. She argued that this observation could also be extended to other countries globally. She also pointed out issues such as maternal mortality as additional indicators of systemic racism.

González emphasized the importance of addressing reparations for victims and their families. She mentioned that her comments include extensive research on how to effectively provide reparations. Her approach involves a multidimensional strategy to reparations, considering various aspects and needs of the victims and their families as outlined in her report.

Adelle Blackett reflected on the importance of capturing the aspirations and specificity of the people the Draft Declaration aims to represent. She read a poignant excerpt from NourbeSe Philip's retelling of the legal case *Gregson v. Gilbert* about the tragic incident where 132 enslaved Africans were thrown overboard, highlighting how the decision was driven by insurance law rather than moral considerations. She emphasized that the Draft Declaration must challenge existing frames and recognize the specificity of the experiences and aspirations of the people it addresses.

Blackett drew attention to the concept of "labor," particularly the deeply gendered aspects of labor, including reproductive labor, labor through enslavement, and labor through colonialism. She highlighted how the womb has been a site of reproduction for slavery and emphasized that this dimension of labor is often overlooked. She referenced Marcus Garvey and W.E.B. Du Bois's earlier calls for focusing on native, or black, labor and stressed that addressing and redressing black labor is crucial.

As a drafter of the Domestic Workers Convention, Blackett shared her experience with pushback and underscored the importance of maintaining an attentive focus on the drafting process. She advocated for proactive measures in drafting the Declaration, drawing on comparative law examples to avoid reliance on individual litigation models. She also mentioned her recent work in Canada on labor equality, where the Canadian government has recognized black workers as a distinct employment category to address historical disparities.

Blackett concluded with a quote from Toni Morrison: "we should dream a little before we think," underscoring the need for envisioning black flourishing as a central goal in the declaration.

Chantal Thomas noted the prevalence of large conceptual and political frameworks in the discussion and raised a few specific thoughts on structural and systemic racism as it relates to people of African descent. She highlighted recent developments, such as the establishment of the Council of African Diaspora Engagement by the Biden administration, which, while an advisory council, could be a productive avenue for engagement and solidarity.

Thomas urged for a more detailed articulation of how international economic law contributes to the possession and dispossession of wealth. She cited examples such as the case of the Southern African Development Community (SADC) Tribunal, where white property owners in Zimbabwe obtained reparations without considering the historical context of how they acquired the land. She emphasized the need to clarify how investment, trade, and labor dimensions contribute to global inequality and entrench racial biases in subtle ways.

She also recommended that the Permanent Forum support evidence-based work on implicit and unconscious bias. Thomas referenced social science data, such as a study by Professor Nathan Connolly in Maryland, where a home's appraisal increased significantly after the removal of African art and family photos, demonstrating the pernicious effects of implicit bias. She argued that these examples provide concrete evidence beyond anecdotal accounts.

Thomas concluded with three specific suggestions, though they were not detailed in her comments.

Margareta Matache, a Roma scholar from Romania, delivered three comments on: (1) defining structural racism, (2) racial capitalism, and (3) solidarity with other racialized groups. Matache emphasized the importance of clearly defining structural racism, building on Noles Cotito's earlier point. She noted that the terms "structural racism" and

“systemic racism” are often used interchangeably in literature, but structural racism can be a distinct concept. She highlighted the need to understand how structural racism interacts with other systems of oppression. She called for a discussion on racial capitalism, echoing how South Africans have framed the issue. Matache suggested examining racism from a perspective of exploitation, not just internal factors, particularly in the context of relationships between Africa and the Global North. Referring to Draft Point-39 of the Declaration, Matache highlighted the need to revisit the concept of solidarity among the oppressed, as discussed in the 2001 Durban Declaration. She questioned whether it is possible to express solidarity with other racialized groups, such as those affected by enslavement in Romania, Jamaica, and other regions where their experiences may be less recognized.

Abadir M. Ibrahim raised questions and comments related to the broader picture or the overall approach of the Draft Declaration. He first asked whether, given the broad spectrum of topics that are covered in the Draft Declaration, the Permanent Forum had done stakeholder analysis to see how different stakeholders are going to react to or vote on the Declaration. He cited the Draft Declaration’s statements about indigenous peoples and the right to self-determination as examples of issues that could face passive or even vocal resistance from African states which he noted were also resistant to the UN Declaration on the Rights of Indigenous Peoples. He asked if the Permanent Forum has developed its understanding of how different actors and states might align with the political and normative implications of the Draft Declaration in order to have an understanding of how to proceed in promoting it and prioritizing different goals in case there is division among supporters.

His second question was about how collective rights are articulated in the Draft Declaration. He noted that he was unable to understand what the document meant by collective rights when read together with the right to self-determination, political participation, and to traditional land until an earlier presentation by Permanent Forum members. He noted that this may indicate some room for better clarity in how the document is written or drafted.

Ibrahim also pointed out that the human rights community may oppose the Draft Declaration's proposal to shift the burden of proof in criminal cases regarding racial discrimination. Cautioning that this may be an example of a proposal that may not have been developed as well, or that ought to be clarified either in the text of the draft or in explanatory notes, he noted that the words used in the draft do not rule out a complete reversal of the burden of proof where a defendant is required to prove a negative claim. This will at least implicate the presumption of innocence and fair trial rights. But can also raise other challenges connected with the freedom of expression and other rights. The limitation of the right to be presumed innocent requires not just a stakeholder analysis but also doctrinal and balancing analysis. This may also require empirical studies if this is an idea that has already been tried in domestic jurisdictions or to show whether the goals being pursued cannot be achieved with less restrictive means.

Finally, he raised a question about whether or what kind of pushback the Permanent Forum anticipates in connection with its inclusion, in the Draft Declaration, of notions of the legacy of slavery and reparatory justice. It would not be unreasonable to anticipate that a bid to develop an international obligation to provide reparations for slavery could face resistance from many post-slavery societies. One could, especially taking on a non-positivist definition of law, argue that *de jure* slavery, and not just *de facto* slavery or human trafficking, still exists in some

parts of the world. In some countries where people of African descent used to be enslaved, and where the legacy of slavery is still palpable, anti-slavery and anti-trafficking activists face persecution and sometimes investigation and criminal prosecution for blasphemy. While reparations will be received well by victims or their descendants, this might also lead to resistance to the Draft Declaration from unexpected places.

If one were to flip this challenge around, one could also not imagine how the PFPAD could entertain the idea of prescribing reparations for one post-slavery society and deliberately exclude others. That would raise serious legal and, in fact, even more serious ethical questions. He briefly noted that this point might also apply to reparations for colonialism, and whether and how it applies to previously colonized states and to Afro-descendants in former colonial powers.

Ibrahim summarized the overall implication of his comments as a need to tease out a more detailed view of what the implications of the Draft Declaration are, whom it affects, and how. Some of the clarification may be conceptual, some of it may be about communication and strategy, and some of it may boil down to drafting the text to clarify the first two. He noted that some form of a stakeholder analysis and a forecast of potential alignments or votes may help the PFPAD make intentional and strategic choices.

Gaynel Curry intervened and agreed with Ibrahim that a fine-tune definition is needed and stated that the African states are already “on board with the Declarations.”

Aminta Ossom highlighted potentials and opportunities of leveraging institutional knowledge at the United Nations to understand what has worked and what has not in similar contexts, such as with the Declaration on the Right to Development and efforts related to the

Durban Declaration and Programme of Action. She suggested that having both public and private documents evaluating the effectiveness of institutions in addressing related issues could be valuable.

She stressed the importance of distinguishing between what must be asserted because it is the right thing to say, regardless of potential pushback, and what might need to be conceded during negotiations. This approach would help ensure that key principles are upheld while navigating the complexities of international diplomacy.

Ossom also pointed out the hierarchy present in multilateral spaces, where more powerful countries and governments often dominate. She noted that this power imbalance is a direct result of structural racism. Capturing and addressing these imbalances is crucial, particularly when dealing with less powerful countries and governments that may lack the will or capacity to effectively address these issues.

Gloria YA Ayee emphasized that when considering structural and systemic racism, it is important to recognize that its effects extend beyond just the direct targets. Structural and systemic racism hinders not only the individuals directly affected but also impedes economic growth and prosperity of families, communities, and society as a whole. Ayee argued that the presence of racism undermines the moral authority and legitimacy of those who claim to address these issues but fail to protect or rectify them. She highlighted the broader societal impact of racism and the necessity of framing the declaration to address these widespread effects.

Michael McEachrane began by clarifying that the scope of the Draft Declaration is intended to encompass anyone within the diaspora, meaning that African states would not bear direct responsibility for the issues addressed, although some of the proposed standards might still be challenging for certain states.

He emphasized the importance of consultations in recognizing and valuing contributions to the drafting process. McEachrane underscored that systemic and structural racism should be a central theme throughout the Draft Declaration. He posed key questions about how to define, monitor, and address racism in a way that states can effectively implement, stressing the need for practical, operational definitions and strategies.

McEachrane noted a gap in European countries in the recognition of systemic and structural racism compared to their acknowledgment of systemic and structural patriarchy or gender inequality. He argued that the Draft Declaration should comprehensively address systemic and structural racism, a theme that has become increasingly prominent in discussions from the Permanent Forum.

Turning to the issue of reparatory justice, McEachrane highlighted that, while reparations were a significant focus at the Durban Conference and represented a major step forward in raising reparatory justice as key to address the lasting consequences of enslavement, the trade and trafficking of enslaved Africans and people of African descent, apartheid, genocide and colonialism, the Durban Declaration and Programme of Action does not adequately address reparatory justice from a human rights perspective. To conceptualize reparatory justice for people of African descent in terms of human rights should be a key element of the declaration on the human rights of people of African descent. He also proposed the establishment of a United Nations Reparatory Justice Commission and an international tribunal to tackle systemic injustice, reparatory justice, and the legacies of colonialism.

Addressing extraterritorial perspectives, McEachrane pointed out the relevance of these issues for Caribbean nations, noting that accountability for the lasting consequences of historical injustices like enslavement and colonialism, as well as the impact of climate disasters,

is crucial. He also discussed the need to regulate AI to prevent racial bias and to use disaggregated data to enhance human rights monitoring and policymaking.

In conclusion, McEachrane suggested that the Declaration should not stand alone but be accompanied by a comprehensive program of activities and an implementation and monitoring mechanism. This would ensure that the Declaration is translated into practical measures and effectively implemented, making a tangible impact on the issues it addresses.

Session 2: Reparatory Justice for Histories and Legacies of Enslavement, Colonialism, and Apartheid, Possibilities for a UN Reparatory Justice Commission or Tribunal

Justin Hansford (session moderator) highlighted a gap in the global conversation about racism by noting that while much has been discussed about ending racial discrimination, very few states have seriously addressed the issue of reparations. He pointed out that over 170 countries signed the UN Indigenous Peoples Declaration, demonstrating widespread international support for related principles. However, the Draft Declaration on People of African Descent, which aligns with the recommendations of the UN Permanent Forum, underscores the need for a more focused approach to reparations.

Hansford emphasized that states have an obligation to provide reparations. To illustrate this, he referenced the comment on the Draft Declaration by Gay McDougall. Additionally, he shared insights from the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which assert that individuals have the right to reparations at city, local, national, and international levels. These guidelines also outline various categories to consider when contemplating reparations.

Despite some progress in recognizing the abstract right to reparations, Hansford noted that this recognition has not been specific to people of African descent. There remains a significant gap in establishing clear pathways to obtain reparations. He called for the creation of a Commission, Tribunal, or UN organ dedicated to exploring the obligations of states and providing advisory opinions on reparations.

Hansford questioned who would be responsible for implementing these mechanisms and ensuring accountability. He inquired about how these

mechanisms can be incorporated into the Draft Declaration. Moreover, he discussed the possibility of a global summit on reparations with the African Union and the creation of a Global Reparations Fund.

Tanya Hernandez raised questions about whether Jim Crow laws and other forms of racial segregation should be explicitly included in the discourse surrounding the legacy of slavery and apartheid. She asked an open question about whether the document addressing these issues should specifically mention such forms of segregation or if it is risky to be explicit about this topic.

Hernandez delved into the concept of customary law, which she described as a state funded and enforced continuation of the logics of slavery, or apartheid and segregation, despite it not being explicitly recognized in positive law. This form of law, though unwritten, is a method of state regulation that spans the entire nation. Hernandez emphasized that segregation does not have to be codified in law to exist; it can manifest through state-supported customs and practices. She underscores the idea of race regulation, where societal norms and practices enforce racial boundaries and discrimination without explicit positive law mandates but operate with the force of the state as customary law.

By including customary law in the discussion, Hernandez suggests that we can expand our understanding of the legacy of slavery. This broader conceptualization allows us to explore how the remnants of slavery persist in modern forms of racial segregation and regulation. She argues that acknowledging customary law can provide a framework for addressing race regulation in various aspects of contemporary society.

Furthermore, Hernandez noted that there is some potential in using this expanded understanding to tackle issues such as police violence. If customary law is recognized as part of the legacy of slavery, it can serve

as a tool to challenge and dismantle the systemic racial biases that underlie such violence.

June Soomer referenced the Brattle Group's Report on Reparations for Transatlantic Chattel Slavery in the Americas and the Caribbean, a significant report by Patrick Robinson, a former member of the International Court of Justice (ICJ), which provides a detailed quantification of the impacts of the transatlantic slave trade and its aftermath. This report estimates the total cost at an astounding \$120 trillion, accounting for the loss of life, uncompensated labor, loss of liberty, mental injury, mental pain and injury, and gender-based violence. Soomer emphasized that while the report attempts to quantify these losses, some aspects, such as the loss of identity, family, and intergenerational trauma, remain unquantifiable. She highlighted this report as the first truly scientific effort to quantify the damages inflicted by the slave trade.

Despite its comprehensive nature, Soomer pointed out certain gaps in the report. One significant gap is the undervaluation of the labor of women, an oversight that diminishes the full extent of the harm experienced by female slaves. Additionally, the report does not address modern-day slavery, focusing instead on chattel slavery, which was characterized by the absolute ownership of individuals as property.

Soomer stressed that when considering reparations in their entirety, the specifics should not be detailed within the Draft Declaration itself. Instead, these specifics should be part of the implementation and actionable steps that follow. She argued that reparations should consider both individual and collective rights, posing the question of which approach is most appropriate. She used the example of the Garifuna people—African and indigenous individuals who were forcibly removed from their homeland—to illustrate the complexity of

reparations. Should reparations be addressed to individuals or to the collective group?

Furthermore, Soomer underscored that the issue of reparations is not a generic one and but requires a nuanced understanding. She particularly highlighted the undervaluing of women's contributions and the ongoing struggle of African women to negotiate their identity. This aspect underscores the need for a gender-sensitive approach in the discourse on reparations, recognizing the unique burdens borne by women in the context of slavery and its legacy.

Justin Hansford addressed a question regarding what constitutes a “people,” setting the topic within discussions on the Indigenous People’s forum and eventual declaration. He argued that reparations should be considered more of a collective right, particularly for people of African descent. This perspective is grounded in the recognition of people of African descent as a distinct “people” with shared experiences and historical injustices that merit collective redress.

Hansford explored the appropriate avenues for addressing reparations. He questioned whether the responsibility should lie with the ICJ or the UN General Assembly, or whether a more specialized approach is needed. He suggested the possibility of appointing a specific rapporteur on reparations for people of African descent. This role would involve creating a mandate to address specific reports and recommendations on reparations, ensuring that these efforts move beyond mere aspirations and become actionable items.

In advocating for a dedicated rapporteur, Hansford emphasized the need for focused and sustained attention on the issue of reparations for people of African descent. This approach would facilitate the development of concrete plans and actions, rather than allowing the

topic to remain a broad and unaddressed aspiration within international forums.

Baba Jallow raised questions regarding Africa's position in the ongoing discourse on reparations: Where does Africa stand? Is it part of the conversation, or is it being sidelined? Jallow has been actively working with the African Union on issues related to reparations, striving to ensure that Africa's voice is included and heard in these vital discussions.

Jallow highlighted the complexity of what is being asked for in terms of reparations. Are the reparations being sought for the injustices of colonialism, enslavement, apartheid, or for other historical wrongs, and do Africa or the African Union have a stake in this conversation? He underscored the need for clarity and specificity in what reparations are being demanded for, as this will shape the direction and focus of the reparations movement.

He advocated for the Permanent Forum to explicitly include Africa's role in the conversation about reparations. This inclusion is essential for the promotion, protection, and full respect of human rights for Africans and people of African descent. Jallow suggested that incorporating language in the Draft Declaration to reflect past human rights violations is necessary to acknowledge and address these injustices.

Jallow noted that it is important to broaden the conversation to place Africa at its center including by including Africans in the title of the Draft Declaration itself. Since many of the human rights challenges faced in Africa today are a direct result of the legacy of colonialism, not addressing Africa would leave a contemporary issue that is part of the lived experience of Africans. Picking up on previous discussions about police violence, he noted that one can see how the legacy of slavery and

segregation are something that is being experienced in diasporic communities. But that is no less the case in Africa, whether the issue is colonialism or apartheid. By taking a broader approach, the dialogue on reparations can encompass the full scope of historical and ongoing human rights violations faced by Africans and people of African descent. This inclusive approach would help to ensure that the demands for reparations are comprehensive, and that Africa's perspective is integral to the reparations movement.

Iyiola Solanke emphasized the importance of seeking commitments from states to explore their historical links to slavery and the profits derived from colonialism before finalizing the provisions of a reparations declaration. She suggested that this preliminary step can set the necessary context for reparations, ensuring that states recognize and understand their roles in these historical injustices.

Solanke pointed to the Church of England's reparations recommendations as a valuable example of how institutions can approach this complex issue. The Church has examined its own links to slavery and proposed reparations, taking a proactive stance that could serve as a model for States. Incorporating similar approaches into the Draft Declaration could enhance its impact and credibility.

Additionally, Solanke highlighted that some governments in Western Europe have formally apologized for their roles in slavery and colonialism. She suggested that including references to these apologies in the preamble of the Draft Declaration could reinforce the acknowledgment of historical wrongs and set a tone of accountability and reconciliation. These formal apologies, combined with commitments to explore links to slavery and colonialism, would provide a strong foundation for the reparations movement.

Abadir M. Ibrahim raised some considerations about the scope of application of the Draft Declaration in relation to reparations. He noted that his first question was raised by Baba Jallow and added that the colonial legacy is such a potent force in Africa that many of the abusive practices of the post-colonial state are seen as a continuation of the practices of the colonial state. He reiterated the question as one of whether we can talk about reparations for colonialism and exclude in that discussion societies that are tangibly affected by colonialism and the effects of which are grappling with to date.

Moving to the scope and legal implications of reparations for slavery, he asked whether the conversation about reparations is limited to the transatlantic slave trade or if it includes slavery in general. He asked if it is even possible to iterate an anti-slavery precept, or a legal norm that requires reparations, in a way that covers people of African origin, while leaving out non-African slaves in the Americas, or leaving out victims of slavery in Africa, or in the Trans-Saharan or the Red Sea slave trades. Even if one can overcome the challenge of articulating this distinction legally, it also raises questions about whether it is even a good idea to do so from an ethical and solidaristic point of view.

He ended his comment by adding that the alternative is also not necessarily an easy outcome since establishing a broader precept or a binding norm that makes reparations to the descendants of victims possible could face practical challenges. He pointed out that, just looking at cases that have come to African regional and sub-regional human rights mechanisms as a sample, a form of slavery in which the “rights” of slave owners are enforced by law enforcement and judicial systems can exist today. This might mean that some states which are not implicated in the transatlantic slavery could show resistance to the Declaration, especially if they feel that it is likely to succeed.

Justin Hansford responded to both Jallow and Ibrahim's comments, acknowledging the growing interest and involvement of African governments in the reparations discussion, specifically citing the governments of Ghana and Namibia. He highlighted that these nations are taking an active stake in the conversation on the Continent.

Hansford emphasized the need to address reparations for slavery not only for individuals in the diaspora but also for those on the African continent. He suggested including language in the declaration that encompasses reparations for colonialism for both groups, ensuring a comprehensive approach.

He introduced the concept of universalism, referencing the 2005 principles as a universal document that establishes rights expected for all people worldwide. However, Hansford stressed that the current declaration should specifically focus on people of African descent, recognizing their unique history and determined rights. He pointed out that precedents set by other communities and groups, such as indigenous peoples, can inform the efforts for the Declaration on People of African Descent.

Hansford noted that African people were not necessarily included in the indigenous people's documents to the extent that they are considered "indigenous." He argued that using the 2005 principles is appropriate and can guide the pursuit of reparations.

He also mentioned the Second International Decade for People of African Descent, suggesting that this period is an opportune time to push for these changes. Hansford raised a question about the commitment of nations signing the declaration: Are they genuinely agreeing to provide reparations to people of African descent, or is this just a symbolic gesture?

Michael McEachrane raised a question about whether the declaration should include both Africans and people of African descent in the diaspora. He pointed out the necessity of a General Assembly resolution to formally include Africans in the scope of the declaration. This inclusion could ensure that African states are also included in human rights to reparatory justice for the legacies of such historical injustices and crimes against humanity as colonialism, enslavement, slave trade, apartheid and genocide.

However, McEachrane noted a potential concern: African states may be reluctant to allow the international community to also hold them accountable for yet another issue, in this case the human rights of Africans. He proposed a solution: Africans should indeed be included when it comes to the international level but not issues of racial discrimination and inequity at the domestic levels, emphasizing that reparatory justice is relevant to African states as well.

McEachrane delved into the terminology used in discussions of reparations, highlighting the need for clarity. When referring to “reparatory justice or reparations,” people often assume it means financial compensation. However, McEachrane stressed that this interpretation may not fully capture the intentions of those in the reparations movement. Instead, the focus should be on rectifying modern and historical injustices, addressing systemic and structural inequities and injustices, and establishing equal dignity and human rights for all.

He introduced a systemic and structural concept of reparatory justice, which goes beyond monetary compensation, and focuses on transforming social conditions, systems and structures with and among countries. This approach includes addressing a variety of systemic and structural injustices domestically and internationally and

thereby ensuring that the human rights and dignity of people of African descent are respected, protected and fulfilled.

McEachrane also presented a third perspective, shared by some Haitian activists, who prefer the term “restitution.” Although the focus here tends to be on repayment of unjust debts, theft and wealth extraction, the activists calling for restitution are not solely seeking financial compensation but also demand the return of resources and artifacts taken from their countries. They seek restitution for all taxes and debts paid to France and the theft and wealth extraction of the US as reparations, highlighting yet a broader understanding of what reparatory justice entails.

Chantal Thomas raised concerns about how the reparations movement can maintain its momentum despite the challenges it faces. She underscored the importance of identifying victims and understanding the full extent of what was done to them as crucial steps in sustaining the movement’s progress.

Thomas emphasized that the discussion of reparations should inform contemporary policy debates and help identify potential legal claims. She pointed to the fact that the UK government only recently stopped paying reparations to former slave owners in 2015, highlighting the ongoing relevance of these issues. She also mentioned the work being done by the Center for Reparations Research at the University of the West Indies as an important resource in this effort.

Acknowledging the analytical challenges in the reparations debate, Thomas stressed that these difficulties must not become obstacles that slow down the process. Instead, they should be addressed in a way that strengthens the movement. She warned that such challenges can be used to delegitimize the unique experiences of persons of African descent affected by the transatlantic slave trade. Furthermore,

reflecting on Ibrahim's comments, Thomas underscored that whereas modern-day slavery is a serious and multifaceted challenge, its inclusion in the discourse around the Draft Declaration could undermine the fight for reparations for historical injustices connected with transatlantic slavery. Modern-day slavery and other forms of exploitation, even though they form a conceptual and historical continuity with slavery, ought to be addressed in a way that complements the historical focus and without losing sight of its primary goals of the movement for reparations.

Pastor Murillo delved into the complexities surrounding the issue of reparations, particularly within the context of the Durban Conference. He began by noting the argument that during the time of slavery, it was not considered a crime under the existing legal frameworks. This historical perspective complicates contemporary efforts to address the wrongs of slavery.

The second issue Murillo raised is about responsibility. He pointed out the double standards that often come to light when discussing accountability for historical injustices. The inconsistency in how past actions are judged versus present moral standards underscores the challenges in seeking reparations.

The third issue concerns the legal mechanisms available, or rather the lack thereof, to address these historical harms. Murillo noted the absence of existing legal norms or instances that can demand redress for actions taken in the past. He suggested that the creation of a tribunal would be a significant step forward. Invoking frameworks such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Inter-American Convention on Human Rights could provide a legal basis for these efforts.

Murillo highlighted the importance of considering the stage from which the reparations issue is being addressed. When thinking about the Draft Declaration, it primarily concerns the descendants of victims of the transatlantic slave trade. However, he noted that the African Union has also articulated the question of reparations, indicating that the issue transcends people of African descent.

He emphasized the need to distinguish between reparations for people of African descent in general and for victims of the transatlantic slave trade specifically. From a legal standpoint, this involves considering aspects such as status, faction, restitution, and non-repetition.

Murillo concluded with a call for innovation in addressing these issues, humorously noting that for such innovation, taking a break for lunch might be necessary. This light-hearted remark underscores the need for creative and sustained efforts to tackle the complex challenge of reparations effectively.

Justin Hansford reiterated Murillo's comments regarding the significance of the Durban Declaration, recognizing it as the most advanced document on reparations to date. The Durban Declaration explicitly acknowledges the transatlantic slave trade as a crime against humanity, making it actionable. This recognition is crucial as it provides a legal and moral foundation for pursuing reparations.

Hansford explored the relationship of African states to the Durban Declaration, noting the complexities and dynamics involved. He expressed curiosity about how the current Draft Declaration will advance the progress made by the Durban Declaration. He questioned what this new conceptual framework will look like and how it will build upon the foundations laid by Durban.

One key aspect Hansford considered is the inclusion of the African continent in the new declaration. He wonders if this inclusion will be a

central innovation, as emphasized by Murillo, that sets this Draft Declaration apart and moves the reparations agenda forward.

Hansford was keen to understand what specific innovations will be introduced in the new Draft Declaration to ensure it goes beyond Durban in meaningful ways. He stressed the importance of not just reiterating past commitments but introducing new elements that can drive actionable change and address the unique historical and contemporary injustices faced by people of African descent.

June Soomer reflected on how the current efforts have advanced the work initiated by the Durban Declaration and Program of Action. She emphasized the fundamental recognition that there can be no African diaspora without Africa, highlighting the intrinsic link between the two.

Soomer pointed out that the African Union has articulated the African diaspora as the Sixth Region, underscoring the importance of ensuring that reparations are due to this region. This recognition aligns with the broader vision of reparatory justice for the African diaspora.

She stressed the need to acknowledge within the declaration that specific groups, such as Haitians, maroons, and the Garifuna, are owed restitution and reparations due to the unique actions taken against them during enslavement and colonialism. However, Soomer acknowledged that the Draft Declaration cannot address all specifics for every group due to limited financial and research resources.

Soomer cautioned against attempting to be everything to everyone, as the Draft Declaration must remain focused and pragmatic. Instead, she suggested identifying key actions that will move the conversation forward, such as calling for another International Decade for People of African Descent. This initiative would provide a structured timeline and renewed focus for advancing reparatory justice.

In her closing remarks, Soomer underscored that the pursuit of reparatory justice is not a task for the weary. It requires sustained effort, resilience, and dedication to achieve meaningful progress.

Session 3: Collective Rights for People of African Descent

Pastor Murillo (session moderator) began by humorously clarifying that he is not a pastor, but rather someone deeply involved in the discourse on collective rights within the declaration. He emphasized the importance of recognizing Afro-descendants as collective subjects, a topic discussed not long ago. There is a resistance to acknowledging Afro-descendants as collective subjects, which Soomer highlighted when she noted how they are often singled out negatively, but their collective rights are not equally recognized.

Murillo discussed the historical context in Latin America, where Afro-descendants have been viewed through the lens of discrimination and racialization rather than as an ethnicity. The concept of ethnicity involves self-identification based on common heritage and cultural practices. This idea has gained traction recently, particularly in Latin American countries. Historically, the myth of non-racial democracy in Latin America obscured racial differences. For instance, Colombia's constitution once emphasized a singular identity—one race, one religion. However, the 1991 constitution recognized the country's pluri-ethnic and pluri-cultural nature, a shift followed by other Latin American nations.

Several countries have adopted laws recognizing the collective rights of Afro-descendants. Ecuador's constitution, particularly Article 57, acknowledges these rights, as do the constitutions of Bolivia and other nations. Latin American jurisprudence, particularly through ILO Convention 169, has extended collective rights originally recognized for indigenous peoples to Afro-descendants. This recognition includes rights to land, with millions of hectares designated as collective lands for Afro-descendant communities. These communities self-govern and manage these lands, a practice seen in Colombia, Brazil, Suriname,

Ecuador, and Honduras. Furthermore, countries like Chile and Costa Rica recognize Afro-descendants as distinct tribal or ethnic groups.

