

## **Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Australia (12-20 December 2022)**

**Canberra, 20 December 2022**

1. The United Nations Working Group of Experts on People of African Descent thanks the Government of Australia for its invitation to visit the country and for its cooperation. We thank the Department of Foreign Affairs and Trade and the Department of Home Affairs for organizing the visit.
2. The views expressed in this statement are of a preliminary nature. Our final report will be presented to the United Nations Human Rights Council in September 2023.
3. During the visit, the Working Group assessed the human rights situation of Africans and people of African descent in Australia, and gathered information on the forms of racism, racial discrimination, xenophobia, and related intolerance they face. The Working Group studied measures and mechanisms to prevent systemic racial discrimination and to protect victims of racism, as well as responses to multiple forms of discrimination.
4. As part of its fact-finding mission, the Working Group visited Canberra, Melbourne, Brisbane and Sydney. It met with senior officials of the Australian Commonwealth Government (Department of Foreign Affairs and Trade, Department of Home Affairs, Attorney General's Department, Department of Education, Department of Health and Aged Care, Department of Employment and Workplace Relations), and the Australian Bureau of Statistics. It also met with representatives of State Government, officials from the Australian Human Rights Commission, the Victorian Equal Opportunity and Human Rights Commission, the Victorian Department of Justice and Community Safety, the Department of Jobs, Precincts and Regions, representatives of Ethnic Communities Council of Victoria, officials of the Queensland Government, the Anti-Discrimination NSW, as well as representatives of the Australian Border Force, the Australian Federal Police and law enforcement in Brisbane and Canberra. It also visited the Villawood Immigration Detention Centre in Sydney.
5. The Working Group met with civil society representatives of African descent from Canberra, Melbourne, Brisbane, Sydney, Perth and Adelaide. We thank civil society, human rights defenders, lawyers and academics as well as African Australians and people of African descent across Australia, including families of affected African Australian communities and individuals who shared their experiences and written submissions with the Working Group. We welcome their efforts to promote and protect the human rights of people of African descent in Australia.
6. The Working Group welcomes the good practices and positive steps taken to guarantee the human rights of people of African descent in Australia including the following:
  - a) The establishment of the Parliamentary Joint Committee on Human Rights in 2012;
  - b) The promulgation of the Human Rights Act, 2004, by the Australian Capital Territory;
  - c) The Government's initiatives to support the mental health of culturally and linguistically diverse (CALD) populations and communities in Australia;
  - d) Initiatives taken among certain states such as the Victorian African Communities Action Plan, the development of Victoria's anti-racism strategy, the Settlement Engagement Transition Supports (SETS);

- e) the intended shift of the Gender Equality Branch to an intersectional approach, the qualification equivalence framework in Victoria, and
  - f) the support offered to organisations, alliances, community leaders and communities of African descent to ensure the human rights of their constituencies.
  - g) The work of the Australian Human Rights Commission especially the development of the National Anti-Racism Framework, the State Commissions and the Ombudsman to protect the human rights of people of African descent and other communities that face racial discrimination.
7. Despite the positive measures referred to above, the Working Group is concerned about the prevalence of racial discrimination and the human rights situation of Africans and people of African descent in Australia. Although with limited recognition, Africans and people of African descent form a significant part of Australia's human resource capital since the arrival of 12 Africans and people of African descent on the First Fleet, and they contribute themselves, their knowledge, skills and culture to the society as citizens, migrants, academics, students, and refugees, among other categories.
  8. The experiences of people of African descent in Australia today continue to be impacted by the country's settler-colonial past, its White Australia policy, and its conduct toward First Nations peoples, including Aboriginal people, Torres Strait Islanders, and South Sea Islanders. People of African descent experience a culture of denial of this racialized reality, and the legacies of this through pervasive "othering" in public spaces and entrenched disadvantage. Particularly for adolescents and youth, seeking to hold memory, home, and history as anchors, this can create devastating identity crises. As one woman of African descent stated, "We all came with great expectations and we all have shattered dreams."
  9. Importantly, the narrative that people of African descent are only recent arrivals to Australia misrepresents the historical record. An ongoing African diaspora presence has existed in Australia since the arrival of the First Fleet in 1788, with known, repeated interactions and visits between iconic Afro-descendant and Indigenous persons. By late 1800s, there were over 1400 settlers of African descent in the settler colony, and the presence of people of African descent on most transports into the colony. In the latter half of the twentieth century, Black internationalism movements in Australia drew from indigenous and Afro-descendant communities, including an iconic event where people of African descent flocked to the airport to welcome a delegation of indigenous people returning from an international pan-Africanist engagement.
  10. The mainstream narrative also misrepresents longstanding connections between Black African and First Nations peoples extending back to the First Fleet. Australian history, policy, and practice was also shaped by the global trade and trafficking in enslaved Africans and the social construct of race and Blackness. As abolition stemmed the transatlantic trade and trafficking in enslaved Africans, the same enslavers fuelled the sugar trade via similar human trafficking practices, like blackbirding of the South Sea Islanders.
  11. The Australian public narrative that 'race' and 'racism' are problematic terms effectively normalizes the erasure and denial of racialized experiences of people of African descent and renders multicultural efforts extractive, in their consumption of cultural heritage rather than authentic engagement in learning and growth. Yet racialized barriers in employment, education, and elsewhere structure the lives of people of African descent.

