

# Combating Discrimination, Achieving Equality of Treatment and Outcomes

## Evolving challenges for law, policy and action

Remarks by:

Patrick A. Taran, President, Global Migration Policy Associates (Independent Expert Group)

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on the Effective Implementation of the Durban Declaration and Programme of Action*

### Item 6: Thematic discussion: **DDPA's contribution in strengthening the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action**

**Geneva, 18 October 2023, morning panel**

I start by reminding as context that *non-discrimination* and protection of the rights of all persons including all migrants featured explicitly in both the Vienna Declaration and Programme of Action<sup>1</sup> and the Durban Declaration and Program of Action (DDPA)<sup>2</sup>. The Vienna Declaration issued a call for ratification of a most relevant Human Rights Convention, on protection of the rights of all migrant workers and family members, on the eve of entry into force of that instrument<sup>3</sup>.

The DDPA contains no less than 40 paragraphs addressing protection of rights including non-discrimination of all migrants, refugees, and non-nationals . In doing so, the DDPA drew out for the first time globally and comprehensively the principles and roadmap for implementation and full realization of Universal Declaration of Human Rights (UDHR) and the Vienna Declaration and Programme of Action in arena of non-discrimination and equality of treatment for all migrants, refugees, and non-nationals –applicable also to Stateless persons--elaborated in every International/UN core convention on human rights as well as UDHR and Vienna, with precisions detailed only otherwise in the ICRMW and elaborated on in treaty body general comments by CEDAW, CERD, CRC, CHR and CESC.

A most distinguishable component of the DDPA was –and remains-- the notion of planned, deliberate, and organized regional, national and local action to combat, prevent and eliminate racism, racial discrimination, xenophobia and related intolerance. Indeed, several countries national plans on racism racial discrimination and xenophobia deriving from the DDPA took up in an exemplary way treatment of foreigners, non nationals, immigrants, migrants as major elements. Ireland and Finland were two good examples we're aware of; Ireland can be considered as best policy and practice because that plan of action not only still exists operationally, but it was recently revised and re-validated –under what can be considered a more conservative government-- with support across government, economic actors, social partners and civil society.

### **Discrimination on basis of nationality and national origin**

I focus on this because treatment of non-nationals, that is to say discrimination on the basis of nationality and national origin are today one of the biggest clear and present dangers to societies worldwide, and to the very economic performance and viability of many countries. That discrimination is also a direct threat to protection of rights and equality of treatment for people of color, notably afro-descendent –but not only-- everywhere.

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1 <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

2 <https://www.un.org/en/fight-racism/background/durban-declaration-and-programme-of-action>

3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – ICRMW (1990). Now 59 States Parties plus 11 signatories pending ratification. Text and link to ratification status by country at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

Who are we talking about? 300 million international migrants resident in around the world. Tens of millions more in short term, temporary, seasonal residence and employment. 14% of populations across OECD countries. And countries in Africa with 25% of population foreign born or children of foreign born. Ditto in other regions. I ain't never met a migrant that didn't have a story or a dozen about discriminatory indeed exclusionary treatment. I've met quite a few, and know about many more. As a migrant worker by definition for the last 33 years, I can tell a few stories of discrimination myself. This is the 50<sup>th</sup> year for me of full time work in this migration business, and I've been in 100 countries in all world regions on migration and related business over the last 60 years. Before some of you were around, I attended the majority black high school in my city in the Voluntary Transfer Program to Improve Racial Imbalance in the Seattle Schools.<sup>4</sup> That in 1966-67.

Importantly, discrimination, exclusion, exploitation, abuse, violence faced by migrants is manifestly related to various, often multiple and usually intersecting grounds or forms of discrimination. Not only those of color or perceived race, albeit these are often conflated with 'those migrants.'

