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Racism, racial discrimination, xenophobia and related
forms of intolerance: follow-up to and implementation of
the Durban Declaration and Programme of Action

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

Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

Summary

Pursuant to Human Rights Council resolution 47/21, the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement presents its first report, in which it shares its methods of work and its approach for the fulfilment of its mandate, as well as an overview of activities undertaken since its establishment in December 2021.

In particular, the Expert Mechanism focuses on the collection, publication and analysis of data disaggregated by race or ethnic origin with regard to interactions of Africans and people of African descent with law enforcement authorities and the criminal justice system, as an essential element for driving and assessing responses to systemic racism in the areas of law enforcement and the criminal justice system. The Expert Mechanism proposes a series of recommendations in this regard.

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I. Introduction

1.   The present report is submitted to the Human Rights Council in accordance with its resolution 47/21.

2.   In 2021, further to the presentation of the report of the United Nations High Commissioner for Human Rights on racial justice and equality,[1] the Human Rights Council established the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement. On 16 December 2021, the President of the Council appointed Yvonne Mokgoro (South Africa), Tracie Keesee (United States of America) and Juan Méndez (Argentina) to serve as the Mechanism's experts. Ms. Mokgoro currently serves as Chair.[2]

3.   In the present report, the Expert Mechanism provides an overview of its activities since its establishment, as well as presenting its salient methods of work and the methodology it pursues in fulfilment of its mandate. The Expert Mechanism also provides reflections and recommendations with regard to the importance of the collection, publication, analysis and use of data disaggregated by race or ethnic origin on the interactions of Africans and people of African descent with law enforcement authorities and the criminal justice system – as a central element for driving and assessing responses to systemic racism.

II. Mandate and guiding principles

4.   Under Human Rights Council resolution 47/21, the mandate of the Expert Mechanism is aimed at furthering transformative change for racial justice and equality, in the context of law enforcement globally, especially in relation to the legacies of colonialism and the trade in enslaved persons. The Expert Mechanism is also mandated to investigate the responses of Governments to peaceful anti-racism protests, and all violations of international human rights law, and to contribute to accountability and redress for victims.

5.   The Expert Mechanism examines systemic racism, including its root causes in law enforcement and the criminal justice system, excessive use of force, racial profiling and other violations of international human rights law by law enforcement officials, as well as patterns, policies, processes and specific incidents. The Expert Mechanism is also mandated to examine any nexus between supremacist movements and actors in the area of law enforcement and in the criminal justice system.

6.   On the basis of engagement with States, law enforcement personnel, victims, directly affected communities, civil society and other stakeholders, the Expert Mechanism is mandated to make recommendations on closing trust deficits, strengthening institutional oversight, adopting alternative and complementary methods of policing and in regard to the use of force, and encouraging stocktaking of lessons learned.

7.   The Expert Mechanism also makes recommendations with regard to how domestic regulation of the use of force can be brought into line with international human rights standards; and with regard to the collection and publication of data, with strict safeguards and in line with international law, disaggregated by race or ethnic origin, to drive and assess responses to systemic racism in law enforcement and the criminal justice system. Furthermore, the Expert Mechanism is mandated to make recommendations on specific steps that need to be taken to ensure access to justice, accountability and redress for excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent.

8.   Human Rights Council resolution 47/21 enjoins the Expert Mechanism to monitor implementation of the recommendations on ending impunity for violations by law

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[1]   A/HRC/47/53, and see the accompanying conference room paper available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf. See also https://www.ohchr.org/EN/Issues/Racism/Pages/Implementation-HRC-Resolution-43-1.aspx.

[2]   See https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-racial-justice-law-enforcement/experts.

enforcement officials, emanating from the High Commissioner's report,[3] and to identify obstacles to their full implementation.

9.   Interactions with law enforcement officials and the criminal justice system are understood as encompassing notably, but not exclusively, stop-and-search, arrest, determinations regarding pretrial preventive detention and denial of bail, access to justice, investigations, prosecutions, sentencing and deprivation of liberty. Although the Expert Mechanism focuses on law enforcement, it understands that the ramifications of its mandate extend to the larger context of the criminal justice systems of each country, wherein law enforcement is a critical factor.

10.   The Expert Mechanism recognizes the importance of adopting a multi-stakeholder, consultative and inclusive approach to the implementation of its mandate. Throughout its work, it integrates gender and intersectional perspectives and pays special attention to listening to and grounding its analysis in the lived experiences of Africans and people of African descent. Special consideration is also given to victims and their communities – ensuring that their voices are central to the fulfilment of the Expert Mechanism's mandate, and that procedures are implemented in an accessible and inclusive manner vis-à-vis persons with disabilities.

11.   The Expert Mechanism has furthermore stressed the importance of coordinating its work, and strengthening its engagement and cooperation, with all relevant United Nations mechanisms.

12.   Highlighting promising initiatives and practices in law enforcement, and in the criminal justice system, is key, and the Expert Mechanism therefore seeks to obtain from States and other relevant stakeholders information on actions taken and evidence gathered regarding interactions of Africans and people of African descent with law enforcement authorities and the criminal justice system.

13.   In order to do so, the Expert Mechanism will conduct inclusive outreach and consultations, including through country visits and online consultations, adopting an intersectional approach, engaging in particular with law enforcement authorities in all parts of the world.

14.   The Expert Mechanism abides by the principles of independence, transparency, impartiality, integrity and doing no harm; and preserving the confidentiality of sources of testimonies if divulgation could cause harm to individuals involved.

III. Activities

15.   The Expert Mechanism held its first private session in person in Geneva from 28 February to 4 March 2022, during which it also held a public meeting open to all stakeholders, seeking information and views from all stakeholders on the implementation of the Expert Mechanism's mandate.

16.   Additionally, it held over 15 meetings and consultations remotely and in person with a wide variety of stakeholders that included States, United Nations human rights mechanisms (including the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), United Nations agencies, national human rights institutions, civil society organizations and directly affected individuals. During its first session in Geneva, the Expert Mechanism held a private meeting with around 30 representatives of 20 civil society organizations from around the world, many of African descent.

17.   In February 2022, the Chair of the Expert Mechanism participated in the twenty-seventh session of the Advisory Committee, further to a mandate given by the Human Rights Council "to prepare a study in which it examines patterns, policies and processes contributing to incidents of racial discrimination and makes proposals to advance racial justice and

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[3] A/HRC/47/53 and the accompanying conference room paper available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf.

equality, which should be firmly anchored in the fulfilment of the 2030 Agenda for Sustainable Development and the attainment of its Goals, in consultation where possible with the Office of the High Commissioner and the international independent expert mechanism to advance racial justice and equality in the context of law enforcement established by the Human Rights Council in its resolution 47/21, and to present the study to the Human Rights Council at its fifty-fourth session".[4]

18.   During that meeting, the Chair of the Expert Mechanism encouraged the Advisory Committee to build on the impressive analysis undertaken over decades by the many United Nations human rights mechanisms seeking to address the systems, practices and patterns that underlie and perpetuate the disproportionate and discriminatory impact of law enforcement and the criminal justice system on Africans and people of African descent, which include police harassment, verbal abuse and abuse of power, discriminatory stop-and-search, ill-treatment, arbitrary arrests, and excessive use of force against Africans and people of African descent in some States. Recent public reports show that deaths of Africans and people of African descent at the hands of law enforcement officers continue to occur in many countries, and that accountability remains the exception.