12. The multicultural narrative in Australia often operates to flatten diversity and enable a strategic colour-blindness with respect to race. This intentional epistemic ignorance of race renders multicultural identity nearly universal, fuelled by the equally broad term, “cultural and linguistic diversity” (CALD), that obscures the highly salient, racialised ways human rights violations and abuses occur, erasing the everyday violence of racism and the particular experiences of people of African descent in Australia.
13. The official statistics may not accurately represent the number of people of African descent in Australia because of the avoidance of race as a data variable in the census, only to be used as a Constitutional ground for disenfranchisement, and as a resultant mandatory ground of exclusion from the census.<sup>1</sup>
14. The Working Group takes note of the disproportionate numbers of people of African descent who have been categorized as unlawful non-citizens and banished from Australia’s population to off shore and onshore detention facilities; the prevalence of statelessness; and the obscurity of identity or enforced invisibilisation as a system driven and supported survival strategy of marginalized groups in the country. Even people of African descent that rightly self-identify as African-Australians are seldom recognised as such but rather classified in the collective as ‘African communities’, reflecting a crisis of diversity that constitutes the actual Australian national identity.
15. Australia has ratified most international human rights instruments relevant to anti-racism including the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). It however entered a subsisting reservation to Article 4 (a) concerning the prohibition of incitement of violence, in 1975, while indicating intention to find the first suitable moment to seek from Parliament, legislation specifically implementing the terms of the provision.
16. The Race Discrimination Act of 1975, was enacted with the ICERD annexed to it, to eliminate racial and other forms of discrimination. The Act out-lawed discrimination based on race, colour, descent, or national origin; affirmed equality of all persons before the law; established the office of the Race Discrimination Commissioner, and inspired the adoption of state anti-discrimination frameworks and establishment of anti-discrimination commissions across Australia.
17. The Working Group has learnt that several laws are in conflict with people of African descent. They facilitate the established project of excessively policing their lives and restricting their mobility in society; support repressive, uninformed processes and outcomes, and lead disproportionate numbers of children and people of African descent into detention. An example is the Migration Amendment (Character and General Visa Cancellation Act) 2014 that authorizes the Minister of Home Affairs to cancel a visa on specified grounds including failure to pass a character test and serving a sentence of imprisonment on a full-time basis in a custodial institution.
18. Pursuing legal redress for racism, and other legal actions such as judicial review of revocation of visas is a daunting costly task with minimal prospects of success. This trend does not support the prevailing complaints-based model of addressing racism and racial discrimination.

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<sup>1</sup> Articles 24 and 25, Commonwealth of Australia Constitution Act.

19. The Working Group heard that once a person is a refugee in Australia, they would always be a refugee. It learnt of the weaponization of refugee and migrant status that often disproportionately places people of African descent in a state of precariousness including the actual risk of loss of status, 'indefinite' detention, and/or deportation. Integration in Australian society by refugees is constrained by remoteness of many of their residential facilities.
20. The Working Group commends the government's investment in settlement of refugees in Australia. It has however learnt of an actual risk of racism, by service providers, tainting the facility with violations of the human rights of people of African descent. Certain entities with a refugee protection role are said to be more inclined and even actively seek to support refugees of other identities while turning away appeals from refugees of African descent. One woman of African descent was locked in her house, faced severe restrictions to the amount of food she could purchase to cook for her three toddlers, and reported pervasive hunger in a wealthy country after resettlement due to the misconduct, abuse of authority, and inhumanity of her case worker. Her reliance on the case worker for money, and to be freed from her own house created an untenable situation where a new arrival lacked avenues for redress and support in integration.
21. Although Australian resettlement policy reportedly seeks to provide a warm welcome, severe limits and conditions to this are felt deeply by people of African descent in Australia, who experience racial hierarchy in policy and in practice and Australian identity has not been revised to see naturalized people of African descent as Australian. For example, Australians of Ethiopian and Eritrean descent expressed heartbreak that neither their neighbours nor Australian policy felt compelled to assist refugees fleeing the war Ethiopia, many of whom were their relatives. The marked difference toward Ukrainian refugees in the current Ukraine-Russia war, who do not have Australian relatives, included readily-available public funding to support Ukrainian cultural events and affirmative requests to host Ukrainian refugees, was evident. Integration was said to be a one-way process.
22. Settlement is a protection tool that may translate into a pathway to prison. There is concern that the focus of the settlement phase is ensuring survival without addressing the trauma of the persons sought to be settled, nor ensure their integration and success in Australian society. The requirements to integrate in Australian society yield extensive financial pressure including exorbitant fees for potentially repeatable language tests, re-training and re-skilling.
23. The progression from refugee status to citizenship is marred by encumbrances including several tests that are conducted by service providers that the Working Group has learnt demonstrate racially discriminatory and extortionist practices. Family reunification of persons in protracted refugee situations in the originating countries is impracticable because of unattainable documentation and the prohibitive costs involved. The deprioritisation of settlement of refugees from Africa in the recent past has adversely affected family reunification.
24. Serious human rights violations have been reported by people of African descent in immigration detention facilities. In addition to the excessive use of force, deaths in custody involving use of ligatures, and gratuitous violence, the use of a "body belt" wherein individuals' feet and hands are shackled together in "hog-tied" positions for up to eight hours were reported. Others reported detention personnel sitting on their chests, injections of very high doses of psychotropic medications, and physical violence.

