

Expounding the frontiers of the human rights agenda of the African Union for the extra-Africa diaspora

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Summary: *There are no rights without responsibilities in the African context. The reverse is equally true: Responsibility is supported by rights. The African Union declaration of Africa's diaspora as the sixth (demographic) region of the African continent triggers a critical discussion of the human rights obligations of the regional body to its diaspora. The African diaspora's invited tactical intervention in the progression of the AU of necessity triggers the expansion of the human rights promotion and protection mandate of the AU to people of African heritage worldwide. Specific human rights guarantees to the diaspora facilitate its envisioned full participation in building the continent. The African diaspora can only make a substantial contribution if its rights are respected, protected and fulfilled in Africa and elsewhere. The 2012 African Diaspora Programme of Action rightly represents the evolving mandate and the nature of the commitment of the AU to embrace it. This mandate comprises the need to address the concerns of African immigrant communities, including recognition of the identity of a person of African descent on the African continent; confronting anti-black racism globally and promoting equality of all races; eradicating political and socio-economic marginalisation of*

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diaspora communities; and advancing Africa's agenda for reparations. These strategies have their nucleus in Africa-led and Africa-advanced approaches; the momentum commences from Africa to the world, with an evident reciprocal effect.

Key words: *African Union; human rights mandate; extra-Africa diaspora; people of African descent; Africa Diaspora Programme of Action*

1 Introduction

One of the objectives of the African Union (AU) is to invite and encourage the full participation of the African diaspora as an important part of the African continent, in the building of the AU.¹ The African diaspora has consequently become known as the 'sixth (demographic) region' of the AU,² in addition to the five geographical regions: Central, Eastern, Western, Southern and Northern Africa. This endeavour forges a specialised African diaspora by raising the profile of the criterion of 'relationship with homeland', as one of the dimensions of the diaspora raised by Butler.³

The African diaspora is loosely described as consisting of peoples of African origin living outside the continent, irrespective of their citizenship and nationality, and who are willing to contribute to the development of the continent and the building of the AU.⁴ There is no firm description of the term 'African diaspora',⁵ and self-identification is a key convening factor.⁶ 'Diaspora' *per se* is fluid and complex. Zeleza describes it as

a state of being and a process of becoming, a kind of voyage that encompasses the possibility of never arriving or returning, a navigation of multiple belongings. It is a mode of naming, remembering, living

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- 1 See art 3(q) Protocol on Amendments of the Constitutive Act of the African Union, 2003.
 - 2 See para 1(k) African Diaspora Programme of Action, 2012 Diaspora/Assembly/AU/Decl(I), adopted by the Assembly of the AU at its 19th ordinary session on 11 July 2013, Maputo, Mozambique, entered into force in August 2016. The participation of representatives from the African Diaspora and the Caribbean Community (CARICOM) enhanced the legitimacy of the Plan of Action.
 - 3 K Butler 'Brazilian abolition in Afro-Atlantic context' (2000) 43 *African Studies Review* 127.
 - 4 Report of the meeting of experts from members of states on the definition of African Diaspora para 18, African Diaspora (dirco.gov.za) (accessed 30 October 2024).
 - 5 MB Salau 'African diasporas: History and historiography' *Oxford research encyclopedia of African history* (2018).
 - 6 H Abbas 'From roots to branches: The African diaspora in a union government of Africa' in T Murithi (ed) *Towards a union government for Africa: Challenges and opportunities. Monograph No 140* (2008) 121.

and feeling group identity moulded out of experiences, positionings, struggles and imaginings of the past and the present, and at times the unpredictable future, which are shared across the boundaries of time and space that frame 'indigenous' identities in the contested and constructed locations of 'there' and 'here' and the passages and points in between.⁷

There is a noble agenda of building a global African family by ensuring the participation of the African diaspora in the integration and development of the continent.⁸ This development validates the heritage of millions of persons of African descent, who were forcibly moved from the African continent during the trans-Atlantic trade and trafficking in enslaved Africans, and fortifies the citizenship, identity and belonging of millions of African migrants currently living in the Americas, Europe and Asia. The significance of Africa's diaspora to the continent is traceable to the origins of pan-Africanism in the 1800s, and the diaspora's centrality as a catalyst of the movement.⁹

The term 'African diaspora' emerged in scholarship in the 1950s.¹⁰ Zeleza classifies the African diaspora into two formations: the historic African diaspora and the contemporary African diaspora both within (intra-Africa diaspora) and outside (extra-Africa diaspora) on the continent. The historic diasporas refer to the diasporas formed before the construction of colonial states that altered the territorial identifications of Africans, and the contemporary diasporas are those formed since the late nineteenth century.¹¹ Also described in terms of colour as the 'black diaspora', scholars rightly note that unlike other diasporas that are described in national, ethnic or ideological terms, the African diaspora is homogenised and racialised based upon the Atlantic experience of forced migration of the sixteenth to nineteenth centuries¹² and, more recently, on the dramatic movement across the Sahara, through the Atlantic to Europe.

7 PT Zeleza 'Rewriting the African diaspora: Beyond the Black Atlantic' (2005) 104 *African Affairs* 41.

8 Diaspora & Civil Society Engagement | African Union (au.int) (accessed 30 October 2024).

9 AG Moges & M Muchie 'The political economy of pan-Africanism' in R Rabakā (ed) *Routledge handbook of pan-Africanism* (2020) 60, <https://www.routledgehandbooks.com/doi/10.4324/9780429020193-3> (accessed 30 October 2024); RK Edozie 'The sixth zone: The African diaspora and the African Union's global era pan-Africanism' (2012) 16 *Journal of African American Studies* 272.

10 See also Salau (n 5).

11 Zeleza (n 7) 55.

12 E Alpers 'The African diaspora in the Indian Ocean: A comparative perspective' in S Jayasuriya & R Pankhurst (eds) *The African diaspora in the Indian Ocean* (2003) 21.

The racialisation of Africa's diaspora affects self-identification, sustaining clear race-based lines of difference among persons of African origin. The narratives of defeat and desperation are set to obscure all other reasons for and conditions of dispersal, hence perpetrating barriers to the realisation of the human rights of people of African descent, especially racism and racial discrimination, and marginalisation of African diaspora communities. Derogatory labels are accorded to both the intra- and extra-Africa diaspora such as *Kafir* or unbeliever in certain Middle East and Asian countries;¹³ and *Makwerekwere* in South Africa.¹⁴ Of note is the inaccurate representation of the size of the African diaspora partly intended to deliberately 'whiten' the histories and images of certain countries by, among others, misleading use of government statistics.¹⁵ Ideological cleansing perpetrates invisibility of people of African descent and a false minority narrative that excuses inadequate policy reforms.

