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# SUBMISSION ON THE STRATEGIC VISION FOR THE FULFILMENT OF THE MANDATE OF SPECIAL RAPPOREUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

Amnesty International welcomes the opportunity to contribute to the strategic vision of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The submission is structured around some of the themes covered in the questions laid out by the Special Rapporteur with a focus on two questions (1 and 5) raised in the call for submissions.

## USE KEY TRENDS IN RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (QUESTION 1)

Amnesty International would like to bring to the Special Rapporteur's attention the following trends, which have come to our attention through our work on and/or involving racism, racial discrimination, xenophobia and related intolerance.

### RACIAL DISCRIMINATION AGAINST MIGRANTS, REFUGEES AND ASYLUM SEEKERS

Amnesty International has documented an alarming trend of systemic racial discrimination, including violence, against migrants, refugees and asylum seekers. In some instances, this treatment has amounted to crimes under international law, with the victims of these crimes disproportionately comprising Black migrants, refugees and asylum seekers.

In Tunisia, recent racist remarks by the President have ignited a wave of anti-Black violence in the country, including violent attacks against Black people on the move and students, which have been downplayed and denied by Tunisian authorities.

In Morocco and Spain, Spanish and Moroccan authorities failed to provide truth and ensure justice for at least 37 Black people on the move killed and 77 others still missing following the deadly events that took place on the border of Spain's Melilla enclave.

In the United States of America (USA), immigration authorities subjected Haitian asylum seekers to arbitrary detention and discriminatory and humiliating ill-treatment that amounted to race-based torture, rooted in anti-Black discrimination. U.S. border officials also practice illegal pushbacks of asylum-seekers at the US-Mexico border.

In Qatar, migrant workers – especially from Africa and South Asia - face discrimination on the basis of their national origin and race in a number of areas, including salaries.

In Saudi Arabia, Ethiopian migrants crossing the border from Yemen or residing in Saudi have been subject to arbitrary arrest, indefinite detention in inhumane and cruel conditions as well as torture and other ill-treatment by Saudi authorities.

In Europe, migrants, refugees and asylum seekers are increasingly forced to resort to unsafe routes to access European borders due to ongoing efforts to block safe and legal routes by European policy makers through push backs and the criminalization of rescue assistance. For example, in Italy the government adopted two measures affecting NGO ships that patrol the central Mediterranean and rescue people in distress at sea. In combination, these measures significantly reduce the capacity of NGO rescue ships to patrol the areas of the central Mediterranean where shipwrecks are more likely to occur. In the central Mediterranean, over 2000 people lost their lives in 2022 while engaging in irregular sea crossings to seek international protection or better lives in Europe.

Following Russia's invasion of Ukraine, European countries demonstrated they had the tools to protect people fleeing war and help new arrivals but that the approach is riddled with racist double standards. In March 2022, the E.U activated the Temporary Protection Directive (TPD) - for the first time since its creation - which granted immediate protection in EU countries to people fleeing the conflict in Ukraine. Non-Ukrainian nationals who fled Ukraine following the Russian

invasion, including many international students and people who had been living in Ukraine for up to 20 years, in particular Black people, reported suffering discrimination and violence when trying to leave Ukraine.

## **POLICING AND CRIMINAL JUSTICE**

Amnesty International has documented a disturbing trend of systemic racial discrimination in law enforcement and policing across the globe, with racially marginalized communities disproportionately subject to police violence, incarceration, and deaths in police custody.

This includes the discriminatory use of less lethal weapons including batons, tear gas and kinetic impact projectiles, as well as other weapons such as hunting shot, in the policing of public protest in many countries, including in Jammu & Kashmir in India, Israel and the Occupied Palestinian Territories, and in the USA.

Amnesty International has also reported on the prevalence of racial and ethnic profiling amongst law enforcement agencies which has material, and sometimes deadly, consequences for racially marginalized individuals and groups. In the Netherlands, the Court of Appeal ruled the border police's use of race in selection decisions as a form of racial discrimination. Amnesty International was a co-claimant together with institutional litigants and people who have been subjected to racial profiling.