25. The Working Group is particularly concerned about suspicious deaths and deaths in police, immigration, and prison custody. Questions remain about the death of Michael Atakelt, who was last seen in police custody before his body was discovered in a river.
26. The targeted surveillance and vigilant regulation of Black bodies is not merely a modern phenomenon. From the colonists records of Black Caesar's repeated visits to indigenous communities to the Australian intelligence apparatus' surveillance and recording of Black and indigenous activists in the latter half of the 20th century, the roots of these practices extend back to the very founding of the colony and structured the emerging apparatus of the state .
27. Today, throughout Australia, people of African descent reported racial profiling, abuse of authority, over policing, targeting, and violence by the police. Particularly at the intersection of race and socioeconomic status, many people of African descent experience only a lesser version of liberty, with frequent restrictions to their movements by the many police present in their communities, including police stops several times daily.
28. Australia's use of indefinite detention, including against people resettled on humanitarian grounds, pursuant to Section 501 of the Migration Act presents grave human rights concerns. In the case studies reviewed by the Working Group. The state acknowledges there is no legal notice requirement to individuals subject to visa cancellation as a collateral consequence in advance of their criminal convictions, and that the provision has been applied retroactively to persons convicted prior to its enactment in 2015. It appears that decision-making of persons subject to criminal proceedings proceeds entirely ignorant of the immigration-related consequences of a criminal conviction. A guilty plea amounting to time served, for example, after a year awaiting trial (or for a preferred sentence) would unknowingly send a visa holder to indefinite detention with little possibility for release ever.
29. The Working Group met with several people detained indefinitely in immigration detention who experienced these systematic failures of notice, due process, or recognition of their contributions, rehabilitation, and underlying circumstances of their situations. In several cases, due process and procedural failures in the underlying criminal cases were carried over unquestioned into the immigration proceedings. Counsel for these persons reported delays and obstacles to receive legal files and relevant documentation. Some cases presenting particular human rights and due process concerns included Mamer Dau Thuch, Emmanuel Deng, Eddie Doe, and others.
30. All people who arrive in Australia via irregular immigration, including asylum-seekers, are placed in detention on a mandatory basis. Yet, no asylum-seekers should face mandatory detention, as irregular routes are not a crime for people fleeing persecution, particularly where no route is provided for regular entry of asylum seekers into Australia soil. Voluntary acceptance and settlement of refugees does not diminish the State's protection obligations with respect to asylum seekers and to protect the liberty and human rights of those within in its jurisdiction. Domestic law and policy contradicting this violates well-settled international law and the Refugee Convention. To the degree this policy results in more extreme periods of detention for people of African descent, or less available opportunity to convert to a legal status, such practices may also violate the ICERD
31. As the Working Group cautioned all Member States at the beginning of the pandemic, the COVID-19 pandemic made evident racialized policy and specific risk tolerated for people of African descent and this population was particularly vulnerable to policy and practices that

disregarded their needs. Several government and policy and civil society organizations reported barriers to access care, culturally competent interventions, and translated material during the height of the COVID-19 pandemic. The facially neutral policy and failure to recognize and address the needs of people of African descent specifically created disproportionate risk and failures of protection for their communities.

32. The hard lockdown of nine public housing estates during the COVID-19 pandemic was a serious failure of protection and a collective violation of the human rights of residents of those houses and their communities. It occurred without consideration for the many thousands of people living in those flats, dismissed their basic needs for food, medications, and assistance, and disregarded the risks they would endure. Community responders experienced disdain, disregard, and ongoing violence from the police, who enforced the lockdowns, for merely trying to provide essential services to their families and community in the absence of any state intervention or protection on behalf of these public housing residents. During the community-led response efforts, community members were eventually relied upon by the government but were not offered PPE or access to enhanced protective measures, despite being first responders.
33. The eventual hiring of community during the hard lockdowns in public housing in Melbourne failed to not acknowledge the skill, integrity, and potential of the people who stepped in to heal the breach in protection and dignity. Their roles they were given were not defined, compensated, or situated to serve as work experience to lead to permanent, similar employment or to recognize the skill, resilience, and commitment they had already shown in public service to the community. The proven dedication and capacity of these community members has not resulted in an acknowledgment of their value and centrality to an effective work force, in the forms of career development, public investment, or widespread opportunity.
34. The Minister of Immigration, Citizenship and Multicultural Affairs publicly stated that Africans and people of African descent do not integrate well in 2007 and this statement has never been retracted or apologized for, even in subsequent governments. It lives on in the minds of people of African descent who see themselves as contributors to Australia and as African-Australian. In addition, there have been examples of extraordinarily fast asylum denials for well-known people of African descent seeking asylum, suggesting individual intervention at the Ministerial level to preclude these asylees from remaining.
35. The use of racialized hate speech in political rhetoric is a particularly toxic form of racism. Political campaigns have openly used xenophobic language and degrading, racist imagery. The 2016 election was characterized by the instrumentalization of negative racial stereotypes and false portrayals of people of African descent as dangerous and criminal to leverage political support.
36. People of African descent report that they are routinely subjected to stereotyping, manifested by labeling and racial profiling on social media, in the media and in person, the latter at school and at work, and when people of African descent try to access basic social services. The reports of the two young women branded as 'enemies of the state' with their personal details publicized, while others who broke pandemic protocols were not so branded or accosted, remain indelibly imprinted in the minds of people of African descent. Similarly, the insistent reports of 'African gangs' in parts of Australia that were largely unfounded, have left communities of people of African descent wounded and alienated from the mainstream.