This article explores how the African Diaspora Programme of Action of 2012 extends the human rights mandate of the AU to the extra-Africa diaspora. It contends that the integration of the African diaspora (as humans and peoples) in the AU also activated the continental body's objective in article 3(h) of the Constitutive Act, to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights (African Charter) and other relevant human rights instruments. The African human rights system comprises instruments that make provision for individual and peoples' rights, and institutions that promote and protect them. The article embodies an analysis of the key thematic interventions envisaged in the African Diaspora Programme of Action, including (i) mainstreaming the concerns of African diaspora communities in foreign policy; (ii) actualising the identity of a person of African descent on the African continent; (iii) confronting anti-black racism and promoting equality of all races; (iv) eradicating political and socio-economic marginalisation of diaspora communities; (v) combating trafficking, exploitation and contemporary enslavement of people of African descent; (vi) promoting favourable regulatory mechanisms governing migration; and (vii) advancing Africa's agenda for reparation. This could be deemed the 'AU Seven-Point Agenda in Africa's Diaspora'.

13 Zeleza (n 7) 35-68.

14 DM Matsinhe 'Africa's fear of itself: The ideology of Makwerekwere in South Africa' (2011) 32 *Third World Quarterly* 295-313.

15 Zeleza (n 7) 51.

2 Thematic interventions of the African Union in Africa's diaspora

2.1 Mainstreaming the concerns of African diaspora communities in foreign policy

African immigrants are persons who have journeyed within Africa, but also to the Americas, Europe and Asia,¹⁶ intending to permanently settle there. Racism against people of African descent (anti-black racism) is a major barrier to the enjoyment, by the African diaspora, of global human rights advancements. They are confronted with invisible but effective borders to their personal economic, social and political mobility and development, translating into vulnerable African diaspora communities. Even in their precarious state, African diaspora immigrant communities play a significant role in negotiating barriers against the realisation of the rights of Africans abroad, and amplifying the voices of their mostly 'invisibilised' constituency. However, these communities lack meaningful engagement with authorities about concerns of African immigrants because of underrepresentation in government and state institutions.¹⁷ The respective concerns are either directly traceable and lie within the ambit of the African countries of origin or the countries in which they settle. The first category of concerns includes lack of infrastructural support to engage and operate remotely in systems of African countries; inadequate facilitation for acquisition of essential documents from home countries such as birth certificates, national identity documents, police clearances, passports, certificates of no impediment or certificates of no record of marriage and alike, resulting in statelessness; financial exclusion; and disproportionate detention of African migrants in the diaspora.¹⁸ Bureaucratic hurdles delay the issuance of documents and are often accompanied by demands such as physical presence of the applicant and predominantly paper-based operations, which make the processes impracticable for persons in the diaspora with limited mobility.¹⁹ The financial sector in many countries in Africa is equally

16 PL Kasanda 'Identification and definition of "people of African descent" and how racial discrimination against them is manifested in various regions' Commission of Human Rights, E/CN.4/2003/WG.20/WP.3 23 January 2003 para 6.

17 S Gumedze 'The influence of the African diaspora on democracy-building processes in countries of residence' (2019) 3 *Global Campus Human Rights Journal* 116.

18 See Country Visit Reports of the Working Group of experts on people of African descent especially Australia that has indefinite migrant detention.

19 As above.

inclined to domestic products with restricted reach to the diaspora. Lack of documentation is a causal factor for financial exclusion.

The African Diaspora Programme of Action expresses the intention of the regional entity to 'engage developed countries with a view to address concerns of African immigrants in diaspora communities'.²⁰ The Programme of Action was the outcome document of the Global African Diaspora Summit that sought to 'explore concrete ways and means of harnessing the abundant human and material resources in Africa and beyond, to advance the socio-economic development of the continent'.²¹ The objective and purpose of the African Diaspora Programme of Action would be to establish the Magna Carta of the diaspora process and put in place effective plans and mechanisms for facilitating its successful implementation as well as benchmarks and indicators for evaluating and monitoring its progress.²²

The regional and international cooperation agenda of the AU should mainstream concerns of Africa's diaspora that emerge from the context in which they settle. Kabongo and Okpara note that following the African diaspora in developed countries is a factor that increases the speed of internationalisation.²³ Existing entry points include the work of the Citizens and Diaspora Organisations Directorate (CIDO) as the focal point and hub of the AU's engagement with the diaspora, and 'a catalyst for rebuilding the global African family in the service of the development and integration agenda of the continent';²⁴ the participation of the AU, as an observer, in the work of the General Assembly and the Human Rights Council; the AU-European Union (EU) partnership on education that promotes harmonisation of education systems and mutual recognition of qualifications, among other relevant subjects.²⁵ This should translate into systems, with elaborate and equitable criteria for recognition and accreditation of qualifications from African institutions among all EU member states and *vice versa*. At the 2022 European Union-African Union Summit, the regional bodies agreed to deepen their cooperation in finding durable solutions for asylum seekers, refugees and vulnerable migrants.²⁶ The experience of asylum seekers of African descent in Europe as they fled the war in Ukraine highlighted the significance of

20 African Diaspora Programme of Action, 2012 para D(a).

21 See Introduction of the African Diaspora Programme of Action (n 2) 1.

22 As above.

23 JD Kabongo & JO Okpara 'Timing and speed of internationalisation: Evidence from African banks' (2019) 102 *Journal of Business Research* 12.

24 <https://au.int/diaspora-division> (accessed 11 October 2024).

25 The European Union and the African Union – Human Development | EEAS Website (europa.eu) (accessed 30 October 2024).

26 European Union – African Union summit – Consilium (europa.eu) (accessed 30 October 2024).

a regional response in eliminating racial discrimination in this area.²⁷ The UN Working Group of Experts on People of African Descent reveals the appalling living conditions and state of precariousness of asylum seekers from Eritrea in Switzerland,²⁸ which differs from the plight of persons of other races in a similar situation. A commitment was made at the EU-AU Summit to strengthen asylum systems to provide adequate reception and protection for those eligible, as well as to work on their integration.²⁹ The leaders also agreed to keep working to address the root causes of irregular migration and forced displacement.³⁰ The overarching concerns of the African diaspora include substantive recognition of the identity of a person of African descent on the African continent; the elimination of racism and the promotion of equality of all races; eradicating political and socio-economic marginalisation of diaspora communities; and advancing Africa's agenda for reparation.

