

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Working Group on discrimination against women and girls

REFERENCE:
AL GBR 5/2019

20 November 2019

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 36/23, 42/16, 34/9, 34/21, 34/6, 34/35 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning racial discrimination as a result of immigration policy particularly affecting the human rights of migrants and members of British ethnic minorities, citizens of Commonwealth descent, and their descendants (collectively known as the "Windrush generation").

According to the information received:

The 1948 British Nationality Act offered "Citizen of the United Kingdom and Colonies" to anyone born in Britain or a British-controlled territory. The Act also recognized that citizens living in these colonies were also British subjects. Therefore, Commonwealth citizens arriving in the United Kingdom arrived as British subjects and thus shared the same nationality as the UK's then resident population (See Section 1, and Section 1 (3) British Nationality Act 1948). This applied to the estimated 500 Caribbean nationals who migrated on the Empire Windrush on June 22, 1948, and the thousands who subsequently followed them (Windrush Generation).

An estimated 500,000 people migrated from the Caribbean under the auspices of the 1948 British Nationality Act, which was part of the United Kingdom's efforts to solve its postwar labor shortage. To stem the flow of migrants into the United Kingdom, the authorities passed the 1971 Immigration Act. Under the act, a British passport-holder born overseas could not automatically settle in the UK. This could only be done if they had a work permit or could prove that a parent or

grandparent had been born in the UK. However, the 1971 Immigration Act provided safeguards to Commonwealth citizens already living in the UK when it granted them indefinite leave to remain. Section 1(1) confirmed the general right “to live in, and to come and go into and from, the United Kingdom without let or hindrance” to persons who had the right to abode. Section 2(1) and (6), conferred on Commonwealth citizens the right to abode. This included citizens of the United Kingdom and Colonies who had been at any time settled in the UK and resident for five years. Section 1(5) required that immigration rules introduce no further restriction on the freedom of Commonwealth citizens already settled in the UK and their wives and children to come and go from the UK. Commonwealth citizens resident in the UK also benefited from exemptions from deportation (see section 7). Since the right was automatic, many people in this category were never given, or asked to provide, documentary evidence of their right to remain at the time or over the next forty years. Thus, many continued to live and work in the UK. A clause in the 1999 Immigration Act specifically protected long-standing residents of the United Kingdom from Commonwealth countries from enforced removal. The clause was reportedly not included in the 2014 immigration legislation.

The Government introduced a set of administrative and legislative measures through the Immigration Act 2014 and the Immigration Act 2016, with the stated aim of creating a “hostile environment” for individuals who are in the United Kingdom without valid leave to remain. One feature of the “hostile environment” policy was the assigning of a major role in immigration control to private citizens and other public sector workers (employers, landlords, bank staff, National Health Service staff and others) rather than immigration officers to check the immigration status of tenants, patients, employees etc. Inevitably, without appropriate training, guidance or oversight, this crucial tenet of the policy lead to racial discrimination and other grave human rights violations. Measures introduced by the policy included a legal requirement for landlords, employers, the National Health Service (NHS), charities, community interest companies and banks to carry out identity checks and to refuse these critical services if the individual is unable to prove his/her legal residence in the UK.

The implementation of the “hostile environment” policy affected migrants in general, as well as British ethnic minorities, citizens of Commonwealth descent, and their descendants (the Windrush generation) whom had been lawful residents in the United Kingdom and become British citizens since the passage of the Nationality Act in 1948, but did not have the required documents to demonstrate their status. They allegedly experienced racial discrimination. Furthermore, they were denied their right to health and housing as well as their right to access social security benefits or pensions and other public services that they had contributed to for decades. As a result, they lost their jobs, their homes, and their savings and were pushed into poverty and destitution. There is evidence that many were unlawfully and wrongfully detained, imprisoned and ultimately deported.

In April 2018, it was estimated based on figures provided by the Migration Observatory at the University of Oxford that up to 57,000 Commonwealth migrants could be affected by these administrative and legislative measures, of whom 15,000 were from Jamaica. It should be noted, that other estimates put the number of those impacted to up to 500,000. In addition to those from the Caribbean, several cases of people beyond the Windrush generation have also been affected by the policy.

It is noted that some steps have been taken to review the situation following the Windrush scandal. In February 2018, Members of Parliament called for a review of the policy. On 29 June 2018, the Parliamentary Human Rights Select committee published a report on the exercise of powers by immigration officials which concluded that the Home Office demonstrated a "wholly incorrect approach to case-handling and to depriving people of their liberty" and urged the Home Secretary, Sajid Javid, to take action against the "human rights violations" occurring in his department. In 2018, the Home Office established the Windrush Taskforce to provide documents to members of the Windrush generation to evidence their right to be in the UK. On 2 May 2018, Home Secretary Sajid Javid announced a lessons learned review to ensure that crucial lessons were identified and learned as quickly as possible to prevent a repeat. The report was expected to be finalized in early September 2019; however, according to the government website, the final report has not yet been received.

