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

## **Report of the Working Group of Experts on People of African Descent on its eleventh session**

(Geneva, 30 April – 4 May 2012)

*Chairperson-Rapporteur:* Verene Shepherd

### *Summary*

The main focus of the discussions during the eleventh session of the Working Group of Experts on People of African Descent was the draft Programme of Action for the Decade for People of African Descent (2013-2022), pursuant to General Assembly resolution 66/144.

Recognition, justice and development were chosen as themes for the Decade by most participants. Participants identified as priority areas for inclusion in the Programme of Action for the Decade the following issues: the right to equality and non-discrimination for people of African descent; education and awareness which recognizes the history, cultures and contributions of people of African descent; the need to disaggregate data; participation and inclusion in all areas of society including decision-making processes; equal protection of the law and countering discrimination in the administration of justice system; the right to development; access to quality education, employment, health and housing; special measures to realise the rights of people of African descent; and the multiple forms of discrimination faced particularly by women and children of African descent among others.

Members of the Working Group and participants also discussed activities undertaken by the Working Group during the past year; and examined retrospectively at the International Year for People of African Descent and the tenth anniversary of the Durban Declaration and Programme of Action.

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## **I. Introduction**

1. The Working Group of Experts on People of African Descent held its eleventh session from 30 April to 4 May 2012 at the United Nations Office at Geneva. It was attended by members Monorama Biswas, Mireille Fanon Mendes-France, Mirjana Najcevska, Maya Sahli and Verene Shepherd.
2. The participants in the session of the Working Group of Experts included representatives of Member States, the Holy See, international organizations, regional organizations, non-governmental organizations and invited panellists (see annex II).

## **II. Organization of the session**

### **A. Opening of the session**

3. The outgoing Chairperson-Rapporteur, Mirjana Najcevska, opened the eleventh session and introduced the United Nations High Commissioner for Human Rights for opening remarks.
4. In her statement, the High Commissioner welcomed the focus of the eleventh session on the draft Programme of Action for the Decade for People of African Descent and stressed that the session was the perfect occasion to consider achievements realized during the International Year for People of African Descent with a view to setting priorities for future action. She also noted that several States have recognized the rights of people of African descent in their national constitutions and domestic legislation and highlighted the invaluable role that civil society organisations played in the process. She added that regrettably, despite these advances at all levels, there was still a long way to go before the full realization of all human rights and fundamental freedoms of people of African descent was achieved. She observed that racism and racial discrimination, both direct and indirect, de facto and de jure continued to manifest themselves in inequality and disadvantage and people of African descent, both descendants of Africans who were displaced to the Americas during the infamous transatlantic slave trade and more recent migrants who have journeyed to the Americas, Europe, Asia and within Africa itself, make up some of the poorest and most marginalized groups. She pointed out that studies and findings by international and national bodies demonstrate that people of African descent still had limited access to quality education and health services, housing and social security; they also experienced discrimination in access to justice. They had a low level of political participation, both in terms of voting and in occupying political positions and faced new and emerging challenges, such as displacement, due to threats of armed conflict or large-scale industrial development projects.
5. The High Commissioner noted that the intersectionality between race, socio-economic status, gender, age and nationality meant that women and girls, children and young people, persons with disabilities and migrants of African descent experienced multiple forms of discrimination and face particular challenges to realizing their rights. She drew particular attention to the plight of young men of African descent, noting that racial profiling, linked to high rates of police violence, arrests and imprisonment and lack of access to justice could have fatal consequences. She added that despite the positive contributions people of African descent have made to the development of their countries, they remained invisible and undervalued, and pointed out the lack of disaggregated data on people of African descent. The High Commissioner stated that the proposal for an International Decade was therefore timely and important and it would be an opportunity to

ensure effective implementation of fundamental provisions laid out in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Durban Declaration and Programme of Action (DDPA). She felt the proposed theme of “recognition, justice and development” could guide the objectives and activities for the Decade. She closed her remarks by affirming that the Office of the United Nations High Commissioner for Human Rights (OHCHR) remained committed to the realization of the rights of people of African descent.

## **B. Election of the Chairperson-Rapporteur**

6. The outgoing Chairperson-Rapporteur invited the experts to nominate a Chairperson-Rapporteur for its eleventh session; Verene Shepherd was elected by acclamation.