In Europe, the enforcement of lockdown measures introduced in response to the COVID-19 pandemic had a disproportionate impact on racially marginalized individuals and groups. The use of coercive measures to protect public health in Europe has had a disproportionate impact on racialized groups already subject to discriminatory identity checks and unlawful use of force prior to the pandemic.

In Peru, authorities have responded with excessive and, in some cases, lethal force and violence to ongoing social unrest and protests across the country. The state violence and repression has been most pronounced in some of Peru's most marginalized regions whose mostly Indigenous populations have historically suffered from discrimination and unequal access to political participation.

In Brazil, the rationale of the "war on drugs" has been used to justify militarized operations and unnecessary and excessive use of force, including extrajudicial executions, resulting in thousands of victims every year affecting mostly afro-Brazilians living in favelas.

## **DIGITAL TECHNOLOGIES**

Amnesty International has documented how digital technologies are not immune to systemic racism and discriminations and can also be a vector of it.

In Myanmar, Meta's algorithms proactively amplified and promoted content which incited violence, hatred, and discrimination against the Rohingya – pouring fuel on the fire of long-standing discrimination and substantially increasing the risk of an outbreak of mass violence.

In Kenya, Amnesty International is an interested party in a legal action that seeks to hold Meta accountable for its role in contributing to ethnic violence and human rights harms in Ethiopia, which is facilitated by Meta's use of algorithmic systems that prioritize and recommend hateful and violent content on Facebook and its business model.

In the Netherlands, racial profiling in unregulated algorithmic decision-making used in the Dutch childcare benefits scheme led to racial discrimination and erroneous fraud allegations against non-Dutch nationals.

## **INTERNATIONAL JUSTICE**

Amnesty International has documented concerns over apparent double standards in international justice, particularly a selective approach to justice by the International Criminal Court (ICC) and its Assembly of member states who do not appear to be applying principles of accountability and redress to situations equally. For example, during the last three years the Office of the Prosecutor has decided to discontinue and/or deprioritize investigations into crimes by powerful countries, such as the United Kingdom and the United States of America, citing viability and budgetary constraints. In contrast, the Prosecutor's decision to seek voluntary funding for a new situation (Ukraine) and not others (For example, Nigeria, Afghanistan) raises important questions about which situations receive priority and fundamentally risks establishing a hierarchical system of international justice.

Amnesty is also concerned at the significant delays, or lack of tangible progress in the ICC investigation into the crimes committed in the Occupied Palestinian Territories, among which - as Amnesty has reported - include the crime against humanity of apartheid.

## CLIMATE JUSTICE

The effects of climate change and fossil fuel-related pollution also run along lines of ethnicity, race, class and caste, perpetuating discrimination and inequalities.

In India and Nepal, communities belonging to low castes (Dalit), and women and girls in particular, face an unjust and unequal society and remain more susceptible to the negative impacts of climate change. They are highly exposed by living in segregated and isolated housing based on caste lines and because they are often overlooked in humanitarian and rehabilitation responses and are persistently deprived of resources and opportunities to influence decisions concerning them.

In North America, air pollution disproportionately affects poorer racialized communities especially Black communities, whose neighbourhoods are more likely to be situated next to power plants, refineries and highways. They experience markedly higher rates of respiratory illnesses and cancers, and Black people are three times more likely to die of airborne pollution than the overall US population.

In Bulgaria, the Roma community of Pernik lives next to a pollution-blighted illegal coal mine and many members of the community are forced due to poverty to engage in highly dangerous artisanal mining. While these industries contribute to GHG emissions, climate change in turn aggravates the health impacts of pollution in these communities.

Globally, Indigenous peoples are disproportionately affected by climate change mitigation programmes, either for programmes of reforestation or combatting deforestation, biodiversity conservation, or green energy as in Kenya, Uganda, Norway, and Cambodia.