19.   In line with Human Rights Council resolution 47/21,[5] the Expert Mechanism held a series of virtual consultations in May 2022 on the need to collect, analyse, use and publish data disaggregated by race or ethnic origin to advance racial justice and equality for Africans and people of African descent in the context of law enforcement and the criminal justice system, in order notably to inform the present report.

20.   The virtual consultations were held with experts from Latin America, Europe and North America, as well as with civil society representatives more broadly. Through these virtual consultations, the Expert Mechanism heard from close to 70 participants, many of whom were of African descent.[6]

IV.   Need for the collection, analysis, use and publication of data disaggregated by race or ethnic origin to advance racial justice and equality for Africans and people of African descent in law enforcement and the criminal justice system

21.   Pursuant to paragraph 11 (d) of Human Rights Council resolution 47/21, the Expert Mechanism is mandated to make "recommendations on the collection and publication of data, with strict safeguards and in line with international law, disaggregated by victims' race or ethnic origin, on deaths and serious injuries by law enforcement officials and related prosecutions and convictions, as well as any disciplinary actions, to drive and assess responses to systemic racism in the area of law enforcement and the criminal justice system".

22.   In her report to the Human Rights Council in July 2021, the High Commissioner noted that assessing the impact of interactions of Africans and people of African descent with law enforcement on the enjoyment of their rights was hampered by the lack of official data disaggregated by race or ethnic origin. Her report further indicated that, where official data is unavailable, some regional bodies, civil society organizations, the media, universities and think tanks have sought to fill this evidentiary gap.[7] The High Commissioner called for data to drive and assess responses to systemic racism; and for collecting and making publicly available comprehensive data disaggregated by race or ethnic origin, gender, age, and other factors, with the aim of analysing the effects of laws and policies.[8]

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[4] Human Rights Council resolution 48/18. See also A/HRC/AC/27/2.

[5] Para. 11.

[6] See https://www.ohchr.org/en/calls-for-input/calls-input/call-inputs-preparation-report-international-independent-expert-.

[7] See the conference room paper available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 80.

[8] Ibid., para. 70.

23.   The Working Group of Experts on People of African Descent has determined that the collection of disaggregated data and the availability of open data have allowed public interest to drive deeper, critical analyses of entrenched racial disparities and racially driven outcomes that disfavour people of African descent systematically. Those analyses have fuelled new understandings of the factors that drive ongoing racial bias and disadvantage. The refusal by some States to collect and disaggregate data based on race and ethnicity has been described by the Working Group as one of the most serious impediments to the attainment of the Sustainable Development Goals.[9]

24.   The Expert Mechanism seeks to further explore challenges and possible solutions to the lack of data within the scope of its mandate on law enforcement and the criminal justice system, in a context where human rights violations by law enforcement officials remain underreported, which contributes to impunity for such violations and limits access to justice for victims and their families.

A.   Disaggregated data – a key element for achieving racial justice and equality for Africans and people of African descent

25.   The collection of data disaggregated by race or ethnic origin should not be viewed as an end in itself, but as central to any effort to drive and assess responses to systemic racism, including objectively measuring the impact of corrective measures and subsequent reforms.

26.   Furthermore, the collection and publication of data disaggregated by race or ethnic origin is needed in order to generate public support and demand for reform, including for policing reform, within communities of African descent and more broadly in society. [10] Consultations have highlighted the fact that data is indeed key to changing the existing narrative.

27.   Another important rationale for data collection and use lies in the need to ensure the recognition of people of African descent and to overcome their historical, social and structural invisibility.[11]

28.   Recent consultations have confirmed the High Commissioner's findings from her report to the Council in June 2021, and indicate that some States continue to deny or have failed to acknowledge the existence and impact of systemic racism, especially institutional racism against Africans and people of African descent. As a result, they have not sufficiently examined the disparate impact of their legislation, policies and practices on certain groups of the population, including Africans and people of African descent.[12]

29.   The collection, publication, analysis and use of data disaggregated by race or ethnic origin is also central to achieving the right to non-discrimination, as provided for in the Universal Declaration of Human Rights and all major international human rights treaties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. States parties are requested to take the measures necessary to ensure non-discrimination in the enjoyment of human rights, and to promote the development of policies and the adoption of specific measures for the implementation of their obligations. These commitments were also reiterated in the Durban Declaration and Programme of Action.[13] Pursuant to article 31 of the Convention on the Rights of Persons with Disabilities, States parties also undertake to collect appropriate information, including statistical and research

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[9] See A/HRC/42/59.

[10] See https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf.

[11] See the conference room paper available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 72. See also A/HRC/42/59, para. 57.

[12] See the conference room paper available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 41.

[13] See https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf.

data, to enable them to formulate and implement policies to give effect to the Convention. Hence, data must be used to support the realization of treaty-based rights.

30.   United Nations and regional human rights mechanisms and bodies have repeatedly recommended the collection and disaggregation of data, including by race or ethnic origin, to analyse the impact of laws, policies and programmes on specific populations, including Africans and people of African descent.[14] The Committee on the Elimination of Racial Discrimination has urged States to take steps to identify communities of people of African descent living in their territories, especially through the collection of disaggregated data on the population.[15] The Durban Declaration and Programme of Action urged States "to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals" who are notably victims of racism and racial discrimination, recognizing that policies and programmes aimed at combating racism and racial discrimination should be "based on quantitative and qualitative research, incorporating a gender perspective".[16]

31.   The Working Group of Experts on People of African Descent has also recommended the collection of data disaggregated by race or ethnic origin, and has emphasized that the need for reliable data on people of African descent should be considered a priority to achieve the aims of the International Decade for People of African Descent and the Sustainable Development Goals.[17] In its 2019 report on the theme of "data for racial justice", the Working Group urged States to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and to take all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance. It also urged States to adopt a human rights-based approach to data, by providing for disaggregation, self-identification, transparency, privacy, participation and accountability in collecting and storing data.[18] The Working Group has also published relevant country-specific recommendations following its country visits.[19]

32.   Human rights treaty bodies, too, have pointed to the connection between the duty to collect data and the Sustainable Development Goals. In particular, they have called upon States to "pay attention" to the links between their human rights obligations and target 17.18 which seeks to "enhance" by 2020 "capacity-building support to developing countries" in order to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.[20]

33.   In a 2015 report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance determined that the collection of disaggregated data on human rights indicators was crucial for monitoring the realization, protection and promotion of human rights for all and upholding the principles of non-discrimination and equality,[21] and that "ethnic data could be considered as a component of the right to non-discrimination".[22]

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[14] See A/70/335. See also
https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf,
https://ec.europa.eu/newsroom/just/items/54849/en,https://www.worldbank.org/en/region/lac/brief/afro-descendants-in-latin-america and
https://repositorio.cepal.org/bitstream/handle/11362/45202/1/S1900854_es.pdf.