7. In accepting her role of Chairperson, Ms. Shepherd thanked the other experts for her election and congratulated her predecessor. She also welcomed the newest member of the working group, Ms. Fanon Mendes-France. The Chairperson thanked participants for their support, stressing the importance of working together. She stated her commitment to working hard to bring attention to anti-Black racism, pointing out that the only way to achieve peace is reconciliation. She also noted the importance of looking back at past experiences and lessons learned to plan future actions.

## **C. Organization of work**

8. The Working Group adopted the revised agenda and programme of work. (See annex I).

# **III. Summary of deliberations**

## **A. Achievements and challenges in the promotion and protection of the rights of people of African descent**

9. The Permanent Representative of Brazil delivered a statement on behalf of the Brazilian Minister who is Head of the Secretariat of Policies for the Promotion of Racial Equality (SEPPIR). She reported on Brazil’s advances in addressing the effects of racism on the lives of people of African descent. She noted that despite the advances, racial inequalities persisted which required new efforts to counteract their harmful effects on opportunities for social inclusion. She agreed that “recognition, justice and development” should be the theme for the Decade for People of African Descent, and noted the importance of reaffirming the principles established in the Durban Declaration and Programme of Action and recognizing racism, racial discrimination, xenophobia and related intolerance as global phenomena.

10. The Permanent Representative stated that in order to challenge the conditions that feed racism and racial discrimination, people of African descent must be able to access power structures and bodies of popular representation. She further suggested that the Working Group include the proposals approved by the Afro XXI meeting, the High Level Ibero-American Summit, held in Brazil in November 2011, as priority areas for the Decade. The proposals include the establishment of a Statistical Data Observatory for People of African Descent in Latin America and the Caribbean and the creation of an “[Ibero-American] Fund on Behalf of People of African Descent”, based on voluntary

contributions, to finance projects and programmes dedicated to the preservation of culture, memory and African traditions.

11. The representative of Senegal, speaking on behalf of the African Group, pointed out the urgency to improve the living condition of people of African descent and noted that despite the inclusion of the issue of people of African descent in the international agenda, limited results had been achieved to date.

12. Ms. Fanon Mendes-France made a presentation in which she discussed some of the challenges faced by people of African descent. She focused on the issue of the administration of justice and the discrimination that people of African descent faced in terms of access to justice. She highlighted the case of Trayvon Martin in the United States of America and stressed that the process of justice was often different for people of African descent and other populations. She pointed out the high rates of people of African descent in prisons and among victims of killings which she related to the stigmatization of people of African descent as criminal or dangerous. Ms. Fanon Mendes-France also pointed out that such discrimination was in opposition to the Universal Declaration of Human Rights and the basic principles of other human rights declarations and treaties. She stressed that countering discrimination against people of African descent was currently more than ever a priority and that strong mobilization should be a priority for all people who strive for equality.

## **B. Briefing by the Working Group members**

13. The Chairperson, in her retrospective look at the International Year for People of African Descent, noted that 2011 was potentially an important year for people of African descent, with the coincidence of the International Year and the tenth anniversary of the Durban Declaration and Programme of Action. She observed that most of the activities for the International Year had taken place in the region of Latin America and the Caribbean. She noted the relatively low level of activities by other Member States and the low media coverage of the International Year. The Chairperson asserted the importance of adequate funding to realize the Decade's goals and to enable States to fulfil their commitments made in Durban.

14. The Chairperson made specific reference to the right to development as critical to the Decade. She noted the link between the legacy of colonialism and contemporary inequality, pointing out that people of African descent have been victims of racism, structural discrimination and enslavement for centuries which has impeded their development. She thus stressed the importance of claiming the full implementation of their right to development.

15. The Chairperson also noted the importance of a renewed focus on preserving memory. She mentioned the current debates in the Group of Latin America and the Caribbean Countries (GRULAC) region on how the invisibility and denial of the history and contributions of people of African descent to their nations' development, particularly in education curricula, have impacted upon generations. She highlighted the critical role of the DDPA as the roadmap to guide the process of developing a Decade for people of African descent. She mentioned the increasingly challenging political context, intolerance, anti-Black racism, ethnocentrism, xenophobia and related intolerance and stressed the need to find a way to resolve conflicts in order to move forward.