2.2 Actualising the identity of a person of African descent on the African continent

Persons of African descent include Africans that were displaced to the Americas and parts of Europe during the trans-Atlantic trade and trafficking in enslaved Africans.³¹ The tragic trade distorted the foundations of citizenship and the identity of its victims. Multitudes were forcibly moved and dispersed in various parts of the world. This led to the emergence of several African diaspora identities globally, including African Americans, Afro-Caribbeans, Afro-Latin Americans, African Europeans, African Australians, and black Canadians, among others. The African identity, however, remained with them and many of them self-identify as people of African descent – a term that emerged as a legacy of the World Conference Against Racism of 2001. Multitudes have sought the aid of scientific means, such as DNA testing, to ascertain their possible countries of origin in Africa. To self-identify as a person of African descent is to present a legitimate claim of belonging to the place where one traces their ancestry. A cautious effort to recognise, document and incentivise

27 See Statement of the African Union on the reported ill-treatment of Africans trying to leave Ukraine, 28 February 2022, Microsoft Word – english.docx (au.int) (accessed 11 October 2024).

28 See statement to the media Working Group of Experts on People of African Descent, on the conclusion of its official visit to Switzerland, 17-26 January 2022 para 33, Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Switzerland | OHCHR (accessed 30 October 2024).

29 European Union – African Union summit – Consilium (europa.eu) (accessed 30 October 2024).

30 As above.

31 Kasanda (n 16) para 6.

the identity of a person of African descent is necessary to formalise the interrelation between Africa and the African diaspora.

Of note, a development model with prospects of success should envisage belonging and ownership rights by people of African descent in African institutions, other entities and spaces on the continent. A framework of qualified descendant status is a fundamental basis. In some parts of the world, the term 'compatriots' is used to refer to citizens that temporarily live abroad, and former citizens who become citizens of other states, while 'diaspora' refers to people who have never been recognised as citizens but consider themselves citizens in terms of ethnic, linguistic, cultural or historical ties.³² 'Steps have been taken to recognise the diaspora as citizens in most Eastern Europe and Central Asian countries (EECA).'³³ The Caribbean Community (CARICOM) Ten-Point Plan for Reparatory Justice makes a defensible proposal for the establishment of a repatriation programme to resettle descendants of persons of African descent who desire to return to Africa, and that³⁴ such a programme should address matters such as citizenship, and deploy best practices in respect of community integration.³⁵ This appeal is not unprecedented. The European Union Global Diaspora Facility (EUDiF) confirms that all countries in the Eastern Europe and Central Asia (EECA) region are establishing special return and reintegration programmes.³⁶ Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova and Ukraine have special repatriation programmes that are intended to attract citizens and non-citizens with ethnic, cultural and/or historical ties to resettle voluntarily in the countries of their citizenship of origin for the purpose of permanent residence.³⁷ In Africa, Ghanaian law allows for a right of abode to be conferred upon a person of African descent living in the diaspora.³⁸ A pioneering project dubbed 'Repatriate to Ghana' has developed fruitfully under which several African-Americans have repatriated to the West African nation,³⁹ but there is lack of clarity in institutional and policy frameworks.⁴⁰

32 Eg Armenia, Azerbaijan, Georgia, Kyrgyzstan, Tajikistan and Uzbekistan; see EUDiF_Regional-Overview_EECA-v.3.pdf (diasporaforddevelopment.eu) 8 (accessed 30 October 2024).

33 EUDiF_Regional-Overview_EECA-v.3.pdf (diasporaforddevelopment.eu) 5 (accessed 30 October 2024).

34 CARICOM Ten-Point Programme for Reparatory Justice para 2. The framework was endorsed by the UN Working Group of Experts on People of African Descent.

35 As above.

36 See EUDiF (n 32) 5-6.

37 EUDiF (n 32) 9.

38 Ghana Immigration Service 2020 *Right of abode*, | Visit Us for your Exention/ Renewal of all (gis.gov.gh) (accessed 30 October 2024).

39 See Repatriate to Ghana, Moving to Ghana | Bringing the Diaspora to Ghana (repatriatetoghana.com) (accessed 30 October 2024).

40 See Diaspora engagement mapping: Ghana 3, CF_Ghana-v.2.pdf (diasporaforddevelopment.eu) (accessed 30 October 2024).

2.3 Confronting anti-black racism and promoting equality of all races

Equality of all races is determined from a transnational perspective. The Human Rights Strategy for Africa underscores the significance of the guiding principle of universality of rights.⁴¹ Africa has an extensive array of human rights and human rights-related frameworks that comprise treaties, declarations and resolutions, which address thematic issues⁴² and concerns of specialised groups, including women,⁴³ children,⁴⁴ persons with disabilities,⁴⁵ migrants and refugees,⁴⁶ internally-displaced persons,⁴⁷ and human rights defenders.⁴⁸ Nevertheless, ‘insufficient implementation and enforcement of human rights norms and decisions’ is a challenge of the African human rights system,⁴⁹ and ‘the capacity and resources for implementation have not matched the progress achieved in adopting human rights instruments and establishing institutions’.⁵⁰ There is a significant gap between the comprehensive regional human rights framework and the lived realities of the people in Africa, so that it can be concluded that human rights are a rhetorical rather than a universal reality on the continent. Leaders of AU member states with a poor human rights record assume the leadership of the organisation, tainting the commitment of the Union to its own human rights

41 Human Rights Strategy for Africa para 27(d), https://au.int/sites/default/files/documents/30179-doc-hrsa-final-table_en3.pdf (accessed 11 October 2024) (accessed 30 October 2024). The Human Rights Strategy for Africa is a guiding framework for collective action for the AU, regional economic communities (RECs), and member states intended to strengthen the African human rights system. The vision is a unified well-governed Africa respectful of human dignity and in which a culture of human rights and democracy is institutionalised (para 25).

42 African Charter on Human and Peoples’ Rights.

43 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa of 2003 (African Women’s Protocol), <https://www.un.org/shestandsforpeace/sites/www.un.org/shestandsforpeace/files/protocolontherightsofwomen.pdf>; AU Strategy for Gender Equality and Women’s Empowerment, <https://au.int/en/articles/au-strategy-gender-equality-and-womens-empowerment> (accessed 30 October 2024).

44 African Charter on the Rights and Welfare of the Child.

45 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of People with Disabilities in Africa 2018, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa> (accessed 30 October 2024).

46 Resolution on missing migrants and refugees in Africa and the impact on their families ACHPR/Res. 486 (EXT.OS/XXXIII) 2021, <https://www.achpr.org/sessions/resolutions?id=517>; Migration Policy Framework for Africa and Plan of Action (2018-2030), <https://au.int/sites/default/files/documents/35956-doc-aupfa-executive-summary-eng.pdf> (accessed 30 October 2024).

47 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4ae572d82> (accessed 30 October 2024).

48 Resolution on Human Rights Defenders in Africa ACHPR/Res.196(L) 2011, <https://www.achpr.org/sessions/resolutions?id=192> (accessed 30 October 2024).

49 See African Diaspora Programme of Action, 2012 para 1.

50 See African Diaspora Programme of Action, 2012 para 20.

agenda. This state of affairs causes disproportionate inequalities and a stark contrast in the well-being and respect accorded to Africans globally. The distinction, exclusion and marginalisation are the embodiment of racism, racial discrimination, xenophobia and other forms of intolerance, which is systemic and structural in many contexts.

