



Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers

The Quaker United Nations Office (QUNO), an international non-governmental organization in General Consultative Status with ECOSOC (through our parent body FWCC) welcomes the opportunity to submit the following information. QUNO works on the human rights of migrants in a commitment to building a world without violence and for a world where dignity and rights are upheld regardless of migration status and not on the basis of citizenship or perceived deservedness. Our faith calls us to work for migration justice.¹ As part of this work, this submission aims to underline how excessive use of force and other human rights violations by law enforcement in the context of migration governance result from and reinforce systemic racism. Whilst this submission necessarily focuses on Africans and people of African descent, we acknowledge the impact of racialized borders on all racialized individuals.

The Universal Declaration of Human Rights clearly sets out the equal rights of all individuals on the basis of their inherent humanity. The concepts of equality and non-discrimination are a cornerstone of many human rights instruments.² Despite this, structures of inequality impact on the realisation of the rights of many, including migrants and people on the move. This submission has a particular focus on migration to highlight that while migration laws, policies and practices may appear race-neutral, they are built on historical practices that subordinate and racialize individuals from specific backgrounds. This means that they can either directly or indirectly impact the rights of Africans and people of African descent whether they migrate or not.³ Hostile migration policies and laws, including criminalization of irregular migration, create risks for violations of migrants' human rights by law enforcement officers. The Covid-19 pandemic has disrupted migration in many ways and exacerbates many risks for migrant communities which also needs be considered. This submission will consequently set out the challenges for rights protections of Africans and people of African descent in migration governance.

I. Migration Law and Policy and Structural Racism

There is a close relationship between migration law and policy and the deep-rooted structural racism affecting Africans and people of African descent. Migration laws, policies and practices in different territories seek to create categories and distinctions between individuals which subsequently impact on individuals' abilities to enjoy their human rights and fundamental freedoms. Different States purport different reasons as to why individuals are subject to migration controls but ultimately this idea is rooted in States being able to exercise self-determination over their territories and enabling

¹ Excerpt of Quaker Statement on Migration which will be available online from 10 December 2020 at <https://quno.org/quaker-migration-statement>.

² UN General Assembly, Universal Declaration of Human Rights (1948). For a comprehensive analysis of instruments see: Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance report A/HRC/32/50 (2016) para 10-14.

³ Human Rights Council, Report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/HRC/38/52 (2018) para 14.

entry and stay in their jurisdiction only to those they perceive as desired or deserving.⁴ States' sovereign prerogative in regard to governance of their borders must be carried out in line with international law, including international refugee law and international human rights law. Yet, anti-immigrant and racialized notions of belonging compound the reality of inequality in migration law. The framing of migrants as threats, whether as a physical threat to the host nation, the culture or way of life of the country or to the economic and social institutions of the country are among many of the anxieties expressed by politicians, media, institutions and individuals.⁵ Using and feeding this anti-immigration and anti-migrant rhetoric is a choice made by States that continues to impact on individuals long after they become citizens and impacts on generations to come with racializing of identities and creation of categories of the Other.⁶ This enables the sustained dehumanization and racialization of migrants throughout the world, despite the existence of a plethora of human rights instruments addressing their exclusion, violations and abuses of their human rights.

The concepts of structural, institutional and systemic racism are useful in recognizing the pervasiveness of racism in all aspects of society which infringes on the rights of those who are racialized, including Africans and people of African descent. This type of racism is entrenched in beliefs, institutions and societies all over the world which, in part, is due to historical legacies of slavery and colonialism. Africans and people of African descent experienced over 400 years of laws that categorized them as non-human and as property which is linked to their treatment today and manifestations of anti-blackness in all aspects of society.⁷ According to the UN Working Group of Experts on African Descent:

Racial discrimination cannot be resolved merely by ignoring race and assuming that the legacy mindsets of colonialism and the trade and trafficking in enslaved Africans have vanished.⁸

It is therefore necessary to recognise the historical and current role migration laws and policies play in facilitating the violation and abuse of human rights of Africans and people of African descent and acknowledging the racial discrimination they are built on and perpetuate.