[15] See the Committee's general recommendation No. 34 (2011), para. 9.

[16] See https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf,
paras. 92–98.

[17] A/HRC/42/59, para. 85.

[18] A/HRC/42/59.

[19] See https://www.ohchr.org/en/special-procedures/wg-african-descent/country-visits.

[20] See, for example, CRPD/C/HTI/CO/1, para. 57. See also CMW/C/ECU/CO/3, para. 15.

[21] A/70/335, para. 13.

[22] Ibid., para. 18.

34.   Another important aspect of data collection, analysis and use is ensuring that it captures intersectionality and the combination of several identities, including sex, gender, sexual orientation, gender identity, nationality, migration status, disability, religion, socioeconomic status and other status. Only then can the analysis and use of such data serve to address and eliminate systemic racism and racial discrimination in the interactions of people of African descent with law enforcement authorities and the criminal justice system. Information received by the Expert Mechanism also recommended the georeferencing of data, since adopting a territorial approach may allow for the identification of patterns of violence and local, regional and national impacts.[23]

B.   Existing guidance on the collection and use of data disaggregated by race or ethnic origin

35.   Guidance is available from United Nations human rights mechanisms in this regard.[24] For example, the Committee on the Elimination of Racial Discrimination asserted that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin was to be monitored, States parties, while reporting to the Committee, needed to provide specific information on the number of persons who might be treated less favourably on the basis of those characteristics.[25] Furthermore, the Committee requested that States parties conduct periodic surveys on the reality of discrimination against people of African descent, and that they document disaggregated data on, inter alia, the geographical distribution and the economic and social conditions of that specific group, including a gender perspective. It also stressed the necessity of taking into consideration the gender variable, as women often suffered multiple forms of discrimination.[26]

36.   In order to provide general guidelines on the adoption of human rights principles in data collection and disaggregation, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published "A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development", which identifies a preliminary set of six principles that should be observed during the data cycle – namely, participation, data disaggregation, self-identification, transparency, privacy and accountability. The principle of participation establishes that relevant population groups must be included in every stage of the data cycle, including planning, data collection, dissemination and analysis, via a range of processes that facilitate and encourage participation. According to the principle of disaggregation, data should be disaggregated by key characteristics identified in international human rights law, in order to allow data users to compare population groups, and to understand the situation of specific groups. The principle of self-identification means that, for the purposes of data collection, populations of interest should be self-defining. Individuals should have the option to disclose, or withhold, information about their personal characteristics. In order to ensure transparency, data collectors should provide clear, openly accessible information about their operations, including about the research design and the data collection methodology. Data collected by State agencies should be openly accessible to the public. Privacy requires disclosed data to be kept protected and private, and the confidentiality of individuals' responses and personal information to be maintained. Finally, the principle of accountability means that data collectors are accountable for upholding human rights in their operations, and data should be used to hold States and other actors to account on human rights issues.[27]

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[23] From the Corporación Instituto Internacional sobre Raza, Igualdad y Derechos Humanos (Colombia).

[24] See, for example, Human Rights Committee, general comment No. 18 (1989) on non-discrimination; and Committee on Economic, Social and Cultural Rights, general comment No. 1 (1989) on reporting by States parties.

[25] CERD/C/2007/1, para. 11.

[26] See the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

[27] See https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproacht oData.pdf.

37.   The United Nations Office on Drugs and Crime (UNODC) supports Member States in implementing the International Classification of Crime for Statistical Purposes,[28] which provides a framework for the systematic production and comparison of statistical data across different criminal justice institutions and jurisdictions. The International Classification of Crime for Statistical Purposes currently includes the citizenship of the victim and the motive for the crime, including hate crime and racial discrimination, as disaggregated variables to be collected and disseminated by law enforcement agencies for all categories of crime. Several States have started implementing the International Classification of Crime for Statistical Purposes at national level, which could facilitate the collection and publication of data which ultimately may help monitor deaths and serious injuries of Africans and people of African descent by law enforcement officials.

38.   At the regional level, the European Commission has stated that equality data are crucial for raising awareness, sensitizing people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action, and contributing to evidence-based policymaking.[29] In a push towards getting the right data for informed policy choices, the European Union, in its anti-racism action plan (2020–2025), states that accurate and comparable data are essential in enabling policymakers and the public to assess the scale and nature of discrimination suffered, and for designing, adapting, monitoring and evaluating policies. It is also stressed in the action plan that this "requires disaggregating data by ethnic or racial origin"[30] – an explicit reference to the Durban Declaration and Programme of Action. It notes that "the collection of reliable and comparable data at European and national level is an essential prerequisite for effective action", and while highlighting the role played by the European Union Agency for Fundamental Rights and the equality bodies, the European Commission concludes that a more significant step is needed towards a new approach on equality data collection.[31]

39.   Such a new approach, according to the action plan, is in full respect of constitutional norms, European Union data protection law and the Charter of Fundamental Rights of the European Union, and contains safeguards to ensure that sensitive equality data cannot be related back to the individual. In this regard, the action plan encourages member States to improve the collection of data disaggregated by racial or ethnic origin, and calls upon the European Union Agency for Fundamental Rights to "continue to gather and publish data on police attitudes towards minorities".[32] Further, in its common guiding principles for national action plans against racism and racial discrimination, the European Commission called upon States to ensure evidence-based policymaking including by making sure that, when developing, implementing and monitoring national action plans against racism, all actions are informed by, and based on, reliable and robust equality data. Moreover, all data collection exercises should be in line with human rights principles on data collection – that is, participation, data disaggregation, self-identification, transparency, privacy and accountability.[33]

40.   Similarly, the European Parliament has called upon the European Commission and member States to "take steps towards the collection of further data disaggregated by race and

[28] See https://www.unodc.org/documents/data-and-analysis/statistics/crime/ICCS/ICCS_English_2016_web.pdf.

[29] See https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52021DC0139, para. 2.5.

[30] See https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf, p. 15.

[31] See also https://www.humanconsultancy.com/downloads/691-specific-report-on-equality-data-based-on-racial-and-ethnic-origin-pdf-1-49-mb for a review of challenges to the collection of such data.

[32] See https://ec.europa.eu/migrant-integration/sites/default/files/2020-09/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf, p. 7.