16. During the interactive discussion, several good practices were shared with the Working Group. The representative of Colombia highlighted the programmes implemented in his country to protect the rights of people of African descent, including the restitution of lands. The importance of retaining institutional memory regarding efforts to combat racism

and its effects on people of African descent was also pointed out. In this regard it was suggested that the activities of the International Year for People of African Descent were enriching and served as a reminder to the international community. Speakers reiterated the importance of the right to development encompassing civil and political as well as economic, social and cultural rights for people of African descent. The suggestion was made for the Working Group to draw on the United Nations Declaration on the Right to Development when considering some of the rights to be achieved for people of African descent.

17. It was also pointed out that despite the majority of activities and support for the year having been in the GRULAC region, many States in other regions, including Europe, had played key roles in the process since the Durban Conference in 2001. They were represented at the Afro XXI Ibero-American High-Level Meeting, held in Brazil in November 2011, and also supported other related issues, such as minority rights, at the international level.

18. The Global African Diaspora Summit, , hosted in South Africa in May 2012, was mentioned, which was expected to reinforce the efforts of the Working Group. The importance of establishing clear objectives of the Decade was highlighted, in order to ensure real meaning and impact on the ground.

19. The discussion also addressed the issue of the multiple forms of discrimination and exploitation that women and migrants of African descent face in the workplace, particularly those in informal work situations in sectors such as domestic service, agriculture and construction, and the need to adopt and implement legislation that protects their rights.

20. During the interactive discussion several comments were made by participants about the important achievements of the Durban Conference during which the significant struggle faced by people of African descent were recognised by the international community which pledged to remedy the situation. The International Year for People of African Descent was also mentioned several times as an initiative which allowed stakeholders to strengthen their commitments towards the fight against discrimination. Regarding the proposed Decade for People of African Descent, it was suggested that specific actions by decision makers at all levels were needed to set clear objectives for the Decade. It was stressed that this could not be achieved without a victim-based approach. States should focus on victims who need assistance using existing international mechanisms including special procedures and their country visits. In this regard, the importance of State's reports to the Committee on the Elimination of Racial Discrimination (CERD) and implementation of its recommendations was pointed out, as well as the importance of cooperating within regional mechanisms such as the Council of Europe, the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights. The relevant United Nations bodies and agencies should be involved, and the establishment of an anti-discrimination network focusing on the situation of the rights of people of African descent would be welcomed.

21. The session turned to the question of how to ensure that the decade would be more successful. Ms. Najevska pointed out that the International Year provided the foundations for the Decade and highlighted the need for further action. Ms. Fanon Mendes-France added that despite the limited attention to the Year, it did give higher profile to the issues affecting people of African descent, and that as the Decade would be a much longer period of time there was potential to achieve the objectives. She viewed the Year as an introduction to this process.

22. The importance of determining what could be done for victims was raised and led to further discussion on the concept of victimization, in which several observers stressed the importance of not victimizing people of African descent. Ms. Fanon Medes-France pointed out that while it is important not to victimise them it was also important to

recognize people of African descent in terms of being victims of rights violations in order to be able to address those violations

23. Ms. Najcevska noted that promoting the visibility of people of African descent was one of the original main concerns and incentives for the International Year for People of African Descent. Ms. Sahli stated the need to consider positive as well as negative aspects, and lessons learned during the International Year and noted that the very occurrence of the Year and the activities that took place gave a higher profile to the plight of people of African descent. She noted that, unlike the Year, the Decade would provide substantial time to achieve objectives. The financial commitment and determination as well as drive of Member States to make the Decade successful would be important factors. It was also important that States make real commitment beyond rhetoric to taking special measures such as affirmative action to achieve full and effective equality. With reference to the launch of the Decade, the Chairperson pointed out the financial challenges that civil society and non-governmental organizations often face in organizing such activities and suggested that States could launch activities and then hand them over to non-governmental organizations to take forward.

24. Several participants made recommendations for a focus on implementation, to learn from positive experiences to inform future work, clearly identify challenges to be overcome and to call on the political will to secure funding. They stressed the need for clear objectives in order to have clear outcomes. They also mentioned the need to consider good practices, in order for countries to learn from successful activities of other countries and to focus on positive experiences and draw on lessons learned. It was reiterated that without financial resources, it would not be possible to ensure progress towards the full and effective enjoyment of all human rights by people of African descent.