While this submission recognizes that Africans and people of African descent are different groups who may have differing experiences, it aims to highlight that the racialization and exclusion created in migration policies result in similar manifestations of racism. In addition, while it speaks generally of these groups due to the scope of this submission, an intersectional analysis is vital in assessing the violations and abuses that Africans and people of African descent face in migration contexts. Intersectionality is needed to reveal the unique experiences and specific vulnerabilities of particular individuals in migration to recognize human rights violations by law enforcement and to respond effectively.

II. Law and Law enforcement

Law and law enforcement play significant roles in the human rights violations that Africans and people of African descent experience in migration. National law in itself has enabled appalling situations to exist through its application of justifications and narratives of racial superiority

⁴ E. Tendayi Achiume, 'Migration as Decolonization', *Stanford Law Review* 1509 (2019). Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3330353

⁵ Marie-Benedicte Dembour, *When Humans Become Migrants* (Oxford University Press, 2015).

⁶ Human Rights Council, Report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/38/52 (2018).

⁷ General Assembly, Report of the Working Group of Experts on People of African Descent, A/74/274 (2019) para 10.

⁸ Human Rights Council, Report of the Working Group of Experts on People of African Descent, A/HRC/45/44 (2020) para 69.

contravening international law. Consequently, law enforcement officers have played a central role in supporting and defending the existence of laws and practices that allow segregation, exclusion and discrimination predominantly of those who are not white.⁹ While the perception of law and law enforcement has evolved to be considered by many as a positive force in upholding equality and justice, in reality, many racialized communities face the brunt of discriminatory policies and discriminatory treatment by law enforcement officials.¹⁰ In addition, growing reliance on deliberately hostile policies have enabled the existence of everyday borders that extend law enforcement into different environments such as education, healthcare and social welfare institutions. The power and legitimacy afforded to law enforcement has enabled the violations of migrants' rights worldwide including by sustaining racism and discrimination.

III. Human Rights Violations at Borders

Border regimes, defended by law enforcement, often have racist and violent consequences for Africans and people of African descent. The very creation and increased use of border regimes throughout the world is riddled with racial tensions. Borders are not just a matter of geography, but are a direct result of historical interactions that create conditions to exclude and discriminate against individuals that a State defines as not belonging to particular territories. Restrictive border management policies are deployed by States and their actors in order to protect territories from perceived external threats including irregular migration, often without the consideration of human rights obligations.¹¹ These regimes, which can be physical, digital and ideological, coupled with restrictions on regular migration pathways have resulted in migrants with various protection needs being compelled to use irregular means to seek safety and dignity even at the risk to their own lives.¹² This is the case for many African migrants who are pushed to take deadly migration routes in pursuit of protection. In testimony given to the Mixed Migration Centre, a Somali refugee said,

On this Journey, no one cares if you live or die.¹³

For many, particularly Africans and people of African descent, 'place of birth alone determines whether the act of crossing national borders is a matter of life or death'.¹⁴ Policies such as externalization of borders with the aim of preventing irregular migration have been linked to some of the most serious violations of migrants' human rights including right to life, non-refoulement, right to seek asylum among many others. These policies can have a disproportionate impact on Africans and people of African descent due to global power structures which aim to curb migration from specific regions.¹⁵ Policies such as externalization, criminalization of migrants and their defenders and expulsions are all policy measures that the UN Working Group on Mercenaries note in their report, on this they state:

⁹ A/74/274 para 10-15.

¹⁰ A/HRC/45/44 para 79 e.

¹¹ A/HRC/38/52 para 41.

¹² Human Rights Council, Working Group on the use of mercenaries as a means of violating human right and impeding the exercise of the right of peoples to self-determination 'Impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants' A/HRC/45/9 (2020) para 18.

¹³ Mixed Migration Centre and UNHCR (2020) [On this Journey No One Cares if You Live or Die: Abuse, protection, and justice along routes between East and West Africa and Africa's Mediterranean coast](#)

¹⁴ E. Tendayi Achiume, 'Migration as Decolonization', Stanford Law Review 1509 (2019).

¹⁵ A/HRC/45/9 para 20.

