

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Marking the 21st Anniversary of the Durban Declaration: A Panacea or a Predicament for the People of African Descent?

ASHRY SRIVASTAVA¹

ABSTRACT

The 21st Anniversary of the Durban Declaration and Programme of Action exhibits the stigmatization and violence experienced by people of African descent. These people have witnessed hateful conspiracies, xenophobia, misogyny, white supremacy and amplification of Neo-Nazi ideologies; hence it can be contemplated that human rights have been consistently assailed. There is an urgent need for a new awakening recommending the ideology of “a fight against racism, xenophobia and related intolerance” to prevent the structural inequalities and transgressional affliction which have been entrenched in the generations of colonial abuse and enslavement.

Keywords: Durban Declaration and Programme of Action, Racism, Structural Inequalities, Xenophobia.

I. INTRODUCTION: APARTHEID IS DEAD, AND RACISM CONTINUES TO LIVE

The **World Conference Against Racism** held at Durban in 2001 led to the ratification of a radical and comprehensive document epitomizing the global commitment toward tackling the bane of racism. This document is famously known as the **Durban Declaration and Programme of Action (hereinafter DDPA)**. Xenophobia is the hatred and fear of foreigners and strangers while Racism can be comprehended to have a broader meaning encompassing- “a set of beliefs that racial differences lead to inherent supremacy of a particular race”².

DDPA affirms that colonization has had a major impact on racial discrimination, xenophobia, and racism against Africans and people of African descent. Even twenty-one years later the world has failed to break free from the shackles of colonialism as Xenophobia and Racism have regained moral, legal and political recognition. Two decades later, apartheid lies dead however, racism and xenophobia continue to live in various societies and regions making it an abhorrent and pervasive phenomenon.

¹ Author is a student at Symbiosis Law School, India.

² Australian Human Rights Commission, (July. 7, 2022, 10:04 AM), https://humanrights.gov.au/our-work/race-discrimination/what-racism_

(A) Objectives

The present literature intends to-

- Highlight the existence of racism in societies even after the end of apartheid.
- Indicate the paradox of the Durban declaration and substantiate the same with contemporary inhumane treatment of the people of African descent.
- Elaborate on the case studies focusing on the racial discrimination faced by the people of African descent, thereby emphasizing the fiasco of the declaration.
- Spotlight the contemporary developments and evolution in the fight against racism and xenophobia.
- Connote multiple recommendations to combat discrimination against African descent.

II. DURBAN DECLARATION AND HUMAN RIGHTS: A CATCH-22 SITUATION

The era of 1990 had been recognized as the aeon of human rights, thereby marking the DDPA as the culmination of human rights-driven social agenda. It essentially revolved around the **Charter of the United Nations and the International Bill of Human Rights**³. However, one of the most antagonistic issues of the DDPA was the inability to recognize reparation and slavery as contemporary issues. To date, the African descendants have failed to reserve themselves apologies and financial compensation as victims of slavery⁴. Nevertheless, 21st Century has witnessed the persecution and marginalization of people of African descent including minorities, indigenous people, migrants, women and the LGBTQ+ community.

Despite the assertions made by the International Community towards the commitment of DDPA, racism and xenophobia have persistently existed, thereby continuing to disregard the human rights of African descendants. For instance, on reminiscing one such issue put forth is that DDPA advocates the gravity of education, however, a lot remains to be done. Structural imposition of the education system has been construed as a barricade resisting developments in the improvement of racial discrimination. This can be considered as the addendum to the issue of economic exclusion of the African descendants making the payment of fees non-feasible. The following section will deal with how the world has failed to uphold the doctrines of the

³ The International Bill of Human Rights consists of five documents: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant of Civil and Political Rights; the Optional Protocol on Civil and Political Rights; and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

⁴ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration (2001).

Durban declaration thereby making DDPa a sheer predicament for the people of African descendants.

China: Banned Services, Evictions And Forced Quarantine Of The Africans

In early April 2020, China had been held liable for discriminatorily treating the Africans in Covid-19⁵. People from the city of Guangzhou Guangdong, comprising China's largest African community were compelled to be coercively tested for the coronavirus, leading to the eviction of the African residents rendering them homeless. This can be evidently identified as discrimination as other foreign groups were not forced to be extorted to similar treatment.