[33] See https://ec.europa.eu/info/sites/default/files/common_guiding_principles_for_national_action_plans_against_racism_and_racial_discrimination.pdf, p. 9.

ethnic origin",[34] considering that "if data on ethnic discrimination and hate crime were to be collected, it should be for the sole purpose of identifying the roots of and combating xenophobic and discriminatory discourse and acts, in accordance with the relevant national legal frameworks and European Union data protection legislation".[35] Indeed, the European Parliament has recognized that "the scarcity of data makes it difficult to measure the exact scale of the problem", meaning that the data available do not necessarily give a clear picture of how widespread discrimination and crimes based on racial and ethnic origin really are.[36]

41.   With regard to Latin America and the Caribbean, the United Nations noted that "data and information emerge as fundamental tools for the design, implementation and monitoring of actions aimed at guaranteeing the rights of people of African descent. Data and information are also powerful catalysts for progress and essential to the construction of fair and egalitarian societies."[37] The Economic Commission for Latin America and the Caribbean and OHCHR launched a set of indicators to measure ethnic and racial inequalities and gaps between Afrodescendent and non-Afrodescendent populations in the region, noting that such a set of indicators would be an important tool for monitoring the policies implemented for combating ethnic and racial inequality and would serve as a guide for furthering the pursuit of equality, which is a matter of increasing urgency in the region.[38] The proposed indicators are underpinned notably by the indicator frameworks that measure the 2030 Agenda and other relevant agreements and recommendations of human rights mechanisms; and are grounded in regional instruments such as the Montevideo Consensus on Population and Development, in which States agreed notably to generating – through participatory processes – reliable and timely information on Afrodescendent populations, broken down by sex, age, socioeconomic status and other variables.

42.   Regional human rights mechanisms in Latin America and the Caribbean have also made relevant recommendations. The Inter-American Commission on Human Rights has stated that "without reliable data, without indicators and periodic measurements, the kinds of political decisions calculated to deal with the discrimination problem cannot be taken. The figures also have an unmistakable political element, since for those affected it means that their invisibility is being reversed and they are being recognized along with everyone else."[39] Concerning the use of force, the Commission emphasized that in order to be of the greatest use for human rights monitoring, official data must be disaggregated and regularly and consistently gathered. Official statistics should distinguish between the context of use-of-force incidents (e.g. at public demonstrations, during evictions, raids, incidents in places of detention, regular policing activities, states of emergency),[40] the actors involved (both State actors and victims, disaggregated by, inter alia, race, colour, gender identity, sexual orientation, age, language, origin, and education level; in the case of State agents, also indicating the security agency to which they belong), the weapons used, the rights violated, and the circumstances of time and place, among others.[41] It is also important to compile data on ongoing investigations and proceedings, including specifying the jurisdiction, and the results thereof.

43.   The Inter-American Commission on Human Rights also made similar calls with regard to specific States, including the United States,[42] and in *Acosta Martínez* the Inter-

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[34] See https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html and https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html.

[35] See https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html.

[36] See https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690525/EPRS_BRI(2021)690525_EN.pdf, p. 6.

[37] See https://www.un.org/sites/un2.un.org/files/2020/02/19-00854_people_of_african_descent-web.pdf, p. 5.

[38] Ibid., p. 16.

[39] See https://www.oas.org/en/iachr/docs/annual/2012/afrodescendantseng.pdf, para. 38.

[40] Consultations also highlighted the importance of information relating to the policing of public spaces by private security guards, and how they may be held to account.

[41] See http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf, para. 253.

[42] See, for example, https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf.

American Court of Human Rights requested Argentina "to take measures to reveal and prevent police violence based on racial profiling". This included implementing a mechanism to collect the complaints of people who claim to have been arbitrarily detained based on racial profiling in order to produce a record of these situations and enable actions in response to the complaints. It also included implementing a system for documenting and keeping statistics on the Afrodescendant population in the country, as well as on the arrests above, so as "to tally the arrests of Afrodescendant persons and the complaints filed by them and compare them to the total population". The Inter-American Court of Human Rights also requested that Argentina publish this information annually, ensuring that it is accessible to the general public, while keeping the identities of the victims confidential. [43] Information received indicates that there is no data available to civil society.[44]

C. Challenges in the collection and use of data disaggregated by race or ethnic origin

44.   The Expert Mechanism was informed that many States continued to be reluctant to engage in the collection and use of data disaggregated by race or ethnic origin. Some States go as far as prohibiting, by law, the collection of ethnic-based statistics.[45] Even where hate crimes are recorded and investigated, they are not specifically recorded as crimes or incidents against Africans or persons of African descent. Concerns were expressed by States with respect to the right to privacy, and the legacies of tragic historical contexts linked to the misuse of such data. Such concerns had prompted legal prohibitions on the collection of such data.

45.   Such challenges have long been acknowledged by various United Nations human rights mechanisms, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. [46] The High Commissioner has acknowledged the reluctance of some States to collect and analyse data disaggregated by race or ethnic origin. The reasons noted range from considering the collection of such data an obstacle to the building of a unified national identity; to fearing that it would lead to further discrimination and aggravate tensions between different ethnic groups; to arguments that data disaggregation is prohibited on the grounds that legislation ensures the equality of all citizens before the law, without distinction on grounds of race or ethnic origin; and also encompass human rights concerns, such as the misuse of data for racist and exclusionary policies, violation of the right to privacy, and concerns around the protection of personal data.[47]

46.   In Europe, concerns related to data protection, privacy and legislative provisions continue to hinder the collection of data disaggregated by race or ethnic origin, for example in France and Italy. The European Union action plan indeed notes that some member States collect such data whereas others consciously avoid this approach. Furthermore, article 9 of the European Union's General Data Protection Regulation [48] provides for a general prohibition on the processing of personal data revealing characteristics including racial or ethnic origin.

47.   However, there are no blanket prohibitions; exceptions exist, and data can still be collected illustrating nationality, name and geographic origin, within established safeguards on data protection for the collection of objective and anonymous data. Indeed, consultations flagged the fact that many surveys in European States focus on the perception of discrimination or use "proxy data" such as citizenship or nationality, country of birth, country of birth of parents, or language, which can be helpful in providing a consistent basis for

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[43] See https://www.corteidh.or.cr/docs/casos/articulos/seriec_410_ing.pdf.

[44] Diáspora Africana de la Argentina (DIAFAR).

[45] This is the case of France (Loi informatique et libertés, 1978, art. 6; and Penal Code, art. 226-19).

[46] See A/70/335.

[47] See the conference room paper available at
https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 44.

[48] Regulation (EU) 2016/679 – see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679.

monitoring change over time. Indeed, the consultations showed that, for example in France, the National Consultative Commission on Human Rights had laid out strict guidelines and safeguards for collecting such data, with the consent of the person concerned. Furthermore, there are exemptions available in some instances through European legislation for anonymized data collection. The European Union's General Data Protection Regulation (Regulation (EU) 2016/679) provides that data can be asked for with explicit consent, for specified purposes and when its processing is needed for reasons of substantial public interest, statistical purposes, or scientific or historical research purposes.