This combination of policies has been disastrous for migrants, resulting in countless death along sea, lake, river, mountain and desert crossings and in the violation and abuse of migrants' rights on a massive scale.¹⁶

Despite the harrowing accounts of migrants' deaths throughout their journeys, States and migration law enforcement officials continue to deploy racialized and securitized borders. Not only are these policies documented to give rise to the loss of life, but they can also result in torture, inhumane and degrading treatment, sexual and gender based violence, trafficking among many other violations.¹⁷

The rise of digital technologies in border enforcement, and the role these technologies play in the violation of African migrants' and people of African descent's rights must also be interrogated. Not only do these technologies raise challenges in regard to the right to privacy but they also raise issues of inequality and algorithmic-discrimination as they are often responsible in reinforcing the existing inequalities presented by border governance.¹⁸ These technologies have an impact on not only irregular migrants, but disproportionately can impact Black people even in situations where they have access to regular immigration statuses and citizenship.¹⁹

When assessing the evolution of restrictive migration policies it has been stated that:

Those who seek legal authorization even just to visit the First World are faced with complex and often prohibitively expensive visa restrictions that, notably, do not apply to the international mobility of First World Citizens. And those Third World Migrants who dare risk their lives to migrate to First World countries without legal authorization are confronted with militarized border regimes negotiated by First and Third-World nation-states, and which amount to multilateral projects for the regional containment of Third World persons beyond the First World.²⁰

Those tasked with border control can be complicit in the violation and abuse of Africans and people of African descent's human rights as well as complicit sustaining systems of racial inequality which warrant further investigation.

IV. Detention, Return and Removals

Immigration detention, returns and removals are tools used by States in upholding systems that disproportionately impact racialized communities including Africans and people of African descent.

The use of immigration detention and returns and removals are all measures that should be used only be used in line with international law, including only 'as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose'.²¹ When these measures are used disproportionately or arbitrarily, they violate the human rights of migrants, including for Africans and people of African descent who can disproportionately experience human rights violations and abuses

¹⁶ A/HRC/45/9 para 20.

¹⁷ A/HRC/45/9 and A/HRC/38/52

¹⁸ General Assembly, Report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/75/590 8-20.

¹⁹ A/75/590 para 9.

²⁰ E. Tendayi Achiume, 'Migration as Decolonization', *Stanford Law Review* 1509 (2019) 1515.

²¹ UN Working Group On Arbitrary Detention. Deliberation No.5 on situation regarding immigrants and asylum seekers. (2018) available: https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

as a result of migration policies and practices. States continue to routinely employ these policies and practices which can have racist and discriminatory consequences, whether they are intended or not.

A major challenge for recognising the true impact of the practice of immigration detention has on Africans and people of African descent is the lack of disaggregated data in many countries which would reveal patterns of racial discrimination and violations and abuses.²² Despite this, there are various reports of the racialised use of immigration detention. For example, where racial profiling of individuals leads to detention on the basis of a lack of documentation, in this example skin colour and identity is a determining factor in the likelihood of being detained.²³ Research has also shown, in some cases, varying lengths of immigration detention employed for black people in comparison to their white counterparts.²⁴

In some contexts, identifying anti-blackness can provide an insight into the dehumanization and criminalization of Africans and people of African descent in immigration detention. This can manifest in people being held indefinitely in overcrowded facilities, with poor or no hygiene, without access to food or adequate or no medical care.²⁵ In some situations, guards are documented to have been violent to detainees and have weaponized sexual violence and rape rendering African women and women of African descent vulnerable to these forms of violence in immigration detention.²⁶ Practices such as black women and other marginalized groups in detention being forcibly sterilized by medical professionals highlight real challenges to the rights of migrant women and underline intersecting forms of violence.²⁷²⁸

Returns and removals are another way in which Africans and people of African descent are affected by racial discrimination in migration. The reality of the concept of not being perceived to ever truly belong in a State or community is clear in the practice of wrongful deportation of racialised communities.²⁹ In some instances, States pursue returns or removals following an individual's criminal conviction, even in cases of minor convictions. The use of this policy even for individuals who have regular statuses highlights that the concept of belonging is largely related to skin colour in a number of jurisdictions.³⁰ Black people are disproportionately affected by and represented in criminal justice systems all over the world, the unique interaction between race, criminal justice systems and migration and the risk of human rights violations by law enforcement officers as a result, therefore needs further exploration.