Diaspora human rights activists are often confronted with the state of the human rights of Africans on the continent as a contrast to the ideals they seek to realise elsewhere. The analogy is unsound but it weakens the premise for equality of all races. This trajectory excuses internalisation of oppression and self-stigmatisation among people of African descent.⁵¹ Africans struggle to claim a status of equality elsewhere, which is rendered impossible at home. The first step towards ensuring equality of all races would be the complete realisation of Africa's human and peoples' rights, and the transformation of the lived reality of persons in Africa, as respected and protected persons that are equal in dignity and worth. This includes the regard for its diaspora on the continent.

The AU intends to work for the full implementation of the Durban Declaration and Programme of Action (DDPA), the outcome of the third World Conference against Racism of 2001.⁵² Following over 22 years of operation of the DDPA, the standard is set – racism is regressive to humanity as a whole and must be eliminated.⁵³ Concisely expressed, 'the DDPA has contributed to the proliferation of legislative measures, the development of national action plans and monitoring mechanisms, and has helped to place the issue of racism, racial discrimination, xenophobia and related intolerance as an urgent priority on today's international agenda'.⁵⁴ Of note are Durban mechanisms, including the Working Group of Experts on People of African Descent (WGEPAD); the Intergovernmental Working Group for the Effective Implementation of the Durban Declaration and Programme of Action; the Ad Hoc Committee on the Elaboration of Complementary Standards; and the Group of Independent Eminent Experts on the Implementation of the Durban

51 '[I]nternalised oppression includes the negative self-evaluations and dehumanisations believed to be true by peoples suffering unjust and imposed social conditions such as racism, colonialism and conquest ... it influences the thoughts, behaviours, and attitudes toward self, members of one's defined group and the dominant group.' M Salzman & P Laenui 'Internalised oppression among Pacific Island peoples' in EJR David (ed) *Internalised oppression: The psychology of marginalised groups* (2014) 84.

52 Para E(b) African Diaspora Programme of Action, 2012.

53 See Durban Declaration and Programme of Action, 2001 paras 19 & 20.

54 See 'Fighting racism and discrimination: The Durban Declaration and Programme of Action at 20' OHCHR 15, OHCHR_DDPA_Booklet_EN.pdf (accessed 30 October 2024).

Declaration and Programme of Action. Expert bodies under the auspices of the anti-racism machinery of the UN Office of the High Commissioner for Human Rights include the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement; and the Permanent Forum for People of African Descent. Notable examples of plans of action against racism include the EU Anti-Racism Action Plan, 2021-2025;⁵⁵ Canada's Anti-Racism Strategy, 2019-2022;⁵⁶ South Africa's National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia, and Related Intolerance;⁵⁷ Portugal's National Plan to Combat Racism and Discrimination (PNCRD) 2021-2025;⁵⁸ the Plan for a National Anti-Racism Framework in Australia,⁵⁹ among others. These entities and developments have formed a complementary force that is establishing principles and making interventions towards eradicating racial discrimination and supporting state advancements and the victims. The AU desires to 'encourage and support the adoption and implementation, in different diaspora countries, of policies that will facilitate the elimination of racism and the promotion of equality among races'.⁶⁰ However, there is a need for a racial justice index, which is comparable in function to the corruption perceptions index,⁶¹ establishing criteria to measure the efficacy of anti-racism strategies and the progression of states in eradicating racial discrimination.

The DDPA, however, is currently being opposed based on unsubstantiated claims such as anti-semitism that does not surface on the four corners of the framework and emerged even before the instrument was formulated. This led to an unprecedented number of states to boycott the commemoration of its twentieth anniversary in New York in September 2021. Undermining of the Durban framework would be a huge setback to the fight against racism, racial discrimination, xenophobia and related intolerances. If it continues unabated, it is destabilising the ideological basis and the most comprehensive, tried and test framework for the elimination of racial discrimination globally. As the Special Rapporteur on Racism

55 EU Anti-racism Action Plan 2020-2025 | European Commission (europa.eu) (accessed 30 October 2024).

56 Building a Foundation for Change: Canada's Anti-Racism Strategy 2019-2022 – Canada.ca (accessed 30 October 2024).

57 National Action Plan to combat racism, racial discrimination, xenophobia and related intolerance (www.gov.za) (accessed 30 October 2024).

58 Portugal: National plan to combat racism and discrimination 2021-2025 | European Website on Integration (europa.eu) (accessed 30 October 2024).

59 National Anti-Racism Framework | Australian Human Rights Commission (accessed 30 October 2024).

60 Para A(p) African Diaspora Programme of Action, 2012.

61 <https://www.transparency.org/en/cpi/2023> (accessed 12 October 2024).

noted, 'the group of non-supporters includes some of the greatest beneficiaries of colonialism, slavery and the trans-Atlantic slave trade'.⁶² Trafficking and trade in enslaved Africans and colonialism are among the major roots of racism, racial discrimination and the xenophobia that Africans and people of African descent suffer today. The AU needs to demonstrate solidarity and leadership by utilising its good offices to rally states to recommit to the transnational process of eradicating racial discrimination that began and is still anchored in the Durban Declaration and Programme of Action. It is important for AU member states to support Durban mechanisms by providing financial support, attending the activities of these mechanisms, and exercising their voting rights, where necessary, to advance the cause. AU member states could promote the anti-black racism agenda in their foreign policies, by seeking to encourage strategic partner states to adopt and implement effective strategies to eradicate racial discrimination.

2.4 Eradicating political and socio-economic marginalisation of diaspora communities

The most effective way to eradicate marginalisation of diaspora communities is by empowering them. The African diaspora communities need to be facilitated to harness their advantage of belonging to the African continent. There is a need for legal structures to regularise and accord legal personality to qualifying African diaspora organisations in Africa. Legal existence of diaspora organisations in Africa would strengthen their capacity to invest in the continent and repatriate their benefits. The African-American Association of Ghana may be studied for a possible contribution in this regard.⁶³ It is a best practice for a state to have an institution dedicated to diaspora engagement.⁶⁴

The AU also intends to bolster the image of Africa by coordinating efforts of existing media and promoting new media to re-brand Africa and to counter stereotypes about Africans and people of African descent.⁶⁵ Marginalisation of Africans and people of African descent in mainstream media is deeply entrenched and adversely consequential. Images of African children are used by even reputable international organisations to portray dire situations such as extreme

62 'UN expert criticises boycott of Durban process against racism, calls for action' 28 October 2021, UN expert criticises boycott of Durban Process against racism, calls for action | UN News (accessed 30 October 2024).