Look at the data, the reality. Today most migration is within regions where there are considerable similarities, sometimes commonalities, in ethnicity, skin color, appearances, and religion. 50-70% of migrants originating in each Africa, Asia, the Caribbean, Europe, Eurasia-CIS, and Oceania-Pacific including Australia and New Zealand are resident within those regions. The only exceptions are the MENA grouping of countries and North America where a greater proportion of migration originates outside those regions.

But it is even more so within Regional Economic Communities -RECs- of usually neighboring countries –of which 11 have operational free movement regimes, involving more than 100 countries. To mention those whose members I see present: 80% + ECOWAS and the Eurasian Economic Union among former CIS countries, some 60% plus for the Caribbean Community, and over 50% for East Africa Community, MERCOSUR, and SADC. Within most of these RECs, there are generally broad similarities of physical characteristics and color, although many marked distinctions in ethnicity and nationality.

### **Intersectional/multiple discrimination**

However, there are high degrees of discrimination and mistreatment, including xenophobic violence –even State perpetrated-- in countries in these and other communities of countries, including in Africa for example. Yet it is impossible to say it is singular discrimination on racial, ethnic or nationality grounds-- all the more so given commonalities of appearances of nationality, national origin, perceived nationality and/or ethnicity. In racialized or color terms, it's white on white firebombings of immigrant homes, black on black necklacing and mass expulsions of immigrants originating from other countries on the continent, it is large scale detentions and deportations of nationals of neighbouring countries in Asia, it's hostility and illegalization of nationals of other countries within Latin America and the Caribbean.

Intersectionality of multiple grounds of discrimination is the rule today and becoming more so. But notably discrimination that includes grounds of nationality and national origin. Most nation state narratives and ideology are based on national and often ethnic definitions of identity and belonging, with overtones of both superior and exclusionary characteristics. These exceptionalisms often have racialized overtones but they are explicitly defined by nation and nationality.

It's not a matter of feeling or perception but a matter of real numbers, quantitative data as well as qualitative. While at ILO, I was responsible for cooperation with governments and social partners to carry out discrimination situation testing across Europe; more than 10 countries were concerned. We developed a methodology which in effect treatment differential treatment comparisons in real-life employment seeking --empirical, not opinion, but

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<sup>4</sup> Garfield High School, Seattle, that Jimi Hendrix and Quincy Jones attended and where Martin Luther King Jr. tested lines for his "I Have a Dream" speech, Jesse Jackson spoke, and Barack Obama once lectured on importance of education.

real behaviour in real circumstances. The methodology restricted the testing variables to foreign origin versus classic nationals in each country. The approach eliminated multiple variables by matching pairs of tester employment candidates characteristics to the same neighborhood, same schooling, same skills, same level of experience, same age and gender, and in many of the countries, birth in that country as well as citizenship. The differences that served as the testing variables were only two –physical appearances and names-- that were evident markers of national origin/perceived nationality difference. The results were striking, those who appeared to be ‘foreigners’ with different names and visible difference in appearance at the interview stage, had to make 3 to 5 times as many job applications as those typically ‘nationals’ to land a positive outcome –a consistent ratio at each stage of the hiring process –submission of application, interview, and hiring selection. If it took 5 tries to land positive hiring experience for ‘nationals’, it was 15 to 25 tries to land a positive hiring process outcome –at each stage-- for perceived non-nationals –even when in most tests they were fellow ‘native born’ citizens.

### **Multiple prohibited grounds of discrimination**

As the UDHR and Vienna Declaration proclaim, all Human Rights apply to all people. And discrimination is a universal risk. But discrimination, inequality of treatment, and differential outcomes for migrants including refugees across various and multiple grounds are manifestly more prevalent and intersectional among the seventeen grounds in international instruments, let alone others. Belgium for example has 19 grounds –and very importantly, several monitoring and enforcement accountability bodies that address all of those grounds, either individually or grouped in what OHCHR refers to generically as national human rights institutions.