Murillo emphasized the importance of a declaration like the Universal Declaration of Human Rights (UDHR) for envisioning cultural diversity and providing intrinsic power to these communities. He argued that the Draft Declaration should reflect the pluralism of legal jurisdictions and the unique realities of different peoples, without enforcing uniformity. Afro-descendants, as a collective, should be able to define themselves internally, drawing from their own histories and cultures rather than being externally defined.

He highlighted the resistance of some countries to recognize the collective identity and self-determination of Afro-descendants, unlike the rights often granted to indigenous peoples. The starting point for recognizing Afro-descendants continues to be discrimination resulting from the slave trade, rather than acknowledging their ethnic dimension.

Murillo concluded by expressing a desire for further discussion on these issues with Professor John Antón Sánchez and other participants, indicating a collaborative approach to addressing these challenges.

John Antón Sánchez, a professor at the University for High Studies in Ecuador and an activist in the network of black movements in Latin America, shared his insights on the importance of recognizing collective rights for Afro-descendants. He began by affirming the points Murillo had discussed, emphasizing that voices from Latin America, especially those concerning collective rights, often go unheard in international conversations originating from Geneva.

Antón Sánchez stressed that Afro-descendants in Latin America, a group numbering around 180 million, represent a distinct ethnic identity, different from merely being labeled as black or mixed. He illustrated this by mentioning unique civilizations such as the Yuncas in

Ecuador and the Palenque in Colombia, which were formed from the legacy of European enslavement. According to Antón Sánchez, Afro-descendants should be recognized as a collective people with a unique ethnic identity, distinct from indigenous groups. He drew attention to historical precedents, such as Marcus Garvey's Declaration of the Rights of the Negro Peoples of the World, which was a groundbreaking document advocating for the rights of black people even before the UDHR.

Antón Sánchez outlined the collective rights that Afro-descendants are demanding in the proposed declaration. These rights encompass various aspects of recognition, justice, development, and participation:

1. **Right to recognition:** Antón Sánchez called for all people of Afro-descent to be recognized as a collective group with a distinct identity.
2. **Right to ancestral lands:** He emphasized the importance of granting titles to ancestral lands, noting that only a small fraction of such lands has been officially recognized and titled.
3. **Collective use of property:** Afro-descendants should have the right to conserve, protect, and control their ancestral lands and knowledge. This includes recognizing their cultural, linguistic, and religious practices.
4. **Consultation rights:** Antón Sánchez asserted that Afro-descendant communities must be consulted on any matters affecting their ancestral lands.
5. **Justice and equality:** Ensuring equality within legal institutions and addressing issues such as racial profiling and algorithmic bias were highlighted as critical rights.
6. **Reparations:** The right to reparations for the transatlantic slave trade was deemed essential, given its significant role in building modern capitalism.

7. **Affirmative action:** Antón Sánchez called for measures to ensure socioeconomic and climate rights, as well as addressing racial profiling by the police.
8. **Development rights:** Afro-descendants should have access to essential services such as potable water, sewage systems, electricity, and roads.
9. **Political participation:** Inclusion in political processes, including quotas in parliament and participatory practices, was emphasized.
10. **Rights of Afro-descendant women:** Ensuring equal pay and employment opportunities for Afro-descendant women was identified as a critical issue.
11. **Access to IT and scientific progress:** Ensuring access to information technology and the benefits of scientific advancements was deemed necessary for the community's development.
12. **Higher education:** Antón Sánchez highlighted the importance of the right to higher education and the establishment of educational institutions on ancestral lands.

Concluding his presentation, Antón Sánchez underscored the importance of these rights being incorporated into the declaration. He assured the audience that a detailed written presentation, including an article in English, would be made available for further reference.

Mariela Noles Cotito posed a question concerning the concept of collective rights, particularly in the context of Latin America. She queried whether it is possible to conceive of collective rights without necessarily linking them to land. This issue arises because, in contemporary Latin America, there are spaces officially recognized as ancestral lands in countries such as Chile, Paraguay, and Argentina with that not being the case for countries like Peru or Bolivia.

Noles Cotito's inquiry delved into whether collective rights must inherently be tied to notions of self-government that come with their own set of rules. Her question highlights the complexity of defining and implementing collective rights, especially in diverse regions where the idea of ancestral lands is acknowledged but may not always align with traditional concepts of self-governance. This points to the broader challenge of how to best recognize and respect the collective rights of Afro-descendants and other groups within the framework of modern states that have their own established legal and governance systems.

Michael McEachrane raised a question following Noles Cotito's. He asked on what grounds collective rights should be included in the declaration, suggesting two broad approaches. The first approach is based on shared identities and heritage, which Murillo and Antón Sánchez have highlighted. This approach aligns with General Recommendation 34 of the Committee on the Elimination of Racial Discrimination, relevant to some African communities in Latin America, putting them on similar footing as indigenous communities. McEachrane noted that this perspective would have the Draft Declaration resemble that of indigenous peoples.

He then posed two questions: why should African descendant communities have such rights, and should all people of African descent across the world have such rights? To illustrate the complexity, he mentioned Sweden, where he lives. There, ultra-nationalist right-wing Sweden Democrats, Sweden's second largest political party with roots in neo-Nazism oppose the indigenous rights of the Sami people, arguing that all ethnic groups should have the right to their cultural identity and to self-determination, which they use to justify their nationalism.

He argued that if collective rights are based on the notion of collective cultural identity, it must be scrutinized whether this logic can be

universally applied. In Europe, for instance, the answer is often no. African descendant communities across Europe are mostly first and second-generation immigrants from Africa, lacking a common African descendant identity or community. This differs from the shared experiences stemming from the Middle Passage and colonialism found in other parts of the diaspora. Furthermore, within Africa itself, being black does not carry the same meaning as it does in the diaspora.

McEachrane suggested that the rationale for collective rights should be based on recognizing the systemic and structural challenges and racism faced by people of African descent. Therefore, the collective rights should not merely be about identity but about recognizing, addressing and rectifying the systemic inequities and injustices that African descendant communities face globally.

Abadir M. Ibrahim emphasized the importance of clarity in the language used within the Draft Declaration, particularly regarding collective rights. He noted that the concept of the collective right to self-determination, as understood in the Latin American context, became clear to him initially only after reading the footnotes in the draft. Noting that the presentations of Murillo and Antón Sánchez especially clear and informative on the subject, Ibrahim suggested that self-determination, especially in the context that connect with political self-determination or the autonomy ancestral territories, needs to be explicitly framed so that it understood without the need for lengthy explanation.

Noting that self-determination is a pre-existing term in international human rights law, Ibrahim connected this discussion to a broader context that included the two international covenants, the African Charter, and indigenous peoples' rights. Given the connection of the right with the anti-colonial movement, he pointed out that it inherently (but not necessarily) includes a component of land and territory as well

as notions of autonomy and self-governance. Given the pre-existing meaning of self-determination, which was reflected in the previous presentations about Afro-descendant communities in Latin America, it is unlikely to be relevant to, or invoked by, every Afro-descendant community.

He added that the reason this term is frequently associated with indigenous groups, and not necessarily in connection with other non-dominant or persecuted groups, is because the right to self-determination of indigenous peoples is being violated. That, however, does also not mean that other groups, such as those referred to earlier, do not have the right. It is just that their right to self-determination is not being violated and they are already exercising the right. He reiterated the need for a clarification of these concepts in the Draft Declaration, in relation to well-established discourse on the subject as such an approach would reaffirm the right, where it is applicable, while also helping identify if there is a need to modify or extend the right.

June Soomer emphasized the importance of self-determination, particularly in the context of the Caribbean, where colonialism is still a pressing issue. She highlighted that there are still 17 colonies in the Caribbean, with European countries such as the United Kingdom, France, Netherlands, and the United States of America maintaining control. Soomer stressed that there is no such thing as postcolonialism in this region, and the concept of self-determination is crucial for the collective rights of people of African descent.

She pointed out that Chapter 1 of the United Nations Charter talks about the right to self-determination, but this right is being denied to many in the Caribbean. The colonial powers argue that these countries are not ready to self-govern, calling them overseas territories, which Soomer described as an illegal concept. Decisions for these territories are made away from the people who live there, exemplified by the

situation in the Virgin Islands. In the 1950s, Britain considered abandoning these territories, deeming them uninhabitable except for birds, despite the presence of people of African descent. By the 1970s, the people in these territories started to control their own budgets, moving towards self-governance. However, as of 2024, these territories still face significant control from their colonial powers, including the need to get their budgets approved by England.

Soomer argued that the declaration must address the rights to self-determination for people in these Caribbean territories. She noted that these territories must seek permission from their colonial leaders to join CARICOM, which impacts their regional relations. She advocated for the Draft Declaration to include a strong statement on the complete self-determination of people in these places, aligning with the collective right to self-determination as stated in the UN Charter.

E. **Tendayi Achiume** commented on the importance of clarifying the context and scope of the Draft Declaration concerning people of African descent. She emphasized the necessity of unpacking the term “people of African descent” to ensure it accurately reflects the diverse identities and experiences within this group. Achiume highlighted several key points:

1. **Racial dimension of blackness:** She noted that the racial aspect of blackness unifies the experiences of people of African descent but acknowledged that blackness as an ethnicity might not be universal for everyone identifying as black.
2. **Political identity:** Achiume pointed out that political identity also applies differently across various contexts, further complicating a universal definition.
3. **Multiple explanations of identity:** She suggested that the Draft Declaration should recognize that the term “people of African descent” captures multiple identities, each triggering

different rights. This could be addressed either in the preamble or operative part of the Draft Declaration.

4. **Salience of racialization:** Achiume emphasized that racialization remains significant, though it might not always trigger the same rights for people of African descent. This is particularly relevant in the context of reparations, which are connected to but distinct from other rights.
5. **Complex and varied experiences:** She concluded that African descendants constitute racial, ethnic, political, and cultural communities, all shaped in different yet overlapping ways by the shared but complex and varied experiences of the transatlantic slave trade and colonialism.

Achiume's comments underscore the need for the Draft Declaration to be nuanced and inclusive, recognizing the multifaceted identities and experiences of people of African descent to ensure that their rights are appropriately addressed and protected.

Tanya Hernandez's comments brought attention to the issue of intersectionality within Afro-descendant communities, specifically highlighting the rural versus urban dichotomy. She pointed out that in Latin America, the experiences and identities of Afro-descendants are often framed by the state through a rural lens which obscures their marginalization in urban spaces, just as the state approach to blackness as an ethnic identity obscures their racialized experiences apart from cultural differences. These distinctions are significant because they influence how these communities are able to articulate their identity and rights.

Hernandez used the example of Lima, Peru, to illustrate her point. In urban contexts like Lima, the concept of blackness may not be the same as in rural areas. This difference highlights the variability and complexity of Afro-descendant experiences within a single country.

Urban Afro-descendants might face different challenges and have different cultural expressions compared to their rural counterparts.

She emphasized that this urban-rural divide is an essential consideration when discussing collective rights and self-determination. The needs and experiences of Afro-descendant communities can vary widely based on their geographic and social contexts. Therefore, any declaration or policy aimed at recognizing and addressing the rights of Afro-descendants must account for these intersectional differences. By bringing up the rural versus urban dichotomy, Hernandez underscored the necessity of a nuanced approach that considers the diverse realities of Afro-descendant communities. This approach should recognize the unique challenges faced by both rural and urban Afro-descendants and ensure that their specific needs and perspectives are adequately addressed in any framework or declaration concerning their rights.

Pastor Murillo's comments illuminated the complexity and diversity within Afro-descendant communities and their collective rights. He began by emphasizing that Afro-descendants recognize themselves as a collective community, united by the shared history of the transatlantic slave trade. This collective identity forms the foundation for their collective rights, but the application of these rights varies significantly based on geographic and contextual factors.

Murillo illustrated this by pointing to Colombia, where a law exists to protect all Afro-descendants. However, this law has limitations. For example, he lives in Bogotá and cannot benefit from laws regarding collective land rights that apply to other regions. This example underscores the importance of recognizing the diverse expressions and needs of Afro-descendant communities, including their languages and resource management practices.

He noted that certain communities have the right to determine how to use their resources, such as prohibiting the sale of land within the community. This is another dimension of self-determination that is crucial for maintaining their cultural and communal integrity.

Murillo also addressed the ongoing impact of colonialism on Afro-descendant communities, drawing parallels between the situations in Puerto Rico and São Paulo. He emphasized that these communities are still suffering from external colonial influences and highlighted the urgent need for self-determination and the right to manage their own affairs without external interference.

Finally, Murillo acknowledged the challenge of finding the right language to effectively communicate these issues in a way that resonates across different countries and contexts. He emphasized that this is a significant challenge but crucial for advancing the rights and recognition of Afro-descendant communities.

Murillo's comments highlighted the importance of acknowledging the diverse and specific needs of Afro-descendant communities while advocating for their collective rights and self-determination. His remarks underscored the necessity of a tailored approach that considers the unique contexts and challenges faced by these communities in different regions.

John Antón Sánchez expanded on several key points regarding self-determination and land rights for Afro-descendant communities, emphasizing the historical and legal context within Latin America.

Firstly, he highlighted the concept of auto-determination. Historically, the terminology of auto-determination has been established in international pacts but has not typically been applied to Afro-descendants. He noted that within the black political agenda in Latin America, there is a push not merely to create new treaties but to

emphasize the plural identity of Afro-descendant communities. This plural identity acknowledges the diverse and multifaceted nature of Afro-descendant experiences and cultures, which should be recognized and respected in any legal or political framework.

Antón Sánchez also addressed the issue of land rights. He provided historical context by mentioning that before 1993 in Colombia and before 1994 in Ecuador, there were no recognized lands for Afro-descendant communities. This lack of recognition has been a significant barrier to the self-determination and cultural preservation of these communities. However, progress has been made, as exemplified by the Salamancas community in Suriname, which was recognized in the American Convention, although they initially did not have the land that was rightfully theirs.

Furthermore, Antón Sánchez pointed out that the right to land is an evolving issue for Afro-descendant communities. He used the example of future applications of this right to Afro-Peruvian communities. In Chile, there is significant development with a tribal law for Afro-Chilean communities set to be enacted, which will grant them their own land and territory. This legal recognition is a crucial step towards ensuring that Afro-descendant communities can exercise their right to self-determination and preserve their cultural heritage.

Iyiola Solanke focused her comments on the language and framing of the declaration, drawing from her experiences and observations in Europe. She began by agreeing with Tendayi Achiume's comments about the need for clarity in the declaration's language and the distinctions between different forms of identity and rights.

Solanke highlighted that in Europe, she identifies more with a racial identity than an ethnic one, exemplifying this by describing herself as a black Brit. This contrasts with Nigeria, where racial identity is less

emphasized. On the global stage, she experiences racism primarily due to her skin color rather than her ethnicity, which underscores the racial rather than ethnic dimension of discrimination. She noted that even Africans who may not initially think of themselves in racial terms often come to understand this distinction when they move to places like the UK for studies, where racial identity becomes more pronounced.

Solanke also mentioned the political connotation of black identity, which, while not always explicitly acknowledged, still carries significant weight in discussions of rights and discrimination. In the UK, the concept of community rights encompasses both rural and urban settings, which helps avoid the need for overly detailed specifications that might exclude some groups. This broader approach to community rights can provide a more inclusive framework.

She raised a point about the potential for groups to feel excluded if their specific collective rights are not articulated in the declaration. To mitigate this, she suggested using general terms that can be interpreted and applied broadly. Solanke drew parallels to European treaties, which have been interpreted over the years to adapt to changing contexts and needs. She saw no reason why the Draft Declaration could not adopt a similar approach with general language that allows for flexibility and inclusiveness over time.

Session 4: Extraterritorial Human Rights of Sustainable Development and Right to Environment, and Obligations to, People of African Descent in the Caribbean and Elsewhere

Gaynel Curry (session moderator) took the floor with an emphasis on the intersectional nature of the challenges faced by people of African descent, particularly within the diaspora. She began by highlighting the disproportionate burden these communities often bear compared to other minority groups, especially in specific and often overlooked settings.

One of the main issues Curry underscored was environmental and climate racism. Recalling a discussion with Aminta Ossom at the Human Rights Council, she detailed how deforestation disrupts the livelihoods of these communities, affecting their culture, religion, and community beliefs. This disruption, she noted, causes extensive and lasting damage.

Turning her attention to the Caribbean, Curry painted a vivid picture of the severe impacts of environmental degradation. She outlined several critical rights that must be addressed in the declaration: the right to a safe and clean environment, the right to work, the right to an adequate standard of living, and the right to nondiscrimination. She highlighted the dire prediction that by 2050, the region's coral reefs might be gone, leading to significant economic repercussions due to the loss of tourism.

Pollution and climate change, she explained, are rampant in former colonized territories, exacerbating the economic and environmental degradation these communities endure. Citing Shepherd from the Committee on the Elimination of Racial Discrimination, Curry underscored the clear link between these environmental injustices and broader issues of economic and reparatory justice.

Echoing Murillo's remarks, she spoke about the pushback against climate justice regulations within the Draft Declaration, stressing the necessity of integrating climate justice, racism, and reparatory justice into the framework of the UN's Sustainable Development Goals (SDG). Curry argued that the Draft Declaration must incorporate these frameworks and address development issues, making the linkages between economic justice, climate justice, and reparatory justice unequivocally clear. She pointed out the stark reality that current frameworks often exclude people of African descent, and this gap must be addressed to ensure extraterritorial human rights are upheld. Curry's call to action was a plea for a comprehensive approach in the Draft Declaration, one that recognizes and integrates the intersection of environmental, economic, and social justice. Her words resonated deeply, highlighting the unique burdens faced by people of African descent due to historical and ongoing injustices and the urgent need for a Draft Declaration that addresses these multifaceted challenges.

Michael McEachrane took a critical stance on the understanding and implementation of human rights, emphasizing that the default understanding of human rights typically assigns responsibility to individual States for the human rights of people within their national jurisdictions. He highlighted that states and their national jurisdictions are seen as the primary and often times exclusive entities accountable for fulfilling human rights.

However, McEachrane pointed out the lack of clarity regarding who bears responsibility for the rights related to socio-economic development, and especially in the Caribbean, as a significant gap in the Draft Declaration and Compilation of human rights for people of African descent. He also posed a crucial question: when discussing issues like climate justice and reparatory justice, who should be held accountable? He highlighted the importance of determining whether it

is the international community or specific countries—particularly those that have historically contributed to greenhouse gas emissions—that should be responsible. This query underscores the extraterritorial dimension of human rights obligations, which extends beyond national borders and implicates international actors.

He stressed the necessity of ironing out these details in the Draft Declaration, making it clear who is being referred to when addressing reparatory justice and climate justice. McEachrane's comments emphasized the importance of establishing clear lines of accountability to ensure that these pressing issues are adequately addressed and that those responsible are held to account. His call to action urged that there is a need to explicitly define these responsibilities, ensuring that the document provides a robust framework for addressing the multifaceted challenges of climate and reparatory justice on a global scale.

Gaynel Curry posed a question about accountability, asking, “Who are we thinking about in terms of accountability?” This query underscored the need for clarity on who should be held responsible when addressing the rights related to development, climate justice, and reparatory justice. Her comments highlighted the importance of defining accountability within the context of the Draft Declaration to ensure effective and just implementation of these rights.

Erika George raised several points, expressing her confusion about the term “extraterritoriality” as used by the Permanent Forum. She suggested that what might be more relevant is the concept of “accountability.” George highlighted the issue of “sacrifice zones” for frontline communities and stressed the need to be explicit about the proportionality of responsibility for harms.

She also touched on the territorial anxiety that arises around producing mandatory reports and questioned whether the goal is to expand or

identify those actors that have perpetuated harm. Additionally, George mentioned the potential role of nontraditional grievance mechanisms, citing the Democratic Republic of the Congo (DRC) as an example. Her comments underscored the importance of clear definitions and accountability mechanisms in addressing human rights abuses and environmental harms.

Gaynel Curry reflected on the concept of extraterritoriality, explaining that her initial thoughts were centered around accountability. She questioned how the current situation was reached and emphasized the need to move forward. Curry stressed the importance of holding states and industries accountable, particularly those that have played significant roles in creating the problems, to also be part of the solution. Her comments highlighted the necessity of identifying responsible parties and ensuring they are actively involved in addressing and resolving the issues at hand.

June Soomer emphasized the importance of decision-making and accountability in her remarks. She highlighted that the decisions affecting Caribbean nations are often made by colonial powers without the input of the people directly impacted. Soomer provided an example with Britain's Blue Economy Proposal, created to address pollution around Britain but based on the continued colonization of Caribbean nations. The proposal allows British citizens to vote, move, and own land in these countries, exemplifying a new form of invasion and exploitation.

Soomer also discussed the detrimental impact of colonialism, citing the DRC as part of the strategic development plans of powerful nations, often at the expense of people of African descent. She noted that countries like Brazil are persuaded to destroy the Amazon, affecting not just the local environment but also regions like the Caribbean.

She criticized colonial institutions like the IMF and World Bank, calling for reparations and accountability for the damage caused. Soomer argued that sustainable development is impossible without reparations and urged for a comprehensive approach that considers the interconnectedness of environmental and social issues. She pointed out the misclassification of a devastating hurricane in Dominica as an earthquake, stressing the need for accurate recognition and accountability.

Soomer concluded by emphasizing the need for the Draft Declaration to ensure accountability and recognize the necessary actions to address the long-standing impacts of colonialism and environmental degradation.

Gaynel Curry underscored the necessity of achieving the type of development that truly benefits the communities involved. She underscored the importance of ensuring that development initiatives are aligned with the needs and aspirations of the people they are meant to serve. Curry's comments suggest a call for inclusive, participatory development processes that consider the voices and perspectives of those directly affected. This approach is crucial for fostering sustainable and equitable development outcomes.

Adelle Blackett focused her comments on the framing and language of the Draft Declaration. She highlighted the importance of using the term "transnational" to accurately describe the dynamics between states and transnational corporations. This term captures the autonomy and influence of these corporations, which operate with a certain degree of independence while being empowered by states. She suggested that frameworks of due diligence and accountability be included to ensure comprehensive oversight and responsibility.

Blackett emphasized the necessity of incorporating sustainable development issues directly into the Draft Declaration, either by restating established norms or explicitly referencing specific conventions, such as Convention 169. This would involve calling upon UN specialized agencies like the ILO and UNEP to pay particular attention to the rights of people of African descent, linking normative actions with ongoing and future responsibilities.

She proposed that the Draft Declaration specifically mention the World Trade Organization (WTO) to address the need for a detailed analysis of how transnational obligations might work across different organizations. This would help avoid the need to constantly reinvent frameworks and ensure continuity and coherence in addressing these issues.

Regarding resources, Blakett stressed that writing specific responsibilities into the programs of UN agencies would integrate the work into their regular activities, making it harder for these agencies to ignore. This integration would effectively embed the rights of people of African descent into the broader UN framework.

Blackett also underscored the importance of balancing group rights and individual rights. She warned that failing to embrace both could create a paradigm of separateness, potentially reducing the responsibility of certain states to ensure that people of African descent fully enjoy their human rights. She argued for a comprehensive conceptualization of group rights, seeing it as essential for the complete realization of human rights for people of African descent.

Gaynel Curry then intervened and spoke on the importance of engaging others in the work of advocating for the rights of people of African descent. She pointed out that intentionality is crucial when it comes to programming and resource allocation. Curry noted that there is often a

lack of dedicated programs and stressed the need to approach specialized agencies that have the necessary funds. If these agencies are not intentional in their efforts, opportunities to advance the rights of people of African descent may be missed.

She also highlighted the role of treaty bodies and questioned what recommendations they are making specifically for women of African descent. Curry expressed concern about the specificity and intentionality of these recommendations, suggesting that more targeted and deliberate efforts are needed from UN Human Rights entities.

Curry's comments underscored the necessity of ensuring that international bodies and specialized agencies are not only aware of the issues facing people of African descent but are also proactive and specific in their recommendations and programming. This intentionality would help to secure the necessary resources and attention to address these critical issues effectively.

Abadir M. Ibrahim, reiterating that the topic of extraterritorial climate effects of greenhouse gas emissions needed to be articulated in the Draft Declaration, raised a question about whether the PFPAD considered the inclusion of extraterritorial jurisdiction or the extraterritorial application of human rights norms in the draft. He highlighted the importance of considering whether it might be prudent to capture both the acts and responsibilities industrialized states as well as major corporations based in those states. Ibrahim also pointed out that there is a symbiotic relationship between states and international corporations and that it is worth considering both state and corporate responsibility thus filling liability gaps for human rights violations.

Iyiola Solanke emphasized the importance of including information about extraterritoriality within the preamble of the Draft Declaration,

suggesting that people in the UK could resonate with this framing of climate justice and social support. She pointed out that in European Union law, former colonized countries are to some extent governed by European Union law. Solanke highlighted the ongoing discussions within the European Union regarding a directive on corporate responsibility and due diligence.

Solanke also stressed the power of conducting research and empirical work, including surveys, to identify discrimination. She mentioned that such surveys have been impactful in the UK, as data collected calls attention to important issues, thereby fostering a deeper understanding and acknowledgment of discrimination and the need for legal and policy intervention.

Michael McEachrane read out a definition of extraterritoriality and suggested that while the term itself might not need to be explicitly included in the Draft Declaration, the problems associated with it should certainly be addressed. He noted that extraterritoriality is a widely established term often applied to due diligence and business practices, highlighting its relevance and the significant issues it encompasses.

McEachrane emphasized the importance of including language in the Draft Declaration that directly addresses the real-world impacts and harms experienced by people due to extraterritorial actions, including the lasting consequences of such historical injustices as enslavement and colonialism. He underscored that this is an area where the Draft Declaration could make substantial and novel contributions, providing a framework to better articulate and address the transnational challenges and responsibilities impacting individuals and communities.

Pastor Murillo stressed the importance of recognizing the right of African descendants to a healthy climate. He shared his initial lack of

understanding, which changed after learning about the spread of cancer in Louisiana, citing earlier comments about the intersection of racism and COVID-19. Murillo pointed out that excessive deaths among African descendants are linked to poor air quality, which in turn is connected to deforestation.

He highlighted the broader challenge of achieving sustainability for African descendants as intrinsically tied to the sustainability of the planet. Murillo urged the incorporation of insights from conversations on biodiversity in Cali, Colombia, and the upcoming COP29 in Brazil. This perspective underscores the interconnectedness of environmental and racial justice, advocating for a holistic approach in the Declaration to address these intertwined issues.

At the end of the first day, **June Soomer** provided her reflections and set the stage for the following day. She noted that despite spending considerable time trying to understand various concepts, there was still no clear consensus on the identity of people of African descent.

She emphasized the historical attempts during enslavement to detach people from their African identity, mentioning that there were 150 shades of black aimed at distancing individuals from their African roots. Soomer shared a personal sentiment, describing how each time she returns to Africa, she feels a deeper connection, symbolizing the idea of going home.

Soomer, who is also writing a book on mobility, race, and gender, underscored the importance of knowing one's identity to prevent others from erasing their origins. She concluded with a powerful statement about the need for people of African descent to have a sense of homeland, akin to how others have a fatherland, suggesting the term "motherland" as a fitting representation.

Session 5: Artificial Intelligence, Disaggregated Data Collection and Data-Driven Policymaking

At the opening of the second day, Soomer acknowledged International Women's Day, dedicating the day to women. After reflecting on the significance of various observances Soomer recapped the conversations of the previous sessions.

Soomer noted that the previous day had been productive, observing that the discussions had revolved around content, context, structure, and outcomes. They tackled systemic and structural racism, the importance of specificity, trauma, Haiti, and how systemic racism affects individuals and communities. She highlighted the recommendation on definitions, especially regarding racism, and the need for reconceptualization, including the view of racism as a security threat.

There was also a strong suggestion to build on existing declarations, such as those for indigenous people, and to consider new definitions of rights, especially structural racism. This involved consultations with various groups to gather their stories and incorporate them into the definition. Soomer emphasized that the Draft Declaration is for the people it represents, not just the drafters. She mentioned her conversation with Harvard Law students about forming a student body for the Permanent Forum to continue this work.

Soomer stressed the importance of considering intersections like structural racism and racialized and gendered capitalism. She highlighted the need for written submissions and the interesting discussions on reparations, noting the diverse perspectives on whether reparations should be internal, who should be included, and the specifics for different regions. She emphasized the importance of

naming gaps in reparations, even if they are not quantifiable, such as intergenerational trauma and systemic racism.

Soomer acknowledged the anxiety around global support for reparations and the potential opposition from the U.S. and within communities but urged everyone to move forward despite this. She mentioned CARICOM's efforts to create a booklet explaining reparations. She also called for more women to be involved in the movement, noting that most representatives are male, and emphasized women's specific role in reparations.