37. With little visibility given to progressive and law-abiding people of African descent in Australia, their past and current contributions, outside of the celebration of cultural expressions around food and dance and music, leave little in the minds of 'other' Australians about the viability of recent immigrants, who in turn are subject to racial discrimination, xenophobia, and other related intolerance. The work of the Ethnic Relations Committees, the community engagement of various departments, social inclusion and small grants initiatives, and the Human Rights Commissions seem currently to fall short of what is needed by both the incoming and receiving communities to ensure adequate settlement of immigrants.
38. The Working Group welcomes and commends the important resource of the "Racism in Schools" research published by university students in Canberra (Australian National University) and Melbourne (University of Victoria). These confirm nearly universal experiences of racism, a failure to protect by teachers or administrators, inconsistent allyship against racism by classmates, and significant ongoing use of racial slurs and racial disparities in educational experiences, opportunities, and treatment.
39. Children of African descent therefore, have ready legal access to public pre-primary, primary and secondary education. In some instances, parents have chosen to send their children to private schools, in part because of the many challenges children of African descent face in schools. The Working Group has learned that participation in and progressing through the system is fraught with several challenges, including the following:
  - a. a) Many refugee children enter Australia without any/a strong foundation in early years schooling. As their admission is based on age/stage rather than knowledge and skills, they are more likely to fall behind their peers, a gap that increases as they are 'progressed' through the school system with their learning outcomes compromised.
  - b. b) In some instances, children and their parents, face language and other social barriers, which would require additional support to adjust to the Australian school context in order to reach the expected grade level competence.
  - c. c) Many refugee children, and their parents, have been traumatized by the circumstances in their country, and need special teaching-learning support in the classroom and for home assignments to succeed.
40. Children of African descent are subject to racial slurs, bullying, labelling, stereotyping and pejorative name-calling from classmates and teachers, as well as ostracization and isolation in school and community settings. Children of African descent have little recourse to a clear complaints procedure, and in those instances where some have registered complaints, they have faced either indifference or pushback.
41. There is very little, if anything, in the curricula with which children of African descent can identify, nor do children of African descent see positive images of themselves and their families in the news, on social media. With minimal representation among adult authority figures – teachers, administrators, police, social workers, and even in the councils and commissions designated to advocate for and support cultural and linguistic minority issues – children, and people of African descent, often feel disassociated from their new home, community, country. At the tertiary level, the Working Group has learned that there are very

few African studies courses, and in one instance – at ANU - despite being heavily subscribed, was taken off the curriculum.

42. A significant proportion of people of African descent in Australia is pursuing university studies. They pay a premium for such education, charged in some instances as much as four times national students. These students generally do well, and some have remained in Australia, themselves entering academic and research institutions.
43. Although the Working Group heard of a work force crisis and significant needs in every sector and at every level, people of African descent struggle to get hired, promoted, and retained in permanent work. Yet, overall, the population of immigrants of African descent are relatively well-educated and skilled.
44. It is important to note that there are skilled, credentialled and qualified persons within the refugee community, who have had to leave not just their homes, families, communities, but also their professions. Many of these immigrants come from countries where English is an official language.
45. Many persons of African descent have indicated that their credentials are not recognised, and they are forced to retrain and/or recertify, only to be told they have no local experience. This major concern has been raised consistently, as it presents considerable social, financial, emotional, and professional hardships to individuals who enter Australia with both qualifications and experience. As a consequence, these immigrants enter the workforce at grades below their qualifications, many outside of their profession, and also progress at a slower rate. One individual described this situation not so much as a glass ceiling but as a concrete ceiling, exacerbated by the responsibility in some instances to train others without recognition of their competence and/or experience.
46. People of African descent reported being subjected routinely to racial microaggression and humiliation at work. They are therefore not only confined to fewer employment opportunities, but to the lower rungs of the job hierarchy when employed. People of African descent are virtually not represented in senior or executive positions, including in those civil, social, economic and cultural areas where there is a direct interface between governments and government institutions and people of African descent. Public sector employment was cited several times, in this context, where retention and promotion are particularly problematic and instances where public servants have left to establish small businesses.
47. People of African descent expressed considerable frustration in the way English language testing seems to be used as a barrier to decent work, with trained professionals such as nurses being subjected to stringent testing even when they have successfully completed certification and training in Australia. In other instances, people of African descent indicated that they are routinely told that they don't have local experience and/or that they are over-qualified in instances when they have felt there was a racial barrier to their employment.
48. Racism and racial discrimination have a significant impact on the health, health care and psychological wellbeing of men, women and children of African descent in Australia. The Working Group learnt from several psychologists and researchers that people of African descent experience racial trauma and minority stress, but these are neither recognized nor addressed in the white modelled training of practitioners and practice. This often leads to misdiagnoses and lack of proper treatment, which predisposes people of African descent to

aggravated approaches such as detention and involuntary infusion therapy. A person of African descent who spent 10 years in mental health care institutions confirmed racism in those institutions that exacerbates the conditions of patients. The Working Group learnt that infusion therapies are administered arbitrarily, and in disproportionately excessive doses that lead to sedation and death in certain cases. It witnessed the physical effects of this therapy on a detainee that was visibly weak and pale. People of African descent expressed concern about the rise of suicide and self-harm among the communities. Psychologists of African descent experience a high level of burn out because of structural barriers in the health system that translate into racial discrimination against them and their clients.