48.   The Expert Mechanism deems that the use of proxy data, such as the criteria of nationality, is helpful in situations where other data still cannot be collected. However, it can only go so far in highlighting the discrimination faced by Africans and people of African descent. Indeed, according to the Economic Commission for Europe publication *Poverty Measurement: Guide to Data Disaggregation*, "using proxy information can be challenging for certain groups and needs to be handled with care. For example, nationality-based data might be a very weak indicator for ethnicity due to differences in naturalization policies, or for indigenous people or autochthonous ethnic groups." [49] The European Commission Subgroup on Equality Data suggests that both self-identification and proxy data are collected and analysed to provide a more holistic picture of protected groups.[50]

49.   Additional challenges in the collection and use of data exist in federal States, in reconciling state- and local-level data with federal-level data, as they are collected in different ways and with varying levels of quality. Regionally, it is also challenging to compare data and identify trends. The European Parliament has noted that "equality data collection in European Union member States is neither systematic nor based on self-identification and often omits descendants of migrants or 'third-generation migrants' and beyond".[51]

50.   Consultations also showed that even when data was collected and disaggregated by race or ethnic origin, it was not published.[52] Consequently, the data is either not used, thereby not serving the purpose of driving and assessing responses to systemic racism; or it requires national-level researchers or civil society organizations to fill the gap, for example by cross-referencing data collected through different surveys with census data, to identify trends and patterns – and thereby "translate" the information into comprehensive and meaningful resources capable of substantiating discrimination. [53] This leads to concerns over a misunderstanding of State obligations in this sphere, as well as, reportedly, risks for civil society actors, who may be targeted for criticizing law enforcement authorities and the criminal justice system. It is therefore key that advocacy continue for States to collect, publish and use data disaggregated by race or ethnic origin in law enforcement and in the criminal justice system.

D. Specific challenges linked to data related to law enforcement and the criminal justice system

51.   Additional challenges exist to the collection, publication and use of data disaggregated by race or ethnic origin in law enforcement and the criminal justice system. Consultations indicated that across regions, such data was deemed sensitive and seen as a challenge to authority, which results in strong reluctance or even refusal to produce or publish the data. Even where data exists, figures are sometimes underreported, and access is difficult, because of the lack of a uniform data collection system.

52.   The European Commission has stressed that, in general, member States report data on complaints and/or decisions in relation to the work of equality bodies, but much less often

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[49] See https://unece.org/sites/default/files/2021-01/ECECESSTAT20204.pdf, para. 256.

[50] See https://ec.europa.eu/info/sites/default/files/en-guidelines-improving-collection-and-use-of-equality-data.pdf, p. 11.

[51] See https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html.

[52] See, for example, the information received from Diáspora Africana de la Argentina (DIAFAR), at https://www.ohchr.org/en/calls-for-input/2022/call-inputs-preparation-report-international-independent-expert-mechanism.

[53] For example, regarding the United States of America, see https://mappingpoliceviolence.org.

publish data on complaints received by the police or complaints and/or decisions received by or delivered by courts.[54] The potential political cost of collecting and addressing the data was also highlighted; as was the inherent lack of trust in an agency which may be responsible for particular human rights violations against Africans and people of African descent being tasked with collecting the data; and the lack of incentive for them to do so.

53.   Yet, the Expert Mechanism recalls that data and transparency in this sphere are crucial – this is the sphere in which States and their agents are empowered, in limited circumstances, to use force and potentially risk using lethal force. Data disaggregated by race or ethnic origin is indeed essential, to show communities that law enforcement agents are using this force as a matter of necessity, and proportionately. Data disaggregated by race or ethnic origin is also a precondition to any transformative reform to seek to rebuild trust with the communities that they serve.

54.   Guidelines on the collection of data disaggregated by race or ethnic origin generally recommend self-identification. People of African descent may, however, be reluctant to self-identify as a member of a group which may traditionally be targeted through racial profiling or discriminated against. Yet, relying on data where race or ethnicity is assigned by a law enforcement official is also problematic. The Expert Mechanism is of the view that there is an inherent value in data based on self-identification, in addition to data assigned by officials. The Expert Mechanism also acknowledges that some aggregation is inevitable, as ethnicity may not necessarily be broken down into a multitude of categories.

55.   A further concern in the area of law enforcement and criminal justice is the growing challenges around the use of artificial intelligence, including bias in technological novelties, such as facial recognition, with the inherent risk of racially biased data contributing to overpolicing and overtargeting of communities of African descent, as a result of biases embedded in computerized algorithmic systems. However, addressing this challenge also presupposes the collection of quantitative and qualitative disaggregated data on relevant law enforcement practices, such as identity checks, traffic stops and border searches, which include information on the prohibited grounds for racial discrimination, including its intersecting forms, as well as the reason for the law enforcement action and the outcome of the encounter.[55]

56.   Another challenge highlighted is that information and data are scattered, making it difficult to get a complete picture of interactions with law enforcement authorities. While there has been some progress in making data collection mandatory in some spheres, this is not always the case for the specific interactions. For example, the first main European Union instrument to prohibit discrimination based on racial and ethnic origin was the Race Equality Directive, which implemented the principle of equal treatment irrespective of racial or ethnic origin. While it applies to discrimination resulting from the use of artificial intelligence,[56] it does not cover law enforcement or criminal justice more broadly. The President of the European Commission has committed to strengthening European Union law where necessary, in areas (such as law enforcement) that are not yet covered by European Union non-discrimination legislation.[57]

57.   The complexities of the use of data in the law enforcement sphere were highlighted. In the United States, various data, including on stops, police arrests, driver's licences, motor vehicle traffic accidents, and moving violations, are used to assess racial profiling. Research

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[54] See https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equality_directive_en.pdf, footnote 127.

[55] Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), para. 50.

[56] See https://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equality_directive_en.pdf, p. 18.

[57] Under the Victims' Rights Directive, the European Union and its member States must collect data disaggregated by age, gender and disability on victims of crime in order to identify particular groups of victims of crime and address their specific needs. Other factors, such as race or ethnicity, sexual orientation, gender identity and refugee status, may also be considered.

has shown limitations inherent in this approach, and has led to calls for the use of auxiliary data sources, such as surveys, direct observations and events-based data, and for the continued refinement of data collection and methodologies for assessment. Submissions also showed that in the United Kingdom of Great Britain and Northern Ireland, the definition of death "in or following police custody" does not include cases where a person was in direct contact with the police prior to their death but had not been arrested or detained. As such, key cases involving deaths in direct police contact, such as those involving use of force and restraint, are lost in a broader category.

58.   Efforts to collect disaggregated data should also focus on the ethnicity of law enforcement officers, with a view to identifying bias and discrimination, by reporting on the ethnicity of the law enforcement officers throughout the whole spectrum of the criminal justice intervention. Further research should seek to quantitatively analyse the impact of officer race on law enforcement outcomes.

E. Overcoming challenges in the collection and use of data disaggregated by race or ethnic origin

59.   The Expert Mechanism is of the view that pragmatic solutions and safeguards grounded in international human rights law can address the challenges mentioned above, which can be categorized for these purposes into (a) methodology and (b) perception.

60.   Concerning perception, it is key to address concerns that the collection and use of data is a punitive measure by law enforcement and criminal justice actors. Specific efforts should be made to explain the benefits of collecting and using disaggregated data in moving towards enhanced professionalism, transparency and legitimacy on the part of law enforcement and criminal justice actors vis-à-vis the communities that they serve.