63 See <https://aaaghana.org/> (accessed 11 October 2024).

64 EUDiF (n 32) 6.

65 Para C(a) African Diaspora Programme of Action, 2012.

poverty and hunger.⁶⁶ Model victories of politicians of African origin have been reported with demeaning references such as ‘child of refugees’,⁶⁷ and ‘cleaner’,⁶⁸ which reflect racial hierarchies and vulnerabilities in the political sphere. A counter-narrative needs to be proactive, revolutionary and broadly disseminated.

Racial stereotypes also cause, promote and sustain racial injustice.⁶⁹ Similarly, a prevalent, exaggerated and colonial perspective of life as better abroad is also stereotypical and a driver of irregular migration that pushes Africans into precariousness in the diaspora. This narrative is also promoted by education curricular that lacks the African conscience and does not articulate the opportunities on the African continent. A strategy for the media should be complemented by effective decolonisation of education curricular to develop knowledge and skills that are applicable to the African context.

2.5 Combating trafficking, exploitation and contemporary enslavement of people of African descent

The human and peoples’ rights agenda of the AU includes strengthening the implementation of legislation and other measures aimed at eradicating trafficking, exploitation and other modern forms of slavery.⁷⁰ These violations are rooted in the historical legacies of slavery and colonialism, which ‘negated the essence’⁷¹ of Africans and persons of African descent. The current dysfunctionality of several states has also undermined the propensity of the continent to boost the brand of an African. Structural racism and racial discrimination have placed people of African descent in the margins of the social and economic progression of societies, where they are susceptible to trafficking, exploitation and enslavement. An amalgamation of short, medium and long-term preventive, protective and remedial measures is required to reverse the regressive trajectory.

A notable example for immediate intervention is the state of migrant labour from Africa in the Middle East and Gulf states.⁷² There

66 See ‘Children of African descent’, Report of the UN Working Group of experts on people of African descent, A/HRC/51/54, 18 August 2022 para 39.

67 Child of refugees becomes Germany’s first black female cabinet minister | Germany | The Guardian (accessed 30 October 2024).

68 French elections: Cleaner defeats former minister in parliamentary vote – BBC News (accessed 30 October 2024).

69 Report on the role of negative racial stereotypes of people of African descent in perpetuating racial injustice, A/74/274, 2 August 2019.

70 Para E(c) African Diaspora Programme of Action.

71 See Introduction to the Durban Declaration and Programme of Action, 2001, Durban_text_en.pdf (ohchr.org) (accessed 30 October 2024).

72 Situation of African Migrants in the Middle East | African Union (au.int) (accessed 11 October 2024).

is a notable increase in the volumes of labour migration from sub-Saharan countries, including Ethiopia, Kenya, Uganda, Tanzania and Ghana, to the Arab world, to undertake semi-skilled work in homes, the construction industry, manufacturing and agricultural sectors in the recent past.⁷³ These migrant workers are often subjected to an exploitative system:⁷⁴

The legal status of domestic and other migrant workers in the [Gulf Cooperation Council] (GCC) and some countries in the Middle East such as Jordan and Lebanon is governed by the *kafala* system. *Kafala* is a migration management policy under which a migrant worker's immigration and employment status is legally bound to an individual employer or sponsor (*kafeel*) ... The *kafala* system has also been found to foster the abuse and exploitation of migrant workers, particularly domestic workers who operate in private spaces.

The workers are excluded from the national labour legislation,⁷⁵ and threats of cancellation and illegalisation always loom over them, making them susceptible to oppressive conditions of work.⁷⁶ A study by the International Office of Migration on returned Ghanaian domestic workers revealed that a significant percentage of them suffered various forms of abuse, including corporal punishment, sexual assault, denial of food, and extra unpaid tasks.⁷⁷ The Uganda Human Rights Commission confirmed police reports that 'some workers who signed up with labour recruitment companies to work in the Middle East and Gulf State countries had their organs, especially kidneys and livers harvested'.⁷⁸

In 2021 President Rodrigo Duterte of the Philippines made an unprecedented call to Middle Eastern countries to dismantle the *kafala* system because, in his own words, 'it's a set up for slavery'.⁷⁹ The AU needs to strengthen the call for the complete ban of the *kafala* system in all practising countries, advance and concretise a system

73 N Laiboni 'A job at all costs: Experiences of African women migrant domestic workers in the Middle East' 10, https://gaatw.org/publications/Africa_Domestic_Work_Consolidated_regional_report.pdf (accessed 30 October 2024).

74 Laiboni (n 73) 10; see also RS Parreñas & R Silvey 'The governance of the Kafala system and the punitive control of migrant domestic workers' (2021) 27 *Population, Space and Place* 1-7, <https://doi.org/10.1002/psp.2487> (accessed 30 October 2024).

75 See Domestic Workers (Arab States) (ilo.org)(accessed 30 October 2024).

76 See, eg, F Demissie 'Ethiopian female domestic workers in the Middle East and Gulf states: An introduction' (2018) 11 *African and Black Diaspora: An International Journal* 1.

77 Summary report on Ghanaian domestic workers in the Middle East, September 2019 4, iom-ghana-domestic_workers_report_summary-finr.pdf (accessed 30 October 2024).

78 Uganda 2021 Human Rights Report 335, https://www.state.gov/wp-content/uploads/2022/03/313615_UGANDA-2021-HUMAN-RIGHTS-REPORT.pdf (accessed 30 October 2024).

79 *Philippines Daily Inquirer* (Makati City, Philippines) 26 July 2021.

that enables the realisation of the rights of African migrant workers in the Arab world. Supposed reforms to the *kafala* system have not been satisfactory.⁸⁰ In addition, there is a need to establish accessible, proximate and secure monitoring and complaint mechanisms within the African human rights system that allow for effective interventions and redress for violations.

2.6 Promoting favourable regulatory mechanisms governing migration

Migrants of African descent experience racism, racial discrimination, xenophobia and other forms of intolerance on the African continent and the diaspora. The xenophobic attacks of foreign nationals of African descent in South Africa,⁸¹ the violent crack-down of Africans in transit to Europe, through North African countries,⁸² the exclusionary approach of transit and destination European countries towards persons of African descent fleeing the war in Ukraine⁸³ in the recent past demonstrate the magnitude of the problem.

The African Commission on Human and Peoples' Rights (African Commission) has expressed concern about the number of migrants and refugees who disappear in Africa under circumstances of armed conflicts, violence, trafficking, forced labour, rape and other forms of sexual violence that put them at risk of enforced disappearance, or disappearance in other circumstances, detention in transit or destination countries, or even in their own country of origin when they are deported, including detention of such persons in unofficial or secret places.⁸⁴

Undocumented persons of African descent are also incarcerated indefinitely in prisons around the world, long after serving their terms, for lack of determinable destination countries.⁸⁵ There are credible reports of torture and death of people of African descent

80 The Kafala System In Saudi Arabia - ECDHR (accessed 11 October 2024).

81 T Odeogun & OT Faluyi 'Xenophobia, racism and the travails of "black" immigrants in South Africa' in AO Akinola (ed) *The political economy of xenophobia in Africa: Advances in African economic, social and political development* (2018) 125.