The prohibited grounds listed in the core UN Human Rights Convention include: sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. (Article 1 ICRMW) The International Convention on the Rights of People With Disabilities added *indigenous origin* as well as *disability* to the prohibited grounds of discrimination in the core HR conventions.

It should not bear reminding, but I do so. Discrimination is outlawed across 17 grounds in the core universal human rights Conventions, most of which are ratified or acceded to by many UN member countries. International Labour Standards also provide prohibitions on discrimination. Discrimination in employment and occupation is one of the Fundamental Principles and Rights at Work to which all 183 ILO member States are bound to respect, whether individual fundamental conventions –in this reference ILO Conventions 100 and 111 regarding discrimination–among the 10 core Conventions-- are ratified or not.

Discrimination on various singular, multiple and generally intersecting grounds is nonetheless a virtually universal basis for social and economic stratification and exploitation; it has been since times of ancient societies East and West that practiced slavery, forced labour, feudal domination, ruthless exploitation of workers whether rural agricultural or mining or urban industry and services. These were –and the latter remain-- assertedly justifiable bases for the rationale and ideologies of exploitation and exclusion --the two generally going together. Long a question of labour exploitation –from times of slavery and forced labour in ancient civilizations to the present. It’s also been a basis for justifying expropriation or domination of land and resources.

Exploitation, abuse, exclusion, and expropriation –from lesser to extreme forms of discrimination as unjustifiable differential treatment-- on basis of differentiation in appearances and identity are the clear and present basis of many societies, and remain a primordial *clear and present* danger in many nations today –and to a sustainable future for the world and humanity.

Today as over the last two centuries, interest in and worldwide demand for cheap, docile, unprotected, indeed unacknowledged foreign labour to industrialize, produce food, goods and services in larger quantity for growing

markets and populations but at costs defying the competition, denying human rights including labour rights and eviscerating *decent work*.

### **Rising costs of exclusionary restricted migration**

But we need to look further. The relation between nationality-national origin and related discriminations and migration mobility, specifically immigration access to where in fact labour and skills needed but few or nearly no regular pathways. Threatening –and already resulting in-- inflation, economic slowdown, stalled production, constrained services, and potential crisis.

Last week at the 2023 Vienna Migration Conference, the former head of personnel of Siemens highlighted that 30 million jobs remain unfilled across OECD countries -- unfillable by qualified persons present in the countries where those jobs are on offer. She cited the cost of resulting economic losses as 5 billion –not million-- dollars per day. That's way over a trillion dollars a year. The major constraint is restrictive immigration, despite demographic ageing, work force decline, and technological change. I would add also practices of uprooting, deporting, expelling resident people, often large scale.

This is indisputably a major indirect cost of discrimination and exclusion, built on narratives, discourse and often policy explicitly targeting, scapegoating and threatening lives and livelihoods of non nationals. And ultimately, undermining economic viability of entire countries.

Analysts in the business world are getting part of it right. And so some countries and their political leadership. Switzerland insisted on 'accompanying measures' to ensure equal treatment and equitable opportunities for all particularly natives in joining the EU free movement system. That was imperative in a country 30% of whose entire resident work force foreign born, 42% in Canton & Ville de Geneva –plus 110,000 frontier workers resident in France who come here every day to provide the skills and labour that make this city work quite successfully--including this Palais des Nations.

Increasingly diverse societies everywhere are not going to resolve anything without a rights-based legal, policy and practice framework that recognizes, addresses and suppresses discrimination across all prohibited grounds. Especially so in ever more mobile world. And a world facing precipitous decline in work forces in most countries, maybe not so far off even across Africa and Asia.

Indeed, trying to tackle one only exacerbates the problem. Here I refer specifically to discrimination faced by Afro-descendent and other people of color. Employer sanctions –penalizing employers who hire foreigners without work authorization, ended up being used as a cover or justification to exclude even considering any applicant who was black, brown, Asian, or Latino, because employers presumed that they could be immigrants not necessarily with proper papers and the employers did not and could not have means to verify documents, but would be liable if they were controlled and anyone without proper documents were detected. A major uptick in discrimination was verified –against people of color particularly black and latino citizens. There was no way to challenge the logic of employers facing potential sanctions, but advocates observed that the sanctions on basis of nationality and status gave those disposed to discriminate on other grounds a perfect –and legally unimpeachable-- cover.