61.   With regard to methodology, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that due regard be given to the right to privacy and the protection of data, and that the process of collection of data be participatory and based on informed consent and self-identification.[58] At a regional level, the European Commission's "Guidelines on improving the collection and use of equality data at national level"[59] underline that the European Union's General Data Protection Regulation does not prevent equality data collection, including when disaggregated by racial and ethnic origin, if it is done in an appropriate way.[60]

62.   The Committee on the Elimination of Racial Discrimination has reasserted self-identification as a pillar of the collection of ethnically disaggregated data.[61] While there is some value in comparing data based on self-identification with data reported by law enforcement officials – the latter will face less pushback, and may notably identify possible racial profiling – the Expert Mechanism concurs that self-identification should be the norm in collecting data in the context of law enforcement and the criminal justice system.

63.   This should, however, be accompanied by specific safeguards to ensure that self-identification will not lead to additional discriminatory treatment such as racial profiling. It should also ensure respect for voluntary disclosure of one's ethnicity. The benefits of data collection should be presented, including the goal of building a constituency, inside and outside communities, for driving change and asserting rights.

64.   Categories should be determined in consultation with people of African descent, to ensure that appropriate and legitimate terminology is used. New categories being added or redefined could, however, result in additional challenges in comparing and analysing data and progress over time. Some of these challenges can be met by providing training to census

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[58] A/70/335, para. 46.
[59] See https://ec.europa.eu/info/sites/default/files/en-guidelines-improving-collection-and-use-of-equality-data.pdf.
[60] Directive (EU) 2016/680, art. 10.
[61] See the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention.

officers, and those who enter the data, with commensurate resources allocated to analyse the data.

F. Innovative ways to address challenges

65. The Expert Mechanism was informed that in some States in which direct policing data are not available, other official surveys may shed light on possible disparities with regard to policing or the criminal justice system. For example, surveys undertaken with persons deprived of their liberty could be expanded to highlight their experiences with the whole chain of the criminal justice system, starting from arrest. Surveys related to health could also serve to highlight disparities in the treatment of persons confronted with law enforcement officials as first responders, in situations of mental health crisis. Furthermore, victimization surveys and hate crime surveys give an indication of hurdles to access to justice which might be faced – for example, why certain complaints are never filed, and what relationship victims of hate crime may have with law enforcement officials.[62] Other surveys that could elicit information about the daily occurrence of racial discrimination against Africans and people of African descent include data on stop-and-search (and whether those searched are on foot or in a car, and in an urban or a rural location, and so on). And, as noted previously, the use of proxy data can also shed some light on interactions with law enforcement authorities and the criminal justice system. Taken together, different data sources from different sectors should be collected and used to triangulate evidence, and can be generalized to broader statistics.

66. Consultations showed that the most common way in which data disaggregated by race or ethnic origin is made available is through data collected and analysed by non-governmental organizations, academic and research institutions, and national human rights institutions – including through the use of right-to-information legislation, consent decrees, or the use of legislation which compels disclosure. While this is welcome in situations where no data would otherwise be made public, it places an undue burden on petitioners, and it may delay the publication of important data, and related remedial action.

67. The Atlas of Violence,[63] produced and published by the Brazilian Public Security Forum and the Institute of Applied Economic Research, using data from the Ministry of Health's Mortality Information System, was cited as an illustrative initiative. Furthermore, consultations highlighted the role of specific institutions such as equality bodies in the European Union, which are empowered to collect data, suggest reform initiatives and conduct ad hoc surveys and research.[64]

68. Regional bodies were also highlighted as being able to undertake some data collection which may not be conducted at the national level. For example, the European Union Agency for Fundamental Rights published a survey in 2021 which presents statistical data for the European Union on how often people are stopped by the police, in what kind of situations they are stopped, the action taken by the police during stops, and views on whether or not the police acted respectfully.[65] According to the publication, the data presented "make it possible for the first time to compare, across all European Union member States, experiences of police stops by the general population and by selected immigrant and ethnic minority groups".

69. Consultations recommended that data collection and publication be mandatory at the State level, and that independent authorities such as national human rights institutions be empowered to publish the data.

70. UNODC and the Convention against Torture Initiative have recently launched practical advice on the effective implementation of existing international law and human rights standards in policing and law enforcement activities, including guidance on stop-and-

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[62] See, for example, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-hate-crime-reporting_en.pdf.

[63] See https://www.ipea.gov.br/atlasviolencia/.

[64] See, for example, https://www.igualdad.gob.es/ministerio/dgigualdadtrato/Documents/Executive_summary.pdf.

[65] See https://fra.europa.eu/en/publication/2021/fundamental-rights-survey-police-stops.

search procedures that respect, inter alia, the principle of non-discrimination.[66] As an example, law enforcement personnel should be able, and should be required, to account for the reasons why they carried out the procedure. A good practice would be to keep records of all stop-and-searches carried out, and all complaints received, and to subject stop-and-search procedures to independent periodic review.[67] Another good practice reported to the Expert Mechanism is increased transparency, through the disclosure of statistical data by law enforcement agencies. For example, following the periodic collection, analysis and publication of data, since 2010, on the use of force and its effects, by the Independent Commission of Investigation of Jamaica, fatalities linked to police use of force have reportedly decreased by around 50 per cent in recent years.[68]

G. Guidelines on the use of data disaggregated by race or ethnic origin

71.   The Expert Mechanism reiterates that data collection is not an end in itself, and that data without analysis would have little value. It recalls that the purpose of collecting, publishing and analysing data disaggregated by race or ethnic origin is to drive and assess responses to systemic racism experienced by Africans and people of African descent in their interactions with law enforcement authorities and the criminal justice system. It is therefore crucial to obtain the right data in each context, in order to drive this change, and capacity must be built across States to ensure that the data is analysed to drive and assess responses.

72.   Data disaggregated by race or ethnic origin is needed to seek to redesign public safety for Africans and people of African descent, reducing the harm that they encounter in their interactions. Consultations showed that broader data could elicit a fuller picture of how safety played out in a particular State or area thereof. Data can show how policing resources are allocated to specific communities, how the police process complaints, and how many victims and families obtain legal aid – thereby going beyond more visible human rights violations to examine other recurring disproportionate impacts of laws and practices on people of African descent. In addition to collecting the data on interactions, this also requires undertaking qualitative surveys on what "safety" means for Africans and people of African descent, and their communities. For example, in countries where law enforcement officials act as first responders in cases of mental health crisis, such surveys could include listening to emergency calls and how the interactions play out.

73.   Consultations also highlighted the need for narratives behind the numbers, that is, bringing to light the hidden data. Although this information may be challenged by law enforcement officials – even when the data is official – as biases about criminality may influence the way the data is interpreted, such anecdotal data can also help in showing that full picture, including through monitoring by communities of information which may go beyond numbers. Furthermore, in some contexts where data is more readily available, and where it has not led to real policy change, the purpose of obtaining the data will continue to be about informed advocacy for reform in many instances.

74.   In the European Union action plan, the European Commission indicates a number of elements needed for a new approach on equality data collection, including full respect for constitutional norms, European Union data protection law and the Charter of Fundamental Rights of the European Union. The goal should be for member States, in full respect of their national contexts, "to move towards the collection of data disaggregated on the basis of racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimization and structural aspects of racism and discrimination. This data should be comprehensive, reliable, regular and timely; mainstreamed into European Union and national surveys; and both representative and comparable."[69]

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[66] See https://cti2024.org/resources-for-states/police-resourcekit/.
[67] UNODC and OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017), p. 34.
[68] Ibid., p. 158.
[69] See p. 15.