49. There are racialized barriers to health care including language and intercultural misunderstandings, inordinate delays, stereotypical and dismissive approaches such as mistrusting patients of African descent, and underrating their pain including women in labour. This has led to loss of insurance cover, late medical interventions, and inadequate reach of public health messaging. Examples include a woman of African descent who was repeatedly advised by her doctor to lose weight as management of her condition, only to be subsequently found six months pregnant, and another woman of African descent whose doctor refused to acknowledge the impact of a motor accident on her body with the consequence that insurance could not support her treatment. A woman of African descent with obvious physical disability was required to medically prove her disability as a pre-requisite to accessing facilitation from an institution.
50. Ailments that are peculiar to people of African descent such as fibroids in women, sickle cell anemia and vitamin D deficiency lack significant attention in health care, research and development. Presentations of skin conditions in Black skin were unknown to medical providers and negative racial stereotypes about capacity for pain and the need to use large amounts of medication on people of African descent persisted. The Department of Health and Aged Care was unaware of widespread, serious community concerns at pervasive mental health issues and a prevalence of suicides among South Sudanese refugees, in part due to a lack of relevant data collection and reporting disaggregated by race and ancestry.
51. The Department of Health and Aged Care also confirmed that linguistic and cultural competence are significant determinants of health with persons that do not speak English in Australia as less likely to rate their health condition as adequate. The interpretative needs of people of African descent in health care in Australia transcend the lexicon equivalence of words to translation of systems and imparting broader knowledge of the modalities. This gap is yet to be filled.
52. Access to adequate housing is a general concern for Australian society, which is aggravated by race-based drivers of the rental economy. People of African descent report rental discrimination by private landlords and hostile and racist treatment by public housing personnel, including in the process of requesting suitable housing. Many people of African descent are facing housing instability with much of their accommodation as overcrowded and un serviced that adversely impacts their family lives, and escalates tensions. Housing inadequacy drives young people to patronise public spaces such as parks, where they are subsequently surveilled and their lives policed by both society and law enforcement. The Working Group was informed of the ordeal of a person of African descent in Queensland, who made 150 applications before he obtained a single offer for accommodation that was

subsequently sold shortly thereafter. The income of many persons of African descent falls below the requisite threshold set for those that qualify to apply for housing.

53. People of African descent obtain support from the government to form associations and organise events among their communities. The Working Group was however informed of consistent policing, threats and disruptions of gatherings of people of African descent, which are often prompted by suspicions that, of necessity, imply race-based intolerance.
54. The communities and concerns of people of African descent in Australia are diverse. The significant culturally competent role of community-based organisations in addressing the specific concerns of people with African heritage is evidently recognized by both government and civil society. However, the funding support accorded to organisations of people of African descent is disproportionately low compared to the gaps in state programming that they fill. There is a practical anomaly because organisations with more access to funding have limited impact due to limited cultural competence while organisations of people of African descent do more work and have more impact in their own communities but have no adequate funding.
55. The Working Group has learnt that organisations of communities of African descent are subjected to regulatory measures that equate to structural violence based on stereotypical assumptions that they are susceptible to malpractices. Most of the funding extended to them is only intended for short cycle activities other than medium and long-term programming hence limiting the impact of these organisations.
56. The human right to adequate food that is culturally acceptable to people of African descent is constrained by border controls and restrictions that have a racialized effect.<sup>2</sup> People of African descent narrated the ordeal of losing their essential food, sourced from afar, to waste, due to quarantine and prolonged and culturally uninformed and insensitive procedures. A business woman specializing in African delicacies confirmed losing several of her consignments to unjustified food disposals and the higher cost of having to transition her imports through third party countries in order to navigate restrictions but transfer the cost to the consumers.
57. Children, and young people (adolescents) are particularly vulnerable and the Convention on the Rights of the Child (CRC) provide special measures for their survival, development, protection and participation, grounded in principles of the best interest of the child. In many instances, children and young people immigrating to Australia, regardless of the entry pathway, come because their parents or guardians seek a 'better' life in terms of peace, security, professional and/or economic development. In many instances, children and young people, and their parents and their peers, bring their individual and collective trauma which affect their capacities to settle in Australia.
58. Many children of African descent, particularly first generation immigrants, come from countries where the collective culture predominates, and where parental and collective rights are mediated in fundamentally different ways than those in Australia. Many of these children go through their identity formation in Australia, with distinctly different, if not dissonant,

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<sup>2</sup> See CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) para 11: Cultural and consumer acceptability implies the need to take into account, as far as possible, perceived non-nutrient based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies. <https://www.refworld.org/pdfid/4538838c11.pdf>.

formation elements experienced across the home, school, community and public nexus. Some children have easily adapted and quickly assumed an Australian identity; others retain their African identity while seeking to develop an Australian identity; and fewer others, may experience a disconnect from both. The latter cohort, mostly aged in the upper teens, are most at risk for cultural clashes.

