



# **Fundamental Rights of People of African Descent in Europe**

*Policy Recommendations by the European Network of People of African Descent (ENPAD) and the European Network against Racism (ENAR) based on the FRA survey “Being Black in the EU”*

This briefing outlines some reflections on the most central findings of the *Second European Union Minorities and Discrimination Survey - Being Black in Europe* of the FRA and the adequacy of existing EU measures and policies to combat racial discrimination, racism and xenophobia against people of African descent (PAD) in Europe.

## **I. INTRODUCTION**

The results of the European Union Agency for Fundamental Rights survey, *Being Black in the EU*, show that for PAD, in the words of the report, “racial discrimination is a reality in all areas of life.”

Despite that the European Union has enacted legislation to combat racial discrimination and racist crime and to encourage the victims to report racist offences to authorities and equality bodies, there exist major gaps between law and practice in protecting people of African descent and in the full implementation of the relevant EU law by Members States for an effective response to end racism faced by PAD.

This year 2018 has marked several key developments at the EU-level. With the first European Union People of African Descent week hosted by the European Parliament and Anti-Racism Diversity Intergroup as well as the upcoming European Parliament Resolution on the fundamental rights of PAD, there is an increased awareness and political will to address racism faced by Black people in Europe. However, further efforts need to be made at both the EU and national levels to systematically end racial discrimination, racism and hate crime against people of African descent in the EU.

## **II. ANALYSIS**

In our estimate, the findings of *Being Black in the EU* call for increased measures and efforts by the European Commission in three areas. First, they call for an increased *recognition* of racial



discrimination in general in Europe, not least as it affects PAD, as structural. That is to say, a racial discrimination that is recurring across every area of society, is part of how European societies are constituted—including widespread notions of national and continental belonging—and has a compounded impact on the well-being, dignity and rights of segments of the population. This structural racial discrimination especially affects people of non-European descent, so-called “people of colour”, and not least PAD. Here we would like to emphasize the need to recognise, commemorate, educate on and where possible address the impact of European colonialism on structural racial discrimination, especially as it affects PAD.

Second, the findings call for renewed and expanded efforts to ensure *justice*—equality before the law, equality of dignity and rights for people of African descent and other people of colour. In particular, they call for elaborating on and promoting group-based positive measures (as suggested by Article 5 of the Race Equality Directive, the Third Principle of the European Pillar of Social Rights and recommended by FRA Opinion 4 in the report).

Finally, the findings call for a renewed and increased commitment by the Commission to make recognition of structural racial discrimination in Europe and positive and other measures to combat it an integral part of EU policy making and specially to create a new battery of measures for the *development* of the human rights situation of PAD.

Not incidentally, the theme “recognition, justice and development” is also the theme of the UN International Decade for People of African Descent 2015-2024. *Being Black in the EU* can be used by Member States to, in its own words, “draw on evidence presented in the report to help assess progress with respect to their commitments under the International Decade for People of African Descent.” The Decade—which the EU has expressed support for at the UN level—offers a unique opportunity to promote increased respect for human rights. There is much that the EU can learn from the UN concerning recognition of structural racism, its historical roots in Europe and the sort of human rights measures that are needed to address it. It may be understood as part of a lack of political will to address racial discrimination against PAD at the national levels in the EU that so far only two European countries have cared to officially mark the Decade.

### **III. RECOMMENDATIONS**

The following recommendations are intended to assist the European Commission and its Members States in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance faced by PAD in the EU.