On collective rights for people of African descent, Soomer discussed the suppression of racial identity and the importance of data collection. She recalled Trevor Noah's commentary on the French World Cup team and the struggle for racial identity recognition. She also touched on collective rights in terms of self-determination and land issues, highlighting the historical and ongoing challenges.

Regarding extraterritoriality, sustainable development, and the fight of people of African descent on the environment, especially in the Caribbean, Soomer mentioned the caution about language and the need to consider social support groups and corporate responsibility alongside state responsibility. She noted the discussions about new attempts at recolonization under the guise of sustainable development.

Soomer concluded by stressing the need for a comprehensive list of recommendations to include in the Draft Declaration, reflecting the good discussions from the previous day and looking forward to continuing the productive conversations.

Justin Hansford (session moderator) began the session by outlining the day's focus on AI, disaggregated data collection, and data-driven policy. He emphasized that this discussion is directly linked to one of the mandates of the Permanent Forum: addressing the global need for

access to disaggregated data and gender statistics concerning people of African descent. Hansford underscored the importance of this task, noting that for the agenda to be relevant to the United Nations, data collection must align with the vision of the Sustainable Development Goals (SDGs).

He highlighted the UN's dedication to achieving its SDGs by 2030, which include goals related to access to housing, food, clean water, and more. Hansford stressed the necessity of tracking these metrics to ensure that the needs of people of African descent are met. To this end, he has involved Howard University students in gathering data from 12 different cities, aiming to fill the gap in data on African Americans, which is often non-existent at both city and federal levels.

Hansford pointed out that in the U.S., disaggregated data on access to clean water, healthcare, electricity, and gender differences by race is rare. He noted that this issue is even more pronounced in other countries, like France, which adheres to a policy of color blindness. This policy, he argued, is based on the misguided belief that ignoring racial tensions will resolve them. Instead, it obscures the reality of racialized societies, a practice that has roots in post-WWII attempts to avoid racial tensions after the Holocaust.

Turning to artificial intelligence (AI), Hansford highlighted the newness of this issue in the field of data collection and the challenges it presents. His researchers have struggled to find treaties addressing the potential harms of AI on data collection and its impact on people of African descent. He mentioned UNESCO's stance that AI should do good instead of harm and that human rights should guide AI and new technologies. However, he noted a lack of specific UN policy on AI concerning people of African descent.

Hansford referred to the most recent version of the Draft Declaration, pointing out a statement under point 31 that affirms the right of people of African descent to be included in surveys and disaggregated data by race and gender, particularly regarding sustainable development and environmental degradation. However, he noted the absence of references to AI in the draft. He posed a crucial question: how can we ensure transparency through data collection and equity in how this technology and data drive international policy decisions, especially concerning people of African descent? This question underscored the need for explicit inclusion of AI considerations in the Draft Declaration to support equitable and informed decision-making.

Tanya Hernandez spoke about the importance of data collection for understanding and addressing the issues faced by people of African descent. She emphasized that while the topic might seem technical compared to more high-profile issues like reparations, accurate and detailed data is fundamental for making persuasive arguments and crafting effective interventions.

Hernandez illustrated her point with two examples:

In Colombia, the 2018 census included questions about Afro-descendants thanks to sustained efforts by civil society movements. However, a significant portion of the Afro-population—30.8%—disappeared from the census compared to the 2005 data. This discrepancy was due to issues with how the questions were designed and coded. The 2005 census directly asked about Afro-descendants, while the 2018 version placed this option at the bottom of an overall question, making it less visible. Additionally, many census takers did not consistently ask the race question. Hernandez highlighted this case to show the critical impact of question design on data accuracy.

She then turned to an example from the United States. The Census Bureau, attempting to address the low response rates to the race question among mostly white Latinos in the 2020 census, introduced a new method. They asked respondents about their race and then provided an “ethno-option” which did not include Latin American identities, thereby blocking Afro-Latinos from being explicitly included in the black racial category. When Latinos nevertheless wrote in their own ethno-racial identity into the “Some Other Race” option, the Census Bureau used a coding method that led to misclassifications. For instance, a white Argentinian who checked white and wrote “Argentina” was coded as “mixed-race.” This example underscored the problems that can arise from inadequate coding practices.

From these examples, Hernandez made several key recommendations to ensure more accurate and meaningful data collection:

1. **Consultation with black experts:** black experts should be consulted and given decision-making power regarding the design of questions and coding alternatives at every step of the process.
2. **Testing in black communities:** Alternatives should be tested in black communities to identify potential issues, rather than testing in predominantly white communities, which might not reveal significant effects or biases.
3. **Black representation in coding decisions:** There should be black representation in coding decisions to ensure that the data accurately reflects the identities and experiences of black individuals.

4. **Inclusion of black census takers:** When using census takers in the field, it is crucial to include black census takers to avoid biases that might arise if white census takers find asking about race uncomfortable or inappropriate.

Hernandez also highlighted the broader implications of data categorization, noting that changes outside the direct questions about black identity matter. She cited how a small administrative change in the U.S. census significantly decreased the Latino-white category and increased the Latino-mixed category, demonstrating the far-reaching effects of coding decisions on racial data.

In conclusion, Hernandez stressed that our representation and expertise matter profoundly in contextualizing and interpreting data. She provided these insights and recommendations to ensure that future data collection efforts accurately reflect the identities and experiences of people of African descent.

Erika George highlighted the involvement of the working group on business and human rights in B-Tech initiatives. She noted that recent reports have addressed issues of discrimination, particularly focusing on the responsibilities of corporations in designing AI. George mentioned that a four-point plan with due diligence models has been outlined and is currently in the next steps process. She offered to send over the relevant details.

Justin Hansford emphasized the importance of the Permanent Forum having a seat at the table during stakeholder deliberations, especially when discussing issues related to discrimination. He stressed that someone from their community should be included in these discussions to ensure their perspectives are represented. Hansford appreciated Tanya Hernandez's clear and excellent recommendations, suggesting that they could lead to the Forum issuing best practices

recommendations globally. He highlighted that one of their levers is the ability to create informational pamphlets and brochures, which UN agencies worldwide can refer to when engaged in activities impacting people of African descent.

Adelle Blackett provided two relevant examples from Canada concerning data collection and community involvement. In British Columbia, the data collection approach was guided by the “Grandmother Principle,” emphasizing community-based, self-determined methods to avoid the historical harm caused by insensitive data collection practices. This principle encapsulates the ethos of “nothing about us, without us,” ensuring community involvement in how data is collected and monitored.

In the employment context, disaggregated data collection focuses on unemployment and includes considerations for privacy and community involvement in both data collection and implementation. Blackett highlighted the importance of community representation and shifting how employment data is counted to accurately reflect affected populations. Specific recommendations related to these practices are detailed in a report provided to the chair.

Pastor Murillo began his comments by acknowledging the challenges in census processes across Latin America, highlighted earlier by Tanya Hernandez. Despite these challenges, he emphasized the significant strides made in this area, noting that around 20 Latin American countries now include Afro-Latino options in their census and demographic surveys. This progress is crucial because recognizing these populations is the first step towards understanding and addressing systemic racism in the region.

In Brazil, for instance, despite 56% of the population identifying as African descendants, political representation remains woefully

inadequate, with less than 10% in political roles and fewer than 2% of Afro-Latino women in leadership positions within the private sector. Murillo illustrated this disparity further, stating that out of 175 ambassadors, only four are African descendants, and out of 1288 diplomats, merely 189 belong to this group. Such statistics starkly highlight the systemic exclusion of Afro-Latinos from influential positions.

He shared alarming data about the prevalence of violence and poverty among African descendants in Brazil. Homicide is the leading cause of death for this community, with a person of African descent being killed by the state every four hours. Similarly, in Colombia, people of African descent are 75% more likely to live in poverty and 140% more likely to endure extreme deprivation compared to others with similar characteristics.

Murillo stressed the importance of objective data in shedding light on systemic racism. He recounted a survey by the University of Sao Paulo, which revealed a contradictory perception of racial prejudice: while 96% of respondents claimed there was no prejudice against people of African descent, 99% admitted knowing someone who harbored racial prejudice. This data underscores the pervasive yet often unacknowledged nature of racial bias.

Transitioning to the topic of AI, Murillo highlighted its disruptive impact, particularly on historically discriminated groups. He pointed out that as human activities become increasingly dictated by algorithms, the quality and biases inherent in the data collected pose significant challenges. For instance, in the United States, even without explicit racial data collection, algorithms can infer racial biases from other indicators like zip codes, leading to biased outcomes. He cited Florida as an example, where AI-driven decisions exhibit a 75% bias.

Murillo argued that the declaration must address these contemporary forms of racial discrimination, including those perpetuated by AI. He mentioned the progress in legal frameworks, such as the AI standards being developed in the European Union, and suggested adopting similar measures in the declaration.

He identified three key AI-related challenges for the declaration to address:

1. The deepening of existing inequalities.
2. The digital gap, where Afro-descent children are learning basic literacy while their counterparts are learning programming.
3. Issues related to migrant surveillance and profiling at borders using biometric information.

Murillo concluded by emphasizing the importance of adopting comprehensive strategies to combat algorithmic bias and ensure the declaration effectively addresses these modern challenges. This, he argued, is essential for truly advancing the rights and protections of people of African descent in today's digital age.

Yanilda González began her comments by addressing the measurement of disparities in police violence globally, with a focus on Latin America and the United States. She emphasized that measuring police practices can significantly influence perceptions and policies. She provided an example from New York, where the release of statistics on stop-and-frisk incidents led to substantial policy reforms. However, she noted that governments might be reluctant to collect such data due to political reasons.

She shared an anecdote about an FBI official who claimed there was no data on a specific issue, despite being responsible for data collection.

This highlights the political dynamics that often hinder data collection efforts. González stressed that the declaration should account for these political obstacles.

Turning to Brazil, she pointed out that while some states have robust data collection systems, merely having data is insufficient to change behavior. Despite ample data on racial disparities in police killings, these incidents continue to rise. Brazil, despite its smaller size compared to the United States, experiences a higher rate of police killings.

González argued that the declaration should address the need for measuring police and state violence and propose mechanisms to change state behavior. She stressed the importance of implementing explicit mechanisms to compel states to reduce overall killings and specifically address racial disparities. Despite having good data for years, Brazil's situation underscores that data alone cannot drive change. Mechanisms must be in place to ensure that States act on this data to reduce violence and disparities.

Aminta Ossom acknowledged the complexity of addressing algorithmic bias in its various forms. She noted that generative AI, such as ChatGPT, has undergone analysis, but there are other types of AI, including identification and predictive AI, that are deeply embedded in numerous systems. These forms of AI often include coding biases that impact areas such as creditworthiness, disease prediction, and combatant identification, thereby incorporating racism into critical aspects of daily life.

Ossom expressed her struggle in formulating appropriate recommendations for the Draft Declaration. Without addressing the underlying problem of bias in general, AI will continue to reproduce

existing biases. She raised a crucial question: how can we tackle AI-related issues without first eliminating bias?

In her closing remarks, Ossom emphasized the need for the declaration to address the reduction of bias specifically for people of African descent. She highlighted the importance of developing recommendations that confront both the broader issue of bias and its manifestation in AI systems. The challenge lies in ensuring that the declaration provides clear guidance on how to mitigate these biases to prevent the perpetuation of discrimination through advanced technologies.

Michael McEachrane posed a question about how the Draft Declaration could effectively incorporate data collection and leverage AI for this purpose. He emphasized that a central and innovative aspect of the Draft Declaration could be to assert boldly the human rights of people of African descent through a comprehensive human rights-based and data-driven approach to recognizing and addressing systemic racism, racial discrimination and inequity both within and among countries.

Referencing Article 28 of the UDHR, McEachrane highlighted the necessity of ensuring that everyone is entitled to both social and international orders in which human rights and freedoms can be fully realized. He noted that addressing inequities both within and between countries, as partially recognized by the SDGs, is crucial in today's world. One of the Permanent Forum's recommendations in its final report to the Human Rights Council and the General Assembly is the development of official UN guidelines and a handbook for a comprehensive human rights-based data-driven approach to recognizing addressing systemic and structural racism against people of African descent.

McEachrane suggested that these guidelines could detail what it means to recognize and monitor systemic and structural racism, including an operational definition and specific guidelines for data collection. He underscored the importance of making data more accessible to the public to reveal the realities of systemic and structural racism.

He invited recommendations on this topic, acknowledging that it requires extensive research. McEachrane proposed the development of research projects in this area and suggested that the Permanent Forum could develop these guidelines, which could potentially be adopted by the UN. He concluded by noting that such guidelines could be greatly beneficial for the Draft Declaration, enhancing its impact and effectiveness.

Chantal Thomas emphasized the importance of forward-looking impact assessments, suggesting that policymakers should consider the impacts on communities when collecting and using data. She pointed out that, in the context of gender, gender mainstreaming has developed over many years, becoming an integral part of various policies, including trade policy. This involves incorporating gender considerations into training and decision-making processes.

Thomas proposed that developing a framework for how questions about the impacts of data on communities could be asked would be beneficial. She noted that similar work has been done in other areas when addressing equity issues, indicating that this approach could be effectively applied to racial equity issues too. By adopting a structured framework, policymakers can ensure that data collection and usage are equitable and inclusive, addressing the specific needs and concerns of affected communities.

June Soomer highlighted the punitive use of data collection. She explained that in the Caribbean, many reports often show blank data

sections because when data is accurately reported, it can lead to negative consequences. For instance, if Caribbean countries report that they are doing well in areas such as education and healthcare, they may no longer qualify for foreign direct investment or assistance during natural disasters. Despite their successes, these countries can experience significant setbacks, such as having their GDP wiped out by a natural disaster.

Soomer questioned how the Draft Declaration could address this issue, suggesting that it should speak on the utility of the data. She emphasized the need for the Draft Declaration to consider how data is used and ensure that reporting positive progress does not lead to punitive measures. This approach would encourage accurate data collection and reporting without fear of negative repercussions, thereby supporting the Caribbean nations in both their development and disaster recovery efforts.

Justin Hansford spotlighted the importance of rewarding rather than punishing progress in data collection. He noted that this topic requires significant academic engagement. In their first session on data collection, they discussed the need to actively engage with different sectors. Hansford highlighted that it is part of the Permanent Forum's role to monitor the progress of people of African descent. Analyzing and disseminating data should involve collaboration with scholars, and he mentioned McEachrane's initiative in starting a research and academic network to engage more scholars in this effort.

Hansford reflected on a past discussion about adding racial justice SDGs, which did not gain traction. However, he reiterated the importance of framing data collection processes within the SDGs, as this is the framework the UN uses for measuring data. He stressed the right to transparency regarding data, especially in the age of AI, and the

need for people of African descent to gain access to the data collected on them, such as through mobile phones.

Hansford proposed including a commitment in the Draft Declaration that states must address revealed disparities. He cited the example of police violence in Brazil, where data has been revealed but no action has been taken. By signing the Declaration, states would commit to remedying such disparities. He also suggested a reporting mechanism like the Convention Against Torture treaty process, where states report their progress. This mechanism would add enforcement power to the Declaration, ensuring that states are held accountable for making progress on the disparities identified through data collection.

II. Written Submissions

Consulta a Expertos sobre la Declaración de las Naciones Unidas sobre
la Promoción, Protección y Pleno Respeto de los Derechos Humanos
de los Afrodescendientes

7-8 de marzo de 2024 – Escuela de Derecho de Harvard

**Contribuciones al Preliminary Submission by the UN Permanent
Forum of People of African Descent (Draft Declaration)**

Por: Mariela Noles Cotito¹

Agradeciendo a los miembros del Foro Permanente por su atención, así como por el tiempo brindado a la revisión de este documento, me

¹ Es profesora de Discriminación y Políticas Públicas del Departamento Académico de Ciencias Sociales y Políticas de la Universidad del Pacífico, en Lima-Perú. Máster en derecho (LLM) por la University of Pennsylvania, Máster en Estudios Latinoamericanos (MA), y Máster en Ciencia Política (MA) con una concentración en Etnicidad en Países Andinos, por la University of South Florida. Su portafolio de investigación incluye temas de derechos humanos, igualdad de género y no discriminación, así como el análisis de políticas públicas de inclusión social. Más recientemente, se concentra en las políticas de etnicidad en América Latina y la legislación que promueve los derechos de las poblaciones afrodescendientes de la región. Sus últimas publicaciones incluyen el volumen editado Reflexiones sobre el Perú (2022), el capítulo «Race, Gender, Class and Public Policies in Latin America and Andean countries» en el Routledge Handbook of Urban Studies in Latin America and the Caribbean: Cities, Urban Processes, and Policies, el capítulo «A historical, socio-political and discourse approach to the emerging field of Afroperuvian Studies» en el Routledge Handbook of Afro Latin American Studies, y el capítulo «The path to Black citizenship in Peru: Ethno-racial legislation and the political recognition of Afrodescendants in the country» (2021) en la Oxford Encyclopedia of Latin American Politics; así como el volumen editado Perú in the 21st Century: Progress, Trends and Challenges, publicado en los Estados Unidos en el 2020. Su experiencia gubernamental incluye el haber sido parte del equipo técnico de la Dirección General de Igualdad de Género y no Discriminación del Ministerio de la Mujer y Poblaciones Vulnerables, y de la Dirección de Políticas para Población Afroperuana del Ministerio de Cultura, así como coordinadora de todos los temas de diversidad e inclusión en la Gerencia de la Mujer e Igualdad de la Municipalidad Metropolitana de Lima. Además, sirvió como miembro del Tribunal de Honor del Pacto Ético Electoral para las Elecciones Generales 2021, y las Elecciones Municipales y Regionales 2022; así como en la Comisión Consultiva Nacional de Cultura. Email: mi.nolesc@up.edu.pe

permiso exponer algunas ideas y argumentos que estimo de importancia para su consideración en borradores siguientes de la Declaración de las Naciones Unidas sobre la Promoción, Protección y Pleno Respeto de los Derechos Humanos de los Afrodescendientes.

Sobre el instrumento internacional

1. Una Declaración de derechos como la propuesta es de fundamental importancia para seguir construyendo una institucionalidad internacional para la defensa de los derechos de las poblaciones afrodescendientes en el mundo, así como para fortalecer el compromiso de los Estados con los derechos de estas poblaciones, su afirmación y su aseguramiento.
2. Dejando esto por sentado, recomiendo revisar en futuros borradores la definición certera entre los que serían los derechos de las personas y pueblos afrodescendientes, y las que serían (o deberían ser) las obligaciones de los Estados. Esto dado que en el borrador actual hay una línea difusa entre los derechos de unos y las obligaciones de otros. Por ejemplo, respecto del tema de la recolección de data estadística, esto esta planteado como un derecho de las poblaciones afrodescendientes, sin embargo, esto en estricto debería ser una obligación estatal. Donde el derecho deviene el ser contados y considerados para efectos demográficos. No obstante, estas son dos caras del derecho a ser contado y/o tomado en cuenta por el Estado, que deben hacerse explicitas desde el lado del derecho, pero también, de la obligación estatal.
3. Así también, considerar el punto 15 relativo a la expresión de preocupación profunda sobre la falta de compromiso de los Estados con la justicia reparativa y la eliminación del racismo y todas las formas de discriminación racial, además de la urgencia la comunidad internacional para reanudar su compromiso con

reparación de los derechos humanos de los ciudadanos afrodescendientes del mundo, debería colocarse mucho antes en el preámbulo; toda vez que es uno de los llamados más poderosos del mismo.

4. Finalmente, abogaré porque el documento haga referencia a otros instrumentos internacionales que también buscan la liberación de las personas en otros colectivos y grupos humanos. Esto podría hacerse siguiendo la pauta ya establecida en el párrafo 39. Respecto de la versión puesta a revisión en la Consulta de Expertos, este lee como sigue: “The Declaration should call for the 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.” Mi propuesta es la siguiente: “...and the present Declaration following its adoption; as well as the implementation of other instruments that also strives for the liberation of all peoples and the elimination of racism and racial discrimination in all of its forms.”

Sobre la inclusión de la definición de racismo estructural

5. Entendiendo la reticencia corriente de algunos Estados de definir el fenómeno del racismo estructural en la parte operativa del documento, en tanto esto podría ser entendido, erróneamente, como una admisión de responsabilidad estatal internacional *de facto* y/o para minimizar el riesgo político de eliminación del concepto en el periodo de negociación del documento, sugiero su integración dosificada en el preámbulo. Esto haría que el concepto de racismo estructural tenga una potencialidad más alta de permanecer en el documento, además de hacer parte de uno de sus pilares.

6. Toda vez que hay partes de este concepto y fenómeno social que ya hacen parte del lenguaje aceptado de otros instrumentos, como la definición de racismo y la aceptación de algunas de las consecuencias sistémicas de este en las diversas poblaciones del mundo, y de los pueblos afrodescendientes en particular, la propuesta concreta implica que se utilicen estas herramientas para delinear un concepto de racismo estructural que se base en los elementos ya aceptados por los estados resaltando la conexión entre el concepto, sus consecuencias sistémicas y su naturaleza estructural.

7. Así, inspirándose en el ejemplo de la teórica legal feminista Alda Facio sobre el concepto amplio del derecho,² puede delinearse en el prefacio la siguiente ruta conceptual sobre el racismo estructural, enunciada en tres párrafos distintos, a saber: 1. El racismo es un sistema de creencias que justifica las jerarquías raciales, además de ser recreado constantemente por actores privados y públicos (lo que recogería un concepto ya aceptado). 2. El racismo tiene consecuencias pervasivas para las poblaciones afrodescendientes del mundo (noción también mayoritariamente aceptada por los Estados miembros). Finalmente, 3: la naturaleza de estas consecuencias, en tanto afectan todas las etapas de la vida de las personas y a través de los diferentes ámbitos de su vida, con consecuencias a lo largo del tiempo y a través de generaciones lo hace estructural. Así también, en tanto es ejercido por todos los actores sociales (consciente e inconscientemente) lo hace sistémico.

²Véase: Alda Facio. Cuando el género suena cambios trae. Una metodología para el análisis de género del fenómeno legal. En: https://catedraunescodh.unam.mx/catedra/CONACYT/16_DiplomadoMujeres/lecturas/modulo2/1_Alda%20facio_Cuando_el_gen_suena_cambios_trae.pdf

8. Considero que esta desagregación del concepto, donde se construye sobre nociones ya aceptadas por los Estados para finalmente hacer la conexión que nos lleve naturalmente hacia lo estructural y sistémico, aunado a que esta definición no se ubique en la parte operativa del documento, puede maximizar su posibilidad de supervivencia en el mismo.

Sobre el lenguaje a utilizar en la propuesta de Declaración

9. Huelga recordarlo, pero es fundamental recordar que el texto de esta Declaración debe responder a la realidad y contexto de diferentes poblaciones afrodescendientes en el mundo; aquellas que buscan su autodeterminación de poderes coloniales aun existentes, aquellas libres pero constantemente sometidas a presiones nacionales e internacionales, y aquellas desarrollándose en contextos nacionales donde son minorías (reconocidas o no), entre otras. En este sentido, es fundamental verificar el uso del lenguaje, en general, y en la descripción de algunos fenómenos sociales que afectan desproporcionadamente a estas poblaciones en el mundo.
10. Nuestra intención no es, de ninguna manera, descaracterizar los fenómenos sociales que se busca describir, sino más bien, utilizar un lenguaje más amplio que permita que más poblaciones afrodescendientes puedan verse reflejadas en este listado de derechos, y verse protegidas por el instrumento político.
11. En este sentido, traemos como ejemplo el fenómeno de “brutalidad policial;” fenómeno que es aplicable para describir una problemática que afecta principalmente a las poblaciones afrodescendientes en los Estados Unidos y Brasil. Sin embargo, un término descriptivo más amplio y que igualmente se acoge en otros países donde no se utiliza el concepto antes referido es el de “uso excesivo de la fuerza por parte de las autoridades o fuerzas del orden.”

12. Lo mismo respecto del derecho de las personas, como se prescribe en el borrador bajo análisis, a ser reconocidas como nativos (originarios) o pueblos tribales. Estas categorías, por ejemplo, no son categorías que sean de aceptación mayoritaria para las poblaciones afrodescendientes de los países andinos, a excepción del caso de Colombia o Ecuador. En países como Perú o Bolivia, por ejemplo, ninguna de estas categorías es de uso o aceptación colectiva. La primera porque lo originario es mayormente aceptado para la población indígena de la región, y la segunda categoría (tribal) porque alimenta la narrativa colectiva de animalización/exotización sobre estas poblaciones en sus territorios nacionales.

THE RIGHT TO REPARATIONS OF FAMILIES OF VICTIMS OF STATE VIOLENCE

Submission to the UN Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action

Input to the Draft UN Declaration on the Promotion and Full Respect of the Human Rights of People of African Descent

Based on the findings of the research project: “Voices of Pain, Struggle, and Resistance of Mothers of Victims of State Violence in Brazil”

Principal Investigators:

Débora Maria da Silva, Mothers of May Movement

Yanilda María González, Harvard University

Raiane Patrícia Severino Assumpção, Federal University of São Paulo (UNIFESP)

Research team:

Edna Carla Souza Cavalcante, Mothers of the Periphery (Fortaleza, Ceará)

Nivia do Carmo Raposo, Mothers of the Baixada Fluminense (Rio de Janeiro)

Rute Fiuza, Mothers of May of the Northeast (Salvador)

Aline do Rocco Gomes, Center for Forensic Anthropology and Archeology (UNIFESP)

Valéria Oliveira, Center for Forensic Anthropology and Archeology (UNIFESP)

Overview

State violence in Brazil is both rampant and highly racialized. In 2022, Brazil's police forces killed some 6,429 individuals, constituting the equivalent of 13% of all homicides in the country. Yet, while 55% of Brazilians identify as black, black Brazilians comprise 83% of victims of police killings. While killings committed by state forces are typically seen as a one-time event that enters into official or civil-society-produced statistics of deaths caused by state security agents, we understand them instead as an ongoing state-induced trauma. For the

families of victims of police killings, these occurrences entail a sequence of experiences and interactions with the state that undermine the rights, dignity, and agency inherent in democratic citizenship. Our research, based on twenty interviews with mothers of victims of police killings in four Brazilian states, reveals the profound effects of state-induced trauma for victims' families. Our study documents the repercussions of state-induced trauma beyond the act of lethal violence, as families subsequently face the degradation of family life, a loss of economic opportunity due to difficulties returning to work, and deterioration of their mental and physical health, in some instances resulting in death by suicide or due to cancer. We also document how victims' mothers across Brazil are mobilizing to assert their right to reparations for the death of their loved ones at the hands of the state and the set of adverse consequences of state-induced trauma. Following the example of these mothers of victims, the right to reparations for state violence should be recognized in the Declaration on the Promotion and Full Respect of the Human Rights of People of African Descent as an affirmation of the dignity and agency of victims' families and in accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

"Imagine the pain, guess the [skin] color": Racialized State Violence in Brazil

A recent social movement campaign in Brazil sought to bring attention to the racialized patterns of police violence by inviting its audience to "imagine the pain, guess the [skin] color" (*imagina a dor, adivinha a cor*). The underlying truth of this slogan becomes readily apparent when reviewing the demographics of the targets of police violence. Per the most recent study by the Brazilian Forum for Public Security, 83%

of victims of police killings in Brazil;¹ by contrast, 55% of the country's population identify as black. As Table 1 demonstrates, the disproportionate impact of police killings on black Brazilians is replicated across the four states included in our study. The dire levels of police violence faced by people of African descent in Brazil are perhaps best exemplified by conditions in the state of Bahia, whose population is 80% black. In 2022, Bahia's state police killed 1,464 individuals, more than the approximately 1200 victims killed by 18,000 police forces in the United States, whose population is 23 times larger than Bahia.

Table 1: Police Killings in Four Brazilian States by Race

State	% black among victims	% black, population (per 2022 Census)
Bahia	95%	80%
Ceará	80%	71%
Rio de Janeiro	87%	58%
São Paulo	64%	41%

Note: Percentages reflect victims for whom race was reported

Source: "Pele Alvo: A Bala Não Erra O Negro", report by the Network of Security Observatories, November 2023

"The [victim's] mother dies every day due to lack of answers from the State":² Police killings as state-induced trauma

Police killings are typically viewed as a one-time event that enters into official or civil-society- produced statistics of deaths caused by state security agents, but they are experienced by victims' families as ongoing processes of state-induced trauma. For the families of victims of police killings, these occurrences entail a sequence of experiences and interactions with the state that undermine the rights, dignity, and

¹ Data on police killings from ANUÁRIO BRASILEIRO DE SEGURANÇA PÚBLICA 2023. São Paulo: Fórum Brasileiro de Segurança Pública, ano 17, 2023. ISSN 1983-7364.

² Excerpt from interview with mother of a victim of a police killing from São Paulo, Brazil.

agency inherent in democratic citizenship. The enduring adverse effects of state violence emerge not only from a single moment of lethal violence. For victims' families, the grief following the death of a loved one is reproduced and exacerbated by iterative interactions with state institutions, including media reports and officials' discourses that stigmatize and criminalize victims and their families, denial of access to information, stalled investigations and impunity, and even threats against families from police.