²² Human Rights Council, Report of the Working Group of Experts on People of African Descent (2019) A/HRC/42/59 para 3.

²³ Committee on the Elimination of Racial Discrimination, General Recommendation No.36, 'Preventing and Combating Racial Profiling by Law Enforcement', CERD/C/GC/36 (2020) para 10 – 11.

²⁴ The Guardian, 'Home Office uses racial bias when detaining immigrants', (2020) Available: <https://www.theguardian.com/politics/2020/jun/21/home-office-uses-racial-bias-when-detaining-immigrants>.

²⁵ Committee on the elimination of racial discrimination, Prevention of racial discrimination, including early warning and urgent action procedure, 'Statement on Racial Discrimination and enslavement of migrants in Libya (2017) https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LBY/INT_CERD_SWA_LBY_8609_E.pdf

²⁶ Human Rights Council, Report of the Special Rapporteur on the human rights of migrants (2019) A/HRC/41/38 para 48.

²⁷ ACLU, Immigration Detention and Coerced Sterilization: History Tragically Repeats itself (2020) Available: <https://www.aclu.org/news/immigrants-rights/immigration-detention-and-coerced-sterilization-history-tragically-repeats-itself/>.

²⁸ Groups like Detained Voices and Freed Voices operating in the United Kingdom can provide expertise by experience on the issue of detention. <https://detainedvoices.com/>, <https://detentionaction.org.uk/freed-voices/>.

²⁹ A/HRC/45/9 para 54.

³⁰ A/HRC/38/52 para 11.

Deprivation of citizenship and nationality can render people stateless or lead to exclusion. The practice again intersects between immigration enforcement, criminal law enforcement and ideas of belonging. This is a growing practice used by States for a variety of reasons including as part of anti-terrorism policies. The statelessness that results from this is rooted in discriminatory laws, policies and practices which:

aim to exclude or have the effect of excluding people who are considered as foreign, often on the basis of their race, colour, descent, ethnicity, national origin or religion.³¹

States utilise deprivation of citizenship and nationality and:

treat it as a privilege that can be taken away, members of minority communities, human rights defenders, dissidents and suspected terrorists are all more likely to be stripped of their nationality-facing acute human rights deprivations as a result.³²

Abdul Aziz Muhamat, a human rights defender and advocate, highlights the importance of hearing from refugees affected by human rights violations and abuses directly. These ideas can also be applied to migrants more generally.

Why is it easy to listen to someone who speaks out on behalf of victims but not to the victims directly? Is it also time to question this invisibility? The fact that no-one is listening and no-one is offering them a platform to express their concerns on their own, so it doubles their suffering. We hide them in detention centers or camps, away from us, making it harder from them to connect with reality. But it also prevents the truth from coming out as it is, and that's part of the complexity.³³

Hearing from migrants directly affected by these practices can shed light on the true impact racialized policies and practices can have on individuals at various parts of their migration journeys.

V. Migration Enforcement Implications on other Human Rights

Migration enforcement being embedded throughout societies results in the violations of human rights of Africans and people of African descent. The permeation of anti-immigration rhetoric in all facets of society has contributed to and is fed by the adoption of policies and practices that recreate borders everywhere. These everyday borders, including in healthcare, housing, work, access to food, social welfare institutions, education and justice create major barriers in the realisation of migrants' human rights particularly for those without a regular status.³⁴ The racism, biases and xenophobic attitudes and beliefs that are structurally present in migration enforcement institutions are therefore reinforced and strengthened through the everyday policing of migrant communities leading to their criminalisation. It makes doctors, teachers, landlords and banks, among many others, into part of the immigration law enforcement apparatus, creating barriers to accessing the rights these services ought to be delivering on. While these policies are intended to target migrants without a regular status,

³¹ A/HRC/38/52 para 11.