59. Children of African descent are being subjected to challenges at home where parents may wish to retain their own traditions, in school facing new ways of learning and socializing, and in the community where individual differences are subsumed by the collective, are at risk of not fitting in, attracting the attention of authority figures to their detriment. The Working Group has heard of the consistent policing of black communities, black social gatherings, the routine stop and search, and the over-representation of people of African descent in detention centres.
60. The Working Group's attention was drawn to the violation of parents rights, as articulated by the CRC, manifested in two ways – first, the criminalization of African upbringing or the disconnect between home and school that results in children and young people of African descent reporting parents to the police for actions that are the norm in traditional African societies; second, in the temporary or permanent separation of children from their parents, including the assignment of custody to the non-black parent of bi-racial children. The detention of scores of males of African descent, continues to cause irredeemable harm to parents, children and communities, particularly because these are for undefined periods of time, removing hope and the capacity to plan and develop from these families.
61. Children and young people of African descent are disproportionately in court, with the escalation of challenges because of corresponding breaches which may or may not have been known to these children and young people. This growing phenomenon was described as the evolving school-to-prison pipeline by groups of people of African descent.
62. Given the centrality of sport to the Australian culture and psyche, sport can and most likely does play a central role in the emerging identity of children and young people of African descent. The Working Group has learned that children and young people of African descent have been subject to both exclusion and subtle forms of discrimination in sports, less so in the arts as expressions of culture are widely celebrated through community, government-supported activities that attract a wide cross-section of Australians. Regrettably, 8 years into the Decade of People of African Descent, this is the first time that many persons of African descent in Australia have learned of the Decade.
63. Australia does not maintain racially disaggregated data and does not routinely keep data on national origin or ancestry in every field. This lack of data increased risk and diminished social protection during the early phases of the COVID-19 pandemic. It is a fundamental barrier to recognizing and addressing ongoing and serious racial discrimination and injustice in education, health, employment, housing, detention, the administration of justice, and more. In certain areas, like suicides, the lack of disaggregated data may obscure important information like serious mental health concerns in specific populations, like South Sudanese people.
64. People of African descent consistently reported a lack of true inclusion as decision-makers in the institutions and organizations with power to make decisions about their lives. Consistent with this, the Working Group met only one person of African descent in senior leadership in government or independent commissions, in its many consultations. The people of African

descent that the Working Group did encounter in these areas held positions that were part-time, subject to annual funding renewals, or otherwise precarious. there was little acknowledgment of the loss of expertise, legitimacy, and understanding resulting from the lack of representation of people of African descent in the issues defining their social protection in government.

65. LGBTQI people of African descent are caught between communities and priorities, often unsupported by the mainstream queer community that replicates familiar racialized hierarchies and baselines white queer culture as a norm, even against which asylum decisions are made. In Australia, queer people of African descent continue to balance living their truth fully against their concerns for their physical and psychological safety and few valid resources exist beyond professionals who have specific training and education but also relevant lived experience .
66. There is currently a lack of an operational intersectional approach or priorities to State engagements and lines of effort relating to gender, economic empowerment, and more. Yet, urgent need for labor throughout the work force does not seem to be met with an urgent process to reconcile the lack of recognition and accreditation of education, skill, and experience acquired overseas, particularly for people of African descent who struggle to achieve recognition of existing skills and education.

## RECOMMENDATIONS

67. The Working Group recommends the following measures and approaches to assist Australia in its efforts to combat all forms of racism, racial discrimination, xenophobia and related intolerance:
68. Government, state and local authorities implement Australia's international commitments and the specific recommendations of the UN Committee on the Elimination of Racial Discrimination, the Special Rapporteur on Racism, the Universal Periodic Review, and other recommendations made by international and national institutions and experts to address racial discrimination faced by people of African descent.
69. Ensure that the Australian Human Rights Commission and State level Commissions and Ombudsman have sufficient human and financial resources to enable it to fulfil its responsibilities for the promotion and protection of human rights.
70. Implement recommendations to address human rights concerns of people of African descent including the Ombudsman report recommendations calling for the Government of Victoria to apologise publicly to residents of the Flemington and North Melbourne public housing estates for harm or distress caused by imposition of the immediate lockdown on 4 July 2020.
71. Recognize and claim the long history of Afro-indigenous people in Australia as important to an accurate telling of history and to understanding and dismantling the systemic racism prevalent in Australian society.
72. Australia must come to terms with its own systemic racism and the reasons for its resistance to discussing race, i.e., its discomfort with its tragic past. Among other things, the resistance to seeing and understanding the role of race in Australian society is hindering the development

of true knowledge production and cultural resources that would help negotiate and evolve issues of identity crisis, disaffection, and isolation.