State-induced trauma undermines rights enshrined in international human rights conventions, including the "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution" (CERD, Art. 5); the rights to life, liberty, and security of person (UDHR, Art. 3), and to "an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (UDHR Art. 8); and protections against arbitrary interference with family, the home, and attacks on one's honor and reputation (UDHR, Art. 12).

Participatory Action Research Alongside Victims' Mothers in Brazil

The project "Voices of Pain, Struggle, and Resistance of Mothers of Victims of State Violence in Brazil" employed a participatory action research methodology, in which four mothers of victims of police killings in Brazil led the development of the research questions, design of the research methodology, and the data collection with twenty mothers of victims of police killings in four Brazilian states. The methodological approach of the research aimed to remove the mothers of victims from the role of objects of study, to place them in the role of social researcher. This research seeks to subsidize - and transform - both research and policy making processes of training researchers in order to give mothers of victims of violence a leading role in the production of knowledge and the design of policy remedies.

Summary of Findings

State failure to deliver justice

Across the four states of our study, mothers of victims told similar stories of state silences and inaction, stalled or nonexistent investigations, in some instances mothers undertook their own investigations, collecting evidence and talking to witnesses, in an effort to get justice for the death or disappearance of their sons. Many mothers drew a linkage between the state's unresponsiveness and their own intersectional identities. As one mother from Bahia put it, "you go to the police station... and it's like they doubt you, because you're black, because you're poor, you don't deserve respect, attention, their concern to pursue, investigate what happened."

Transformation of family life and community life

Our research also finds that the enduring effects of state violence extend beyond the tragic loss of a loved one, transforming many aspects of family life and community life. Many mothers we interviewed took on responsibility for full-time care of their grandchildren, who had now lost a parent. Across the four states, many mothers described living in a climate of fear, feeling re-traumatized in seeing police cars circulating in front of their homes, and the constant fear that the police may do something to threaten or harm remaining children or grandchildren. One mother in Ceará reported that after the death of her son, police raided her mother's home, tried to accuse her of drug trafficking and beat up her nephew. Another mother in Bahia shared that police entered her daughter's house on multiple occasions, which the family interpreted as attempt to intimidate or threaten them, and that police returned to a neighborhood to intimidate residents who engage in protest against a police killing.

The profound health consequences of state violence

Our interview participants in all four states reported a range of mental health and physical health challenges that they reported as emerging in the months and years following the death or disappearance of their son

at the hands of the state. As one victim's mother from Bahia told us, "all of this occurred after the disappearance of [my son], I had a stroke, my blood sugar went up, diabetes; I didn't have these issues before, depression, anxiety..." All 20 of our interviewees reported the emergence of mental or physical health conditions in the aftermath of state violence, affecting themselves and/or one of their surviving children, including: anemia, anxiety, bipolar disorder, cancer, depression, diabetes complications, hypertension, hyperthyroidism, and stroke. These health conditions posed additional challenges to several affected families, including an inability to work due to physical and mental health conditions, psychiatric hospitalization, and suicide attempts among multiple mothers or one of their surviving children. Beyond the grave loss of a child, state violence, as one mother from Rio de Janeiro put it, "destroys our health, destroys our life. So this is what remains, the State kills and then kills [us] bit by bit."

The Right to Reparation of Victims of State Violence

Our study document how victims' mothers across Brazil are mobilizing to assert their right to reparations for the death of their loved ones at the hands of the state and the set of adverse consequences of state-induced trauma. State violence disproportionately affects people of African descent not only in Brazil, but throughout the world. As the findings of our study demonstrate, the effects of state violence are multidimensional, pervasive, and profound.

Following the example of these mothers of victims, we affirm the right to reparations for victims of state violence should be recognized in the Declaration on the Promotion and Full Respect of the Human Rights of People of African Descent as an affirmation of the dignity of victims and agency of the families.

In accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

International Humanitarian Law,³ families' demands for reparations encompass:

- Effective, prompt, thorough and impartial investigations of cases of police killings and disappearance
- Access to justice and proper assistance to victims seeking access to justice
- Treatment of victims and their families with humanity and respect for their dignity and human rights, and appropriate measures to ensure their safety, physical and psychological well-being
- *Compensation* should be provided for any economically assessable harms, including: physical or mental harm, lost employment and education opportunities; moral damage; Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
- *Rehabilitation*, including medical and psychological care as well as legal and social services.
- An official declaration restoring the dignity, the reputation and the rights of the victim and their families, including a public apology and acknowledgement of the facts and responsibility
- Commemorations and tributes to the victims;
- *Guarantees of non-repetition*, including ensuring effective civilian control of military and security forces, and independence of prosecutors and the judiciary

Victims' families define reparations in their own words:

Memory is a key factor; after all, we mothers gave birth to them, we raised them with great difficulty. Many of them die as “suspects,” which is sickening. Not least because they have first and last names and a home, as well as a family. The erasure of memory is sickening, we won't

³ Adopted by General Assembly resolution 60/147 on December 15, 2005.

accept it, for me this [memory] is "moral" reparation (mother of victim, São Paulo)

The person who suffers the error expects at a minimum the recognition of that error, an apology, a public recognition of the error. (mother of victim, Bahía)

Reparations is to repair harm, the harms that people were left with, health, mental health, family stability. That would be reparation by those that caused these harms in people's lives; people develop illness and don't receive any help, none at all. (mother of victim, Bahía)

Reparation for me is... bringing dignity back to my family, because after they killed [my son], after the state took his life, we have never been the same. (Mother of victim, Ceará)

Reparation for me will be when justice is done, when I see justice for my son's death; when my granddaughter receives something from the state for her future, to study, to go to college. That's when I'll see it as reparations. (mother of victim, Ceará)

When people talk about reparations, they think about monetary reparations, but it's not really about that. The reparations we want is moral reparations for what they took from us, they took our happiness, they took our joy, and our health... reparations would be adequate treatment for [victims' mothers] so they can recover what they lost, their life, and their desire to live. (victim's aunt, São Paulo)

Reparations are broad, it's much much greater than just thinking of financial reparations, it's a moral reparations, an acknowledgement of our suffering. (victim's sister, São Paulo)

The Importance of Reliable Race Statistics

Fordham Law Professor of Law Tanya Katerí Hernández
March 12, 2024

Executive Summary of Recommendations

RE: The right of people of African Descent to be included in demographic surveys

1. Meaningful Inclusion of Afro-descendant Concerns, Experiences, Perspectives & Expertise for designing Data Collection forms requires:
2. Including Afro-descendant members and Afro-descendant demographers with voting rights, on all bodies concerning data collection design and administrative decision making
3. Including Afro-descendant input in the design, wording, & structure of data collection ethno-racial questions
4. Including Afro-descendant input in the administration of field testing of any proposed ethno-racial questions or changes in design to ethno-racial questions
5. Have field testing of proposed ethno-racial questions or changes in design to ethnoracial questions within communities with a significant proportion of Afro-descendants
6. Including Afro-descendant data collection administrators and census enumerators in the implementation of data collection and census taking
7. Including Afro-descendant members and Afro-descendant demographers with voting rights on all bodies concerning data collection coding decisions and manner of collating disaggregated racial data

Introduction

The right of people of African Descent to be included in demographic surveys provided for in the Preliminary Submission for a UN Declaration to promote, protect and fully respect the human rights of people of African Descent [section IV.A.31], is an essential component for recognizing and addressing systemic structural racism. This is because the gathering of population statistics sits at the heart of racial politics. At its most fundamental level, the demographic survey of residents by race makes clear that racially marginalized communities exist. Being counted on a national demographic survey is the first step towards making social justice demands that government entities incorporate formerly excluded racial groups into social policies. Moreover, national demographic survey racial data can make visible any racial disparities that exist in access to important public goods such as access to education, employment, housing, medical services, etc. In short, a national demographic survey count of a population by race provides concrete data about racial hierarchies and exclusion. Without it, systemic racism is rendered invisible. The AfroLatinx transnational struggle for inclusion provides a useful case study, because AfroLatinx populations across Latin America have made national demographic survey racial categories an important part of their social justice agendas.

The Latin American National demographic survey Context:

The Inter-American Commission on Human Rights has noted in its Standards to Prevent, Combat and Eradicate Structural Racial Discrimination, that when governments hinder the collection of statistical racial data it “stands in the way of the progressive realization of their rights and inclusion in public policies.”² Social justice activists in the region are in accord and have long noted that the availability of racial data facilitates the lobbying for racial equality government policies.³ For example, because Brazil has been one of the few countries in the region that have most consistently included a racial identification question on their decennial national demographic survey, its racial justice organizations have been able to utilize the data to support their claims of unacceptable racial disparities in the

country.⁴ It is in large part for this reason that Brazil has also been one of the few countries in the region to implement affirmative action policies in the public sector hiring and educational contexts.⁵

More countries in the region are also focusing on the need for national demographic survey racial data. For example, even though Venezuela had refused to collect racial data on its national demographic survey forms since 1873 (twenty years after the abolition of slavery in 1854), in 2011 the government included a new race question on the national demographic survey. This was the result of much lobbying by various Afro-Venezuelan organizations with the support of the Inter-American Development Bank (IDB) and the World Bank. With their funding of a 2000 international conference focused on the regional need for national demographic survey racial data, the Inter-American Development Bank and World Bank helped many Latin American countries apply political pressure to their governments.⁶

In addition, the Inter-American Development Bank provided a number of pipeline loans to national statistics institutes to conduct national demographic surveys to improve data collection on race and ethnicity. It has also provided some technical support to finance specialized studies and surveys on race and ethnicity. By 2021, an IDB review of Latin American national demographic survey and other national survey forms found that all countries in the region with the exception of the Dominican Republic include racial category questions.⁷

However, it is not sufficient to simply have a national demographic survey race question if it is poorly constructed in ways that interfere with an accurate and reliable count of AfroLatinx. For that reason, Afro-Colombian social justice activists filed and won a lawsuit against DANE the Colombian national demographic survey entity, when 30.8 percent of the Afro-Colombian population “disappeared” from the 2018 national demographic survey compared to the 2005 national demographic survey.⁸ Notably the 2005 national demographic survey form directly asked whether a respondent considered themselves Black/Afro-Colombian/Afro-descendant based on their cultural ancestry or physical features.⁹

The 2018 national demographic survey form was modified to bury the issue of race to the last option in a 5-part ethnic origin question that many Afro-Colombians lost sight of in the confusion of the 5 subset portions of the question.¹⁰ Moreover, in the instances in which national demographic survey officials filled out the forms upon interviewing the respondents, many national demographic survey officials refrained from asking Afro-Colombians the ethnicity/race question.

As a result, the Colombian Constitutional Court decided that the faulty 2018 national demographic survey dramatic decrease in the count of Afro-Colombians violated their fundamental rights to equality. In the words of the Court, this “irreversible damage” to the statistical visibility of Afro-Colombian communities, affects the “official recognition of the diversity in the Colombian population” and “obstructs the design of suitable public policies that allow overcoming the enormous gaps that disproportionately affect Afro-Colombian populations.”¹¹

The Court ordered the Colombian national demographic survey office to systematically and comprehensively evaluate the internal and external causes for the faulty national demographic survey count of the black population. The national demographic survey evaluation must be done in consultation the representatives from the Black community and Black scholars expert on the topic. The evaluation report must offer better alternatives for the enumeration of Afro-Colombians. A pilot study of the new alternatives must again allow for consultation by the Afro-Colombian community, with a progress report submitted to the Court in preparation for the next national demographic survey enumeration.

As the Colombian example illustrates, in Latin America proper there is a growing recognition of the relevance of acknowledging our racial differences as a path towards true racial equality. It is thus especially ironic that just as Latin America is starting to bring greater attention to the social justice need for racially specific national demographic survey categories, in the U.S. Latinx legacy civil rights organizations are lobbying for a color-blind Latinx “race” category. Their justification is that when Latinx populations in the United States engage national demographic survey forms, their “Latin American cultures” prevent

them from seeing racial differences. Stated differently, while Latin Americans in Latin America do check White and Black national demographic survey racial categories U.S. based Latinx from these same regions are suddenly incapable of doing so once they cross the U.S. border. An honest appraisal shows that it is not culture but race politics that drives the North vs. South regional differences. A U.N. Declaration to promote, protect, and fully respect the human rights of People of African Descent, would aid people of African Descent to dispel the politically constructed mythologies that interfere with the gathering of accurate and reliable racial statistics.

The U.S. Latinx National demographic survey Context

The current U.S. racial and ethnic classifications that the government Office of Management and Budget (OMB) agency devised in 1977 (and revised in 1997) were for the specific purpose of facilitating the application of civil rights laws.¹² By comparing the demographic count of individuals by race to the statistical presence of each racial group in workplaces, housing purchases and rentals, and access to mortgages, racial disparities can be uncovered and then investigated for discriminatory practices. The current format first asks whether someone's ethnicity is Hispanic/Latinx-Origin, followed by a second question of what is their race (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Other). This two-question format recognizes that within Latinx ethnicity there are racial differences.

The OMB proposal now being considered will combine both inquiries into a single question of "What is your race or ethnicity?" and collapse Latinx/Hispanic ethnic identity into the list of racial categories with Black, White, Asian, American Indian, Middle Eastern, Native Hawaiian.¹³ While the OMB proposal is not technically naming Latinx as a Race, by proposing to insert "Latinx" as a category commensurate with "Black," it not only situates Blackness as foreign to Latinx identity it also encourages a view of the Black category as only pertaining to non-Latinx in ways that erase the very existence of AfroLatinx and discourages multiple box checking. Indeed, an analysis of Current Population Survey data, indicated that Latinx are less likely to provide

a racial response in an ethno-racial combined question, than when two separate questions on ethnicity and race are provided.¹⁴ Furthermore, Pew Research has documented how AfroLatinx are more fully counted with questions that do not have them worry that the Black category is only meant for non-Latinx.¹⁵

Importantly, when The AfroLatin@ Forum conducted a survey to understand the racial experience for Latinx, the results showed that there is a necessity to ensure that Black Latinx have ease of access to self-identify on the data collection forms¹⁶ :

Results of our pilot survey show that the best way to account for Black Latinx population is to make sure that they find a place to check themselves. AfroLatinxs, already faced with rejection, questioning, and doubts about their racial experiences, should not be forced to go through extra steps to find themselves and write themselves in a National demographic survey.

This would only be accentuating the violence of invisibility already bestowed on our lives. We have to make it clear and easy for us to express our racial realities. If the National demographic survey is serious about Black Latinx, make sure we can find ourselves swiftly and clearly in the National demographic survey.

For AfroLatinx and others with dark skin in the United States, the race and ethnicity OMB proposal erases how they experience racism compounded by their Blackness. Like in Latin America, we need data that can measure the existence of racial disparities amongst Latinx. As the Pew Research Center and other researchers have long noted, like in Latin America, there are distinct social outcomes based on labor market access, housing segregation, educational attainment and prison sentencing that vary for Latinx if they are dark-skinned and especially if they are visibly AfroLatinx.¹⁷ This is not an insignificant population, given the fact that approximately 90 percent of the enslaved Africans who survived the Middle Passage voyage were taken to Latin America and the Caribbean.¹⁸ In fact, research has persistently demonstrated that despite the fact that

AfroLatinx demonstrate higher levels of education than White Latinx, it is White Latinx who have higher earnings, lower poverty status, lower unemployment rates and possess more assets. Moreover, too often, Latinx decision-makers deny AfroLatinx access to jobs, homes, public accommodations and fair treatment in schools and the criminal justice system.¹⁹ These powerful and disturbing economic and labor market disparities have been able to be documented thanks to the current separate race and ethnicity questions; a statistical viability now under threat.

What then has so many non-Black Latinx in the United States supporting the OMB colorblind proposal in marked contrast to the Latin American shift demand for racially specific national demographic survey categories?²⁰ The notion that Latinx Latin American cultures make Latinx in the U.S. less aware of racial differences is belied by how those in Latin America check White and Black racial boxes. A more relevant factor to consider, is what racial boxes in the U.S. context implicate for Latinx.

U.S. national demographic survey forms use the OMB mandated racial categories, but also include an open-ended Some Other Race (“SOR”) choice to capture the migration of populations not previously pulled in by the traditional racial boxes. Yet it is Latinx who are the most frequent users of the SOR fill-in. Notably, Latinx in the United States use the SOR box more than any other group, writing in responses such as “Mexican,” “Hispanic,” or “Latin American.” Thirty-seven percent of Latinx did so on the 2010 national demographic survey, as did 42 percent on the 2000 national demographic survey.²¹ In contrast, within Latin America the use of an “Other” box is minimal.²²

For U.S. Latinx, SOR is an escape from the discomfort of acknowledging the relevance of racial difference, disparities, harm and privilege that exist within U.S. Latinx ethnicity. The novelist Melissa Rivero captures the U.S. based non-Black Latinx impulse to shy away from racial identification aptly with a character who states:

I am, after all, a child of immigrants, but the wrong type of immigrant . . . I cringe every time a form attempts to reduce me to a simple category. How easy would it be if I could just put myself in a box? Black or White, they say. American Indian, Hispanic or Latinx. But my Spanish is not great. I check “other,” and sometimes in that empty space, I write in *Brooklyn*.²³

For those Latinx without a definitive racial identity as Black, White, Indigenous or Asian, several dynamics interfere with their ability to become allies in the demand for racially specific data to support the needs of racially subordinated Latinx populations. One perspective is embodied by the notion: “I may have light skin and European features, but I don’t identify as White and so I can’t check a race box.” This is a perspective that associates White identity as belonging only to Anglos and European immigrant descended persons. Yet, as previously mentioned in Latin American and the Caribbean, many residents identify as White on government forms without any angst or the use of a Some Other Race category. In other words, the disinclination some Latinx in the United States may have with acknowledging the relevance of their White appearance is not a Latinx culturally determined discomfort with racial categories, but rather a United States-specific dynamic that associates asserting a White identity with Ku Klux Klan membership, or the socio-economic privilege of Anglos across the contiguous United States.

For other Latinx, the disassociation with the White box is tied to the ways in which they experience and observe U.S. based xenophobia and discrimination against Latinx for being Latinx alone. Anti-Latinx discrimination seemingly makes Latinx Whiteness as less White. Nevertheless, even for those light-skin Latinx who do not personally “feel White” in the United States, their White appearance accords them racial privilege denied to darker-skinned Latinx. And that is a phenomenon that the government inquiry into race is meant to measure and in turn address.

Relatedly, Latinx who identify with Latin American inspired racial mixture terms like “Mestizo” or “Brown,” are just as apt as White

identified and White appearing Latinx, to flee national demographic survey racial category boxes. In fact, the congressional mandate to continue including a SOR box on the national demographic survey was instigated by former Representative Jose Serrano, who threatened to block funding of the national demographic survey unless it included this space for Latinx to express their Mestizo identifications.²⁴ Yet these Mestizo identified Latinx do not check multiple racial boxes to indicate the mixture as government forms authorize and invite. They prefer terms of racial ambiguity like Mestizo or country-origins entered into the Some Other Race box that evade association with specific racial origins.

“Brown” is an assertion of being inherently Mestizo (as neither Black nor White, nor definitively Indigenous, but a mixture of some sort). In the 1960s, the Chicano movement galvanized a Brown identity aligned with Mexican indigenous ancestry as a way to articulate how they experienced discrimination and violence at the hands of state institutions as “non-Whites.”²⁵ It is important to note however, that the notion of Brown is purposely vague to include Chicanos and now, Latinx of any shade. In other words, the Brown label is not a skin-shade indicator but rather a rhetorical device for referencing the discrimination that Latinx experience as Latinx (based on surname, accent, Spanish language usage, citizenship status, etc.). However, this form of discrimination is already addressed with Equality Law provisions that rely upon the national demographic survey count of Hispanic/Latinx ethnic origin.²⁶

The language of Brown/Mestizo is also the way in which some Latinx attempt to express how darker skin color, regardless of racial origin, exposes them to discrimination. But what this intuitive communication regarding skin color fails to appreciate, is that skin color stratification is a dynamic that affects many other groups outside of Latinx.²⁷ Using Brown/Mestizo to convey the relevance of skin color is much too imprecise with the huge spectrum of skin-color that can be subjectively included as a result of self-identification being used as the mode of response. “Brown” can mean many things to many people. Social scientists have other

survey methods such as using a skin color palette chart to indicate self-reported and third party observed color differences to more accurately measure the harm that skin color bias imposes across ethnic and racial groups outside of the national demographic survey race question.²⁸ For instance, Mexico's 2017 National Survey on Discrimination utilized a skin color palette chart to measure the barriers to socio economic opportunity that dark skinned versus light skinned persons of either Indigenous or African Descent (or both) experience.²⁹

The disinclination non-Black Latinx have for acknowledging their greater access to societal preferences because of their lighter appearances, was especially on display in the 2020 national demographic survey results. During the months the 2020 national demographic survey was being administered, the nation was sheltering in place from Covid19 transfixed by the multitude of George Floyd inspired #BlackLivesMatter protests on their screens. For Latinx, this moment was also accompanied by the amplification of AfroLatinx voices naming Latinx Whiteness as part of anti-Blackness. Many White presenting Latinx expressed discomfort at being implicated within racism, as reflected in one Latinx's observation "I just don't usually go for White because although my people's colonizers were, I definitely am not."³⁰ Or as some Latinx Twitter users tweeted "I'm not White, I'm Latinx. I've never had White privilege or been look [sic] at as so,"³¹ and "White privilege is a myth. I'm Latinx and even I know White privilege is a myth."³² That Latinx iteration of "White fragility" surfaced in a significant way in the 2020 national demographic survey responses.³³ The number of Latinx who identified as White alone decreased by 52.9%.³⁴

Even more telling, is that there was a landslide shift from White-identified Latinx selecting only the White racial category as they had done in prior national demographic survey es, to large numbers instead selecting White in combination with other racial categories. For instance, Mexican American Julissa Arce had always selected the White box in response to the race question presumably based upon her outward appearance, but on the 2020 national demographic survey

she instead added additional categories such as American Indian, Chinese, and Some Other Race.³⁵ Indeed, the percentage of Latinx White-only response checking declined from 53% to 20.3%, at the same time that the percentage of Latinx multiple race response checking increased from 6% to 32.7%.³⁶ The same pattern also occurred on the island of Puerto Rico's own encounter with #BLM, with the percentage of Latinx White-only response checking declining from 75.8% to 17.1%, at the same time that the percentage of Latinx multiple race response checking increased from 3.3% to 49.8%.³⁷ By electing to group themselves within the amorphous national demographic survey category of "two or more races," White Latinx in Puerto Rico and across the United States hinder the ability to make comparisons that reveal the existence of racial disparities amongst Latinx.

Moreover, the National demographic survey Bureau exacerbated the obfuscation of intra-Latinx racial disparities with its 2020 innovation of listing ethnic origins for the White racial category that noticeably excluded Latinx just as the Black racial category ethnic origins list did. The White racial category instead invited respondents to identify their origins in the White category by listing German, Irish, English, Italian, Lebanese and Egyptian examples. Furthermore, as with prior national demographic survey tabulations, if a Latinx respondent checked the White racial category and nevertheless inserted a Latinx ethnic origin in the SOR write in space, the National demographic survey Bureau counted that as an indication of a Latinx checking Two or More Races to express a multiracial identity. Put together, these two National demographic survey Bureau choices in 2020, resulted in Latinx White-only racial category checking declining by 14 million people, at the same time that the number of Latinx tabulated as White in combination with some other race increased by 15 million.³⁸ This is how the White Hispanic multiracial count increased by 1,106% from 2010 to 2020.³⁹

With one small administrative sleight of hand, the 2020 national demographic survey transformed White Latinx into "multiracial" Latinx whose White privilege can no longer be readily quantified.⁴⁰ The OMB combined question proposal ostensibly seeks to solve a problem that is largely a statistical coding invention of the U.S. National demographic survey Bureau.

Further altering the national demographic survey form to collapse Hispanic ethnicity into the national demographic survey racial categories rather than having it remain a separate ethnicity question will likely escalate the White Latinx population disinclination to acknowledge the significance of their Whiteness and thereby obscure the statistical measure of their socio-economic advantages as compared to AfroLatinx.

This is because when "Hispanic" is juxtaposed as a racial category distinct from others in the United States, Latinx perceive the other categories as pertaining only to non-Hispanics. This helps to explain why Puerto Ricans in Puerto Rico differ in their use of the Some Other Race (SOR) box compared to Puerto Ricans living in the mainland United States. Only 11 percent of Puerto Ricans in Puerto Rico itself selected "Some Other Race" or "Two or More Race" on the 2010 national demographic survey, as compared with the 30.8 percent of mainland Puerto Ricans that selected Some Other Race or Two or More Races.⁴¹ On the island of Puerto Rico, Puerto Ricans can view the racial categories as pertaining to themselves and not exclusively to U.S. mainland racial groups. Thus, checking the White box in Puerto Rico rather than SOR is a reflection of the reality that Whiteness matters in how one is socially positioned within Puerto Rico because of the legacy of Spanish conquest.⁴²

The combined question encouraging Latinx to view the category options other than "Hispanic" as only pertaining to non-Latinx, also problematically impairs the count of AfroLatinx. When the National demographic survey Bureau tested a combined race and ethnicity question in Puerto Rico in which "Hispanic/Puerto Rican" was juxtaposed as commensurate with "Black," Afro Puerto Ricans were less likely to select Black.⁴³ In contrast, when Puerto Rico was listed as an example of Black as well, many more participants checked both Hispanic and Black because that testing alternative did not trigger a perception of Black as only pertaining to African Americans. For stateside Puerto Ricans, national demographic survey box checking always occurs in a context of comparison to the U.S. racial

groups of African Americans and Anglo Whites. Such comparisons thereby implicate Latinx racial attitudes.

The OMB combination-question proposal is rooted in the idea that it is better to create comfort for some Latinx respondents in their preference to avoid thinking about the relevance of racial appearance, over the needs of racially subordinated Latinx who need to have the racial identity that coexists within Latinx ethnicity also recognized. While individual identity is a highly person matter, when a government agency or National demographic survey Bureau asks about race, its collection of the answers matter for the nationwide enforcement of civil rights and monitoring of anti-discrimination law violations.

Proposing to insert “Latinx” as a category commensurate with “Black” not only situates Blackness as foreign to Latinx identity it also encourages a view of the Black category as only pertaining to non-Latinx in ways that harm AfroLatinx civil rights. Specifically, the combined question impedes the legal system’s ability to statistically detect and sanction an employer who systematically rejects qualified AfroLatinx applicants while simultaneously hiring White Latinx. Without racially specific Latinx national demographic survey data to compare to the business’s hiring pattern, an employer’s racism would be swept away with the defense “I do hire Latinx.” Notably a review of employment discrimination cases in the United States indicates that Latinx employers and supervisors do discriminate against AfroLatinx employees and applicants.⁴⁴ Importantly, the anti-Blackness of Latinx employers has been observed not only from White identifying Latinx, but also Latinx who identify as “Brown” or racially mixed “Mestizo.”

Yet the OMB is poised to sacrifice the accurate count of AfroLatinx in ways that will harm AfroLatinx equality. But rather than exploring more nuanced mechanisms for encouraging Latinx populations to desist from the escapism of the SOR category that does not diminish the count of AfroLatinx (such as those recommended by AfroLatinx experts⁴⁵), the OMB at the behest of the National demographic survey

Bureau has been on a campaign since before the 2020 national demographic survey to effectively deracinate Latinx populations. To be clear, there are other ways to address the complexity of Latinx identity that will not risk erasing the racial count of those Latinx whose racialized appearance leaves no ambiguity about the significance of race in their lives.

Conclusion

In short, race matters in Latinx communities, and AfroLatinx need racially specific national demographic survey data for social justice efforts. The way forward cannot be signing onto the OMB proposed conflation of ethnicity with race into a single question that risks obscuring the number of AfroLatinx and the monitoring of socioeconomic status differences of Latinx across races that exist. AfroLatinx scholars have a variety of alternatives that are more responsive to how Latinx interact with racial questions.⁴⁶ These other options include disentangling questions about ancestry from how others perceive you (known as socially ascribed race) amongst others. Importantly, these alternatives do not deracinate Latinx and risk erasing the statistical existence of AfroLatinx. The OMB and the National demographic survey Bureau should be testing these alternatives and consulting these Latinx experts, instead of imposing the single question format proposal as a tepid mechanism for accommodating the discomfort some Latinx have with considering the significance of race, at the very same time that nations across Latin America have reaffirmed the need for accurate race data collection for monitoring racial exclusion.