#### ***1. Recognition***

1. **Recognizing and combating structural racial discrimination.** The European Commission could develop guidelines, for example, a Compendium by EC Justice, for how to conceptualise and address structural racial discrimination, especially as it affects PAD. Such guidelines could include (a) the need to recognize and carefully monitor how certain groups in society are impacted by recurring and compounded racial discrimination, (b) which terms—such as race, skin colour and ethnicity—may be appropriate to describe and monitor the problem, (c) an elaboration of the concept of group-based “positive measures” and why states may need them to effectively combat structural racial discrimination, (d) the need to recognize the historical roots of structural racial discrimination, not least the impact of European colonialism, in Europe and internationally, especially as it affects PAD (including public education and commemoration such as museums on the matter).
2. **Raise awareness on the history of Afrophobia/anti-black racism in Europe.** Including its roots in colonialism and the transatlantic enslavement of Africans and people of African descent. But also, the historical struggle of Africans and people of African descent for freedom and equality of dignity and rights as well as the long-standing presence of people of African descent in Europe. For example, this could be done by issuing a statement from First Vice President Timmermans on the occasion of the UN International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade (25th March), designing grants for the purpose or work together with the OHCHR and UNESCO to mark the UN International Decade for People of African Descent.
3. **Equality data collection.** The EC and other EU institutions should continue work toward systematic equality data collection disaggregated by race and ethnicity, based on self-identification and ensuring anonymity. This should include a focus on the collection of self-identification data which includes the third generation and beyond. The European Commission should outline how it will use its upcoming guidelines on equality data collection to accommodate this and to ensure comparable data sets across Europe. In addition, the EC could include addressing the matter with arguments for and against whether the term race should be omitted in favour of skin colour and ethnicity when collecting data and describing discrimination. The FRA should update its methodology as far as is possible for upcoming surveys of migrants and minorities.
4. **Intersectional discrimination and a focus on vulnerable groups.** The European Commission should ensure an intersectional approach to its policy making processes. The European Commission should review its policies to understand how marginalised groups (women, victims of human trafficking LGBTIQ, persons with disabilities, irregular migrants) are impacted and the implications of racial discrimination against PAD on fundamental rights

and the principle of non-discrimination. A particular focus should be the impact of migration and security policies on PAD on the ground—e.g. in access to justice and on ethnic profiling.

### *B. Justice*

5. **Positive action measures.** The European Commission should develop guidelines for Member States on the concept and implementation of group-based positive action measures as a policy tool to prevent or compensate for disadvantages linked to racial or ethnic origin, following Article 5 of the Race Equality Directive (cf. FRA Opinion 4 in the report). It should be made clear by the EC that merely strengthening and effectively implementing national anti-discrimination laws is insufficient to address structural racial discrimination and its impact on de facto enjoyment of rights. Group-based special/positive measures and equality data should be encouraged by the EC as integral to combating and monitoring (structural) discrimination.
6. **Criminal justice and policing.** The European Commission should develop guidelines on good practices to promote fair and efficient policing. This should include reference to the principle of non-discrimination on the basis of race and ethnicity, and the end to all discriminatory practices on the basis of race in criminal law enforcement, counter-terror measures and immigration control. The European Commission should recognise the disproportionate impact of such practices on PAD, and the ability for PAD to access justice as victims of crime.
7. **Mandate a comprehensive review of (the lack of and gaps in) equality before the law for people of African descent.** Such a review could include treatment by law enforcement, sentencing, incarceration rates, migration detention and access to the procedures for determining refugee status. The review should also offer recommendations.

### *C. Development*

8. **EU infrastructure on PAD issues.** The European Commission should take steps to increase their capacity on PAD issues. The European Commission should set up a dedicated team within relevant Commission services with specific focus on Afrophobia/anti-black racism issues. This should include the appointment of a European Commission coordinator on Afrophobia/anti-black racism, with enough leverage and resources to conduct outreach to PAD civil society.



9. **Funding programmes.** The European Union should reflect “tackling structural discrimination” as a key priority of the European Commission work programme, internal organisational structure, and funding programmes. In addition, specific grants should be made available to civil society organisations which promote the fundamental rights of people of African descent (including, for instance, the UN International Decade for People of African Descent). These funding streams should be accessible to grassroots civil society organisations.
  
10. **Initiate the development of a EU Framework for combating structural racial discrimination against people of African descent.** Keeping in mind the structural nature of racial discrimination in Europe and the need for positive measures and equality data as essential anti-discrimination tools. The Framework should cover areas that are covered in the report such as policing, hate crimes, health, education, housing and employment. Developing the Framework should be done in close collaboration with civil society. Similar Frameworks already exist for other groups and it is high-time that a Framework be developed for people of African descent too.