73. Prioritize all its citizens, including naturalized citizens, in its humanitarian aid and assistance and other policy, including holding as equal its regard for civil wars on the African continent, particularly in locations of relevance to naturalized Australians, as a sign of its ongoing commitment to its diverse citizenry.
74. Counter the promotion of a strategic racial color-blindness toward people of African descent, whose experiences are not consistent with this constructed narrative. Support knowledge production and cultural production that engage, rather than deny, the complex role that race and Blackness has played in the public imaginary in Australia, and the role race continues to play in experience, opportunity, and access for people of African descent today, and seeks to learn, evolve, and grow from the past.
75. Given the startling number of south Sudanese and other refugees in prison, jail, and indefinite detention, as a country-specific norm not replicated in other resettlement countries, Australia must consider its own role in driving dysfunction, despair, suicidality, and poor outcomes among South Sudanese refugees, particularly young men and boys, revisiting character determinations with the assistance of international human rights observers and the implementation of community based and community led support and prevention mechanisms. If not, the international community should consider country-specific warnings to the refugees in advance of resettlement.
76. The effectiveness of policing can only be accurately measured by local feedback and community sentiment. Delegate all matters not related to policing, including mental health responses school security, to appropriate authorities rather than expanding the role and the footprint of the police, the latter keeping data on all public encounters and record them, including the race of the person encountered.
77. Dedicate a specialized independent body to inquire into the cases of all persons in both offshore and inland migrant detention with a view to providing appropriate and effective remedies, and erasing mandatory indefinite migrant detention from Australia's contemporary history.
78. Have community based interventions intended exclusively for people of African descent led by people of African descent, and consequently, funds directed at interventions among communities of people of African descent be exclusively allocated to them.
79. The Parliamentary Joint Committee on Human Rights conduct a human rights audit of the Commonwealth Australian Constitution with a view to amending all provisions that are inconsistent with Australia's international human rights obligations, such as Article 25 that allows for race-based disenfranchisement.
80. Recognise race as identity and its role as a determinant of human rights in law, policy and practice.
81. Provide competent quasi-judicial jurisdiction over complaints about racism and racial discrimination that is accessible to people of African descent and reflective of international 'best' practice.

82. Restructure the settlement program to enable refugees to thrive in Australian society including provision for such as recognition and accreditation of foreign qualifications and skills, ensuring adequate language services in all essential sectors, and integrating trauma-informed approaches.
83. Locate the work and culturally appropriate approaches of community organisations of people of African descent in government programming, and policy, supported with adequate and consistent funding.
84. Maintain an oversight role over privately outsourced essential services such as language testing, settlement support, management of detention, with a view to fulfilling its human rights obligation of ensuring equality of all persons and eliminating racial discrimination.
85. Invest in mental healthcare, specialised health conditions, research and development for people of African descent.
86. Consult people of African descent to identify culturally acceptable food for people of African descent, and make necessary policy and procedural provisions for its availability on the market.
87. Amend the Migration Act with a view to restricting the nature of crimes that can lead to cancellation of visas to crimes that threaten Australian national security.
88. Enhance early and full access by persons of African descent on humanitarian visas to the National Disability Insurance Scheme, and accord them trauma-based, culturally appropriate care.
89. Increase government's provision of affordable and adequate housing and regulate the private housing sector to eliminate discriminatory practices.
90. Retract and widely disseminate reparative positions in response to the high-level political statements previously made by politicians and multiple ministers against the communities of African descent that are sustaining repressive narratives.
91. Establish the necessary institutional framework and adopt a model similar to report on pay equity and the number of people of African descent employed in several sectors.
92. Given the startling number of south Sudanese and other refugees in prison, jail, and indefinite detention, as a country-specific norm not replicated in other resettlement countries, Australia must consider its own role in driving dysfunction, despair, suicidality, and poor outcomes among South Sudanese refugees, and particularly young men and boys. This should include a revisiting of character determinations with the assistance of International human rights observers and the implementation of community based and community led support and prevention mechanisms. If not, the international community should consider country-specific warnings to de refugees in advance of resettlement
93. The effectiveness of policing can only be accurately measured by local feedback and community sentiment, including from the specific communities of adolescents of African descent whose liberty is heavily impacted. All matters not related to policing, including mental health responses, school security, and more, should be delegated to appropriate authorities

rather than expanding the role and the footprint of the police. Police should keep data as to all public encounters and record them, including the race of the person encountered.

94. Australia should immediately suspend operation of Section 501 of the Migration Act pending advice on the legality of this provision, as written and as applied, under international law from the International Court of Justice, UNHCR, or other competent international authority.
95. The State should immediately require notice of the immigration-related collateral consequence of indefinite detention under Section 501 in all criminal proceedings involving non-citizens and provide counsel in immigration proceedings to ensure that all persons subject to this provision have meaningful understanding of the collateral consequences of a criminal conviction and sentence.
96. Mandatory detention of asylum seekers and anyone else who arrives via irregular immigration is an overbroad carceral initiative that lacks deterrence value or other rationale while presenting serious concerns at human rights violations. Institute a policy of immigration bail or release on one's own recognizance should be available to asylum seekers and others awaiting immigration proceedings.
97. Public education about Africans and people of African descent and their contribution to global development be provided across Australian society, and particularly to those professionals in direct contact with people of African descent, particularly teachers, health care providers, housing providers and related professions which provide access to all basic services in communities where people of African descent are concentrated.
98. Political leaders, thought leaders, media influencers and others in the public domain be subjected to scrutiny and censure for inciting racism, racial discrimination, xenophobia and related intolerance of people of African descent.
99. Adopt strong measures to prevent and condemn the use of racial slurs, hate speech and incitement to hatred.
100. The "Racism in Schools" research conducted at ANU and University of Victoria should guide an important conversation and reinterrogation of how race and racism structures student experience, access, and opportunity in Australia. The recommendations of these reports should be adopted and immediately implemented.
101. Consideration be given to knowledge-based tests for placement, remediation acceleration for children of African descent, in individual subjects and grade level, the latter only where necessary.
102. Efforts be made to integrate verbal and visual representation in supplementary materials used in schools that attended by children of African descent.
103. A policy of zero-tolerance of labeling, stereotyping and/or the use of racial slurs be adopted in all schools and school-related activities, regardless of type or level.
104. Explicit efforts be made to recruit and retain teachers of African descent in public schools.