In the meantime, all Latinx would benefit from reflecting on how their personal identities (as human, Brown, Mestizo, Boricua etc.) in all its richness and complexity, can coexist with a socio-political racial identity connected to how one's physical appearance mediates access or exclusion to opportunity.⁴⁷ It does not make us racist to acknowledge on a government inquiry into race, how our racial appearance is perceived by others within a social hierarchy. The first step to dismantling racism is to have data that shows the patterns of inclusion and exclusion as a tool for intervention, while at the same

time remembering that no form can ever fully encompass all of what we truly are. Data collection forms must ask about race and the race question must be carefully crafted to accurately capture populations of African Descent to show the role that race plays in shaping their lives. A UN Declaration to promote, protect, and fully respect the human rights of People of African Descent, would be a critical tool towards ensuring that accurate and reliable race statistics further the goal of racial equity.

Recommendations

RE: The right of people of African Descent to be included in demographic surveys

Meaningful Inclusion of Afro-descendant Concerns, Experiences, Perspectives & Expertise for designing Data Collection forms requires:

1. Including Afro-descendant members and Afro-descendant demographers with voting rights, on all bodies concerning data collection design and administrative decision making
2. Including Afro-descendant input in the design, wording, & structure of data collection ethno-racial questions
3. Including Afro-descendant input in the administration of field testing of any proposed ethno-racial questions or changes in design to ethno-racial questions
4. Have field testing of proposed ethno-racial questions or changes in design to ethno racial questions within communities with a significant proportion of Afro-descendants
4. Including Afro-descendant data collection administrators and census enumerators in the implementation of data collection and census taking
5. Including Afro-descendant members and Afro-descendant demographers with voting rights on all bodies concerning data collection coding decisions and manner of collating disaggregated racial data

Bibliography

Allen, Reuben, "Investigating the Cultural Conception of Race in Puerto Rico: Residents' Thoughts on the U.S. Census, Discrimination, and Interventionist Policies," *Latin American and Caribbean Ethnic Studies* 12, no. 3 (2017): 201-226.
<https://doi.org/10.1080/17442222.2016.1273855>.

Campbell, Mary E. and Christabel L. Rogalin. "Categorical Imperatives: The Interaction of Latinx and Racial Identification." *Social Science Quarterly* 87, no. 5 (November 2006): 1030-1052.
<https://doi.org/10.1111/j.1540-6237.2006.00414.x>.

Cleland, Danielle, and Angela Gutierrez. "More Than Brown: How Race and Skin Tone Matter for Latinx Group Identity." *APSA Preprints*, (2022): <https://doi.org/10.33774/apsa-2022-4r9wq>.

Colombia, Departamento Administrativo Nacional de Estadística: Censo General 2005 Cuestionarios. October 2005. <https://www.dane.gov.co/files/censo2005/cuestionario.pdf>.

Colombia, Departamento Administrativo Nacional de Estadística. Censo Nacional De Población Y Vivienda. 2018 https://www.dane.gov.co/files/censo2018/informacion-tecnica/Cuestionario_Hogares.pdf.

Comas-Diaz, Lillian. "LatiNegra: Mental Health Issues of African Latinxs." *The Multiracial Racial Borders as New Frontier*, edited by Maria P.P. Root, 167- 190 New York: Sage Publishers, 1996.

Contreras, Russell and Yacob Reyes, "The Multiracial Identity Revolution among U.S. Latinos." *AXIOS*, August 19, 2021. <https://www.axios.com/2021/08/19/multiracial-identity-us-latinos-black-indigenous>.

Darity, Jr., William, Darrick Hamilton and Jason Dietrich. "Passing on blackness: Latinx, race and earnings in the USA." *Applied Economics Letters* 9, no.13 (2010): 847-853.
<https://doi.org/10.1080/13504850210149133>.

DiAngelo, Robin, *White Fragility: Why It's So Hard for White People to Talk About Racism*, Boston: Beacon Press, 2018.

Dinzey-Flores, Zaire Z., "Stop Sacrificing Black Latinx: The Census & the Racial Mis-Count of Latinx." *Black Latinxs Know Collective Blog*, March 31, 2023. <https://www.blackLatinxsknow.org/post/stop-sacrificing-black-latinxs-the-census-the-racial-mis-count-of-latinxs>.

Duany, Jorge, *The Puerto Rican Nation on the Move: Identities on the Island and the United States*. Chapel Hill, NC: University of North Carolina Press, 2002.

Flores, Carlos. "Race Discrimination Within the Latinx Community." *Diálogo, Center for Latinx Research DePaul University* 5, no. 1 (2001): 30-31. <https://via.library.depaul.edu/dialogo/vol5/iss1/9>.

Gravlee, Clarence C., William W. Dressler, and H. Russell Bernard. "Skin Color, Social Classification, and Blood Pressure in Southeastern Puerto Rico." *American Journal of Public Health* 95, no. 12 (2005): 2191-2197. <https://doi.org/10.2105/AJPH.2005.065615>

Galdamez, Misael, et. al. *Centering Black Latinidad: A Profile of the US AfroLatinx Population and Complex Inequalities*. Los Angeles: Latinx Policy & Politics Institute, 2023. <https://Latinx.ucla.edu/research/centering-black-latinidad/>. Giron, Jonathan. Twitter Post.

Glenn, Evelyn Nakano ed., *Shades of Difference: Why Skin Color Matters*. Stanford, CA: Stanford University Press, 2009.

Gonzalez, Dulce et. al. *Observing Race and Ethnicity through a New Lens: An Exploratory Analysis of Different Approaches to Measuring "Street Race"*. Washington, D.C.: Urban Institute, 2022.

<https://www.urban.org/sites/default/files/2022-12/Observing%20Race%20and%20Ethnicity%20through%20a%20New%20Lens.pdf>.

Gonzalez-Barrera, Ana. *About 6 million U.S. adults identify as AfroLatinx* Washington, D.C: Pew Research Center, 2022.

<https://www.pewresearch.org/short-reads/2022/05/02/about-6-million-u-s-adults-identify-as-afro-latino/>.

Gonzalez-Barrera, Ana. *Hispanics with darker skin are more likely to experience discrimination than those with lighter skin*. Pew Research Center: Fact Tank: News in the Numbers. Washington, D.C.: Pew Research Center, 2019. <https://www.pewresearch.org/short-reads/2019/07/02/hispanics-with-darker-skin-are-more-likely-to-experience-discrimination-than-those-with-lighter-skin/>.

Gosin, Monika. "A bitter diversion': Afro-Cuban immigrants, race, and everyday-life resistance." *Latino Studies* 15, no. 1 (2017): 4-28.

<https://doi.org/10.1057/s41276-017-0046-2>.

Haney Lopez, Ian F. *Racism on Trial: The Chicago Fight for Justice*. Cambridge: Harvard University Press, 2004.

Haslip-Viera, Gabriel. *Puerto Rican Hispanophilia and Puerto Rican Hispanophiles in the early twenty-first century*. New York: Latinx Studies Press, 2019.

Haywood, Jasmine M. "Latinx spaces have always been the most violent': AfroLatinx collegians' perceptions of colorism and Latinx intragroup marginalization." *International Journal of Qualitative Studies in Education* 30, no. 8 (September 2017): 759-82. <https://doi.org/10.1080/09518398.2017.1350298>.

Hernandez v. Texas 347 U.S. 475, 479-80 (1954).

Hernández, Tanya Katerí. *Racial Innocence: Unmasking Latinx Anti-Black Bias and the Struggle for Equality*. Boston: Beacon Press, 2022.

Hernández, Tanya Katerí. "Latinx Antiblack Bias and the Census Categorization of Latinx: Race, Ethnicity, or Other?" In *Antiblackness*, edited by Moon-Kie Jung and Joao H. Costa Vargas, 283-96. Durham, NC: Duke University Press, 2021.

Hernández, Tanya Katerí. "The Magical Transformation of White Latinx into Multiracial Latinx." *Latinx Rebels*, December 1, 2021. <https://www.Latinxrebels.com/2021/12/01/multiracialLatinx/>.

Hernández, Tanya Katerí, *Multiracials and Civil Rights: Mixed-Race Stories of Discrimination* New York: NYU Press, 2018.

Hernández, Tanya Katerí, *Racial Subordination in Latin America: The Role of the State, Customary Law, and the New Civil Rights Response* Cambridge: Cambridge University Press, 2013.

Hernández, Tanya Katerí, “Too Black to Be Latino/a’ Blackness and Blacks as Foreigners in Latinx Studies,” *Latino Studies* 1 (2003): 152-159. <https://doi.org/10.1057/palgrave.lst.8600011>

Hogan, Howard, “Reporting of race among Hispanics: Analysis of ACS data.” *The Frontiers of applied demography*, edited by David Swanson, 169-191. Cham, Switzerland: Springer International 2016. https://doi.org/10.1007/978-3-319-43329-5_9.

Holder, Michelle, and Alan A. Aja. *Afro-Latinos in the U.S. Economy*. Boston: Rowman & Littlefield, 2021.

Ilex Accion Juridica vs. DANE, Tutela T-276 (2022).

Instituto Nacional de Estadística y Geografía (INEGI de Mexico), Encuesta Nacional sobre Discriminación. 2017, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/estsociodemo/enadis2017_08.pdf

Inter-American Commission on Human Rights, Economic, Social, Cultural and Environmental Rights of Persons of African Descent, *Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination*. OEA/Ser.L/V/II. Washington, D.C.: Organization of American States, 2021.

Inter-American Development Bank. “Political Feasibility Assessment: Country Potential for New Research on Race in Latin America.” Presentation, International Conference, Todos Contamos: Los Grupos Étnicos en los Censos, Cartagena de Indias, November 8–10, 2000.

Irizarry, Yasmiyn, Ellis Monk, Jr. and Ryon J. Cobb. "Race-shifting in the United States: Latinxs, Skin-Tone, and Ethnoracial Alignments." *Sociology of Race and Ethnicity* 9, no. 1 (2022): 37-55.
<https://doi.org/10.1177/23326492221114813>.

"Latino/Hispanic is Not a Race," Latino/Hispanic is not a race. <https://www.latinoisnotarace.info/resources>.

LaVeist-Ramos, Thomas Alexis, Jessica Galarraga, Roland J. Thorpe Jr., Caryn N. Bell, and Chermeia J. Austin. "Are black Hispanics black or Hispanic? Exploring disparities at the intersections of race and ethnicity." *Journal Epidemiological Community Health* 66, no. 7(2012): 1-5. <https://doi.org/10.1136/jech.2009.103879>.

Lima, Márcia, and Luiz Augusto Campos. "Apresentação: inclusão racial no ensino superior impactos, consequências e desafios." *Novos estudos CEBRAP* 39, (2020): 245-254.
<https://doi.org/10.25091/S01013300202000020001>.

López, Nancy, Edward Vargas, Melina Juarez, Lisa Cacari-Stone and Sonia Bettez. "What's Your 'Street Race'? Leveraging Multidimensional Measures of Race and Intersectionality for Examining Physical and Mental Health Status among Latinx." *Sociology of Race and Ethnicity* (2018): 49-66. <https://doi.org/10.1177/2332649217708798>.

Lowe, Jr., Ricardo Henrique, "Census Bureau's Proposal Threatens Integrity of Race and Ethnicity Data," *UT News*, Dec. 8, 2023, <https://news.utexas.edu/2023/12/08/census-bureaus-proposal-threatens-integrity-of-race-and-ethnicity-data/>.

Minority Rights Group, ed., *No Longer Invisible: Afro-Latin Americans Today*. London: Minority Rights Publications, 1995.

Monk Jr., Ellis P. "The unceasing significance of colorism: Skin tone stratification in the United States." *Daedalus* 150, no. 2 (2021): 76-90.
https://doi.org/10.1162/daed_a_01847.

Morrison, Judith, et al, *Recommendations on Diversity Data in the Social Sector* Washington, D.C.: Inter-American Development Bank, 2021.

<https://publications.iadb.org/en/publications/english/viewer/Recommendations-on-Diversity-Data-in-the-Social-Sector.pdf>.

Morrison, Judith, et al, *Counting Ethnicity and Race: Harmonizing Race and Ethnicity Data in Latin America (2000-2016)*. Washington, D.C.: Inter American Development Bank, 2017, <https://publications.iadb.org/en/counting-ethnicity-and-race-harmonizing-race-and-ethnicity-data-latin-america-2000-2016>.

Noe-Bustamante, Luis. *Latinx experience discrimination from other Latinx about as much as from non-Latinx*. Washington, D.C.: Pew Research Center, 2022. <https://www.pewresearch.org/short-reads/2022/05/02/latinos-experience-discrimination-from-other-latinos-about-as-much-as-from-non-latinos/>.

Office of Management and Budget, “Initial Proposals for Updating OMB’s Race and Ethnicity Statistical Standards.” *Federal Register* 88, (January 27, 2023): 5375. <https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards>.

Ortega, Idsa E. Alegría and Palmira N. Ríos González, eds., *Contrapunto de género y raza en Puerto Rico*, Puerto Rico: Centro de Investigaciones Sociales, 2005.

Passel, Jeffrey S. and Jens Manuel Krogstad. 2023. *How a coding error provided a rare glimpse into Latinx identity among Brazilians in the U.S.* Washington, D.C.: Pew Research Center, 2023. <https://www.pewresearch.org/short-reads/2023/04/19/how-a-coding-error-provided-a-rare-glimpse-into-latino-identity-among-brazilians-in-the-u-s/#:~:text=Many%20Brazilians%20say%20they%20are,United%20States%20>.

Parker, Kim, “The Many Dimensions of Hispanic Racial Identity,” Washington, D.C.: Pew Research Center, 2015), <https://www.pewresearch.org/social-trends/2015/06/11/chapter-7-the-many-dimensions-of-hispanic-racial-identity/>.

Questionnaires; number, form, and scope of inquiries, 13 USC § 5 (2024). Rivero, Melissa. *Flores and Miss Paula*. New York: Harper Collins, 2023.

Rosenblum, Alexis, William Darity, Jr., Angel L. Harris, and Tod Hamilton. "Looking through the Shades: The Effect of Skin Color on Earnings by Region of Birth and Race for Immigrants to the United States." *Sociology of Race and Ethnicity* 2, no. 1 (2016): 87-105.

Telles, Edward E., *Pigmentocracies: Ethnicity, Race, and Color in Latin America*. Chapel Hill: UNC Press, 2014.

"Trans-Atlantic Slave Trade Estimates". Trans-Atlantic Slave Trade Estimates, SlaveVoyages.

<https://www.slavevoyages.org/assessment/estimates>.

U.S. Census Bureau, "2020 Census: Redistricting File (Public Law 94-171) Dataset" (tabulated from census dataset).

<https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html#P1>.

U.S. Census Bureau, "Hispanic or Latinx Origin by Race: 2010 and 2020." <https://www2.census.gov/programs-surveys/decennial/2020/data/redistricting-supplementary-tables/redistricting-supplementary-table-04.pdf>.

U.S. Census Bureau, "Race and Ethnicity in the United States: 2010 Census and 2020 Census."

<https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

Village of Freeport v. Barrella, 814 F.3d 594, 598 (2nd Cir. 2016).

Wang, Hansi Lo, "The 2nd-Largest Racial Group in the U.S. Is 'Some Other Race,'" *GBH News*, Sept. 30, 2021,

<https://www.wgbh.org/news/national/2021-09-30/the-2nd-largest-racial-group-in-the-u-s-is-some-other-race-most-are-latino>.

Endnotes

¹ This Commentary draws on the research from my forthcoming publication, “Transnational Census Racial Politics and Latinx Civil Rights,” in *AfroLatinidades: Transnational Connections in Afro-Latin American and Afro-Latinx Studies*, eds. Michele Reid-Vazquez & Victor Figueroa.

² Inter-American Commission on Human Rights, Economic, Social, Cultural and Environmental Rights of Persons of African Descent, *Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination* (Washington, D.C.: Organization of American States, 2021), 34 <https://www.oas.org/en/iachr/reports/pdfs/desca-afro-en.pdf>.

³ Tanya Kateri Hernandez, *Racial Subordination in Latin America: The Role of the State, Customary Law, and the New Civil Rights Response* (Cambridge: Cambridge Univ. Press, 2013), 131.

⁴ *Id.*

⁵ Márcia Lima and Luiz Augusto Campos. “Apresentação: inclusão racial no ensino superior impactos, consequências e desafios.” *Novos estudos CEBRAP* 39 (2020): 245-254.

⁶ “Political Feasibility Assessment: Country Potential for New Research on Race in Latin America,” presentation at “International Conference, Todos Contamos: Los Grupos Étnicos en los Censos,” Inter-American Development Bank, Cartagena de Indias (November 8–10, 2000).

⁷ Judith Morrison, et al, *Recommendations on Diversity Data in the Social Sector* (Washington, DC: Inter-American Development Bank, 2021), 15-16.

<https://publications.iadb.org/en/publications/english/viewer/Recommendations-on-Diversity-Data-in-the-Social-Sector.pdf>

⁸ *Ilex Accion Juridica vs. DANE, Tutela T-276 (2022)*. <https://www.corteconstitucional.gov.co/Relatoria/2022/T-276-22.htm>.

⁹<https://www.dane.gov.co/files/censo2005/cuestionario.pdf>

¹⁰https://www.dane.gov.co/files/censo2018/informacion-tecnica/Cuestionario_Hogares.pdf

¹¹ *Ilex Accion Juridica vs. DANE*, Tutela T-276 (2022).

¹² Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Federal Register 58782 (1997), <https://www.federalregister.gov/documents/1997/10/30/97-28653/revisions-to-the-standards-for-the-classification-of-federal-data-on-race-and-ethnicity> .

¹³ Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards 88, Federal Register 5375-5384, Jan. 27, 2023, <https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards>

¹⁴ Mary E. Campbell and Christabel L. Rogalin, "Categorical Imperatives: The Interaction of Latinx and Racial Identification," *Social Science Quarterly* Vol. 87, No. 5, Special Issue on Ethnicity and Social Change (December 2006), pp. 1030-1052. ¹⁵ Ana Gonzalez-Barrera, "About 6 million U.S. adults identify as AfroLatinx." Pew Research Center Report, May 2, 2022, <https://www.pewresearch.org/short-reads/2022/05/02/about-6-million-u-s-adults-identify-as-AfroLatinx/>.

¹⁶ Zaire Z. Dinzey-Flores, "Stop Sacrificing Black Latinx: The Census & the Racial Mis-Count of Latinx," Black Latinxs Know Collective Blog, March 31, 2023, <https://www.blackLatinxsknow.org/post/stop-sacrificing-black-latinxs-the-census-the-racial-mis-count-of-latinxs>.

¹⁷ Luis Noe-Bustamante, "Latinx experience discrimination from other Latinx about as much as from non-Latinx." Pew Research Center, May 2, 2022 (www.pewresearch.org).

¹⁸ *SlaveVoyages*, Trans-Atlantic Slave Trade Estimates, (<https://www.slavevoyages.org/assessment/estimates>).

¹⁹Tanya Kateri Hernandez, *Racial Innocence: Unmasking Latinx Anti-Black Bias and the Struggle for Equality*: Beacon Press, 2022).

²⁰[Data from survey of OMB public commentary response]

²¹Kim Parker, "The Many Dimensions of Hispanic Racial Identity," Pew Research Center (June 11, 2015), <https://www.pewresearch.org/social-trends/2015/06/11/chapter-7-the-many-dimensions-of-hispanic-racial-identity/>.

²²Judith Morrison, et al, "Counting Ethnicity and Race: Harmonizing Race and Ethnicity Data in Latin America (2000-2016) Inter-American Development Bank Technical Note IDB-TN-1353 (2017),

²³Melissa Rivero, *Flores and Miss Paula* (New York: Harper Collins, 2023), 65-66. ²⁴13 USC § 5 (2024), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title13-section5&num=0&edition=prelim>.

²⁵Ian F. Haney Lopez, *Racism on Trial: The Chicago Fight for Justice* (Cambridge: Harvard Univ. Press, 2004).

²⁶*Village of Freeport v. Barrella*, 814 F.3d 594, 598 (2nd Cir. 2016).

²⁷*Shades of Difference: Why Skin Color Matters* 236-244 (2009 Stanford Univ. Press book chapter, Evelyn Nakano Glenn, ed.).

²⁸Edward E. Telles, *Pigmentocracies: Ethnicity, Race, and Color in Latin America* (Chapel Hill: UNC Press, 2014); Ellis P. Monk Jr, "The unceasing significance of colorism: Skin tone stratification in the United States." *Daedalus* 150.2 (2021): 76-90.

²⁹Instituto Nacional de Estadística y Geografía (INEGI de Mexico), Encuesta Nacional sobre Discriminación (2017), chrome

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/estsociodemo/enadis2017_08.pdf.

³⁰ Russell Contreras and Yacob Reyes, “The Multiracial Identity Revolution among U.S. Latinos,” AXIOS, Aug. 19, 2021,

<https://www.axios.com/2021/08/19/multiracial-identity-us-latinos-black-indigenous>. ³¹ 1andOnlyAlpha. Twitter Post, <https://twitter.com/1andOnlyAlpha>.

³² Giron, Jonathan. Twitter Post.

³³ Robin DiAngelo, *White Fragility: Why It's So Hard for White People to Talk About Racism*, (Boston: Beacon Press, 2018).

³⁴ US Census Bureau, “Hispanic or Latinx Origin by Race: 2010 and 2020” (percentages based on the total Hispanic populations for 2010 and 2020 respectively). ³⁵ Hansi Lo Wang, “The 2nd-Largest Racial Group in the U.S. Is ‘Some Other Race,’” GBH News, Sept. 30, 2021, <https://www.wgbh.org/news/national/2021-09-30/the-2nd-largest-racial-group-in-the-u-s-is-some-other-race-most-are-latino>.

³⁶ U.S. Census Bureau, “Hispanic or Latinx Origin by Race: 2010 and 2020.”

³⁷ US Census Bureau, “Race and Ethnicity in the United States: 2010 Census and 2020 Census” (percentages based on the total Hispanic populations for 2010 and 2020 respectively).

³⁸ US Census, “2020 Census: Redistricting File (Public Law 94-171) Dataset” (tabulated from census dataset).

³⁹ Ricardo Henrique Lowe, Jr., “Census Bureau’s Proposal Threatens Integrity of Race and Ethnicity Data,” *UT News*, Dec. 8, 2023, <https://news.utexas.edu/2023/12/08/census-bureau-proposal-threatens-integrity-of-race-and-ethnicity-data/>

⁴⁰ <https://www.latinorebels.com/2021/12/01/multiraciallatinos/>

⁴¹ Howard Hogan, “Reporting of Race Among Hispanics: Analysis of ACS Data,” in *Frontiers of Applied Demography*, ed. David A. Swanson (Cham, Switzerland: Springer International 2016), 169-191; Reuben Allen, “Investigating the Cultural Conception of Race in Puerto Rico: Residents’ Thoughts on the U.S. Census, Discrimination, and

Interventionist Policies,” *Latin American and Caribbean Ethnic Studies* 12, no. 3 (2017): 201-226.

⁴² *Contrapunto de género y raza en Puerto Rico*, eds. Idsa E. Alegría Ortega & Palmira N. Ríos González (Puerto Rico: Centro de Investigaciones Sociales, 2005); Gabriel Haslip-Viera, *Puerto Rican Hispanophilia and Puerto Rican Hispanophiles in the early twenty-first century* (New York: Latinx Studies Press, 2019).

⁴³ Ricardo Henrique Lowe, Jr., “Census Bureau’s Proposal Threatens Integrity of Race and Ethnicity Data,” *UT News*, Dec. 8, 2023, <https://news.utexas.edu/2023/12/08/census-bureaus-proposal-threatens-integrity-of-race-and-ethnicity-data/>.

⁴⁴ Tanya Katerí Hernández, *Racial Innocence; Unmasking Latinx Anti-Black Bias and the Struggle for Equality* (Boston: Beacon Press, 2022).

⁴⁵ Nancy López, Edward Vargas, Melina Juarez, Lisa Cacari-Stone and Sonia Bettez. 2017. “What’s Your ‘Street Race’? Leveraging Multidimensional Measures of Race and Intersectionality for Examining Physical and Mental Health Status among Latinx.” *Sociology of Race and Ethnicity* 1-18; Clealand, Danielle, and Angela Gutierrez. 2022. “More Than Brown: How Race and Skin Tone Matter for Latinx Group Identity.” APSA Preprints, <https://preprints.apsanet.org/engage/apsa/article/details/63581619311072do65ef6a4f1>; Zaire Z. Dinzey-Flores, “Stop Sacrificing Black Latinx: The Census & the Racial Mis-Count of Latinx,” *Black Latinxs Know Collective Blog*, March 31, 2023, <https://www.blacklatinasknow.org/post/stop-sacrificing-black-latinxs-the-census-the-racial-mis-count-of-latinxs>.

⁴⁶ Latino/Hispanic is Not a Race, <https://www.latinoisnotarace.info/resources>.

⁴⁷ Tanya Kateri Hernandez, *Multiracials and Civil Rights: Mixed-Race Stories of Discrimination* (New York: NYU Press, 2018).

WRITTEN SUBMISSION

Expert Consultation for the United Nations Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent

Margareta Matache, Lecturer, Department of Social and Behavioral Sciences, Harvard T. H. Chan School of Public Health and Director of the Roma Program, Harvard FXB Center for Health and Human Rights

SUGGESTIONS:

1. **Preamble Declaration (pp. 2-3)**

- a) Incorporate a precise definition of structural racism into the text of the Declaration and consider several key elements:
 - the totality of manifestations of racism;
 - the continuities of oppression;
 - the legacies of past injustices;
 - the interactions between levels, methods, and pillars of racism
 - the interactions between varied oppressions, including patriarchy, racial capitalism, and ableism.
- b) Include the development of an Index of Structural Racism, one similar to the UN Multidimensional Poverty Index.
- c) Include racialized and gendered capitalism.

2. **Article 6.**

Add:

- a) The Right to Justice and Reparations shall extend to other racialized populations who have been victims of historical and collective injustices. The racialized and chattel enslavement of Roma people in two historical principalities of Romania, reflecting a form of internal coloniality, must also be addressed through just and appropriate reparations.

3. **Article 7.**

Add:

- a) The rights outlined in this Declaration shall equally apply to other racialized populations and racialized global diasporas, including the Roma people. Comprehensive regulations, tools, measures, and references shall be developed to address distinct structural racisms, such as anti-Roma racism and anti-Roma/Gypsy/Sinti/Traveller racism in Europe.

Consulta de Expertos para la “Declaración de las Naciones Unidas sobre la Promoción, Protección y Pleno Respeto de los Derechos Humanos de los Afrodescendientes” 7-8 de marzo de 2024

Facultad de Derecho de Harvard, Cambridge, Massachusetts
Lugar: 2019 Milstein East C, Wasserstein Hall (WCC)

Afrodescendientes Reconocimiento, Justicia y Desarrollo

Pastor Murillo

Miembro Foro Permanente sobre los Afrodescendientes, de las
Naciones Unidas, PFPAD
Punto focal ante el IGWG

El presente documento tiene como propósito aportar información en torno a la evolución y perspectivas del Proyecto de “Declaración de las Naciones Unidas sobre la Promoción, Protección y Pleno Respeto de los Derechos Humanos de los Afrodescendientes”. En ese sentido, se destacan elementos relativos al contexto y el contenido del proyecto de Declaración, analizando su valor agregado, los asuntos que se consideran contenciosos, así como vacíos del Proyecto y, de manera especial, se abordan las observaciones preliminares del Foro Permanente sobre los afrodescendientes, así como las perspectivas con miras a la adopción de la Declaración.

1. Profundización de los derechos de los afrodescendientes en un contexto de crisis global

La conversación que nos convoca coincide con la conmemoración de los *75 años de la Declaración Universal de los Derechos Humanos*, adoptada por la Organización de las Naciones Unidas en 1948, tras la Segunda Guerra Mundial, una tragedia humana motivada en el desprecio del otro. Por caprichos de la historia, hoy asistimos a una escalada de conflictos, donde la negación de la esencia humana está nuevamente en el centro y amenaza seriamente la paz y la seguridad internacionales.

En esta ocasión, las tensiones convergen con nuevos retos globales incluidos la migración a gran escala; la crisis climática; la instrumentalización política del racismo, que incluye la *teoría de la reconversión demográfica o recambio*; la pérdida de la confianza en la democracia y en las instituciones; las tensiones en torno a las identidades de género y étnicas; el envejecimiento de la población en algunas regiones del mundo; y los impactos disruptivos de la inteligencia artificial, en particular, en lo que concierne a la desigualdad y al *sesgo algorítmico*, que deriva en formas contemporáneas de discriminación.

Por múltiples razones, los africanos y los afrodescendientes, que juntos representan el grupo poblacional más grande a nivel global, esto es, alrededor de 1.600 millones de personas, se encuentran en el centro de tales retos. Cabe destacar que africanos y afrodescendientes se localizan en áreas clave para la transición energética, debido sus riquezas en materia de recursos naturales; muchas comunidades de afrodescendientes se ubican en zonas geográficas de especial importancia para la cadena de suministros, debido a su intersección con varios de los principales puertos - y el Canal de Panamá -, en particular en América Latina. Africanos y afrodescendientes cuentan con un bono demográfico por poseer la población más joven.