This incident indicated the aversion of the Chinese government to its "zero tolerance for discrimination policy". Subsequently, more than 1800 activists and 300 human rights groups from Africa sent an open letter to the African Union calling for "immediate remedial action" after the racist, xenophobic and inhumane treatment of the Africans took place in China.

America: George Floyd's Grotesque Murder

The death of Floyd due to asphyxiation underneath the knees of a white police officer marked the beginning of the largest civil rights in America since 1960. Despite the use of non-violence by Floyd, he was mercilessly killed where the surfaced video depicted him begging by calling out "I can't breathe".

The police officer was announced guilty by the jury, notwithstanding the service of justice, it has been comprehended that this event should be viewed in consonance with a larger context. Several black men are killed in America at the hands of white police. This case can be noted as one of the laudable attempts to fight racism since the onus of accountability affixed on the police officers is very rare. This incident is a magnificent example of systematic racism.

Though America has not been a signatory of the DDPa, thereby pursuing its long-standing policy going back multiple administrations, nevertheless it was affirmed by the Ambassador of the USA that America stands united against racial injustice. However, the incidents taking place against people of African descent depict the irony of the statement issued by America.

India: Bias Against The Dark-Toned Students

In 2020, several African students were assailed in Uttarakhand's Roorkee Institute of technology based on their dark tone. One of the students was beaten and dragged by 30 men

⁵ China: Covid-19 Discrimination Against Africans, (July. 7, 2022, 10:04 AM), <https://www.hrw.org/news/2020/05/05/china-covid-19-discrimination-against-africans>, <https://humanrights.gov.au/our-work/race-discrimination/what-racism>.

who were dressed as security guards. The administration of the college attempted to cloak the incident by putting forward the defence that the students had failed to comply with the lockdown rules in lieu of COVID-19.

Despite India's commitment to pragmatic engagement with Africa, such incidents have jeopardized India's relationship with the African Nations.

III. CASE STUDIES: THE PARADOX OF DURBAN DECLARATION AND THE EVENTUALITY⁶

The conference was envisaged as a watershed event in history against the historic injustices faced by the Africans. However, even after twenty decades, most commitments of the declaration remain amateurish, thereby making the DDPA a fiasco. **Paragraph 160 of DDPA⁷** progressively recommends the States to address justice for the victims of racism, xenophobia, racial discrimination and related intolerance urgently to ensure that they have expeditious accessibility to protection, administration, judicial recourse and sufficient reparation, however, the following case studies of African descent will highlight the debacle of DDPA.

(A) Africans

Overview: Paragraph 4 of DDPA⁸ advocates the cultural, political and economic development of African countries, thereby facilitating and promoting the participation and heritage of African descent respectively. It has been recorded that people of African descent have compromised the poorest and neglected groups composing of the victims of recent migrants or transatlantic slaves. They experience discrimination quotidianly.

Afro-Chilean Cultural Activist: AZENETH BÁEZ (CHILE): Azeneth Báez was bullied in her school because of her Afro-textured hair. This made her routinely straighten her hair using cloth iron in the vain hope to dissuade the school bullies. Her torments spurred cultural activism, which helped her in galvanizing the Afro-Chileans to claim their rights as citizens in the South American Country.

Aftermath: This incident led to the co-foundation of Lumbanga (NGO) along with the formation of one of the most pronounced Afro-Chilean organizations called the "Oreo Negro" or the "Black Gold" demanding inclusiveness of the Africans.

⁶ United Nations, Durban Declaration and Plan of Action, adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence, (July. 7, 2002, 10:04 AM), <https://www.refworld.org/docid/3db573314.html>.

⁷ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001).

⁸ Id at 6.

(B) African Women

Overview: Paragraph 69 of DDPA⁹ puts forward that some of the major elements which have led to the deterioration, poverty and adverse living condition of African women and girls have been racial discrimination, racism, xenophobia and other related tolerance. This restricts as well as denies human rights to the Africans.

Multiple Discrimination On Women: Alyne De Silva Pimental (Brazil): The death of Alyne (28-year-old Afro-Brazilian) has been regarded as an unfortunate event due to the irresponsibility of the local medical services as they misdiagnosed her and delayed the emergency of obstetric care. A complaint was submitted before the Committee on the Elimination of Discrimination Against Women citing the lack of professional responsibility depicted by the national authorities.