82 A Abderrahmane 'Migrants at the mercy of Morocco's iron fist' ISS 24 August 2022, <https://issafrica.org/iss-today/migrants-at-the-mercy-of-moroccos-iron-fist> (accessed 11 October 2024).

83 <https://www.eth.mpg.de/molab-inventory/shock-immobilities/shock-immobility-African-migrants-and-the-Russian-invasion-of-Ukraine> (accessed 11 October 2024).

84 Resolution on missing migrants and refugees in Africa and the impact on their families ACPHPR/ Res. 486 (EXT.OS/XXXIII) 2021, <https://www.achpr.org/sessions/resolutions?id=517> (accessed 30 October 2024).

85 Portugal Preliminary Observations.

in incarceration. For example, Oury Jalloh, an African asylum seeker, died in a fire in a prison cell in Dessau, Germany, in 2005, while his hands and feet were handcuffed.⁸⁶ There are endemic concerns over the detention of undocumented migrants in South Africa, including prolonged, indefinite periods of detention, and physical bodily harm occasioned by law enforcement officials.⁸⁷ The response of law enforcement agencies to xenophobic violence against black foreign nationals in South Africa has been focused on removing the victims of persecution rather than taking prohibitive action against the perpetrators.⁸⁸ Of note, the undocumented status of several migrants is partly attributable to the bureaucratic inefficiencies of the system that lead to backlogs,⁸⁹ delays in processing applications spanning for years, and loss of documents, among other setbacks, which always translate into prejudice to the migrants. 'The practice of the Department of Home Affairs in itself displays characteristics of institutional xenophobia in its response to migrants and refugees.'⁹⁰

The migration regimes of many countries are governed based on criteria that exclude the majority of people of African descent, such as proof of adequate financial means; considerable amounts of financial deposits for possible future repatriation; graduation from top global institutions excluding African universities;⁹¹ and assimilation, among others. There are requirements to assimilate or integrate but no corresponding opportunities to do so. The majority of migrants of African descent live together in separate areas and communities, with limited social mobility and limited interaction with other people, often other migrants.⁹² In the case of *Ukumu*⁹³ a Canadian court

86 Report of the Working Group of Experts on People of African Descent on its mission to Germany, A/HRC/36/60/Add.2, 15 August 2017 para 28, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/GT7/238/67/PDF/G1723867.pdf?OpenElement> (accessed 30 October 2024).

87 J Jackson & M Hoque 'Effective management of deportation of undocumented migrants from South Africa' in M Mohiuddin and others (eds) *Leadership in a changing world – A multidimensional perspective* (2022) para 4.7.

88 A Hiropoulos 'Migration and detention in South Africa: A review of the applicability and impact of the legislative framework on foreign nationals' APCOF Policy Paper 18, 18 November 2017, <https://apcof.org/wp-content/uploads/018-migration-and-detention-in-south-africa-alexandra-hipopoulos.pdf> (accessed 30 October 2024).

89 See K Moyo 'South Africa reckons with its status as a top immigration destination, apartheid history, and economic challenges' 18 November 2021, Article: South Africa Reckons with Its Status as a.. | migrationpolicy.org (accessed 30 October 2024).

90 SS Ekambaram 'Foreign nationals are the "non-whites" of the democratic dispensation' in V Satgar *Racism after apartheid: Challenges for Marxism and anti-racism* (2019) 217, https://www.jstor.org/stable/10.18772/22019033061.15#metadata_info_tab_contents (accessed 30 October 2024).

91 Eg, the UK High Potential Individual (HPI) Visa, High Potential Individual (HPI) visa: Eligibility - GOV.UK (www.gov.uk) (accessed 30 October 2024).

92 See Country Visit Reports of the UN Working Group of experts on people of African descent. Country visits | OHCHR (accessed 11 October 2024).

93 *R v Ukumu* 2019 ONSC 3731 (CanLII).

established that as a migrant from the Democratic Republic of the Congo (DRC) then living in Canada, Mr Ukumu's ability to practise English and improve his English comprehension skills was somewhat limited, as he had very few friends, engaged in few social activities, and the employment he was able to secure through a series of short-term jobs (for example, as a field labourer paid 'under the table', a seasonal production and packaging worker for a local clothier, and as a part-time dishwasher working alone in the back kitchen of a restaurant, where he would receive instructions and other messages primarily through a French-speaking chef from Morocco). He did not [indulge in] much social interaction, speaking or communication beyond basic English and, while working, he tried not to 'bother' others in any way that might jeopardise his employment. He also had remained single and had no children, such that he had no partner or other familial ties that might have facilitated or required more ongoing interaction with English-speaking people. While Mr Ukumu attempted to speak with strangers in public locations as much as possible (for example, on buses and at libraries), he quickly learned that, in contrast with customary practices in the DRC, approaching and speaking with strangers is not something commonly done in Ontario. He nevertheless continued to encounter and interact with English-speaking Canadians in daily life, for example, while shopping for groceries, while giving people rides in his vehicle, and while dealing with one of the three transmission repair facilities he visited shortly before his arrest. (Mr Ukumu had purchased his two successive vehicles through brief transactions with other immigrants to Canada, during which he was able to speak a mixture of Spanish and English.)⁹⁴

In the German case of *B v R*, a father of African descent was denied custody of his child by the local and regional courts partly because he lacked appreciation of European standards. The Federal Constitutional Court rightly ruled that the father had not been treated with the requisite neutrality because he was denied residence status and consequently could not access state educational opportunities.⁹⁵ Countries such as Germany and Switzerland have introduced integration programmes, offering language courses and support to migrants. Linguistic racism is still a reality even after a person meets the proficiency standards. Lines of difference are drawn according to speech genres and accents.

94 *Ukumu* (n 93) para 42.

95 1178/14, Bundesverfassungsgericht – Entscheidungen – Sorgerechtsentziehung setzt eingehende Feststellungen zur Kindeswohlgefährdung voraus (accessed 30 October 2024).