En ese contexto, cobran especial relevancia, las demandas de los afrodescendientes, por mayor *reconocimiento, justicia y desarrollo*. La Declaración, tiene la potencialidad de compendiar el camino recorrido y delinear las metas aspiracionales de los y las afrodescendientes, en momentos donde es necesario profundizar la defensa de los derechos humanos como agenda central en la geopolítica.

2. El camino hacia una “Declaración Internacional sobre el Respeto, la Protección y la Realización de los Derechos Humanos de los Afrodescendientes”

Desde la perspectiva de la agencia del Movimiento Social Afrodescendiente, la Declaración en progreso hunde sus raíces en la [Declaración sobre los Derechos de los Pueblos Negros del Mundo, liderada por Marcus Garvey](#) y adoptada en Nueva York, en 1920, en un

foro que contó con la participación de más de 10 mil personas. A instancias de las Naciones Unidas, en 2012, el Comité para la Eliminación de la Discriminación Racial, decidió “Proponer la elaboración de una declaración sobre la promoción y el pleno respeto de los derechos humanos de los afrodescendientes”, ([CERD A/67/18](#)). Por su parte, la formulación del proyecto de la Declaración se contempla en la Resolución [A/RES/76/226](#) de 2021, de la Asamblea General de la ONU:

“...Recuerda también el programa de actividades del Decenio Internacional de los Afrodescendientes, en el que se recomendó que se estableciese un foro para los afrodescendientes y que se considerase la posibilidad de preparar un proyecto de declaración de las Naciones Unidas sobre la promoción y el pleno respeto de los derechos humanos de los afrodescendientes.

(...) Solicita al [Grupo de Trabajo Intergubernamental sobre la Aplicación Efectiva de la Declaración y el Programa de Acción de Durban](#), IGWG, que dedique por lo menos la mitad de su período de sesiones anual a la elaboración de un proyecto de declaración de las Naciones Unidas sobre la promoción y el pleno respeto de los derechos humanos de los afrodescendientes, que se estudiará en el acto de clausura de alto nivel del Decenio Internacional de los Afrodescendientes y que se celebrará en el último año del Decenio.

(...) Invita al [Foro Permanente sobre los Afrodescendientes](#) y al [Grupo de Trabajo de Expertos sobre los Afrodescendientes](#) a que, de conformidad con sus respectivos mandatos, contribuyan a elaborar un proyecto de declaración de las Naciones Unidas sobre la promoción y el pleno respeto de los derechos humanos de los afrodescendientes”.

Así, en cumplimiento del mandato de la Asamblea General de las Naciones Unidas y tras consultas con los diferentes grupos regionales, la presidencia del IGWG, puso a consideración un [Proyecto inicial de Declaración](#), que incluyó las contribuciones iniciales del Foro Permanente sobre los Afrodescendientes y de otras partes interesadas. Tras varias sesiones en las que se produjeron avances sustanciales, sorpresivamente, los Estados solicitaron a la presidencia un [nuevo documento](#), centrado en el lenguaje de Durban, lo que, a mi juicio, supuso

un gran retroceso, toda vez que la Declaración y Programa de Acción de Durban se enfoca en *la cuestión del racismo y la discriminación racial, que, no obstante su centralidad,, es solo una de las dimensiones que comporta el abordaje de los derechos de los afrodescendientes*. Las consideraciones contenidas en el presente documento, se inscriben en el Proyecto inicial de Declaración.

Valor agregado de la Declaración. La Declaración de la ONU que nos ocupa se enuncia como el primer instrumento de reconocimiento universal de los derechos individuales y colectivos de los afrodescendientes; que fijará los estándares de sus derechos nacionales e internacionales y tiene la potencialidad de trascender a un instrumento vinculante, como ha sido anticipado por la propia Asamblea General de la ONU. El antecedente más relevante es la [Recomendación General 34 sobre racismo y discriminación racial contra los afrodescendientes](#) (CERD, 2011), que enuncia algunos estándares de sus derechos, incluidos sus derechos colectivos.

La Declaración será el primer catalogo universal que fijará los estándares de los derechos humanos de los afrodescendientes, incluidos, el reconocimiento su condición de sujeto individual y colectivo de derecho internacional, que comporta su condición de pueblo. También permitirá abordar las formas contemporáneas de racismo y discriminación racial, incluido el sesgo algorítmico y, finalmente, el derecho a la justicia y la reparación material, moral y espiritual por los daños derivados de la trata trasatlántica, la esclavización y la prolongación de sus consecuencias.

Tres generaciones de derecho de los afrodescendientes. En el marco jurídico de los afrodescendientes se identifican tres generaciones de derechos: una primera generación sobre el derecho a la libertad, consagrado en las leyes abolicionistas; una segunda generación, centrada en el derecho a la igualdad y a la no discriminación y el reconocimiento de su condición de pueblo libre de autodeterminación y de grupo étnico, lo que comporta el reconocimiento de su condición de sujeto colectivo con derechos colectivos. De allí también se deriva el derecho a decidir sobre sus conocimientos, innovaciones y prácticas tradicionales asociados a los recursos genéticos y sus productos

derivados y a una participación equitativa por los beneficios derivados de su aprovechamiento, conforme está consagrado en diversos instrumentos jurídicos internacionales y nacionales; y una tercera generación relativa al *derecho a la reparación histórica* por la trata trasatlántica, la esclavización y la prolongación de sus consecuencias. Esta generación de derechos también incluye la justicia climática.

En ese sentido, *la Declaración se proyecta como la piedra angular de la tercera generación de derechos de los afrodescendientes*, misma que estará centrada en la *justicia reparadora*, asunto que promete ser el eje gravitacional de la agenda de los derechos humanos en las próximas décadas.

Finalmente, el camino hacia la Declaración también tiene la potencialidad de contribuir a la reconstrucción del puente entre africanos y afrodescendientes, a la concertación y adopción de una agenda común en torno asuntos clave como las reparaciones, que trascienda a los propios afrodescendientes. Es una oportunidad excepcional para entablar un diálogo franco y constructivo con los Estados y otras partes interesadas.

3. El Proyecto de Declaración

Ámbito y contenido. La Declaración busca amparar a todas las personas que se autodefinen como afrodescendientes. En su preámbulo, establece el marco jurídico, contextual, situacional, institucional e instrumental que constituyen la arquitectura actual de los derechos de los afrodescendientes en el Sistema Universal de Protección de los Derechos Humanos; reafirma la vigencia de los principios universales de derechos humanos; condena el racismo sistémico o estructural y delinea las metas aspiracionales de los afrodescendientes.

El Proyecto de Declaración abarca la amplia gama de los derechos políticos, económicos, sociales, culturales y ambientales de los afrodescendientes, así mismo otros derechos históricamente negados como el derecho a la reparación y el derecho a la participación equitativa de los beneficios derivados del acceso a los conocimientos tradicionales, asociados a los recursos genéticos. También busca abarcar la justicia climática y las formas contemporáneas de racismo y discriminación racial, en particular el *sesgo algorítmico*.

Asuntos contenciosos. Varias delegaciones, en particular del Grupo Occidental, se resisten al reconocimiento de los afrodescendientes como sujeto colectivo. Insisten en adscribirlos a la mera condición de individuos. Consecuentes con dicha posición se niegan a que la Declaración incorpore los conceptos de pueblo y libre autodeterminación. El mismo bloque, se opone al reconocimiento de derechos colectivos, en clara oposición al principio de la diversidad y al pluralismo jurídico. En efecto, en América Latina los derechos aquí enunciados gozan de raigambre constitucional y legal en muchos países.

De igual manera, como era de esperar, el Bloque Occidental se opone a que la Declaración comporte el reconocimiento del derecho a la reparación por los daños derivados de la trata trasatlántica y la esclavización. Sorprende, igualmente, que pese al estado de la conversación global sobre cambio climático y a la importancia crítica que para la sostenibilidad del planeta revisten los territorios ancestrales de los afrodescendientes, varias delegaciones del mismo bloque Occidental se opongan a las disposiciones relativas a la justicia climática. Por su parte, algunas delegaciones, en particular de países con Gobiernos teocráticos, vetan cualquier referencia al género y a la interseccionalidad. También se observa una valoración reducida respecto a los alcances del racismo sistémico que acusan los afrodescendientes.

Algunos vacíos. El Proyecto adolece de una definición de afrodescendientes. Una aproximación en ese sentido podría contener, entre otros, los siguientes elementos:

Afrodescendientes. Se entiende como tal, al conjunto de pueblos, de familias, de individuos de ascendencia africana que poseen una cultura autónoma, comparten una historia y tienen sus propias tradiciones y costumbres que revelan y conservan conciencia de identidad que las distinguen de otros grupos étnicos. también denota a los hijos de las víctimas de la trata trasatlántica de esclavos y sus migraciones posteriores.

Si bien el Proyecto aborda la cuestión de la inteligencia artificial y el sesgo algorítmico, aún requiere mayores desarrollos en esos ámbitos.

El Proyecto no aborda, a profundidad, los traumas intergeneracionales de la esclavización, incluso en el ámbito de la salud y adolece de indicadores para su evaluación y seguimiento.

4. Observaciones preliminares del Foro Permanente sobre los Afrodescendientes, con miras a la Declaración.

Como se señala [en el Informe del Foro Permanente sobre los Afrodescendientes acerca de sus períodos de](#), el Foro concede gran importancia a la elaboración de una Declaración que complemente, amplíe y complete los instrumentos de derechos humanos vigentes relativos a los afrodescendientes. Igualmente, afirma que la Declaración será un instrumento fundamental para garantizar la dignidad, la inclusión, la equidad y la justicia reparadora a los africanos y los afrodescendientes.

El Foro se hace eco de las voces que señalan que la Declaración debe rendir homenaje a los orígenes afrodescendientes, reconocer la importancia de la Declaración y el Programa de Acción de Durban y señalar las injusticias históricas de la esclavitud, la colonización y el desposeimiento. También debería mencionar las nociones de identidad, reconocimiento, igualdad y no discriminación; el derecho a la vida y a la seguridad, incluida la salud física y los traumas intergeneracionales, incluso en el ámbito de la salud mental; el derecho a la cultura y a la historia; los derechos a la participación y a la libre determinación; el derecho a la igualdad en la distribución de los bienes económicos y el progreso; y el derecho a la justicia.

El Foro Permanente valora la clara adhesión de varias delegaciones y otras partes interesadas a la Declaración, así como la participación activa de los representantes de la sociedad civil su redacción. Asimismo, reconoce el proceso puesto en marcha por el Grupo de Trabajo Intergubernamental sobre la Aplicación Efectiva de la Declaración y el

Programa de Acción de Durban, al que el Foro ha presentado sus observaciones preliminares.

El Foro Permanente reafirma su papel fundamental para continuar propiciando la *participación de la sociedad civil y de la academia* en la redacción de la Declaración y está firmemente determinado a celebrar consultas amplias y exhaustivas con la sociedad civil de las distintas regiones del mundo para profundizar sus contribuciones a la elaboración de dicho instrumento.

El Foro Permanente sostiene que la aplicación plena y efectiva de la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial y la Declaración y el Programa de Acción de Durban sigue siendo fundamental para hacer frente a la discriminación racial contra los afrodescendientes. Para lo cual es necesario reconocer de manera integral, vigilar y combatir eficazmente la discriminación racial sistémica y estructural a nivel local, nacional, regional y mundial.

El Foro reafirma la necesidad de que se reconozcan los **derechos colectivos** e individuales de los afrodescendientes para combatir eficazmente la discriminación racial sistémica y estructural contra los afrodescendientes; proteger, en determinados contextos sociales, los derechos colectivos culturales, religiosos, territoriales y ambientales, entre otros, y empodera a los afrodescendientes en el desarrollo, la aplicación y el seguimiento de las políticas que les conciernen.

El Foro Permanente acoge con especial interés las contribuciones realizadas por los representantes de la sociedad civil a la elaboración de la Declaración, entre otras cuestiones con respecto a los derechos culturales y lingüísticos de los pueblos afrodescendientes, como los derechos a preservar el patrimonio cultural, las lenguas autóctonas y los conocimientos ancestrales; el derecho a la libre determinación; los derechos colectivos a sus tierras, territorios y recursos; el derecho a su consentimiento libre, previo e informado sobre las decisiones que les afectan; el derecho de las familias a la integridad familiar; y **el derecho a la justicia, a la reparación y a la sanación.**

En efecto, el Foro Permanente afirma que la reparación es una piedra angular de la justicia en el siglo XXI y que, sin ella, la agenda de desarrollo sostenible no puede ser eficaz. Como se reconoce en la Declaración y el Programa de Acción de Durban, para lograr la plena efectividad de la dignidad y los derechos humanos de los afrodescendientes es necesaria una justicia reparadora integral. El Foro afirma que la esclavitud, la trata transatlántica de africanos esclavizados, el apartheid y el colonialismo fueron crímenes de lesa humanidad y constituyeron un genocidio.

El trauma y las repercusiones estructurales de estos crímenes siguen manifestándose en disparidades en la salud, el bienestar y el disfrute de los derechos humanos. El Foro Permanente alienta a los Estados Miembros a que adopten medidas concretas para tomar conciencia y concienciar al público en general sobre la historia y el legado del colonialismo y la esclavitud; reconozcan las formas en que han contribuido a esa historia y ese legado o los han sufrido; y eliminen todas las formas de discriminación racial sistémica y estructural a escala local, nacional, regional y mundial. Los Estados Miembros deberían considerar que se trata de una cuestión de justicia, y no de beneficencia o asistencia, y velar así porque la voluntad, la participación y las necesidades de los afrodescendientes desempeñen un papel fundamental.

La Declaración debe reflejar otras cuestiones relacionadas con los afrodescendientes, en particular **su reconocimiento como pueblos y su derecho a la libre determinación**; la inclusión digital, las formas modernas de racismo y discriminación racial, incluidos el **sesgo algorítmico**, la vigilancia predictiva y, de forma más general, el uso inadecuado de las herramientas de inteligencia artificial; y el derecho a obtener una reparación por las consecuencias del colonialismo, la trata transatlántica de esclavos y la esclavitud de los afrodescendientes.

El Foro Permanente afirma que la declaración deberá tener en cuenta las opiniones y perspectivas de las mujeres, los jóvenes, las personas de

edad, las personas LGBTQI+, las personas con discapacidad y otros grupos vulnerables.

El Foro confirma la importancia de la aplicación plena y efectiva de la Declaración y el Programa de Acción de Durban en lo que se refiere a los afrodescendientes para hacer frente al legado del colonialismo, el comercio transatlántico y la trata de africanos esclavizados y la esclavitud y luchar contra **el racismo sistémico y estructural**, la ideología del supremacismo blanco y la discriminación racial, la xenofobia y las formas conexas de intolerancia a las que se enfrentan los afrodescendientes.

El Foro Permanente alienta a que, en el camino hacia la Declaración, se sigan investigando la historia, el legado y la continuidad estructural de la trata de esclavos en el océano Índico a fin de fundamentar el compromiso de las Naciones Unidas de promover a escala mundial la educación y la comprensión de las causas profundas y las consecuencias de la esclavitud y la trata de personas, así como las iniciativas actuales encaminadas a promover los derechos humanos y la justicia social y económica.

Desde una perspectiva histórica, *la Declaración de las Naciones Unidas sobre la promoción, la protección y el pleno respeto de los derechos humanos de los afrodescendientes* representa una oportunidad excepcional para trascender *hacia una tercera generación de derechos, fundamentada en la justicia reparadora*.

En ese sentido, el Foro Permanente insta a los Estados Miembros a que le otorguen mayor importancia a la redacción de la Declaración y a que reflejen ella el derecho de los afrodescendientes a que se reconozca de manera integral, se vigile y se combata eficazmente el racismo sistémico y estructural a escala nacional e internacional.

Se reitera que la Declaración debe reconocer a los afrodescendientes el estatus de pueblo, lo que implica **nuevos paradigmas** y, en consecuencia, **la Declaración no se puede limitar a compendiar el lenguaje existente**.

El Foro exhorta a los Estados Miembros a que lo apoyen en la organización de consultas regionales con representantes de la sociedad civil y otras partes interesadas pertinentes para que puedan contribuir a la elaboración de la Declaración.

El Foro Permanente también insta a la Asamblea General a que proclame el **segundo Decenio Internacional de los Afrodescendientes** con miras a adoptar nuevas medidas para lograr el pleno reconocimiento, la justicia y el desarrollo de los afrodescendientes, teniendo presente que el primer Decenio concluirá en diciembre del 2024.

El Foro recomienda que el segundo Decenio Internacional de los Afrodescendientes se centre en la justicia reparadora, el reconocimiento y la equidad y aborde la discriminación racial sistémica y estructural a escala local, nacional, regional y mundial. Las deliberaciones con miras a la Declaración ofrecen una oportunidad excepcional para abordar a profundidad esas y otras cuestiones ya señaladas.

Perspectivas hacia la adopción de la Declaración

Como ya se indicó, de acuerdo con el mandato de la Asamblea General de las Naciones Unidas, el Grupo de Trabajo Intergubernamental sobre la Aplicación Efectiva de la Declaración y el Programa de Acción de Durban debe presentar un Proyecto de Declaración, para ser considerado por la Asamblea General en la sesión solemne de cierre del Decenio Internacional de los Afrodescendientes. Sin embargo, a menos que se tomen disposiciones extraordinarias, incluida la asignación de mayores recursos y la realización de consultas formales e informales, más allá de las que proyecta el Foro Permanente sobre los Afrodescendientes, no parece previsible la presentación de un informe que pueda arrojar un documento susceptible de ser sometido a aprobación en el IGWG y mucho menos de la Asamblea General.

Los próximos pasos. Del 20 al 24 de mayo de 2024 tendrá lugar una sesión ordinaria del IGWG que deberá concluir con informe de avance para ser remitido en julio a la Asamblea General de las Naciones Unidas, que podría abordarlo en el marco de la sesión solemne de cierre del Decenio Internacional de los Afrodescendientes y, como se prevé, inauguración de un segundo decenio.

En paralelo, continuarán los procesos de consultas formales e informales, en torno al Proyecto de Declaración, incluso a instancias del Foro Permanente sobre los Afrodescendientes. En ese sentido, el rol de la sociedad civil, de la academia y de otras partes interesadas reviste la mayor importancia.

Conclusiones

El proceso con miras a una “Declaración de las Naciones Unidas sobre la Promoción, Protección y Pleno Respeto de los Derechos Humanos de los Afrodescendientes”, - **ojalá de los pueblos**-, reviste la mayor importancia en el camino hacia la profundización del *reconocimiento, la justicia y el desarrollo de los afrodescendientes*.

El resultado final, dependerá de la acción colectiva de los afrodescendientes y su capacidad para tejer alianzas con diversos sectores, incluida la academia, para desplegar acciones pedagógicas y de incidencia que deriven en una Declaración que consulte la realidad histórica y las metas aspiracionales de los y las afrodescendientes.

Las discusiones que se proyectan en la facultad de Derecho de la Universidad de Harvard, incluida la que estará centrada en la cuestión de las reparaciones, junto con las que se llevarán a cabo en la Universidad de Oregón en abril de 2024, sumadas a las que se activaron en la Universidad de Dayton en noviembre de 2023, así como las consultas realizadas a instancias de OPS/CEPAL/PFPAD, en 2023 y 2024 y las que proyecta el Foro con el apoyo de Open Society Foundations y el Banco de Desarrollo de América Latina y el Caribe, CAF, en alianza con algunos países y otras partes interesadas, sin duda, van en la dirección correcta.

Expert Consultation for the “United Nations Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent” March 7-8, 2024

Harvard Law School, Cambridge, Massachusetts
Location: 2019 Milstein East C, Wasserstein Hall (WCC)

Afro-descendants Recognition, Justice and Development

Pastor Murillo

Member of the United Nations Permanent Forum on People of African
Descent, PFPAD

Focal point before the IGWG

The purpose of this document is to provide information on the evolution and perspectives of the Draft “United Nations Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent”. In this sense, elements related to the context and content of the draft Declaration are highlighted, analyzing its added value, the issues that are considered contentious, as well as gaps in the Project, and, in a special way, the preliminary observations of the Permanent Forum on people of African descent, as well as the prospects for the adoption of the Declaration.

1. Deepening the rights of people of African descent in the context of the global crisis

The conversation that brings us together coincides with the commemoration of the *75th anniversary of the Universal Declaration of Human Rights*, adopted by the United Nations in 1948, after the Second World War, a human tragedy motivated by contempt for others. Due to the vagaries of history, today we are witnessing an escalation of conflicts, where the denial of the human essence is once again at the center and seriously threatens international peace and security.

On this occasion, tensions converge with new global challenges including large-scale migration; the climate crisis; the political instrumentalization of racism, which includes the *theory of demographic reconversion or replacement*; the loss of confidence in democracy and institutions; tensions around gender and ethnic identities; the aging of the population in some regions of the world; and the disruptive impacts of artificial intelligence, in particular, concerning inequality and *algorithmic bias*, which results in contemporary forms of discrimination.

For multiple reasons, Africans and people of African descent, who together represent the largest population group globally, that is, around 1.6 billion people, find themselves at the center of such challenges. It should be noted that Africans and Afro-descendants are located in key areas for the energy transition, due to their wealth in natural resources; Many Afro-descendant communities are located in geographical areas of special importance for the supply chain, due to their intersection with several of the main ports - and the Panama Canal -, particularly in Latin America. Africans and Afro descendants have a demographic bonus due to having the youngest population.

Recognition, justice, and development are especially relevant. The Declaration has the potential to summarize the path traveled and outline the aspirational goals of people of African descent, at times when it is necessary to deepen the defense of human rights as a central agenda in geopolitics.

2. The path towards an “International Declaration on Respect, Protection and Realization of the Human Rights of People of African Descent”

From the perspective of the agency of the Afro-descendant Social Movement, the Declaration in progress has its roots in the [Declaration on the Rights of the Black Peoples of the World, led by Marcus Garvey](#) and adopted in New York, in 1920, in a forum that included the participation of more than 10 thousand people. At the request of the United Nations, in 2012, the Committee on the Elimination of Racial Discrimination decided to “Propose the preparation of a declaration on the promotion and full respect of the human rights of people of African descent,” (CERD A/[67/18](#)). For its part, the formulation of the draft

Declaration is contemplated in Resolution [A/RES/76/226](#) of 2021, of the UN General Assembly:

“...Recalls also the program of activities of the International Decade for People of African Descent, in which it was recommended that a forum for people of African descent be established and that consideration be given to preparing a draft United Nations declaration on the promotion and full respect for the human rights of people of African descent.

(...) Requests the IGWG, to devote at least half of its annual session to the development of a draft United Nations declaration United Nations on the promotion and full respect of the human rights of people of African descent, which will be studied at the high-level closing event of the International Decade for People of African Descent and will be held in the final year of the Decade.

(...) Invites the [Permanent Forum on People of African Descent](#) and, following their respective mandates, to contribute to the development of a draft United Nations declaration on the promotion and full respect of human rights of people of African descent.”

Thus, in compliance with the mandate of the United Nations General Assembly and after consultations with the different regional groups, the presidency of the IGWG was put forward for consideration, which included the initial contributions of the Permanent Forum on People of African Descent and other interested parties. After several sessions in which substantial progress was made, surprisingly, the States asked the presidency for a, *focus on the Durban language*, which, in my opinion, represented a great setback, since the Declaration and Program of Durban Action focused on *the issue of racism and racial discrimination, which, despite its centrality, is only one of the dimensions involved in addressing the rights of people of African descent*. The considerations contained in this document are included in the initial Draft Declaration.

Added value of the Declaration. The UN Declaration in question is stated as the first instrument of universal recognition of the individual and collective rights of people of African descent; that will set the standards of its national and international rights and has the potential

to transcend into a binding instrument, as has been anticipated by the UN General Assembly itself. The most relevant precedent is [General Recommendation 34 on racism and racial discrimination against people of African descent](#) (CERD, 2011), which states some standards of their rights, including their collective rights.

The Declaration will be the first universal catalog that will set the standards of the human rights of people of African descent, including recognition of their condition as individual and collective subjects of international law, which entails their condition as a people. It will also address contemporary forms of racism and racial discrimination, including algorithmic bias and, finally, the right to justice and material, moral, and spiritual reparation for harm derived from transatlantic trafficking, enslavement, and the prolongation of its consequences.

Three generations of rights for people of African descent. In the legal framework of Afro-descendants, three generations of rights are identified: a first generation on the right to freedom, enshrined in abolitionist laws; a second generation, focused on the right to equality and non-discrimination and the recognition of their condition as a people free of self-determination and ethnic group, which entails the recognition of their condition as a collective subject with collective rights. From there also derives the right to decide on their knowledge, innovations, and traditional practices associated with genetic resources and their derived products and to an equitable participation in the benefits derived from their use, as enshrined in various international and national legal instruments; and a third generation related to the *right to historical reparation* for the transatlantic trafficking, enslavement and the prolongation of its consequences. This generation of rights also includes climate justice.

In that sense, *the Declaration is projected as the cornerstone of the third generation of rights of Afro-descendants*, which will be focused on *restorative justice*, an issue that promises to be the gravitational axis of the human rights agenda in the coming decades.

Finally, the path towards the Declaration also has the potential to contribute to the reconstruction of the bridge between Africans and people of African descent, to the consensus and adoption of a common agenda around key issues such as reparations, which transcends the people of African descent themselves. It is a rare opportunity to engage in frank and constructive dialogue with States and other interested parties.

3. The Draft Declaration

Scope and content. The Declaration seeks to protect all people who define themselves as Afro-descendants. In its preamble, it establishes the legal, contextual, situational, institutional, and instrumental framework that constitutes the current architecture of the rights of Afro-descendants in the Universal System for the Protection of Human Rights; reaffirms the validity of the universal principles of human rights; condemns systemic or structural racism and outlines the aspirational goals of people of African descent.

The Draft Declaration covers the wide range of political, economic, social, cultural, and environmental rights of people of African descent, as well as other historically denied rights such as the right to reparation and the right to equitable participation in the benefits derived from access to traditional knowledge, associated with genetic resources. It also seeks to encompass climate justice and contemporary forms of racism and racial discrimination, particularly *algorithmic bias*.

Contentious matters. Several delegations, particularly from the Western Group, resist the recognition of Afro-descendants as a collective subject. They insist on ascribing them to the mere condition of individuals. Consistent with this position, they refuse to allow the Declaration to incorporate the concepts of people and free self-determination. The same bloc opposes the recognition of collective rights, in clear opposition to the principle of diversity and legal pluralism. Indeed, in Latin America, the rights stated here enjoy constitutional and legal roots in many countries.

Likewise, as expected, the Western Bloc opposes the Declaration's recognition of the right to reparation for damages derived from

transatlantic trafficking and enslavement. It is also surprising that despite the state of the global conversation on climate change and the critical importance that the ancestral territories of people of African descent have for the sustainability of the planet, several delegations from the same Western bloc oppose the provisions related to climate justice. For their part, some delegations, particularly from countries with theocratic governments, veto any reference to gender and intersectionality. There is also a reduced assessment regarding the scope of systemic racism that Afro-descendants accuse.

Some empty. The Project suffers from a definition of Afro-descendants. An approach in this sense could contain, among others, the following elements:

Afro-descendants. It is understood as such, the group of peoples, families, and individuals of African descent who have an autonomous culture, share a history, and have their traditions and customs that reveal and preserve awareness of identity that distinguishes them from other ethnic groups. It also denotes the children of the victims of the transatlantic slave trade and their subsequent migrations.

While the Project addresses the issue of artificial intelligence and algorithmic bias, it still requires further developments in these areas.

The Project does not address, in-depth, the intergenerational traumas of enslavement, even in the field of health, and lacks indicators for its evaluation and monitoring.

4. Preliminary observations of the Permanent Forum on People of African Descent, with a view to the Declaration.

As noted, the Forum attaches great importance to the development of a Declaration that complements, expands, and completes the existing human rights instruments relating to people of African descent. Likewise, it affirms that the Declaration will be a fundamental instrument to guarantee dignity, inclusion, equity, and restorative justice for Africans and people of African descent.

The Forum echoes the voices that the Declaration must pay tribute to the origins of African descent, recognize the importance of the Durban Declaration and Program of Action, and highlight the historical injustices of slavery, colonization, and dispossession. It should also mention the notions of identity, recognition, equality, and non-discrimination; the right to life and security, including physical health and intergenerational trauma, including in the area of mental health; the right to culture and history; the rights to participation and self-determination; the right to equality in the distribution of economic goods and progress; and the right to justice.

The Permanent Forum values the clear adherence of several delegations and other interested parties to the Declaration, as well as the active participation of civil society representatives in its drafting. It also recognizes the process launched by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Program of Action, to which the Forum has submitted its preliminary observations.