Aftermath: This infamous case came to be recognized as **Pimental V. Brazil¹⁰**. It has been regarded as the most influential case on maternal mortality to have been decided by the international human rights body. It gained global significance thereby improving the maternal health care and reproductive rights of not only afro-women but rather millions of females in the world. The case has been marked as a symbol against women encountering racial discrimination as the verdict given by the committee endorsed that the States have the responsibility to ensure the non-discriminatory treatment of women and establish adequate medical and maternal health services.

(C) African Migrants

Overview: Paragraphs 48 and 49 of DDPA¹¹ affirms the condemnation of acts of racial discrimination against all migrants and focuses on establishing a conducive environment, thereby importing respect, equality and tolerance towards the migrants in the society.

Condemning Racism: Mary Consolata Namagambe (Denmark): Mary Consolata had to encounter racial slurs because of her African Identity. The students often touched her skin and hair as she was the first-ever brown African kid in the school.

Aftermath: Mary later established a platform known as ‘N-word Hurts’ for of African descent and also formed peer-based guidance called ‘Foreigners guiding foreigners’ which facilitated counselling the African students. She was later selected to attend the UN Human Rights Fellowship Programme for the people of African Descent.

⁹ Id at 6.

¹⁰ Pimental V. Brazil, CEDAW/C/49/17/2008.

¹¹ World Conference against Racism, supra note 6

(C) African Refugees

Overview: Paragraph 34 of DDPA¹² mandates the compliance of obligations placed on the States as a part of International human rights in consonance with asylum-seekers, refugees and displaced individuals. It also requests the international communities to provide them with assistance and protection.

Rights Of The Refugees: Abdul Aziz Muhamat (Australia): Abdul Aziz Muhamat was one of the several male refugees who was designated a bureaucratic numeric pseudonym number “QNK002” for a period of 6 years in Papua New Guinea’s Manus Island. Muhamat was detained and transferred to the Australian Islands when he attempted to flee the strife in Darfur, Sudan.

Aftermath: Subsequently, Muhamat was able to expose the inhumane condition of the camps situated in the Manus Islands in a podcast called ‘The Messenger’. He was then awarded with Martin Ennals award in 2019 and also took part in the UN Human Rights Fellowship Programme for the people of African Descent for his conviction towards refugee rights.

IV. CONTEMPORARY EVOLUTIONS AND DEVELOPMENTS IN THE FIGHT AGAINST RACISM AND XENOPHOBIA¹³.

This section will emphasize the measures taken around the world to enhance the human rights condition of people of African descent. Some of the latest developments are:

(A) UN Marking 2015-2024 As The International Decade For People Of African Descent Legislations

- **SPAIN:** Congress has upheld laws in the memory of slavery, thereby promoting the black community and people of African descent in Spain.
- **URUGUAY:** It ensures equitable access to educational policies and the labour market by capping the limit of the same to at least 8% for people of African descent.
- **THE UNITED KINGDOM, NETHERLANDS, ENGLAND AND WALES:** They have placed affirmative policies restricting racial or ethnic profiling.

National Action Plans

- **PORTUGAL:** It has highlighted the conviction to support the integration of migrants,

¹² Id. at 10.

¹³ International Decade for the People of African Descent (2015-2024), (July. 7, 2022, 10:04 AM), <https://www.un.org/en/observances/decade-people-african-descent/actions-taken>.

especially the ones belonging to African descent into Portuguese society.

- **KAZAKHSTAN:** It adopted the protocol of the “Doctrine of National Unity” which has facilitated the strengthening of respect towards the people of African descent.
- **ECUADOR:** It has prioritized the social development of the Afro-Ecuadorians by launching round table discussions and encouraging dialogues between the civil societies and the Governments.

Setting Up Complaint Mechanism

- **USA:** America has established a Civil Rights Division of the Department of justice which has been constituted to investigate suits related to racial profiling.
- **AUSTRALIA:** A Race Discrimination Commissioner has been established by the Australian Human Rights Commission to inspect complaints filed under the anti-discrimination legislation.
- **GREECE:** It has set up a National Board against Racism and Intolerance, working in consonance with the Greek Ombudsman with the view to developing an anti-racist approach in the nation.

Providing Quality Education And Raising Awareness

- **OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OCHR):** Annually a fellowship Programme is held for the people of African descent, thereby facilitating them with an opportunity to strengthen their education which aids in emphasizing the issues of the people of African descent.
- **UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO):** Several pedagogical contents based on the General History of Africa have been developed, thereby remedying the ignorance of African history. They have also developed an international coalition of artists to convey the struggles of African people.
- **THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OCHR):** It has conducted several workshops to address the civil societies and government bodies on the ways to deal with racial profiling.