### **Danger of singularity versus multifaceted challenges**

The clear and present challenge is that trying to resolve complex multifaceted challenges from singularities doesn't resolve any. A singular formula of race and racism addresses major grounds of discrimination and exclusion. But not the so many others. Singular focuses in addressing complex challenges risk being reductionist, even diversionary, when it obscures prevalence of other and multiple grounds in discrimination and exclusion.

I refer back to academic, scientific and UN own recognition that *race* and racial differentiation among human beings have been dis-proven biologically, genetically, and socially as valid concepts. Given tenacity of common mythology, CERD defined racial --maybe better said racialized-- discrimination, but never even attempted to define *race*. There is no definition of *race* in any international instrument that I know of. Although plenty in national law, even constitutions; where I come from each and every *negro* resident was valued at 2/3 value of white in the founding national Constitution. A de-valuation convergent with being bought, sold, exploited, abused, raped, even murdered as matter of course.

People who helped them to freedom were subject to imprisonment, even murder. I know something about it, my Quaker faith ancestors were conductors on the Underground Railroad in North America, which had lines to Canada, the Caribbean, and Europe as well as to safe haven Indian reservations. Some of those ancestors likely echoed conductor Harriet Tubman's words: *no train of mine ever went off the track and I never lost a passenger*. That that railroad carried 100,000 Afro-descendent people to freedom two centuries ago is pretty good record.

### **So what to do now?**

Realization of the DDPA continues to be ongoing work. It also requires generating new knowledge and data, and evolving application of the framework to evolving conditions and situations. Or risk remaining stuck in a now archaic 19<sup>th</sup> -20<sup>th</sup> Century framework. What's needed is to address, combat and resolve discrimination on multiple, intersectional bases --inclusive of nationality, national origin and ethnicity-- fast before the consequences of discrimination become a driving factor of both economic and social collapse. What's needed is to address the structural and system nature of discrimination in order to eliminate and prevent it.

We need to build on and beyond Vienna, the DDPA, the fundamental Human Rights Conventions, and *jus cogens* law by working on discrimination together, *multipully* and intersectionally. Some treaty bodies and other processes are taking this up --including in a joint comment such as being drafted now between CERD and the treaty body Committee on Rights of Migrant Workers. I note that the EU Fundamental Rights Agency has taken up *intersectionality* since years ago.

As the International Decade for People of African Descent comes to a conclusion next year, one way forward would be concerted research, knowledge building, practical implementation of national and local plans, campaigns, and action in a new *Decade Against Discrimination and for Equality of Treatment*. Of course building on the DDPA against racism, discrimination and xenophobia, but inclusive of addressing discrimination under all other grounds prohibited in international law.

Cities are doing a lot along these lines around the world --across Europe, North America, Latin America, and some in Africa, Asia and the Middle East.

Plenty of actors are already on board by their own mandates, legal obligations and actions, including OHCHR, ILO, UNESCO, UNWOMEN, UNDP, indeed the whole of the United Nations. As well, the African Union, ASEAN, the European Union, OAS, and all the formal RECs. Also BRICS, the BRI and the SCO would have objective interest. Certainly social partners --trade unions and businesses-employers world wide, and a plethora of civil society organizations and associations, particularly among concerned populations.

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Patrick A. Taran, President, Global Migration Policy Associates  
Avenue de la Paix 11, CH - 1202 Geneva  
[www.globalmigrationpolicy.org](http://www.globalmigrationpolicy.org)  
[taran@globalmigrationpolicy.org](mailto:taran@globalmigrationpolicy.org)