The Permanent Forum reaffirms its fundamental role in continuing to encourage the *participation of civil society and academia* in the drafting of the Declaration and is firmly determined to hold broad and exhaustive consultations with civil society in the different regions of the world to deepen its contributions. to the development of said instrument.

The Permanent Forum maintains that the full and effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Program of Action remains essential to address racial discrimination against people of African descent. It is necessary to comprehensively recognize, monitor and effectively combat systemic and structural racial discrimination at the local, national, regional, and global levels.

The Forum reaffirms the need to recognize the collective and individual **rights** of people of African descent to effectively combat systemic and structural racial discrimination against people of African descent; protect, in certain social contexts, collective cultural, religious, territorial, and environmental rights, among others, and empowers

people of African descent in the development, application, and monitoring of policies that concern them.

The Permanent Forum welcomes with special interest the contributions made by representatives of civil society to the preparation of the Declaration, among other issues concerning the cultural and linguistic rights of peoples of African descent, such as the rights to preserve cultural heritage, native languages, and ancestral knowledge; the right to self-determination; collective rights to their lands, territories and resources; the right to their free, prior and informed consent about decisions that affect them; the right of families to family integrity; and **the right to justice, reparation and healing**.

Indeed, the Permanent Forum affirms that reparation is a cornerstone of justice in the 21st century and that, without it, the sustainable development agenda cannot be effective. As recognized in the Durban Declaration and Program of Action, comprehensive restorative justice is necessary to achieve the full realization of the dignity and human rights of people of African descent. The Forum affirms that slavery, the transatlantic trade in enslaved Africans, apartheid, and colonialism were crimes against humanity and constituted genocide.

The trauma and structural repercussions of these crimes continue to manifest in disparities in health, well-being, and the enjoyment of human rights. The Permanent Forum encourages Member States to take concrete measures to raise awareness and educate the general public about the history and legacy of colonialism and slavery; recognize how they have contributed to or suffered from that history and legacy; and eliminate all forms of systemic and structural racial discrimination at local, national, regional and global levels. Member States should consider this to be a question of justice, and not of charity or assistance, and thus ensure that the will, participation, and needs of people of African descent play a fundamental role.

The Declaration must reflect other issues related to people of African descent, in particular, **their recognition as peoples and their right to self-determination**; digital inclusion, modern forms of racism and racial discrimination, including **algorithmic bias**, predictive policing,

and, more generally, the inappropriate use of artificial intelligence tools; and the right to obtain reparation for the consequences of colonialism, the transatlantic slave trade and the slavery of people of African descent.

The Permanent Forum states that the declaration should take into account the views and perspectives of women, young people, older persons, LGBTQI+ persons, persons with disabilities, and other vulnerable groups.

The Forum confirms the importance of the full and effective implementation of the Durban Declaration and Program of Action as it relates to people of African descent to address the legacy of colonialism, transatlantic trade and trafficking in enslaved Africans and slavery and fight against **systemic and structural racism**, the ideology of white supremacy and racial discrimination, xenophobia and related forms of intolerance faced by people of African descent.

The Permanent Forum encourages further research into the history, legacy, and structural continuity of the Indian Ocean slave trade in the lead-up to the Declaration to inform the United Nations' commitment to global advocacy, education and understanding of the root causes and consequences of slavery and human trafficking, as well as current initiatives to promote human rights and social and economic justice.

From a historical perspective, the *United Nations Declaration on the Promotion, Protection, and Full Respect of the Human Rights of People of African Descent* represents an exceptional opportunity to transcend towards a *third generation of rights, based on restorative justice*.

In this sense, the Permanent Forum urges Member States to give greater importance to the wording of the Declaration and to reflect on the right of people of African descent to comprehensively recognize, monitor, and effectively combat systemic racism, and structural at a national and international level.

It is reiterated that the Declaration must recognize the status of people of African descent, which implies **new paradigms** and, consequently, **the Declaration cannot be limited to summarizing existing language**.

The Forum calls upon Member States to support it in organizing regional consultations with representatives of civil society and other relevant stakeholders so that they can contribute to the development of the Declaration.

The Permanent Forum also urges the General Assembly to proclaim the **second International Decade for People of African Descent** to adopt further measures to achieve full recognition, justice, and development for people of African descent, bearing in mind that the first Decade will end in December 2024.

The Forum recommends that the second International Decade for People of African Descent focus on restorative justice, recognition, and equity and address systemic and structural racial discrimination at local, national, regional, and global levels. The deliberations leading up to the Declaration offer a rare opportunity to address in depth these and other issues already identified.

Perspectives towards the adoption of the Declaration

As already indicated, by the mandate of the United Nations General Assembly, the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Program of Action must present a Draft Declaration, for consideration by the General Assembly at the solemn closing session of the International Decade for People of African Descent. However, unless extraordinary measures are taken, including the allocation of greater resources and the holding of formal and informal consultations, beyond those planned by the Permanent Forum on People of African Descent, the presentation of a report that could yield a document capable of being submitted for approval in the IGWG and much less the General Assembly.

The next steps. An ordinary session of the IGWG will take place from May 20 to 24, 2024, which must conclude with a progress report to be sent in July to the United Nations General Assembly, which could address it within the framework of the solemn closing session of the Decade. International of People of African Descent and, as expected, the inauguration of a second decade.

In parallel, the formal and informal consultation processes around the Draft Declaration will continue, including at the request of the Permanent Forum on People of African Descent. In this sense, the role of civil society, academia, and other interested parties is of the utmost importance.

Conclusions

The process towards a “United Nations Declaration on the Promotion, Protection and Full Respect of the Human Rights of People of African Descent”, - **hopefully of the peoples** -, is of the greatest importance on the path towards deepening *recognition, justice, and development of Afro-descendants*.

The final result will depend on the collective action of Afro-descendants and their ability to forge alliances with various sectors, including academia, to deploy pedagogical and advocacy actions that result in a Declaration that consults the historical reality and the aspirational goals of and those of African descent.

The discussions planned at Harvard Law School, including one that will focus on the issue of reparations, along with those that will take place at the University of Oregon in April 2024, added to those were activated at the University of Dayton in November 2023, as well as the consultations carried out at the request of PAHO/ECLAC/PFPAD, in 2023 and 2024 and those planned by the Forum with the support of Open Society Foundations and the Development Bank of America Latin America and the Caribbean, CAF, in alliance with some countries and other interested parties, are undoubtedly going in the right direction.

Consulta de Expertos para la “Declaración de las Naciones Unidas sobre la Promoción, Protección y Pleno Respeto de los Derechos Humanos de los Afrodescendientes” 7-8 de marzo de 2024

Facultad de Derecho de Harvard, Cambridge, Massachusetts
Lugar: 2019 Milstein East C, Wasserstein Hall (WCC)

El concepto de pueblos y derechos colectivos en el proyecto de Declaración de Derechos de las personas, las comunidades y los pueblos afrodescendientes.

John Antón Sánchez

Instituto de Altos Estudios Nacionales IAEN

jhonanton@hotmail.com

john.anton@iaen.edu.ec

Alianza Latinoamericana por el Decenio Afrodescendiente ALDA

Resumen

En esta presentación se intenta un breve análisis de tipo sociológico y jurídico sobre las implicaciones de los derechos colectivos del pueblo afrodescendiente que se deben tener para que el proyecto de Declaración de Derechos de los Afrodescendientes donde se debe asumir la dimensión colectiva de la afrodescendencia, es decir como un pueblo o un conjunto de ciudadanía cultural sujeta de derecho colectivo, según las doctrinas del derecho internacional de los derechos humanos.

1. Introducción

Ya estamos en los 103 años en que Marcus Garvey hizo la proclamación de la Declaración Internacional de los Derechos de los Pueblos Negros del Mundo- Fue en Nueva York en 1920. Una proeza tres décadas antes de la declaración internacional de los derechos humanos de las Naciones Unidas de 1948. Hoy, en el marco del Decenio Internacional de los Afrodescendientes, se prepara una declaración mundial sobre derechos de las y los afrodescendientes.

Consideramos que el proyecto de Declaración sea una evolución del Derecho Internacional, por tanto debe ser una Declaración de Derecho de los Pueblos Afrodescendientes, pues una declaración de las “personas afrodescendientes” constituye algo ya ganado, recordemos que después de la abolición de la esclavitud en la segunda mitad del siglo XIX, los descendientes de africanos comenzamos el camino para ser reconocidos como personas con derechos civiles y políticos, al menos ese fue el legado del Movimiento por los derechos Civiles en Estados Unidos y lo que significó el fin del Apartheid en Sur África.

Hoy en el siglo XXI, para los afrodescendientes si bien es importante garantías a los derechos humanos subjetivos, especialmente el derecho a la igualdad y no discriminación, es importante un reconocimiento como ciudadanías culturales, como pueblos, en la misma dimensión que los pueblos indígenas.

2. La afrodescendencia de las Américas y las razones para ser reconocidos como pueblos.

El planteamiento académico que traemos en esta reunión sustenta que los más 200 millones de afrodescendientes de las Américas somos una expresión civilizatoria originaria, una comunidad transnacional nativa de este continente, un pueblo preexistente y anterior a la formación de los Estados Nacionales latinoamericanos y caribeños.

Las poblaciones y comunidades afrodescendientes, que provienen de la trata esclavista africana en América, constituimos una civilización nueva, de carácter singular, cuyas características son producto de un proceso de deconstrucción y reconstrucción del ethos civilizatorio de unas naciones africanas que fueron esclavizadas, convertidas en negras y luego, mediante complejos procesos de aculturación, enculturación e interculturación, desarrollaron creaciones mentales auténticas que son únicas y solamente propias de América.

La evidencia más clara de que los afrodescendientes de las Américas somos un pueblo originario se sustenta en las creaciones de nuestro patrimonio inmaterial y material que no existe en otras latitudes del planeta. Nuestras expresiones religiosas, mágicas, médicas, poéticas, literarias, musicales, lingüísticas, dancísticas, funerarias, simbólicas

así lo demuestran. Sin intentar hacer una síntesis de la riqueza patrimonial afrodescendiente originaria, podemos dar una breve reseña:

La cultura garífuna, por ejemplo, es la más viva expresión de nuestra originalidad como pueblo étnico y culturalmente diferenciado de otros. El pueblo garífuna, al que perteneció nuestro líder Celeo Álvarez Cacildo, es una cultura ancestral que tiene su origen en la síntesis de expresiones africanas, arawaks y caribes. Los garífunas son afrodescendientes con su propia lengua, sistema de creencias religiosas, estructura de parentesco y culinaria, y prácticas ancestrales de agricultura y pesca.

También como pueblos con gran conservación africana es el Pueblo de Palenque de San Basilio en Colombia, las comunidades quilombolas de Brasil, los marron de Surinam y las Guayanas, donde están los legendarios saramakas.

Recordemos que el contexto de mar Caribe coexisten decenas de pueblos afrodescendientes con configuraciones culturales de acuerdo con sus procesos de esclavización y colonización. Se destacan los raizales de las islas de San Andrés y Providencia en Colombia, los negros ingleses de las Islas de la Bahía en Honduras, de Panamá, Nicaragua, Guatemala y Costa Rica. En el Caribe los pueblos afrodescendientes han desarrollado un sentido rítmico, poético y literario de gran herencia africana. Encontramos fusiones musicales propias como el "Rhythm and blues", el calipso y el reggae, género popular que tuvo como principal protagonista a Bob Marley. Pero también está la salsa, la rumba, el son, el merengue, el chachachá, la bomba, la plena, e incluso la bachata. Y como no mencionar la religiosidad afroamericana empezando por el rastafarismo, y la religiosidad cubana con la Regla de Palo Monte, la Regla de Ocha y la Sociedad secreta de los Abakúa. Pero sin lugar a duda Haití es una explosión cultura originaria afrodescendiente, allí en la cuna de la democracia latinoamericana tenemos el Creol haitiano como lengua nacional y el vudú como religión de Estado. Finalmente, llegamos a Sur América, donde la música y la religiosidad popular son dignos de reseñar: el ritual de la muerte en el Chocó, las fiestas a los santos y vírgenes en el Pacífico colombiano y

ecuatoriano, la música y bailes de Currulao, Marimba, el bullerengue y la champeta en Colombia, y la música y danza de Bomba y de Banda mocha en el Valle del Chota ecuatoriano, los sonidos del cajón afroperuano, la saya afroboliviana, los tambores del candombe uruguayo. Y cerramos con el realismo mágico de Brasil, donde el 52% de su población es descendiente de esclavos africanos. Este gigante país tiene una cultura afrodescendiente original sin igual: sus religiones de matriz africana, su culinaria, música y danzas y todo un culto a la vida y la alegría nos recuerda que la afrodescendencia de las Américas es toda una civilización nacida en la modernidad esclavista que exige un reconocimiento como identidad cultura colectiva, como pueblo originario de las Américas, o dicho mejor en plural: como pueblos. Y este proyecto de declaración de derechos afrodescendientes no puede desconocer esta realidad.

3. Antecedentes: La inclusión del pueblo afrodescendiente en el derecho internacional de los derechos humanos.

Los afrodescendientes en las Américas alcanzan una cifra significativa que se aproxima a los 200 millones de personas. Algo más que un tercio de la población de la región. Pese a su importancia demográfica, dado el racismo y la discriminación, sus condiciones de vulnerabilidad y desigualdad han sido desatendida a lo largo de la historia de los países del hemisferio. Solo hasta el año 2000 y 2001 en que se celebraron las conferencias Regional Preparatoria de la III Cumbre Mundial contra el Racismo, celebrada en Santiago de Chile, y la III Cumbre Mundial contra el Racismo celebrada en Durban (Sur África), se logró llamar la atención sobre la problemática de negación de la ciudadanía de los afrodescendientes. En las declaraciones de estas dos importantes reuniones, los Estados y los Gobiernos reconocen que los afrodescendientes tienen que hacer frente a obstáculos como resultado de prejuicios y discriminaciones sociales que prevalecen en las instituciones públicas y privadas, reconociendo, además, que esto se debe a los siglos de esclavitud, racismo, discriminación racial, y la denegación histórica de muchos de sus derechos. Esta situación genera además una falta de reconocimiento del aporte de este colectivo al patrimonio cultural de las Américas. Para hacer frente a esta situación,

el Derecho Internacional de los Derechos Humanos contempla varias herramientas para hacer frente al racismo, la discriminación racial, la xenofobia y demás formas conexas de intolerancia que enfrenta la afrodescendencia en el mundo.

Así mismo, las organizaciones afrodescendientes en distintas reuniones, cumbres, seminarios, talleres y eventos nacionales e internacionales han expresado sobre la necesidad de atender la problemática del racismo y la discriminación sobre los afrodescendientes, considerada la raíz de las inequidades, desigualdades, pobrezas y negación a los derechos humanos de los afrodescendientes. De allí que se ha valorado la inclusión efectiva de acciones contra la discriminación racial y el racismo en distintos instrumentos internacionales de derechos humanos. A continuación, se hace una síntesis de aquellos instrumentos más representativos de combate al racismo y la discriminación tanto del Sistema de Naciones Unidas como del Sistema Interamericano.

Además de ello, cabe señalar que tanto en el ámbito regional como internacional la mayoría de los Estados miembros han firmado y ratificado o adoptado, según el caso, diversos instrumentos internacionales para la eliminación de la discriminación racial, así como para la promoción y el respeto de los derechos de las y los afrodescendientes. Los instrumentos más importantes en este campo serían: a) La declaración y el plan de acción de Durban; b) La Convención Internacional contra todas las formas de discriminación racial, c) El convenio 169 de la Organización Internacional del Trabajo OIT,

Otros aspectos de recomendaciones de medidas para frenar la discriminación racial en los afrodescendientes se tienen en cuenta: a) medidas concretas que garanticen el acceso pleno y efectivo de todas las personas, en particular los afrodescendientes, al sistema judicial; b) los Estados a que, con arreglo a la normativa internacional de los derechos humanos y a sus respectivos ordenamientos jurídicos, resuelvan los problemas de la propiedad respecto de las tierras habitadas desde épocas ancestrales por afrodescendientes y promuevan la utilización productiva de la tierra y el desarrollo integral de esas comunidades,

respetando su cultura y sus modalidades particulares de adopción de decisiones

4. Ser reconocidos como pueblos la demanda del movimiento social.

En el 2012 el intelectual afrocostarricense Quince Duncan hace un planteamiento respecto a la categoría de “pueblo” para los afrodescendientes. Según el autor esta adscripción de “pueblo” va más allá de la raza y la etnia, pues la cultura afrodescendiente encierra un *pan etnia, una comunidad transnacional* lo. Desde Duncan los afrodescendientes de las Américas son un pueblo con los siguientes marcadores: origen territorial común, matriz espiritual compartida, completo sistema de mestizaje, experiencia común con la esclavitud, experiencia común con el racismo doctrinario, formulas históricas comunes de resistencia a la opresión; “todo lo que nos genera elementos culturales que configuran una civilización” O al menos, elementos civilizatorios que aportan a la civilización americana (Duncan: 2012: 34)

El carácter de pueblo a los afrodescendientes podría interpretarse como un punto central de las demandas de su movimiento social. De fondo existe la consideración jurídica de pueblo en el sentido como lo establece el convenio 169 de la OIT de 1989. El argumento descansa en que los afrodescendientes de las Américas, al igual que los indígenas, cumplen los requisitos que para ser reconocidos como tal proponen los artículos 1 y 2 del Convenio.

El antecedente en Naciones Unidas más inmediato para el reconocimiento de “pueblos a los afrodescendientes lo encontramos en la Declaración de la Conferencia Regional de Santiago 2000 preparatoria a la III conferencia Mundial contra el Racismo (Durban, 2001) allí se consideró el concepto de “pueblos de descendencia africana” (considerando 9), abriendo así una [condición jurídica con miras a la reivindicación de sus derechos humanos colectivos](#).

Otro aspecto es la jurisprudencia sentada por cada país. En Colombia en 1991 hubo una reforma constitucional que permitió que los afrodescendientes fueran reconocidos como comunidades negras con derechos sobre el territorio ancestral de las selvas de la región del Pacífico, más tarde con la expedición en Ecuador y Bolivia sus

constituciones le dan el estatus de pueblo a los afrodescendientes y por tanto se les reconoce derechos colectivos sobre sus tierras, identidad y participación política. Actualmente la Constitución de México se reforma para reconocer el estatus de pueblos a los afromexicanos. En 2019 Chile aprueba una ley de reconocimiento de pueblo tribal a los afrodescendientes de la región de Arica, en tanto que en el 2022 el gobierno de Costa Rica expide un decreto de reconocimiento de pueblo tribal a los afrocostaricense.

Lo que sostenemos aquí, es que los derechos humanos son progresivos y evolucionan, por tanto, el derecho internacional no puede desconocer las realidades de las poblaciones, los gobiernos y los estados. Quizá estamos ante una nueva generación de derechos, al solicitar un proyecto de Declaración que represente las aspiraciones de los pueblos y la jurisprudencia, Recordemos que ya la Corte Interamericana de Derechos Humanos y el Comité Internacional para la Eliminación de la Discriminación Racial CERD de las Naciones Unidas se han pronunciado respecto a que los afrodescendientes representan una colectividad sujeta de derecho, o bien como pueblo tribal o bien como comunidad étnica o minoría nacional, y en consecuencia sujetos de derechos colectivos.

Las bases que alimentarían una declaración de derechos del pueblo afrodescendiente han sido fijadas en la Recomendación 34 (2011) del CERD. Este instrumento acoge al concepto de “afrodescendiente” de la Declaración y el programa de acción de Durban, y hace referencia a que bien sea de manera individual o comunitaria, tiene derechos a ejercer, sin discriminación alguna un conjunto de cuatro bloques de derechos y medidas especiales. En suma, desde las Américas solicitamos que el proyecto de Declaración sea en el sentido que ya lo planteó Marcus Garvey en 1920, una declaración de derechos de los pueblos negros del mundo, y por tanto un conjunto de derechos colectivos, los cuales, en coincidencia con el Dr. Pastor Murillo (2022) resaltamos a continuación:

En cuanto a Reconocimiento:

- Derecho al reconocimiento como pueblos a todas las personas y comunidades que así se identifiquen y se autodeterminen y en consecuencia poseedores de los derechos colectivos
- El derecho al reconocimiento y autonomía de sus territorios ancestrales.
- El derecho a la propiedad y el derecho al uso, la conservación y la protección de tierras ocupadas tradicionalmente y que sus modos de vida y su cultura estén vinculados a la utilización de esas tierras y recursos naturales.
- El derecho a su identidad cultural y a mantener, salvaguardar y promover sus formas de organización, cultura, idiomas y expresiones religiosas
- El derecho a la protección de sus conocimientos tradicionales y su patrimoniocultural y artístico,
- El derecho a decidir sobre sus conocimientos, innovaciones y prácticas tradicionales asociados a los recursos genéticos;
- El derecho a consultar antes cuando se tomen decisiones que puedan afectar a sus derechos, de conformidad con las normas internacionales.

En cuanto a la justicia

- Derecho a la igualdad y a la no discriminación de los afrodescendientes ante las instituciones de justicia y sus tribunales
- Derecho a las reparaciones por ser víctimas de la trata esclavista y por haber sido explotados generando riquezas para fortalecimiento del capitalismo.
- Derecho a medidas especiales o acción afirmativa para acceder en igualdad de oportunidades a derechos económicos, sociales, culturales y ambientales.
- Derecho a medidas especiales de combate al perfilamiento racial policial.
- Derecho a la prevención y el combate del sesgo algorítmico y la discriminación en la inteligencia artificial

- El derecho a beneficiarse del patrimonio cultural subacuático y de los tesoros transportados por los galeones de los esclavistas durante la trata.

En cuanto al **etnodesarrollo** de las comunidades afrodescendientes:

- Derecho a servicios de agua potable, electricidad, alcantarillado, internet, gas, calefacción, infraestructura vial, de salud y educación en comunidades.
- Derecho a la participación política, reconociendo personería jurídica de índole electoral y cuotas de representación directa en los parlamentos.
- Derecho a los beneficios económicos por uso y conservación de bosques y prácticas que mitiguen el cambio climático.
- Derecho de las mujeres afrodescendientes a igual trabajo igual remuneración.
- Derecho al acceso a tecnologías de información y beneficio de los adelantos científicos de la humanidad.,
- Derecho al acceso a la educación superior mediante medidas especiales que incluyan acceso de los jóvenes, creación de instituciones propias y a la divulgación de su memoria cultural y patrimonio histórico.

5. CONCLUSIONES: Afrodescendencia, pueblos y derechos colectivos.

Desde la antropología un pueblo es una agencia que alude a un sujeto colectivo con una identidad, en tanto que para el derecho internacional se trata de “un sujeto con libre determinación, en virtud de la cual determina su condición política y forma de desarrollo” En este sentido tal categoría estaría referenciada a comunidades que buscan autodeterminación en un contexto de proyecto de estado- nación. Pero el Convenio 169 de la OIT da otro carácter a la condición de pueblo, en especial a los indígenas, dejando referencia al principio de autonomía y libre determinación y control de sus propias instituciones y formas de vida

La Declaración de la Conferencia Regional de Santiago 2000 preparatoria a la III conferencia Mundial contra el Racismo (Durban, 2001) fue el instrumento internacional que consideró el concepto de “pueblos de descendencia africana” (considerando 9), abriendo así una condición jurídica con miras a la reivindicación de sus derechos humanos individuales y colectivos. Pero desde entonces el estatus de pueblo ha navegado por un camino de dificultades por el reconocimiento político tanto nacional como internacional. Para Carlos Rosero (2003), el reconocimiento de este estatus a los afrodescendientes ha sido demorado, o en su defecto “ha tenido un carácter retórico y poco práctico” (2003:5).

Lograr el reconocimiento político de la libre determinación de los afrodescendientes en cuanto pueblo implica que actores (incluso académicos) demuestren una aceptación conceptual. Desde la antropología jurídica un papel determinante para interpretar la agencia de pueblo en un grupo tiene que ver con su capacidad de conciencia de identidad y cohesión. Además, algo muy propio para los afrodescendientes como lo anotó Quince Duncan, deben tener pertenencia a una raíz cultural o ancestral. Se trata de elementos de identidad que obligan al grupo establecer reivindicaciones culturales como colectivas, minoría, pueblo (Will Kymlicka 1996).

Los determinantes del reconocimiento de libre determinación como pueblo están en el Convenio 169 de la OIT de 1989. Dicho convenio al referirse a los pueblos originarios y tribales en países independientes establece el estatus de pueblos mediante características que se aplican intrínsecamente a los afrodescendientes:

- Pueblos que están regidos total o parcialmente por sus propias costumbres o tradiciones: Si bien los afrodescendientes no son “pueblos tribales”, sí poseen una raíz ancestral heredada de África cultivada por 5 siglos en América. Esta raíz les distingue de otros sectores de la nación y se caracteriza, en algunos casos, por manifestarse por medio de sus propias costumbres. Tal como ocurre con comunidades rurales de la costa del Pacífico ecuatoriano y colombiano, las comunidades palenqueras, quilombolas y raizales, los pueblos garífunas, las

comunidades del Valle del Chota en Ecuador o los Yungas en Bolivia, por solo dar unos ejemplos.

- Pueblos que habitan el país en la época de la conquista o la colonización o antes del establecimiento de las actuales fronteras nacionales. Los afrodescendientes provienen de africanos traídos a América en condición de Esclavos desde el siglo XIV hasta el siglo XIX cuando se abole la trata esclavista. Su construcción como sociedad y su afianzamiento en territorios de América se dio antes de 1804 cuando se proclamó la primera república independiente de América Latina y el Caribe (Haití). Luego antes de la demarcación de las actuales fronteras nacionales en la década del 20 al 30 del siglo XIX, los descendientes de africanos eran una realidad cultural y conservaban su propia conciencia de identidad.

- La conciencia de su identidad. Este es un hecho indiscutible de los hijos de la diáspora Africana en las América, mantenida pese a los estragos de la colonización y el racismo fenómenos que generan procesos de enajenación en las identidades de los sujetos afrodescendientes.

Una aceptación de las características de pueblo para los afrodescendientes de acuerdo al convenio 169 de la OIT, conllevan a un escenario de reconocimiento de derechos en cuanto colectivo. Sobre este aspecto ya la Corte Interamericana de Derechos Humanos y el Comité Internacional para la Eliminación de la Discriminación Racial CERD de las Naciones Unidas se han pronunciado. La primera ha sentado jurisprudencia en el caso “Pueblo Saramaka versus Estado de Surinam” (Sentencia del 28 de noviembre de 2007, Corte Interamericana de Derechos Humanos) donde se condena Surinam “por la violación al artículo 21 de la Convención Americana de los Derechos Humanos y por la falta de cumplimiento de los artículos 1 y 2 de la misma convención al no reconocer y dar efecto a los derechos colectivos del pueblo saramaka sobre sus tierras y territorios”. Por su parte, la Resolución 69/16 de 2014 de la Asamblea General de las Naciones Unidas, relativa al Plan de Acción del Decenio Afrodescendiente, en su literal h solicita a los estados adoptar una Declaración sobre los derechos de los afrodescendientes.

Las bases que alimentarían una declaración de derechos del pueblo afrodescendiente han sido fijadas en la Recomendación 34 (2011) del CERD. Este instrumento se acoge al concepto de “afrodescendiente” de la Declaración y el programa de acción de Durban, y hace referencia a los descendientes de africanos que vivieron la experiencia de la esclavitud transatlántica. Según se lee los afrodescendientes, bien sea de manera individual o comunitaria, tiene derechos a ejercer, sin discriminación alguna, los siguientes derechos:

a) El derecho a la propiedad y el derecho al uso, la conservación y la protección de tierras que hayan ocupado tradicionalmente y de recursos naturales, en caso de que sus modos de vida y su cultura estén vinculados a la utilización de esas tierras y recursos; b) El derecho a su identidad cultural y a mantener, salvaguardar y promover su modo de vida y sus formas de organización, cultura, idiomas y expresiones religiosas; c) El derecho a la protección de sus conocimientos tradicionales y su patrimonio cultural y artístico; d) El derecho a que se les consulte previamente cuando se tomen decisiones que puedan afectar a sus derechos, de conformidad con las normas internacionales. (Recomendación General 34 CERD 2011)

Pero además de estos cuatro bloques de derechos, las Naciones Unidas amplían otras medidas que den garantía al derecho a la no discriminación racial y a la igualdad de oportunidades, esto por cuanto es necesario comprender que el racismo contra los afrodescendientes es un fenómeno que se expresa en muchas formas - estructurales y culturales-, y que limitan el ejercicio pleno de su ciudadanía. Por ello es necesario ampliar los derechos con medidas especiales o acciones afirmativas según la Convención la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial (arts. 1, párr. 4, y 2, párr. 2). En suma, en términos de alcanzar los objetivos de reconocimiento, justicia y desarrollo para los afrodescendientes en su década, las políticas de reconocimiento identitario político global a los afrodescendientes y el conjunto de derechos especiales o culturales que le merecen, con lleva a un propósito político global de gran trascendencia para el movimiento social afrodescendiente: la

expedición por parte de Naciones Unidas de una declaración de Derechos de los Afrodescendientes, quienes exigen un reconocimiento de fondo con base en los lineamientos del derecho internacional: los pueblos afrodescendientes

III. Annexes

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”.¹ 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.² 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

¹A/RES/75/314

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

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,³ 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.
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.