75.   In September 2021, the European Commission issued a guidance note on the collection and use of equality data based on racial or ethnic origin,[70] which indicates that in order to avoid misuse of data, the use of statistical (analytical) categories for any data collection or for the purpose of data disaggregation should always be led by the overriding human rights-based principle of doing no harm, as proposed by OHCHR.[71] The guiding principles put forward by the European Commission begin with carrying out a mapping of existing data sources that provide information on racial or ethnic origin; followed by a needs assessment of (potential) users of data disaggregated by racial or ethnic origin; aligning definitions, classifications and categorizations related to racial or ethnic origin, and mainstreaming data on racial or ethnic origin into European Union and national surveys; and collecting and using equality data in full compliance with the General Data Protection Regulation and national data protection rules.

76.   The guiding principles provide guidance on how to collect information on self-identification based on racial or ethnic origin, and using proxy information when collecting data on racial or ethnic origin when self-identification is not possible, while also noting that proxies rarely offer a reliable picture of discrimination affecting racialized groups and ethnic minorities. As such, the European Commission recommends collecting data on experiences of discrimination of different groups, on different grounds and in different areas of life, as one of the most effective ways to assess the effective implementation of anti-discrimination legislation. Final recommendations include providing sufficient budget for regular surveys collecting equality data on racial or ethnic origin, and some further ethical considerations such as creating a safe environment and seeking informed consent to take part, and the right to not answer a question, on the grounds that the answer may lead to self-incrimination.

77.   National human rights institutions have also produced guidance. For example, in Ontario, Canada, the Human Rights Code permits the collection and analysis of data based on race and other grounds, provided that the data is collected for purposes consistent with the Code, such as to monitor discrimination, identify and remove systemic barriers, address historical disadvantage and promote substantive equality.[72] Furthermore, in 2018 Ontario launched its Data Standards for the Identification and Monitoring of Systemic Racism, for the purpose of "targeting systemic racism and ensuring people in Ontario benefit equally from public policies, programmes and services", including guidelines on how public sector organizations in justice areas must begin collecting, analysing and reporting race-based information across the province over the next five years.[73]

H.   Illustrative initiatives

78.   Initiatives at the national level highlight gaps and challenges in the collection and use of data disaggregated by race or ethnic origin. In Belgium, the equality body Unia – in partnership with the Equal Opportunities Team of the Federal Public Service for Justice – carried out a project aimed at improving the collection and development of equality data in the country. Unia developed a "data hub" that inventories all data sources in Belgium for three groups of discrimination criteria, including race.[74] This mapping led Unia to note that there was "a lack of reliable data on discrimination or racism in the context of police

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[70] See https://ec.europa.eu/info/sites/default/files/guidance_note_on_the_collection_and_use_of_equality_data_based_on_racial_or_ethnic_origin.pdf. For other related guidance and a compendium of practices, see https://fra.europa.eu/en/themes/equality-non-discrimination-and-racism/about-compendium#diagnostic-tool.

[71] See https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

[72] See https://www.ohrc.on.ca/en/racism-and-racial-discrimination-data-collection-fact-sheet.

[73] See https://news.ontario.ca/en/bulletin/49155/ontario-launches-provincial-standards-for-race-based-data-collection and https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism.

[74] See https://www.equalitydata.unia.be/fr/.

actions".[75] A number of recommendations were made in the final report – notably a need for clearer information about the legislation regarding the processing of personal data, and the need for a coordinated approach to the collection and processing of equality data.[76]

79.   On 2 May 2022, the Province of British Columbia, Canada, introduced the Anti-Racism Data Act, aimed at "identifying and eliminating systemic racism in government programmes and services and paving the way to a more just and equitable province". It seeks to introduce a system to securely collect and safely analyse demographic information on race, ethnicity, faith, gender, sex, ability, income and other social identity markers, with the intended purpose of showing where there are "systemic inequalities" so that issues of discrimination, inequities, and gaps in services can be addressed.[77] The anti-racism data legislation builds upon initial recommendations from the British Columbia Human Rights Commissioner about how government can use disaggregated data to address systemic discrimination.[78]

80.   In France, the National Consultative Commission on Human Rights highlighted a recent initiative combining research and the participation of affected individuals: in the context of the PoliCité project, researchers and residents of the Vaulx-en-Velin neighbourhood came together to look at the relationships between law enforcement agents and the local population, with the objective of devising specific procedures for a constructive and nuanced dialogue. Consequently, several meetings were held with law enforcement agents; and research visits abroad were made, using a comparative approach. The results of the experience were reportedly very positive, in particular with regard to addressing pre-existing bias.[79]

81.   In the United States, pursuant to the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, the Equitable Data Working Group was set up to study "existing federal data collection policies, programmes and infrastructure to identify inadequacies and provide recommendations that lay out a strategy for increasing data available for measuring equity and representing the diversity of the American people".[80] It presented "a vision for equitable data" in April 2022, based on the following principles: making disaggregated data the norm while protecting privacy; catalysing existing federal infrastructure to leverage underused data; building capacity for robust equity assessment for policymaking and programme implementation (recognizing the need for an intersectional approach); galvanizing diverse partnerships across levels of Government and the research community; and being accountable to the American public. Other initiatives in the United States which were highlighted include the National Justice Database (which tracks national statistics on police behaviour, standardizing data collection practices, and seeks to drive reforms based on data),[81] and initiatives taken in the State of New York with regard in particular to "stop-and-frisk".[82]

82.   Furthermore, the *Handbook on Governance Statistics* developed by the Praia Group on Governance Statistics [83] includes country experiences in collecting data on law enforcement, some of which are disaggregated by race or ethnicity. These include the Second

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[75] See https://www.unia.be/en/articles/still-too-few-figures-on-inequality-and-discrimination-in-belgium.

[76] See https://www.unia.be/files/Documenten/Publicaties_docs/Report_-_Improving_equality_data_collection_in_BE_EN.pdf.

[77] See https://engage.gov.bc.ca/antiracism/ and https://engage.gov.bc.ca/antiracism/data-act/.

[78] See https://bchumanrights.ca/publications/datacollection/. See also https://bchumanrights.ca/news/b-c-s-human-rights-commissioners-police-act-submission-data-reveals-disturbing-pattern-of-discrimination-in-b-c-policing/.

[79] See http://entpe.francelink.net/fr/node/159.

[80] See https://www.whitehouse.gov/wp-content/uploads/2022/04/eo13985-vision-for-equitable-data.pdf.

[81] See https://policingequity.org/what-we-do/national-justice-database.

[82] See https://www.nyclu.org/en/press-releases/nyclu-releases-report-analyzing-nypd-stop-and-frisk-data.

[83] The Praia Group was created by the Statistical Commission to contribute to establishing international standards and methods to compile statistics on the major dimensions of governance: non-discrimination and equality; participation; openness; access to and quality of justice; responsiveness; absence of corruption; trust; and safety and security.