On 3 July 2018, the Home Affairs Select Committee published a report, which made a series of recommendations, including measures restoring immigration appeals, legal aid, and a compensation scheme for those affected by the policy. In December 2018, the National Audit Office also published a report which examined how the Home Office handled the impact of its immigration policies on the Windrush generation. It found that the Home Office had failed to protect the rights to live, work and access services and had still not adequately addressed the scandal. In March 2019, following a court case brought by the Joint Council for the Welfare of Immigrants, with supporting interventions from the Equality and Human Rights Commission, the Residential Landlords Association, and Liberty, the High Court ruled that a key tenet of the "hostile environment," the "Right to Rent" scheme, which requires landlords to carry out immigration checks of tenants, was found to directly cause racial discrimination in the private sector and is therefore incompatible with human rights law.

In 2019, the Government established a scheme to compensate members of the Windrush generation whose rights were violated and who suffered adverse effects on their life as a result. These could range from a loss of employment, access to housing, education, or National Health Service healthcare; to emotional distress or deterioration in mental and physical health. The compensation scheme is open to anyone from any nationality who has the right to live or work in the United Kingdom without any restrictions or is now a British citizen and arrived in the United Kingdom before December 31, 1988. It is also open to anyone from a

Commonwealth country who arrived and settled in the UK before 1973. Children and grandchildren of those arriving before 1973, and some close family members may also be eligible to apply. Those who were wrongfully detained or removed from the UK would also be able to make a claim.

The Home Secretary's latest update suggests that 6,603 individuals were contacted by the Home Office's Windrush Taskforce; the total number of individuals that have been allegedly mistreated and their rights denied is unknown. Reportedly, at least 12 British citizens have died following their wrongful deportation and British citizens have been unable to visit loved ones before their deaths.

While we do not wish to prejudge the accuracy of the information made available to us, we wish to express our serious concern about these allegations of racism, racial discrimination, unlawful and wrongful deportation, detention and imprisonment, denial of rights to health, housing, as well as denial of access to social security benefits, and other public services affecting British ethnic minorities, including people of African descent in particular as a result of immigration policy.

The alleged acts if accurate are in contravention of international human rights law to which the United Kingdom is obligated, including the right to life, protection from forced displacement, rightful ownership, as well as the enjoyment of civil, political, economic, social and cultural rights. The above-stated allegations have also brought to the fore the need to address manifestations of racial discrimination faced by people of African descent in the country.

We call for an independent investigation into all reported cases of racial discrimination perpetrated against members of the "Windrush generation" as a result of the "hostile environment" policy introduced by Immigration Act 2016. The investigation should also look at the total number of people who were affected and continued to be affected by this policy, the total number who were unlawfully detained, unlawfully deported (and to which country); and the total number to be compensated, as well as the number of women and children affected.

We also encourage action to implement recommendations already made by the Home Affairs Select Committee and others to address the situation and provide redress, including a formal apology to the victims, and measures to prevent such action in the future.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the latest results related to investigation and judicial or other inquiries which may have been carried out in relation to the above case. What complaints mechanisms have been put in place? Please provide data on the status of the complaints and what has been the outcome.
3. Please provide the latest figures on the following:
 - a) The number of people affected and contacted disaggregated by sex and age;
 - b) The number of cases of wrongful detention disaggregated by sex and age;
 - c) The number of cases in which wrongful deportation has been identified, and to which country;
 - d) The total number of claims that were filed for compensation through the Windrush Compensation Scheme;
 - e) The number of claims that were successful and the number of claims that were rejected;
 - f) The total amount in compensation paid to Windrush victims to date.
4. Please provide information as to the use of personal data submitted by claimants under the Windrush Compensation Scheme and whether such data are used for enforcement purposes. Please also provide the criteria used by the Government to arrive at the total amount for compensation.
5. Please provide information on whether any of those who were detained under the policy are still in detention, and what plans, if any, are there to release them.
6. Please provide information on the measures taken to ensure that the specific needs of women and children detained, under the policy, if any, were duly taken into account.
7. Please provide information on the measures taken by the Government to address allegations of unlawful deportations.
8. Please provide information on the measures taken to investigate the alleged deaths of British citizens.
9. Please provide information on the government's plan to resettle those who were wrongfully deported under the policy.

10. Please provide information on the measures taken to guarantee at present the realization of all human rights, including economic, social and cultural rights, such as right to health, education, housing and adequate standard of living of those affected by the policy, including women and children, and what remedial action, if any, is being undertaken to shield those affected with emotional distress or deterioration in their mental and physical health as a result of the policy.
11. Please provide information on the steps taken by the Government to provide effective remedy to members of the Windrush generation, including an apology, rehabilitation, reparation and measures taken to prevent racial discrimination.
12. Please provide information on the number of tenants affected –during the time it was in place- by the requirement for landlords to carry out immigration checks of their tenants as part of the “Right to Rent” scheme. Was the discriminatory impact of this requirement measured by the Government?
13. Please provide information on plans to amend the Immigration Act 2016 and end the “right to rent” policy and the other hostile environment measures, and any other preventive measures that the Government has taken to ensure non-recurrence of racial discrimination and violations of the rights of British ethnic minorities, and in particular of people of African descent in the UK.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Ahmed Reid
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living, and on the right to non-discrimination in this context

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Meskerem Techane
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the right to life as set forth in Article 3 of the Universal Declaration of Human Rights and in article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom of Great Britain and Northern Ireland on 20 May 1976. Article 6(1) of the ICCPR recognizes that every human being has the right not to be arbitrarily deprived of his or her life.