The effects of slavery and colonialism deprived Africans and people of African descent of a capital base for acquiring intergenerational wealth. In contemporary times, racism is negating their abilities, dismissing people of African descent from life, and denying them access to equal opportunities. Migrant regimes of the world are in conflict with people of African descent, often setting criteria that they cannot meet because of the circumstances imposed on them by the historical factors that perpetuate racism and racial discrimination. The Working Group of Experts on People of African Descent documents the lack of economic mobility of Africans and persons of African descent in the diaspora. They are majorly confined to the informal job sector, where they are prone to exploitation.⁹⁶ Even the most educated Africans and people of African descent are downgraded and work way below their education levels, mostly providing manual labour with limited security and poor prospects.⁹⁷ In many sectors of certain countries in the diaspora, such as Switzerland and Germany, qualifications from African countries are neither recognised nor accredited.⁹⁸ Limited pathways to the labour market have left many Africans and people of African descent with no choice other than to prolong their stay in school in order to retain the right to stay. To require persons in such a predicament to demonstrate ownership of resources in order to regularise their migration statuses is preemptive. Of note, racial discrimination is propelled by policies that advance equal treatment of all persons but have an exclusionary effect upon application.

An exception is made for citizens of countries that enter into cooperation agreements for moderation of visa requirements, and facilitation of paper work for their citizens' travel or residency abroad, such as Portugal's agreement on mobility within the community of

96 See, eg, Report of the Working Group of Experts on People of African Descent on its mission to Argentina, A/HRC/42/59/Add.2, 14 August 2019 para 42, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/242/57/PDF/G1924257.pdf?OpenElement> (accessed 30 October 2024).

97 Examples include Report of the Working Group of Experts on People of African Descent on its Mission to Belgium, A/HRC/42/59/Add.1, 14 August 2019 para 51; Report of the Working Group of Experts on People of African Descent on its mission to Argentina, A/HRC/42/59/Add.2, 14 August 2019 para 42; Report of the Working Group on Experts on People of African Descent on its mission to Canada, A/HRC/36/60/Add.1, 16 August 2017 para 57, <https://www.refworld.org/docid/59c3a5ff4.html>; Report of the Working Group of Experts on People of African Descent on its mission to Spain, A/HRC/39/69/Add.2, 14 August 2018 para 45, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/249/75/PDF/G1824975.pdf?OpenElement> (accessed 30 October 2024).

98 See, eg, Report of the Working Group of Experts on People of African Descent on its mission to Germany, A/HRC/36/60/Add.2, 15 August 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/238/67/PDF/G1723867.pdf?OpenElement>; Report of the Working Group of Experts on People of African Descent on its mission to the United States of America, A/HRC/33/61/Add.2, 18 August 2016 para 55, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement> (accessed 30 October 2024).

Portuguese-speaking countries.⁹⁹ This practice needs to be emulated, to every extent possible, in view of the objective of the AU to ‘engage developed countries with a view to creating favourable regulatory mechanisms governing migration’.¹⁰⁰

The planned revitalisation of the AU-EU-UN Tripartite Task Force¹⁰¹ should envisage broadening the scope of the work of the consortium to migrants and refugees in other North African countries, including Morocco and Tunisia. The Task Force was established in 2017 by the AU, EU and UN with the aim of saving and protecting the lives of migrants and refugees along the migratory routes. Its work could have provided an effective intervention in the recent tragedy that led to the deaths of several African migrants at the Moroccan-Spanish border.¹⁰²

2.7 Advancing Africa’s agenda for reparation

The African Diaspora Programme of Action envisages the role of the AU to ‘coordinate with the African diaspora regarding the question of the illegally-acquired cultural goods that exist outside the African continent, with the aim of speeding their return to their countries of origin in Africa’.¹⁰³ This objective embodies the restitution of property, a form of reparation. There is increased momentum for the restitution of cultural property in the recent past, including the proclamation by the Parliament of France in December 2020, to transfer 26 cultural works, which were held in Museums in France for over a century, back to Benin,¹⁰⁴ and Germany’s commitment to return cultural artifacts illicitly obtained from Cameroon, Namibia, Nigeria and Tanzania in the colonial era.¹⁰⁵ The proposed AU Model Law on the Protection of Cultural Heritage¹⁰⁶ needs to specifically address returned cultural artifacts and seek to foster knowledge transfer, sustainability and necessary modification of modes of

99 Prime Minister notes the importance of the mobility of citizens in the Portuguese-speaking Community – XXII Government – Portuguese Republic (portugal.gov.pt) (accessed 30 October 2024).

100 Para D(a) African Diaspora Programme of Action, 2012.

101 European Union – African Union summit – Consilium (europa.eu) (accessed 30 October 2024).

102 UN committee urges prompt investigation into deaths of migrants at Moroccan-Spanish border | OHCHR (accessed 30 October 2024).

103 Para F(d) African Diaspora Programme of Action, 2012.

104 LOI no 2020 – 1673 du 24 décembre 2020 relative à la restitution de biens culturels à la République, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042738023> (accessed 29 December 2021).

105 See Germany Returns Artifacts Taken from Africa during Colonial Rule | International Center for Transitional Justice (ictj.org) (accessed 30 October 2024).

106 The African Union Model Law | African Union (au.int) (accessed 30 October 2024).

preservation used by transferring countries. It may become necessary to continue the preservation regimes and activities of the previously holding countries.

Certain former colonial powers such as Germany have rendered apologies for colonial crimes,¹⁰⁷ accepting responsibility for those tragedies, but the framework for these demands from Africa remains *ad hoc*, unstructured and poorly facilitated. Legal claims from Africa against former imperial powers have failed for various reasons and others have dragged in foreign courts for decades.¹⁰⁸ This has left room for agreements such as the Germany-Namibia Accord in which development aid is offered to pre-empt actions for reparation.

In the recent past, the AU has broadened and furthered the reparation agenda of the continent, beyond the focus of the African Diaspora Programme of Action, by committing to building a united front to advance the cause of justice and the payment of reparations to Africans.¹⁰⁹ The proclamation followed Resolution 543 on Africa's Reparations Agenda and the Human Rights of Africans in the Diaspora and People of African Descent Worldwide.¹¹⁰ The AU has also declared 'Justice for Africans and People of African Descent Through Reparation' as the theme of 2025.¹¹¹ It is intended to establish structures and consolidate practical approaches that advance reparatory justice in a broader sense, including climate justice, reforming the global financial systems and structures, and reforming the prevailing architecture of multilateral organisations.¹¹²

107 Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, paras 11, 13.

108 See *Hereros v Deutsche Afrika-Linien GMBL & Co* 06-1684, Opinion of the Court of 10 April 2007 (claim by the Hereros against Imperial Germany for slavery and crimes against humanity). The case was dismissed for failure to state a cause of action; *Ndiki Mutua, Paulo Nzili, Wambugu Wa Nyingi, Jane Muthoni Mara and Susan Ngondi v The Foreign and Commonwealth Office*, 21 July 2011 (Mau Mau Litigation); the matter was settled out of court in 2016. South African apartheid litigation by the Khulumani Support Group, against corporations for reparations, has been ongoing before US Courts since January 2010.