25. Other participants expressed their hope that the Decade would encourage those States that had adopted the DDPA to become fully involved in the process. It was mentioned that rather than attempting to rationalize the Decade, the practical approach of the Working Group should be to show how to make the Decade a success. It should analyse challenges faced during the International Year and organize a plan of activities for the decade and extend it to CERD, the Special Rapporteur against racism, the Office of the High Commissioner for Human Rights as a whole and to present it to the Human Rights Council and the General Assembly for approval.

26. The Chairperson noted the importance of minority rights for people of African descent and pointed out the need to have synergies with this area of rights. It was noted that there are diverse conceptualizations of people of African descent in different contexts. Whereas in some contexts, particularly those of recent migrants, people of African descent have been closely related to minority-rights discourse, in other contexts there have been discussions concerning collective rights around issues such as land and titles.

### **C. Presentation and discussion of the draft Programme of Action for the Decade for People of African Descent based on contributions, including answers to the questionnaire**

27. At the second meeting, held on 1 May 2012, the Chairperson welcomed Pastor Murillo Martinez, member of the Committee on the Elimination of Racial Discrimination. Before giving him the floor, she thanked him for the contribution made by CERD and the adoption last year of its general recommendation No. 34 on racial discrimination against people of African descent. She welcomed the effective interaction and cooperation between CERD and the Working Group.

28. Mr. Murillo mentioned the valuable advances that had been made in terms of the increased visibility and recognition of people of African descent since the 2001 World Conference against Racism. He also stressed that the proclamation of the International Year for People of African Descent represented an added value in the efforts of the States and the international community in the promotion of the rights of people of African descent.

29. Mr. Murillo then spoke on behalf of the Committee on the Elimination of Racial Discrimination, recalling the International Year for People of African Descent and underlining the relevance of the Committee and its role to promote the contributions of people of African descent to humankind. He recognized the work of South Africa and Colombia throughout the International Year. He presented the Contribution to the Programme of Action for the Decade for People of African Descent submitted by CERD and adopted during its eightieth session. CERD considered the terms “recognition, justice and development” as sufficiently broad to describe the themes of the Decade for People of African Descent and recommended that, in the formulation and adoption of the Programme of Action for the Decade for People of African Descent, the Working Group present the actions set out in the paragraphs below for consideration for the elaboration of the Programme of Action for the Decade.

30. Primarily, it invited the Working Group to take note when developing the Programme of Action for the Decade of the need to promote the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and to take into account the following general recommendations of CERD: No. 34 of 2011 on racial discrimination against people of African descent; No. 32 of 2009 on the meaning and scope of special measures in the International Convention; and No. 31 of 2005 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee suggested calling upon States parties to put the above into effect, paying particular attention to issues related to women and children of African descent, poverty eradication, full and effective enjoyment of economic, social and cultural rights, political participation, special measures, effective access to justice, preventing racial discrimination in the administration of justice system, and promoting greater knowledge and respect for their culture and heritage.

31. Secondly, CERD suggested considering proposing the elaboration of a draft Declaration regarding the promotion and full respect of the human rights of people of African descent. Pastor Murillo added that such an initiative would allow for a deep analysis of the issues and efforts made by all stakeholders.

32. Thirdly, the Committee stressed that the Programme of Action should invite all United Nations organs, bodies and specialized agencies to conduct studies and produce well-documented reports which focus on people of African descent in the context of their work. The involvement and impact of the Food and Agriculture Organization of the United Nations (FAO), the World Bank Group, the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and United Nations programmes and funds such as the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), as well OHCHR, for instance, would be decisive for the Decade enabling greater effective and global impact.

33. Finally, CERD proposed to invite the General Assembly to consider convening a world summit on people of African descent involving the States parties, the United Nations specialized agencies, programmes and funds as well as representatives of civil society focusing on the rights of people of African descent, in order to assess the progress achieved during the Decade for People of African Descent.

34. The Chairperson made a second presentation entitled: “Global situation of people of African descent”, showing figures and data on achievements of people of African descent in both Europe and throughout the Americas. She mentioned that even though there is still much work to be done people of African descent are raising their voices at different levels. However she underlined that racial discrimination against people of African descent still exists in several countries. She added that religious minorities of African descent, such as the Rastafari, also suffer multiple discrimination and that racism continues to affect them and other such victims.