V. PERMANENT BODY ESTABLISHED BY THE UN TO TACKLE RACISM

United Nations established a new body on the 20th anniversary of DDPA. This body is known as the Permanent Forum of People of African Descent which will address the challenges of

xenophobia, racism and racial discrimination. Its chief objective is to provide a platform to the people of African descent, attempting to enhance their livelihoods and lives.

The 2030 Agenda For Sustainable Development And The Right To Development¹⁴

- **GOAL 4:** It endorses the promotion of constant learning opportunities for all people with access to equitable education thereby ensuring inclusiveness.
 - **URUGUAY:** It offers multiple scholarships to Afro-Uruguayan students with the view of facilitating education to people of African descent.
- **GOAL 8:** It endorses the promotion of economic growth, productive employment and decent working opportunities for all.
 - **UN-WOMEN IN COLOMBIA:** National Learning Services are being offered to Afro-Colombians in order to provide their great accessibility to the labor markets.
- **GOAL 10:** It endorses the reduction of inequality among the countries.
 - **MEXICO:** A work Programme has been developed by Mexico to implement the protocols of the International Decade for the People of African descent.

VI. RECOMMENDATIONS

1. **Ensuring Justice:** The victims of xenophobia, racism, racial discrimination and human rights violations should be ensured access to justice through the mandate of reparations and compensation which to date have been denied to the Afro-victims. This stands in consonance with the universal human rights doctrines.

2. **Introducing Educational Reforms:** The signatories of DDPA should be mandated to take it upon themselves to eliminate illiteracy which will facilitate combating racism and xenophobia. This can be carried out by establishing schools for all age groups and emphasizing delivering a victim-centric education to people of African descent. This will help them to learn from their past struggles and recognize the contributions made by the Africans to humanity.

3. **Enforcing A Blueprint Institutions At The International And National Level:** The international communities should be urged to develop an international order based on human dignity, mutual arrangements and universal rights. Effective steps should be taken by various countries at the national level to counter Anti-Arabism, Islamophobia and anti-Semitism. There is also an urgency to promote the ideology of universal ratification of the International

¹⁴ Transforming our world: the 2030 Agenda for Sustainable Development, (July. 7, 2022, 10:04 AM), https://sdgs.un.org/2030agenda_

Convention on the Elimination of All Forms of Racial Discrimination. This can be accomplished by drawing up a rigid blueprint and elaborating the same. Some of its agendas can be

- Penalizing ideologies revolving around racial superiority or hatred.
- Imbibing multicultural diversity in societies will facilitate the democratic functioning of institutions.
- Ensuring adequate data collection of the victims of racial discrimination will assist in an effective justice delivery mechanism.

4. Developing Pragmatic Societies: The onus for combating racism and xenophobia does not categorically befall on the States, as even the societies such as NGOs and international bodies play an integral role in the eradication of such related crimes against Africans. Such societies can be trained to combat racism in radical ways such as:

- Ensuring the presence of a free press in various multicultural societies will assist in the effective dissemination of instances of racial injustice.
- Endorsing the idea of a workspace free from racial discrimination by enforcement of civil rights.
- Proposing the partnership of State-civil society to ensure data collection of racial violence, xenophobia, racism and related intolerance.

VII. CONCLUSION

On the **21st anniversary of the Durban declaration**, it has become imperative to acknowledge the enduring injustices towards the people of African descent. These people have constantly been underpinned and marginalized leading to their social exclusion, instability and economic disparities. Even after two decades of endorsement of the declaration the ideology of the ‘transatlantic slave trade’ remains alive in society. With the advent of globalization, societies have should be observed through the prism of a ‘multicultural, multi-ethnic and multireligious’ perspective.

Thus far racism and xenophobia have managed to reverberate in the various institutions, societies and social structures. From outrageous violations to grovelling transgressions, the human rights of the people of African descent have consistently been assailed. Reversing the impact of generations of discrimination through a reparatory justice framework is a pressing priority of this century. We as humans have to collectively stand against racism, racial discrimination and xenophobia.

The achievements of the DDPA cannot be regarded as absolutely redundant, nevertheless, it definitely does not meet the standards of 'a panacea' against racism, racial discrimination and xenophobia. Two decades after the landmark declaration against the eradication of racism, discrimination continues to persist in the world symbolizing a regretful predicament for people of African descent.