³² Institute of Statelessness and Inclusion, *The World's Stateless 2020: Deprivation of Nationality (2020)* available: <https://www.instituteforstatelessness.org/year-of-action-resources/worlds-stateless-2020>

³³ Abdul Aziz Muhamat, 'Giving a voice back to the Voiceless: a call to empower refugees' Geneva Solutions 7 November 2020 Available: https://genevasolutions.news/peace-humanitarian/giving-a-voice-back-to-the-voiceless-a-call-to-empower-refugees?utm_source=twitter

³⁴ Office of the High Commissioner on Human Rights 'The Economic, Social and Cultural Rights of Migrants in an Irregular Situation' (2014) HR/PUB/14/1 https://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf

Africans, people of African descent and other minorities with regular statuses (including citizenship) can be impacted by the absence of firewalls and experience violations of their rights by this approach to immigration law enforcement.³⁵

Members of the Voices Network, a network of refugees and asylum seekers write on the impact of some of these measures in the UK context. For example, the network wrote a letter to the UK Home Secretary following the death of Kelemua Mulat, an Ethiopian woman seeking sanctuary that died as a result of denial of cancer treatment due to immigration enforcement practices in healthcare.³⁶

VI. Access to Justice

The position in society of Africans and people of African descent means they are often structurally excluded from accessing remedies, redress and justice, compounding the impact of racism on their enjoyment of their rights. Despite access to justice being a fundamental right that everyone is entitled to regardless of status and identity, there are significant structural barriers that prevent migrants, including Africans and people of African descent, from accessing justice.³⁷ All of the violations and abuses by law enforcement officials in the context of migration that have been discussed so far are compounded when effective remedies or redress are unobtainable. The barriers to justice that Africans and people of African descent face are manifold including, socio-economic standing impacting financial resources, immigration statuses preventing access to services either in policy or in practice due to fear of deportation or reprisals, administrative barriers and language barriers. The criminalization of irregular migration is also a barrier to access to justice which impacts on their equality before the law and further creates situations in which migrants are excluded. In order for true justice to be secured for Africans and people of African descent, particularly when they migrate, the racialised nature of migration laws, policies and practices need to be assessed and addressed to ensure their human rights are respected, protected and fulfilled.

VI. Recommendations

While significant steps in dismantling structural racism need to be taken to address the human rights violations that migrants face by law enforcement officers, below are some small steps that can be taken to better acknowledge and understand the manifestation of racism in migration and resulting violations of the rights of Africans and people of African descent by law enforcement.

To OHCHR

- **Include in this report the connections between racism and policies and practices of migration control leading to human rights violations by law enforcement in the context of migration, including human rights violations against Africans and people of African descent that are both a result of national and regional laws policies that are unlawful under international law and those that are a result of actions by individual law enforcement officers but are fed by a context of systemic racism. To recognise the differential**

³⁵ François Crépeau and Bethany Hastie, 'The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights', *European Journal of Migration and Law*, vol. 17, 2015 and General Assembly, Report of the Special Rapporteur on the human rights of migrants (2018) A/73/178/Rev.1.

³⁶ The Voices Network, Access to healthcare is a universal human right: Statement of the Network on the sad news of Mulat's death (2019) available: <https://thevoicesnetwork.home.blog/2019/09/25/statement-about-accessing-healthcare-for-asylum-seekers/>

³⁷ A/73/178/Rev.1.

manifestations of racism faced by migrants across different geographical locations and by different law enforcement officials.

- Preparation of this report should include specific consultation on the theme of law enforcement in the context of migration with Africans and people of African descent to provide further insights on the interconnectedness of migration governance and racism ensuring that this is facilitated in a way which recognises a range of accessibility concerns.

To States

- In light of the upcoming 20th Anniversary of the Durban Declaration and Plan of Action, States should take concrete steps to implement this instrument. These plans should take note of the racism that occurs in the implementation of migration policy and strengthen safeguards against this.
- The Global Compact for Migration includes non-discrimination and human rights as a Guiding Principle, States should develop national implementation plans which include race analysis and begin to address the impacts of structural racism in migration governance, these plans should be built on meaningful consultation with migrants.
- Through the Human Rights Council establish a commission of inquiry or a fact-finding mission to examine violations of the human rights of migrants at borders and in the wider immigration enforcement context with strong race and gender analyses.
- Review all relevant laws and policies to bring them in line with General Recommendations from the Committee on the Elimination of Racial Discrimination including No.36, No.35, No.30, No.29 and take other steps toward their implementation.
- Implement recommendations from the Special Rapporteur on Racism's recent report on technology, race and borders A/75/590.