European Union Minorities and Discrimination Survey; the General Social Survey – Canadians' Safety, and the Ethnic Diversity Survey; the Law Enforcement Core Statistics (United States); the National Survey of Police Standards and Professional Training (Mexico); the Index of Effective Access to Justice (Colombia); and the Strategy for the Harmonization of Statistics in Africa. OHCHR is supporting the work of the Praia Group task team on non-discrimination and inequality for the development of tools to measure discrimination, using survey and administrative data. This includes disaggregation by ethnicity and race. As custodian of Sustainable Development Goals indicators 10.3.1 and 16.b.1, OHCHR is collecting data on the prevalence of discrimination on grounds prohibited by international law, including on race, colour and ethnicity.[84]

83. Finally, possible promising initiatives include civil society and academic institutions sharing their methodologies widely to allow others to replicate in other territories; and the "translating" of data and analysis thereof for the communities, so that they can advocate for change.

V. Conclusions and recommendations

84. **Data collection will not in itself resolve long-standing racism. However, it is an essential first step towards highlighting and addressing the magnitude of structural and systemic racism and racial discrimination, and the pervasive linkages between legacies of the past (enslavement, transatlantic trade, and colonialism) and present manifestations of racism in law enforcement and criminal justice.**

85. **The Expert Mechanism notes that there are still immense challenges in some States in the collection, publication, analysis and use of data disaggregated by race or ethnic origin to drive and assess responses to systemic racism in interactions of Africans and people of African descent with law enforcement authorities and the criminal justice system.**

86. **The Expert Mechanism was also informed that the lack of capacity or will to collect and use data disaggregated by race or ethnic origin feeds into a lack of trust in the data, and doubts about whether any change will actually happen based on this data. The coronavirus disease (COVID-19) pandemic has further impacted data collection worldwide, limiting the capacity of administrative systems and survey data collection systems.**

87. **Addressing the lack of trust – and ultimately addressing systemic racism – requires leadership with respect to law enforcement authorities, to recognize the potential that data has in bringing about positive change for the communities they serve, and also for law enforcement authorities in undertaking their crucial role.**

88. **States should adopt a human rights-based approach to data collection, use and analysis, by providing for disaggregation and self-identification, through the principles of transparency and participation, and while respecting the right to privacy and the need for accountability in collecting and storing data.**

89. **Strengthening data collection systems should be a priority of criminal justice operations, and should include self-identification data on direct interactions with law enforcement authorities and the criminal justice system at all levels (from stop-and-search to arrests, investigations, prosecutions, sentencing and detention). However, the use of administrative data for informing law enforcement activities should be approached cautiously. Most crimes are never reported, and the specific dynamics between certain groups and law enforcement authorities can increase underreporting**

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[84] Metadata and related guidance on Sustainable Development Goals indicators 10.3.1 and 16.b.1 are available at https://www.ohchr.org/en/instruments-and-mechanisms/human-rights-indicators/sdg-indicators-under-ohchrs-custodianship. These indicators are compiled using multiple sources implemented at the country level, such as the Multiple Indicator Cluster Survey and other household surveys conducted by national statistical offices. The module has also been included in the Goal 16 survey initiative of UNDP, OHCHR and UNODC, and is also a core feature of the survey instrument being developed by the Praia Group task team on non-discrimination and equality.

due to fear or distrust by victims in regard to the criminal justice system. Therefore, a comprehensive approach to data should also include and be complemented by officer-led ID data for comparative purposes and to highlight conscious or unconscious bias; as well as qualitative surveys, general household surveys with specific questions on contact with police, and periodic surveys that can capture the full extent of interactions with law enforcement officials, especially as regards specific groups that are less likely to report incidents. Under the Guiding Principles on Business and Human Rights, technology companies have a responsibility to ensure that their products and services do not contribute to human rights violations; this includes non-discrimination guarantees.[85]

90.   Enhanced capacity and resources should be provided for analysis and to subsequently propose reforms to effect change. The Expert Mechanism was informed that 9 out of 10 national statistical offices in low- and lower-middle-income countries have lost funding, while a majority of countries in Latin America and the Caribbean have signalled challenges in fulfilling international data reporting requirements. Robust technical assistance should also be provided in order to change attitudes and understandings, and resistance to the collection and use of data, among law enforcement agencies.

91.   National action plans against racism should include guidelines on how to collect, publish and analyse data disaggregated by race or ethnic origin, as well as indicators to track and monitor the progress of reforms and initiatives to address systemic racism in the context of law enforcement. Accountability indicators should be implemented to record, inter alia, statistics on crimes with racist motives, the racial disparities of people of African descent in the criminal justice system, and relevant accountability and remedial measures. Such guidelines should be based on international human rights law and on the methodology of OHCHR on human rights indicators.

92.   Attention should also be paid to intersectional forms of discrimination, and to efforts to collect, publish and use data to bring to light intersectionality and combinations of various identities, such as sex, gender, gender identity, sexual orientation, nationality, migration status, disability, age, religion, socioeconomic status and other status. In particular, women, girls and youth of African descent face multiple forms of discrimination, which should be made visible. Efforts to collect disaggregated data should also focus on the ethnicity of law enforcement officers, with a view to identifying bias and discrimination.

93.   The role that civil society organizations, researchers and academic institutions continue to play in publishing data and related analysis on the interactions of people of African descent with law enforcement authorities and the criminal justice system should be recognized and supported. Often, this is the only way that data and evidence are placed in the public domain, to raise visibility and foster advocacy for change. It is crucial that these voices continue to be heard and that an enabling safe and protective environment allows the right of freedom of expression to continue unabated. This includes ensuring that these organizations have access to funding and resources.

94.   Similarly, the important role played by national human rights institutions in publicizing official and non-official data should be acknowledged. This work, especially when grounded in the experiences of communities, can contribute to effecting meaningful change through continued advocacy, and should continue to be supported and encouraged.

95.   More broadly, mechanisms and processes at the national and local levels should allow for the direct participation of people of African descent – and specific subgroups thereof to ensure an intersectional approach – in the design and collection of data and categories of data disaggregated by race or ethnic origin. National data strategies should be developed, with the participation of affected communities, and publicly communicated. Capacity should be built to ensure that the data is collected

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[85] See also Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), para. 64.

appropriately, and that those collecting it are technically and socially competent. Such data strategies should include a mechanism for civilian oversight for data collection.

96. **The Expert Mechanism recognizes that the issue of collection of data disaggregated by race or ethnic origin is sensitive in some States. Nonetheless, there are sufficient pragmatic ways to address concerns, and States are invited to move past historical challenges and to move forward on ensuring that people of African descent are no longer invisible.**

97. **The Expert Mechanism invites relevant United Nations mechanisms and processes, including OHCHR, UNODC and the United Nations Development Programme (UNDP), to work together with the Expert Mechanism to assist States in adopting effective methods and tools for data collection, with a view to fully implementing them; to introduce transparency and oversight safeguards; and to document cases of racial discrimination associated with artificial intelligence, along with sanctions and effective remedies.**