## COVID-19 PANDEMIC

The existential challenges of COVID-19, economic and climate crisis have also exposed the urgent need to dismantle systemic inequalities and discrimination that disproportionately targets racialised communities, minorities, Indigenous peoples and communities discriminated on the basis of Work and Descent (DWD communities). As it was the case before the COVID-19 pandemic as well, people subject to racism face multiple barriers in accessing timely and quality health care and access to the social determinants of health often reflect structural inequality and institutional discrimination which drive/perpetuate racial health disparities.

Globally, among the many injustices that came about in addressing the pandemic, the lack of cooperation to ensure universal access to Covid-19 vaccines was perhaps the most impactful. The development and distribution of vaccines has played a key role in moving the world out of the most acute phase of the pandemic, but the unfair global distribution of these vaccines exposed significant human rights problems, and systemic inequalities for people subjected to different oppressions, including racism.

In East Africa, for example, governments were unable to roll out timely, predictable and therefore effective mass vaccination campaigns. Several countries in East Africa, the Horn and Great Lakes maintained strict measures aimed at preventing the spread of Covid-19 much longer than in countries where vaccine supply has been plentiful. This has risks to the rights to health, education, and an adequate standard of living.

Several countries introduced coercive measures to protect public health, including 'lock-downs', quarantines, compulsory testing, and use of law enforcement agencies to enforce these public health rules. COVID-19 coercive measures increase the number of interactions between law enforcement officers and groups facing intersecting discriminations. In view of the systemic human rights concerns regarding racial discrimination in law enforcement globally, the involvement of police and criminal justice systems in coercive health measures presents a particular risk for discriminated groups. In many instances these measures further stigmatized racialized groups, disproportionately impacted them and contributed to entrench institutional racism.

## HOW THE SPECIAL RAPPORTEUR CAN ELUCIDATE THE LINKS BETWEEN PAST SYSTEMIC HARMS AND CONTEMPORARY FORMS OF RACISM (QUESTION 5)

Human rights violations of today can be traced to historical harms of slavery and colonisation which have given rise to contemporary forms of racism. To dismantle contemporary forms of racism, States need to address discrimination inherently built into laws and practices inherited from colonial and slavery systems. As noted by the mandate: "Historically, the racial categorization of human beings was used during European colonialism to distribute rights and resources among peoples" (A/76/434, para. 3) and "the contemporary political economy of global extractivism cannot properly be understood without reference to its colonial origins". (A/HRC/41/54, paras. 22–26)."

The renewed attention given to the Black Lives Matter movement, sparked by the murder of George Floyd by the police in the USA, has highlighted the need for the global human rights movement to prioritise and effectively address racial justice in a systemic way. To analyse contemporary forms of systemic racism, international human rights law recognizes that it is critical to look at historical grounds of discrimination. There is now a need for a common framework to address contemporary racial injustices linked to past systemic harms.

In the USA, practices of ill-treatment towards Haitians are widespread and have occurred historically at different times and in different places, pointing to long-term and systemic racial discrimination within the immigration system with the aim of punishing Haitian people and deterring them from seeking asylum in the USA. The history of enslavement of people of African descent and contemporary forms of systemic anti-Black racism provided a critical backdrop to this research. US-based NGOs and lawyers interviewed for the report said the treatment Haitians receive under the control of US immigration is deeply interconnected with the way Black people in the USA have been treated historically, including in the criminal justice system, where evidence demonstrates Black people are vastly overrepresented.

There is also a need to further explore how the United Nations can contribute to a debate, in consultation with **Indigenous peoples**, on addressing the historical legacy of colonization, denial of self-government and self-determination, genocide, resource extraction, theft of lands and the harms done to Indigenous culture.

Amnesty International is committed to engage and join efforts with the mandate to address the links between past systemic harms and contemporary forms of racism through the analysis of violations of the right to equality and non-discrimination and by addressing systemic discriminations within their historical context.