³ A/HRC/47/53. Para. 9

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.⁴
 - 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

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

territories.⁵ 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.⁶

- 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.⁷
- vii. The right to prior consultation with respect to decisions which may affect their rights, in accordance with international standards.⁸

⁵ 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.

⁶ 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>

⁷ 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>

⁸ 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>

- 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.⁹
- 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.¹⁰
- xii. The right of people of African descent to *special measures* to combat systemic racism against people of African descent and to

⁹ 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.

¹⁰ 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 .

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.
- 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.
32. 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

33. 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.

34. 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

35. 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.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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

43. The Declaration should call for the establishment of a Fund for the Development of People of African Descent.¹¹
44. The Declaration should call for a second International Decade of People of African Descent to take place from 2025 to 2034.
45. 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,

¹¹ 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.

racial discrimination, xenophobia and related intolerance against people of African descent.

46. 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.
47. 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.

Explanatory note to contribute to consultations on the draft United Nations Declaration on the promotion, protection and full respect of the human rights of people of African descent

Background

In resolution [A/RES/76/226](#) of December 2021, the General Assembly requested the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action - one of the three mechanisms established to follow up the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance – to elaborate a United Nations Declaration on the promotion, protection and full respect of the human rights of people of African descent, and invited the Permanent Forum of People of African Descent to contribute to the elaboration of the draft.

The Permanent Forum issued a call for viewpoints for early discussions on the draft Declaration, and based on the inputs received [the Permanent Forum submitted its preliminary views on the draft Declaration](#) to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

The Permanent Forum is committed to conducting broad-based and comprehensive consultations with civil society across the different regions of the world to solicit their contributions to the elaboration of the draft Declaration and ensure that the final draft reflects the aspirations of people of African descent.

This expert consultation provides a good opportunity in identifying the critical human rights and concepts to be included in the Declaration. Particular attention will be given to these five areas:

- Recognizing and addressing systemic and structural racism

- Reparatory justice for histories and legacies of enslavement, colonialism, and apartheid
- Collective rights for people of African descent
- Extraterritorial human rights of, and obligations to, people of African descent in the Caribbean and elsewhere
- Artificial intelligence, data collection and data-driven policymaking

Participants to this consultation are expected to have general knowledge on human rights and of the human rights concerns and aspirations of people of African descent. Ahead of the consultation it is desirable that participants would have read the preliminary submission of the Permanent Forum linked above.

UN permanent Forum on People of African Descent
Presentation by Gay McDougall

7 December 2022

UN Permanent Forum on People of African Descent

Inaugural Meeting

5-8 December

Presentation by Gay McDougall

Revised

I have been asked to give some essential elements of a Declaration on the Rights of People of African Descent (PAD). What I have attempted to do is to use the International Convention on the Elimination of Racial Discrimination and particularly General Recommendations 34 on racial discrimination against People of African descent, the UN Declaration on the Rights of Minorities, and the Declaration on the Rights of Indigenous peoples as initial models. I also pay respect to and attempt to include the contributions of Pastor Martinez and Jon Anton.

First a few words about the process for the drafting of these other Declarations: The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly** in 2007, but took 20 years to draft and gain positive acceptance by the GA. The Declaration on the Rights of Minorities took a much shorter time and was adopted in 1992. In 2005, the Independent Expert on minority issues was appointed to promote the implementation of the 1992 Declaration. And the Forum on Minorities was created in 2007, to provide a platform for promoting dialogue and cooperation in that field

as well as thematic contributions to the work of the Independent Expert.

But this Declaration on the Rights of PAD must be based explicitly on the ICERD, a treaty that codifies the peremptory customary law against racial discrimination. This gives it a strong underpinning and, I believe, an easier route to acceptance by states.

But the lesson from the history of these other Declarations teaches us that drafting of a declaration of this sort must be based on a broad consultative process with PAD in all regions and then with States that may take time.

But, back to what I have put forward today based on these earlier Declarations.

The result is a framework for further thoughts and additions. It should be seen as deliberately general rather than overly specific. Hopefully it is like a tree on which additional leaves can be hung to populate the document with more specific provisions. But we must be practical, every aspect of our desires and aspirations cannot be put in the Declaration. That's not what a Declaration is to do. Also keep in mind that if we want the Declaration to be adopted by the GA of all States around the world. In order to achieve that, we will have to accept a certain amount of generalities.

A Contribution to a Zero of the Declaration on People of African Descent

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and with good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that People of African Descent are equal to all others, while recognizing the right of all people to be different, to consider themselves different, and to be respected as such,

Affirming also that all people contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that People of African Descent, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that People of African Descent have suffered from historic injustices as a result of, inter alia, their forced enslavement, colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests free from discrimination,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of

which they freely determine their political status and freely pursue their economic, social and cultural development,

Acknowledging other important initiatives of the General Assembly aimed at raising awareness about the suffering of victims of racism, racial discrimination, xenophobia and related intolerance and forms of discrimination, including in the historical perspective, in particular regarding commemoration of the victims of slavery and the transatlantic slave trade,

Stressing the seminal importance of the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which share equal status to the outcomes of all the major United Nations conferences, summits and special sessions in the human rights and social fields, and that the Durban Declaration and Programme of Action remains a solid basis which prescribes comprehensive measures for combating all the scourges of racism and adequate remedies for victims, and noting with concern the lack of effective implementation thereof,

Bearing in mind that nothing in this Declaration may be used to deny any people their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of People of African Descent in this Declaration will enhance harmonious and cooperative relations between States and People of African Descent, both in the territories and globally, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of People of African Descent,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of People of African Descent and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that People of African Descent are entitled without discrimination to all human rights recognized in international law, and that People of African Descent are subjected to violations of rights on the basis of assumptions about their collective inferiority,

Recognizing that the situation of People of African Descent varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds must be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of People of African Descent as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1 Identity and Recognition

People of African Descent have the right to their identity as a group that shares characteristics within a national context and a transnational or global context. Its identity is based on self-identification and shared histories of origin, historical injustices and cultures of resistance and resilience.

That shared identity forms the basis of their inherit right to self-determination and legal personality within national and international contexts, within the understanding of the Charter of the United Nations, the Universal Declaration of Human Rights, and international law.

All the rights and freedoms recognized herein are equally guaranteed to all People of African Descent, in all our intersecting glory: men,

women, those who identify as Indigenous, Morons, Quilombolas, LGBTQI+, disabled, young, older; those who are the majority who control sovereign states and those who are a minority in States controlled by others, whether in the global south and global south.

These rights demand equality within and between States, in recognition that colonialism and the Slave Trade were global economic systems that have shaped the contemporary realities of the have and have not nations.

All States and international institutions have an obligation to recognize and to respect the identity, legal personality and right to self-determination of People of African Descent.

All States and international institutions shall take effective steps to protect and shall encourage conditions for the promotion of identity and furtherance of the self- determination of People of African Descent.

States shall take measures to ensure that persons of African Descent may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

Nothing in this Declaration may be construed as diminishing or extinguishing the rights People of African Descent have now or may acquire in the future.

Article 2 Right to Life and Security of Physical and Mental Health

People of African Descent have the right to life and security of person, physical and mental health.

People of African Descent have a right to exist, as individuals and collectively, in freedom, peace and security; free from violence and with the resources and supports necessary to thrive.

States have an obligation to protect, respect and ensure that they are not subjected to violence of any kind, whether from State or non-state actors, whether by intentional acts of violence or acts of harmful neglect, exclusion or marginalization.

The right of People of African Descent to exist free from violence includes the destructive violence emanating from the criminal justice system in many countries with histories of colonialism and slave labor, which misuse the police, courts, and prisons to be instruments of control and destruction of People of African Descent, leading to their suppression physically and spiritually.

States have an obligation to guarantee that People of African Descent, individually and collectively, live in safe and healthy environments that are conducive to a full and productive life, which includes a climate that will continue to sustain healthy life on an equal basis, without transforming the countries and communities of People of African Descent into racial sacrifice zones.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in or adjacent to lands, territories, or communities of People of African Descent and will take immediate and effective measures to clean-up and restore to health the lands, territories and communities where People of African Descent live that have in the past been used as toxic dumping grounds and further will ensure programs are established for monitoring, maintaining and restoring those areas.

States have an obligation to prevent the proliferation of racist hate speech in all its forms because it promotes racism and racist hate crimes which threaten the safety of and right to existence of People of African Descent.

Article 3 Right to Culture and History

People of African Descent have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language (if applicable), in private and in public, freely and without interference or any form of discrimination.

People of African Descent have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education systems and public information.

People of African Descent have a right to know and to celebrate their histories and the cultural artifacts and sacred spaces of remembrance, in spite of efforts to deny or erase those histories. States have a responsibility to reveal the truth of past injustices, to protect sacred spaces of remembrance, such as slave cemeteries, and to promote the importance of public awareness of these histories as a vital element of democracy, social cohesion and respect for human rights.

People of African Descent have the right to participate effectively and on an equal basis in the cultural, religious, social, economic and all other aspect of the public life of nations and the international community. To these ends, People of African Descent should have ample opportunities through publicly funded education to gain knowledge of the society as a whole and international affairs.

States should take measures, particularly in the fields of education, public information, culture and media, with a view to combating prejudices which lead to racial discrimination and to promoting knowledge of the history, traditions, languages and cultures of People of African Descent, existing within their territory, regionally and globally, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human

Rights ,the International Convention on the Elimination of Racial Discrimination , and of this Declaration.

Article 4 Right to Voice and Self-Determination

People of African Descent have the inherit right to self-determination as embraced by international law and as must be recognized, inter alia, in the following manner.

People of African Descent have a right to equality of Voice and to define and pursue their individual and collective destiny.

People of African Descent have the right to participate effectively in decision-making on the national, and where appropriate, regional levels concerning matters that affect them as a group, and on an equal basis in matters that affect the entire national polity to which they belong or the regions in which they live. States have an obligation to ensure that the political rights or People of African Descent are not suppressed or limited in any way or for reasons that are not in conformity with the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination.

In States where the right to Self-Determination of People of African Descent has been recognized Constitutionally or legislatively, those States shall take all effective measures to respect, promote, and guarantee the full enjoyment of those rights.

In particular, States shall give legal recognition and protection to lands, territories and resources which have been traditionally owned, occupied or otherwise used or acquired by People of African Descent. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the People of African Descent concerned.

Where they have been breached, the State shall take swift and effective measures to punish violators and guarantee reparations to victims.

Article 5 Right to Equality in Distribution of Economic Goods and Progress

People of African Descent have a right to participate equally, without discrimination, in the economic and social benefits, along with the progress and development of the State in which they exist and proportionately of the region.

States and regional governance structures have an obligation to guarantee the right of People of African Descent to these economic and social rights by effective and robust affirmative special measures to swiftly equalize the enjoyment of these rights and to end marginalization and deficits in this regard, particularly in regard to quality housing, equal education outcomes, equal health and care outcomes, sharply reduced poverty levels equal to national level, and rapidly improving participation in the labor force in higher wage employment, as required by the ICERD.

States must also take meaningful and effective measures to prevent the marginalization of People of African Descent and rapidly increase their participation in successful entrepreneurial engagement and in meaningful participation at all levels of private sector ownership and governance.

States must guarantee that the land and resources of People of African Descent, whether held under individual or collective titles, are safeguarded for their ownership and are alienated only pursuant to their free, prior and informed consent under circumstances to their benefit.

Article 6 The Right to Justice and Reparations

People of African Descent have a right to effective remedies for acts of racism and racial discrimination which violate human rights and

fundamental freedoms and also for the historical crimes of colonialism, the slave trade and the system of chattel slavery. People of African Descent have a right to seek just and adequate reparations proportionate to the injuries suffered as a result of such violations and crimes.

States have an obligation to guarantee to People of African Descent to establish competent and impartial tribunals to provide justice and reparations or satisfaction for injuries from acts of racial injustice.

States have an obligation to ensure that courts and tribunals are available to redress acts of racial discrimination, historical and contemporary, perpetrated by State or non-state actors against People of African Descent. Because of the global nature of the colonial and slave labor economy, all states have an obligation to cooperate in guaranteeing just and adequate reparations for those international crimes.

States and the international community have a collective responsibility to ensure that these crimes are fully investigated, that the full picture of those that engaged in the direct exploitation of enslaved People of African Descent and the theft of resources of colonized nations are identified, along with the larger economies that indirectly benefited.

Article 7 International Cooperation to Guarantee these Rights

States should cooperate to promote respect for the rights set forth in the present Declaration.

Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights, the International Covenants on Civil and Political and Economic, Social and Cultural Rights, or the

International Convention on the Elimination of Racial Discrimination.

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of People of African Descent on issues affecting them shall be established.

The United Nations, its bodies, including the Permanent Forum on People of African Descent, and specialized agencies, including at the country level, and all States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely

for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for

human rights, equality, non-discrimination, good governance, and good faith.

END

Participant Biographies

Members of the Permanent Forum on People of African Descent

Gaynel Curry is Member of the Law Faculty at the University of The Bahamas, lecturing in Human Rights Law and Public International Law. She has worked on human rights with the United Nations for more than 23 years, including in Afghanistan, South Sudan, and Timor-Leste, and served as the Gender and Women's Rights Advisor in OHCHR-New York. She oversaw work on the International Decade for People of African Descent, building on assignments in follow up to the Durban Declaration and Programme of Action to end racism and promote the rights of People of African Descent.

Justin Hansford, a distinguished professor of Law, is renowned as the executive director and founder of the Thurgood Marshall Civil Rights Center. A leading scholar and activist, Hansford's expertise spans critical race theory, human rights, and the intersection of law with social movements. Following the tragic killing of Michael Brown in Ferguson, Missouri, Hansford mobilized efforts to empower the community through community-based legal advocacy.

Michael McEachrane (Rapporteur) is an international activist for the human rights of people of African descent as well as a researcher in Black (Nordic and European) Studies, Human Rights Studies and Postcolonialism. As an activist he has, among other things, co-founded several civil society organizations, been deeply involved in the UN International Decade for People of African Descent, the establishment of the Permanent Forum of People of African Descent, and EU recognition of the fundamental rights of people of African descent. As a researcher he is, among other things, the editor of *Decolonial Sweden*

(Routledge, 2024), *Afro-Nordic Landscapes: Equality and Race in Northern Europe* (Routledge, 2014), and the author of numerous articles and book chapters on such topics as Pan-Africanism and African diaspora in Europe, anti-discrimination law and systemic racism, and Black Swedish Studies.

Pastor Elías Murillo Martínez is a Colombian lawyer, independent consultant, and current member of the United Nations Permanent Forum of People of African Descent. He was previously a member (2008-2020) and then vice president (2018-2020) of the United Nations' Committee for the Elimination of Racial Discrimination (CERD). Martínez is the author and promoter of several international initiatives for people of African descent including CERD's General Recommendations 34 and 36 on Racism and Racial Discrimination against people of African descent and on racial profiling, as well as the International Decade for People of African Descent Resolution Project which resulted in the United Nations Proclamation that 2011 was the "International Year for People of African Descent." Martínez also contributed to the International Declaration on the Rights of People of African Descent, currently in progress.

June Soomer's (Chair) career has interwoven the diplomatic, advocacy, and educational spheres, and she currently serves as a member of the United Nations Permanent Forum of People of African Descent. Dr. Soomer was the first woman to serve as the Saint Lucian Ambassador to CARICOM and the OECS. Dr. Soomer writes on regional integration, reparations, and women during enslavement and is a member of the Saint Lucia Reparations Committee.

Other Participants

E. Tendayi Achiume, a recipient of a 2023 MacArthur Fellowship, is the inaugural Alicia Miñana Professor of Law, and former Faculty Director

of the UCLA Law Promise Institute for Human Rights. She is also an Extraordinary Professor in the Department of Jurisprudence at the University of Pretoria. The current focus of her work is the global governance of racism and xenophobia; and the legal and ethical implications of colonialism for contemporary international migration. From 2017-2022, Professor Achiume was the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Leslie M. Alexander is the Dr. Martin Luther King, Jr. Professor of History at Rutgers University. A specialist in early African American and African Diaspora history, she is the author of *African or American?: Black Identity and Political Activism in New York City, 1784-1861* and the co-editor of three additional volumes. Her newest book, *Fear of a Black Republic: Haiti and the Birth of Black Internationalism in the United States*, examines how the Haitian Revolution and the emergence of Haiti as a sovereign Black nation inspired the birth of Black internationalist consciousness in the United States.

Gloria Yayra A. Ayee is an Adjunct Lecturer in Public Policy at Harvard Kennedy School, a Lecturer at the Harvard Extension School, and a Senior Research Fellow with the Institutional Antiracism and Accountability (IARA) Project at the Ash Center for Democratic Governance and Innovation. She is also a faculty associate with the Carr Center for Human Rights at the Harvard Kennedy School. Dr. Ayee's research and teaching interests center on American politics, African politics, comparative politics, human rights, transitional justice, truth commissions, race and civil rights policy, political reconciliation, media policy and politics, politics and popular culture.

Luciana Brito, a distinguished historian specializing in slavery and abolition in the Americas, particularly focusing on Brazil and the United States, serves as a faculty member at the Universidade Federal

do Recôncavo da Bahia in Brazil. Her scholarly pursuits extend to broader themes such as race relations, gender dynamics, representation, Diaspora studies, and comparative analyses across the Americas. Her doctoral dissertation received an Honorable Mention and the Prize for Best PhD Dissertation from the Coordination for the Improvement of Higher Education Personnel (CAPES - Brazil).

Adelle Blackett, F.R.S.C., Ad. E., is Professor of Law and the Canada Research Chair in Transnational Labour Law at the Faculty of Law, McGill University and an elected fellow of the Royal Society of Canada. Renowned for her decolonial approach to labour law, including in its interface with trade law and slavery and the law, her 2019 book entitled *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Cornell University Press) garnered the Canadian Council on International Law's (CCIL) 2020 Scholarly Book Award. Professor Blackett holds a doctorate in law from Columbia University has been the principal architect of the International Labour Organization's Domestic Workers Convention, 2011 (No. 189), the lead expert on labour law reform in Haiti, the principal drafter of the Scarborough Charter on Anti-Black Racism and Black Inclusion in Canadian Higher Education, and the Chair of the Canadian federal Employment Equity Act Review Task Force whose recommendation to create a separate employment equity category for Black workers was accepted by the Canadian government.

Denise Ferreira da Silva is a renowned scholar and artist known for her groundbreaking work in addressing global issues through an anticolonial black feminist perspective. Her articles in prestigious journals such as *Social Text* and *Theory, Culture & Society* cover interdisciplinary themes crucial to understanding contemporary society. Drawing from black thought, post-structuralism, feminist

theory, and her interdisciplinary background, she seeks to redefine global justice through innovative critical analysis.

Shihan de Silva Jayasuriya, FRAS, an esteemed scholar, writer, editor, musician and ethnographic filmmaker, specializing in linguistics, music and history. She is recognized as a UN expert on Afrodescendants in Asia and has contributed significantly to the UNESCO Slave Route Project. Shihan is a Senior Research Fellow (Institute of Commonwealth Studies), Senior Associate (University of Cambridge), Discretionary Associate (University of Oxford) and Visiting Professor (University of Visual & Performing Arts, Colombo).

Erika R. George is the Samuel D. Thurman Professor of Law at the University of Utah's S.J. Quinney College of Law where she teaches constitutional law, international human rights law, international environmental law, and seminars on corporate citizenship and sustainability. Her current research explores the responsibilities of multinational corporations to respect international human rights and efforts to hold corporations accountable for alleged rights violations. She is the former Interim Director of the Tanner Center for Human Rights and a former University of Utah Presidential Leadership Fellow.

Yanilda María González is an Assistant Professor of Public Policy at the Harvard Kennedy School. Her research focuses on policing, state violence, and citizenship in democracy, examining how race, class, and other forms of inequality shape these processes. González's book *Authoritarian Police in Democracy: Contested Security in Latin America* (Cambridge University Press, 2020), studies the persistence of police forces as authoritarian enclaves in otherwise democratic states, demonstrating how ordinary democratic politics in unequal societies can both reproduce authoritarian policing and bring about rare moments of expansive reforms. *Authoritarian Police in Democracy* received the Gregory Luebbert Prize for Best Book in Comparative

Politics from the American Political Science Association (2022), as well as the Donna Lee Van Cott Award for Best Book on Latin American Politics and Institutions from the Latin American Studies Association (2022).

Tanya Katerí Hernández, Archibald R. Murray Professor of Law at Fordham University School of Law, is a distinguished scholar teaching courses on Anti-Discrimination Law, Comparative Employment Discrimination, Critical Race Theory, and more. Professor Hernández's research focuses on comparative race relations and anti-discrimination law, with publications in esteemed law reviews and news outlets including Cornell, Harvard, NYU, UC Berkeley, and the New York Times. Her latest book, "Racial Innocence: Unmasking Latino Anti-Black Bias and The Struggle for Equality," published by Beacon Press, addresses critical issues of discrimination.

Abadir M. Ibrahim is the Associate Director of the Human Rights Program at Harvard Law School. His research focuses on African approaches to human rights which studies, among other things, the iteration and practice of human rights as impacted by Africa's (post)colonial, religious and traditional heritages. His career spans government advising, legal practice, activism, research and education, with much of his work focusing on African countries, and especially his home country of Ethiopia, and Africa's regional human rights systems.

Baba Jallow is the inaugural Roger D. Fisher Fellow in Negotiation and Conflict Resolution at Harvard Law School. Prior to this appointment, Baba served four years as Executive Secretary of The Gambia's Truth, Reconciliation and Reparations Commission (TRRC). A former journalist and editor of two major newspapers in his native Gambia, Baba spent 17 years of exile in the United States (2000 – 2017) as a result of his opposition to the brutal dictatorship of former Gambian military leader Yahya Jammeh.

Randall Kennedy is Michael R. Klein Professor at Harvard Law School where he teaches courses on contracts, criminal law, and the regulation of race relations. Awarded the 1998 Robert F. Kennedy Book Award for Race, Crime, and the Law, Mr Kennedy writes for a wide range of scholarly and general interest publications. His other books are *Say It Loud! On Race, Law, History, and Culture* (2023), *For Discrimination: Race, Affirmative Action, and the Law* (2013), *The Persistence of the Color Line: Racial Politics and the Obama Presidency* (2011), *Sellout: The Politics of Racial Betrayal* (2008), *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* (2003), and *Nigger: The Strange Career of a Troublesome Word* (2002).

Kojo Koram teaches at the School of Law at Birkbeck, University of London. He was called to the Bar of England and Wales in November 2011 and received his PhD in September 2017. He is editor of *The War on Drugs and the Global Colour Line* (Pluto Press 2019) and author of *Uncommon Wealth: Britain and the Aftermath of Empire* (John Murray 2022). Centered on the history of Britain's treatment of its former non-white colonies after the end of empire, *Uncommon Wealth* draws parallels to modern financial crises around the world.

Margareta (Magda) Matache is a Lecturer on Social and Behavioral Sciences at the Department of Social and Behavioral Sciences, Harvard T.H. Chan School of Public Health, and the co-founder and Director of the [Roma Program](#) at the FXB Center for Health and Human Rights, Harvard University. Dr. Matache's research focuses on the manifestations and impacts of racism and other systems of oppression in different geographical and political contexts. Her research examines discrimination, reparations, social determinants of health—including education and social and economic disparities—and their nexus with the historical past and contemporary public policies, with a particular focus on *anti-Roma racism*.

Benyam Dawit Mezmur is Professor of Law at the University of the Western Cape in South Africa and a member of the United Nations Committee on the Rights of the Child. He served as the special rapporteur on children and armed conflict of the African Committee of Experts on the Rights and Welfare of the Child and was a Eleanor Roosevelt Fellow, Human Rights Program, at the Harvard Law School in 2022-2023. In 2018, Pope Francis appointed him to serve on the Pontifical Commission on the Protection of Minors.

Professor Gerald L. Neuman is the Director of the Human Rights Program, and the J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law at Harvard Law School. He teaches courses in international human rights law, immigration and nationality law, and U.S. constitutional law. From 2011 to 2014, he served as a Member of the UN Human Rights Committee, the international body of independent experts that monitors compliance with the International Covenant on Civil and Political Rights, one of the principal human rights instruments that form the “International Bill of Rights.”

Mariela Noles Cotito is a Professor of Discrimination and Public Policy at the Universidad del Pacífico in Lima, Peru. Her research portfolio spans areas such as gender equality, social inclusion policies, and the intersections of various systems of oppression shedding light on how they place different segments of society beyond the protective ambit of the law. In her current research endeavors, she is exploring the efficacy of ethno-racial legislation in promoting and safeguarding the rights of Afro-descendants in Peru. Her approach to research and scholarship combines legal expertise with a policy-focused analysis and insights from the social sciences.

Ruth L. Okediji is the Jeremiah Smith, Jr, Professor of Law at Harvard Law School and Co-Director of the Berkman Klein Center. A renowned

scholar in international intellectual property (IP) law and a foremost authority on the role of intellectual property in social and economic development, Professor Okediji has advised inter-governmental organizations, regional economic communities, and national governments on a range of matters related to technology, innovation policy, and development. She works closely with several United Nations agencies, research centers, and international organizations on the human development effects of international IP policy, including access to knowledge, access to essential medicines and issues related to indigenous innovation systems.

Aminta Ossom is a Lecturer on Law and Clinical Instructor in the International Human Rights Clinic, where she supervises projects focused on human rights and the global economy. Prior to joining the International Human Rights Clinic in Fall 2019, Ossom was a human rights officer at the United Nations, where she supported the Subcommittee on Prevention of Torture and the special rapporteurs of the Human Rights Council in fact-finding, advocacy, and training in Africa, Latin America, Southeast Asia, and Europe. She returned to the United Nations in the summer of 2022 to staff the UN Permanent Forum on People of African Descent in advance of its inaugural session.

Allissa V. Richardson is an associate professor of journalism at USC Annenberg. She researches how African Americans use mobile and social media to produce innovative forms of journalism — especially in times of crisis. Richardson is the author of *Bearing Witness While Black: African Americans, Smartphones and the New Protest #Journalism* (Oxford University Press, 2020). The book explores the lives of 15 mobile journalist-activists who have documented the Black Lives Matter movement using only their smartphones and Twitter.

Jhon Antón Sánchez is a professor at the Institute of Higher National Studies IAEN in Ecuador where he is head of the Chairs on

Fundamental Principles of Public Service, Theory of the State, and Public Policies. He is currently a member of the Observatory for Afro-descendant Justice in Latin America and the Institute for Afro-descendant Research and Development in Costa Rica. Dr. Sánchez's research has been broadly focused on the African diaspora in the Americas, and has covered topics including race, racism, ethnicity and inequalities, social indicators of inequality and discrimination, Afro-descendant social movements, Afro-descendant anthropology, and theories of the rights of peoples and nationalities, as well as topics on Afro-descendant anthropology related to ancestral knowledges, religiosity, and healing practices.

Iyiola Solanke is Deputy Director of the Institute for European and Comparative Law (IECL) and the Jacques Delors Professor of European Union Law at the University of Oxford, where she is a Fellow of Somerville College. In 2018, Solanke chaired the Inquiry into the History of Eugenics at UCL and from 2020 – 2022 she led Co-POWeR, a funded research project investigating COVID-19's impact on practices for well-being and resilience in Black, Asian, and minority ethnic families and communities. She is currently leading Generation Delta, a funded project focused on promoting access to and success in PGR study for Black, Asian, and Minority Ethnic women. Solanke's work adopts socio-legal, historical, and comparative methodologies. As well as many articles in peer reviewed journals, she is the author of a textbook on EU Law as well as 'Making Anti-Racial Discrimination Law' (Routledge 2009), and 'Discrimination as Stigma – A Theory of Anti-Discrimination Law' (Hart 2017).

Chantal Thomas is Vice Dean and the Radice Family Professor of Law at Cornell Law School, where she also serves as the Director of the Cornell Center for Global Economic Justice, and as Faculty Director for the Clarke Initiative for Law and Development in the Middle East and

North Africa. Her research focuses on international law and political economy, centering on questions of global social justice. Dr. Thomas has acted as a consultant for the United Nations Economic Commission for Africa, the United States Agency for International Development, and the World Bank, and currently serves on the United States Department of State's Advisory Committee on International Law and is a Co-Organizer of the Law and Society Association's International Research Collaborative on Gender and Political Economy.