109 Proclamation on building a united front to promote the cause of justice and payment of reparations to Africans, Assembly AU Decl 1 (XXXVII) _E.pdf (africa-union.org) (accessed 11 October 2024); 37th ordinary session of the Assembly of the Union, 17-18 February 2024, The AU theme of the year 2025 is 'Justice for Africans and People of African Descent Through Reparation' (accessed 30 October 2024).

110 ACHPR/Res.543 (LXXIII) 2022 73rd ordinary session 21 October 2022-9 November 2022. See also Preamble to Assembly AU Decl 1 (XXXVII) _E.pdf (africa-union.org) (accessed 30 October 2024).

111 Concept Note on the African Union Theme of the Year for 2025 Theme: 'Justice for Africans and People of African Descent Through Reparations' (accessed 13 November 2024).

112 See, eg, paras 12,10,14, Assembly AU Decl 1 (XXXVII) _E.pdf (africa-union.org) (accessed 11 October 2024).

The leadership of the AU in rallying the continent's solidarity in advancing political claims and fortifying the legal actions for reparations is essential. Following the example of Libya's negotiation for a settlement with Italy for reparation of colonial atrocities, which lasted for decades, the political approach may also be protracted. Regional advances for reparations are not unprecedented. In 2014 the Caribbean Community (CARICOM) developed a ten-point plan for reparatory justice, which outlines a possible path to justice for victims and descendants of colonial crimes, including enslavement of Africans, genocide, and racial apartheid by European governments in the Caribbean.¹¹³ In 1951, 23 major Jewish organisations united, and formed the Claims Conference with the objective of seeking negotiations with the West German government for the suffering and losses of the Jews during the Holocaust.¹¹⁴ A Committee for Jewish Claims on Austria was also established in 1952. Regulated political settlements are seen to yield better results in cases of collective historical crimes.¹¹⁵

Certain reparatory justice measures, such as documenting and promoting authentic African history, require the AU as a direct implementing partner. Africa's image is damaged in the way in which the continent and its people are portrayed in African history. While centring the experience of Europeans in Africa, rather than that of Africans and Africa's civilisation, history promotes the narrative of Africans as vanquished and excludes the atrocities of the imperial powers. Of note, there was no understanding of the full extent of the abuses committed by the British colonial administration during the Kenya Emergency (1952-1960), until the publication of two academic studies, by two expert historians, in 2005.¹¹⁶ The studies were based on extensive archival research and witness evidence from both Kenya and the United Kingdom.¹¹⁷ The capacity to document African history is here in Africa and should be fully developed to advance Africa's agenda. This requires a sound resource base to facilitate scholarship and broadly disseminate outcomes. Each former colonial power should be lobbied to integrate authentic pre-

113 See CARICOM Ten Point Plan for Reparatory Justice, https://adsdatabase.ohchr.org/IssueLibrary/CARICOM_Ten-Point%20Plan%20for%20Reparatory%20Justice.pdf (accessed 1 June 2022).

114 See Claims Conference: Conference on Jewish Material Claims against Germany. <https://www.claimscon.org/about/history/> (accessed 5 January 2022).

115 L van den Herik 'Addressing "colonial crimes" through reparations? Adjudicating Dutch atrocities committed in Indonesia' (2012) 10 *Journal of International Criminal Justice* 704.

116 See 'The role of expert historians in the Mau Mau claims', <https://www.leighday.co.uk/latest-updates/cases-and-testimonials/cases/the-mau-mau-claims/#:~:text=Leigh%20Day%20acted%20on%20behalf,Kenya%20Emergency%20in%20the%201950s> (accessed 30 October 2024).

117 As above.

colonial African history and Africa's colonial history in its curricular as a reparative measure.

There are contemporary violations on the continent such as the dumping of toxic waste from foreign countries on African soil,¹¹⁸ and environmental degradation resulting from exploration by multinational corporations.¹¹⁹ The continent needs to establish and exercise jurisdiction over gross violations that is comparable to the Aliens Tort Statute in the United States. Litigation abroad is prohibitively expensive and often sustained on contingency agreements with foreign firms.

3 Conclusion

The integration of the African diaspora into the AU triggers reciprocal rights and responsibilities. Full participation of the African diaspora in the development of the continent is not severable from the promotion and protection of their rights. The African Diaspora Programme of Action alludes to vital undertakings of the regional body to address both historical and contemporary challenges of its constituency in the sixth region. The 'sixth demographic region of the AU' could serve as a framework for unifying African diaspora identities into a cognisable identity of 'a person of African descent' and attaching value of qualified citizen rights. The AU is strategically positioned to use its good offices to advance both political and legal interventions towards creating a favourable environment for Africans to thrive here in Africa, strengthening the African brand, eliminating racism, confronting contemporary slavery, and procuring reparatory justice. It is therefore suggested that, prospectively, (i) the human rights record of an AU member state counts especially in assuming leadership positions and responsibilities in the Union's ranks; (ii) AU member states establish and dedicate specialised institutions to diaspora engagement; (iii) the AU develops, maintains and utilises a global racial justice index that would also inform the foreign policies and strategic engagements of member states; (iv) the identity of a person of African descent is institutionalised on the African continent with qualified citizen rights, (v) the financial sector in Africa facilitates the inclusion of persons in the diaspora.

118 Eg, the *Trafigura Incident, 2006: Stichting Union Des Victimes De Dèchets Toxiques D'Abidjan et Banlieues v Trafigura Beheer BV C/13/581973/HA ZA 15-195*, 30 November 2016, Microsoft Word – 2016.11.30_Judgment_Stichting_UVDTAB_v_Trafigura_UK (accessed 30 October 2024).

119 See *Endless oil spills blacken Ogoniland's prospects – ISS Africa* (accessed 30 October 2024).

Furthermore, (vii) the AU pursues and concretises the continent's reparation agenda including (a) targeted support for evidence-based research and documentation of historical crimes, which would further the prospects of success of claims; (b) championing the promotion of authentic African history that accurately demonstrates the state of pre-colonial Africa and promotes its inclusion in curricular worldwide; (c) the AU should negotiate for structures of recognition and accreditation of qualifications from African universities in the diaspora; (d) the application of the AU Model Law on the Protection of Cultural Heritage should incorporate the preservation and sustainability, with necessary modification, of returned cultural artifacts including possibilities of knowledge transfer.

The AU and its member states should confront the thorny question of irregular migration by (a) devising a preventive approach to irregular migration, including sensitising and educating the general public about the its perils; (b) African countries establishing processes to facilitate documentation for persons in the diaspora; (c) AU member states developing avenues of negotiating the voluntary return and reintegration of stateless persons to African countries of origin; and (d) the reparation agenda should envisage an exception of migration criteria that represents the effects of slavery, colonialism, racism and racial discrimination such as intergenerational deprivation of resources.