Following General Comments 6 and 31 of the Human Rights Committee, States must adopt positive measures to protect the right to life of individuals, and to prevent violations of this right by state and non-state actors. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to meet its due diligence obligations to take appropriate measures to prevent violations of the right to life from taking place.

Article 2 of the ICCPR provides victims of human rights violations a right to an effective remedy. In accordance with article 2(1) State Parties undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore in accordance with 2(3), State Parties undertake: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

We would further like to refer to provisions of the International Convention on the Elimination of All Forms of Racial Discrimination ratified by the United Kingdom on 21 October 1994. In accordance with article 2(1), States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races. To this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. Furthermore, (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Article 5(b) requires States Parties to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to

equality before the law. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution. Pursuant to article 6, States must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims.

Moreover, we recall General Recommendation No. 31 of the Committee on the elimination of racial discrimination on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In this recommendation, the Committee urges States to prevent racial profiling; to prevent and severely punish racially motivated violence committed by law enforcement officials; and to ensure that the use of force complies with the general principles of proportionality and strict necessity. In its 2016 concluding observations, the Committee called upon your Excellency's Government to take into account this General Recommendation as a basis for "concrete measures to effectively address racial prejudice and bias in the criminal justice system" (CERD/C/GBR/CO/21-23, para. 29). We also recall General Recommendation No. 34 on Racial discrimination against people of African descent. In particular, for the exercise of the rights of people of African descent, the Committee recommends that States parties: (10) Review and enact or amend legislation, as appropriate, in order to eliminate, in line with the Convention, all forms of racial discrimination against people of African descent.

We would also like to remind your Excellency's Government of the Durban Declaration and Programme of Action (2001) and the Programme of Activities of the International Decade for People of African Descent (A/RES/69/16). These documents urge States, including their law enforcement agencies, to eliminate racial profiling; to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance; and to prosecute perpetrators of such misconduct.

We would also like to refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the United Kingdom on 20 May 1976, which establishes the right to the enjoyment of the highest attainable standard of physical and mental health. Moreover, General Comment 14 of the Committee on Economic, Social and Cultural Rights indicates that States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2), including on the basis of legal status, and the obligation to take steps (art. 2.1) towards the full realization of article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. (GC 14, Para.30)

We would also like to refer to article 11(1) of the ICESCR, which establishes the right to adequate housing as a component of the right to an adequate standard of living. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights

indicated (para. 6) that the right to adequate housing applies to everyone, regardless of age, economic status, group or other affiliation or status and other such factors. The Committee added that, in particular, the enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

Recognizing that the individuals affected are members of ethnic minorities in the United Kingdom, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

We would like to recall that the right to a nationality is recognized and protected under international law. The Universal Declaration of Human Rights recognizes a general right to a nationality under its Article 15. In addition, Article 5 (d) (iii) of the International Convention on the Elimination of all of Forms of Racial Discrimination – ratified by the United Kingdom of Great Britain and Northern Ireland on 7 March 1969 – explicitly obliges State parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin violates State parties' obligations to ensure non-discriminatory enjoyment of the right to nationality (see e.g. General Recommendations No. 30, para. 14).

We also would like to draw your Excellency's Government attention to the recommendations of the Special Rapporteur on minority issues in his report to the General Assembly "Statelessness: A minority issue" (A/73/205), in particular his conclusions and recommendation in which he recalls that "States must not arbitrarily or discriminatorily deny or deprive minorities of citizenship", that "States must grant nationality to all children born on their territory if the child would otherwise be stateless, regardless of the immigration status of the parents", and notes that "State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law." (para. 50 and 56)

We would like also to bring the attention of your Excellency's Government to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council (A/HRC/38/52), which identifies and reviews contemporary racist and xenophobic ideologies, and institutionalized laws, policies and practices, which together have a racially

discriminatory effect on individuals' and groups' access to citizenship, nationality and immigration status. We would like to draw specific attention to her recommendations and especially to "take specific steps to end statelessness, including by putting an end to the practices and policies identified [in the report] that render persons stateless and in doing so, make them vulnerable to extreme human rights violations" (para. 67 (c)).

We would also like to refer your Excellency's Government to the fundamental principles set forth in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice". Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular: article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Finally we would like to refer your Excellency's Government to the 1950 European Convention on Human Rights (ratified by the UK in 1951, in force since 1953) in particular Article 14: Prohibition of discrimination which states that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. We also refer to the 1961 European Social Charter (ratified by the UK in 1962, in force since 1965) in particular the agreement by the Contracting Parties to take appropriate measures designed to ensure: The right to protection of health (Article 11), The right to social security (Article 12), The right to social and medical assistance (Article 13) and The right to benefit from social welfare services (Article 14).