105. Programmes be devised and implemented, particularly at the school level, to mentor and coach children and young people of African descent in schools, drawn from volunteers in the host communities.
106. Universities be encouraged to (continue to) include African Studies and related matters in their curricula and research agendas.
107. Government provide a framework to guide the establishment of the validity and equivalence of credentials from countries most implicated by the immigration of people of African descent, including for refugee populations.
108. The processes for the assessment of skills and qualifications be simplified and publicized, with the necessary 'translation' of systems and structures, to facilitate fair hiring of people of African descent, including for refugee populations.
109. Government consider providing support for 'directions programmes' to integrate qualified persons of African descent, including refugee populations, into the workforce, including in the public sector, on par with their peers considering their qualifications and experience, with due regard for necessary orientation, training and support for supervisors, supervisees and other staff.
110. Government provide a framework for developing appropriate monitoring tools to track and publicise opportunities for recruitment, retention, promotion of people of African descent, including refugee populations, in harmony with their qualifications, skills, and professional experience.
111. That due regard be given to other expressions of English, supported by pathways to acquire Australian English for people of African descent, including refugee populations, whose qualifications and experience are being hindered by tests of English in their efforts to enter the workforce.
112. Consideration be given to the provision of opportunities for persons of African descent in immigration detention to study and acquire marketable skills, competencies, and credentials for the job market.
113. Government take all measures to publicize and support activities related to the United Nations International Decade of People of African Descent (2015-2024).
114. In addition to the various intercultural activities celebrated at sub-national levels, the global Days that commemorate the contribution of people of African descent be included in federal and state calendars (i.e. March 21 – the UN International Day for the Elimination of Racial Discrimination, and August 31 – the UN International Day for People of African Descent).
115. Government review its obligations under the Convention of the Rights of the Child regarding the fulfillment of its obligations for children of African descent.
116. A review, in collaboration with people of African descent, of the causes and consequences of infractions committed by children and African descent be conducted to devise strategies to prevent, curtail and minimize the impact of such infractions on the children/young people, their communities and societies.

117. That particular effort be invested in devising and deploying programmes to minimize racial stress in the school, workplace, community and public spaces, including online spaces, accruing to children, young people and people of African descent, on the basis of racial stereotypes, with particular attention to mental health and mental hygiene.
118. Particular attention be given to the adequacy of housing and accessibility of basic social services, including mentoring and coaching, to translate policies, procedures, structures and systems for immigrants to settle.
119. All gender and social inclusion efforts explicitly require intersectional engagement and examine gender efforts as they impact all women, including but not limited to women of African descent who are refugees, of varying socioeconomic status, transgender, asylum-seekers, and others in a holistic approach to gender policy.
120. Efforts to ensure social cohesion and gender justice should include efforts to facilitate how people of African descent can meet Australia's workforce needs. This should include immediate review of recognition and accreditation processes for diplomas and skills, English language test requirements, and other apparent barriers to ensure they are fit for purpose and do not exclude willing contributors to Australian society.
121. People of African descent be included in the decisions that structure their lives, as decision-makers in order for a representative democracy to be fit for purpose. Many people of African descent use the phrase, "nothing about us without us," and specifically disparaged consultative processes, advisory boards, or other ad hoc, "tick-box" measures that perform inclusivity without actually ensuring inclusion.
122. A commitment to human rights for LGBTQI persons entails an intersectional commitment wherein the particular issues facing LGBTQI persons of African descent who also have intersectional identities as immigrants, refugees, youth, religious persons, and more. Sustainable mechanisms to ensure safe affordable housing, a safehouse where at-risk persons could find a bed, a counsellor, and other services, and culturally competent mental health services be supported by the State.
123. Health and mental health professionals working with LGBTQI persons of African descent, and other intersectional populations, be trained in cultural competence and intersectionality, trauma informed care, and ethical engagement practices.
124. Australia develop clear policies to collect racially disaggregated data, as it may fail to achieve its human rights targets without racially disaggregated data, based on the principle of self-identification, to reveal areas of urgent or ongoing concern, show trajectories of improvement over time, and to allow racial disparities to drive efforts at remediation and redress.
125. The Working Group would like to reiterate its satisfaction at the Government's willingness to engage in dialogue, cooperation and action to combat racial discrimination. We hope that our report will support the Government in this process and we express our willingness to assist in this important endeavour.