35. She suggested that the agenda for the Decade should include funding to develop projects by people of African descent. She stressed that intellectual poverty also needs to be addressed, as the relationship between education and development is evident and that education in most regions is still market-driven and does not take into account the context of people of African descent in different countries. She noted that students and children of African descent often have limited options to succeed in education and for people of African descent living in areas with high rates of tourism, their main opportunities are low-paid jobs. The Chair stated that societies must acknowledge all these problems related to the disadvantageous social situation of people of African descent and adopt measures, including positive measures, to address them.

36. Ms. Fanon Mendes-France made a presentation in which she highlighted the need for the Working Group to continue to promote dignity, making use of spaces and platforms at the national and international levels. She stressed the importance of the principle of non-discrimination as a non-derogable right enshrined in international human rights law including in the Charter of the United Nations and the Universal Declaration on Human Rights (UDHR). She argued that the International Convention on the Elimination of All Forms of Racial Discrimination should be utilized in the process of the Decade. She gave several examples of the continued existence of racial discrimination, particularly in the context of the worldwide economic crisis, migration, the rise in extreme right wing political parties and the war on terror. She highlighted the issue of access to justice and the discrimination that people of African descent continued to face within justice systems, reiterating how in particular many prisoners of African descent are denied their rights due to discrimination.

37. Ms. Fanon Mendes-France reaffirmed the importance of the suggested themes for the Decade and discussed the significance of the three terms. Recognition, she noted, related to the recognition of history and of past crimes, current inequalities and the role of the diaspora in global development; justice related both to remedies for past injustice for the individuals and nations that were victims of slavery and colonisation and the issue of contemporary discrimination in access to justice; and development was discussed in the framework of the United Nations Declaration on the Right to Development (1986) which placed human beings at the centre of development as active participants and beneficiaries and stressed that all human beings had the right to development, and that States had the right and duty to formulate appropriate national development policies that aim at the constant improvement of the welfare of the entire population. She stressed that justice, including reparations, must take into account the responsibilities and experiences of different States and that justice cannot be and should not be influenced by discriminatory practices. States must promote measures to fight against racism and encourage development for people of African descent. She concluded that the Decade should also be an opportunity to understand the global value of “creolization”, or the meeting of cultures.

38. Ms. Najcevska recalled the International Year of People of African Descent and mentioned that the Decade would contribute to the realization of the work that still has to be done. Justice and development were highlighted as crucial aspects of this struggle as was the necessity to follow the Durban process to support the Decade.

39. During the interactive discussion the need to consider the consequences of slavery and slave trade-related issues in order to eradicate all forms of racism was pointed out. It was stressed that the inclusion of reparations should be in line with the DDPA, which in paragraph 158 recognized the contribution of historical injustice to contemporary poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity, in particular in developing countries and stresses the need to develop programmes for the social and economic development of these societies and the diaspora. In paragraph 157 it called upon developed countries, the United Nations and its specialized agencies, as well as international financial institutions, to provide new and additional financial resources, as appropriate, to support initiatives.

40. An observer pointed out that the Decade would have an impact not only on countries with a strong presence of people of African descent but also on other countries. The process must be inclusive and Asian States should be effectively included. The role of non-governmental organizations in supporting the rights of people of African descent was noted. It was noted that education is also crucial, as some countries still struggle to promote inclusive education as one of the consequences of segregation.

41. Examples of initiatives for reparations for people of African descent were mentioned, noting that reparations were not only about receiving money but also access to education, health and employment. The need for the adoption of affirmative action measures was also raised and examples provided on its implementation, in a manner that is culturally relevant.

42. The need to destroy cycles of poverty was highlighted. Many of the issues affecting people of African descent, such as low participation and representation in political and institutional decision-making processes and barriers in access to quality education, employment and justice, result in the intergenerational transmission of poverty.

43. Ms. Najcevska pointed out the need to ensure a sense of cultural belonging for people of African descent. She discussed how the Programme of Action would address issues of culture through intercultural approaches which are inclusive and respect cultural diversity. States, particularly in relation to the theme of recognition, should ensure the protection and promotion of the culture, heritage and identity of people of African descent. Beyond this, States should ensure that all measures taken to promote and protect the rights of people of African descent are implemented in a culturally relevant manner.

44. During the interactive discussion, the Chairperson called for suggestions and comments on the theme for the Decade. Many observers agreed that the suggested theme of “recognition, justice and development” was relevant and sufficiently wide to encompass all the issues contained in the Programme of Action. The African Group as well as other observers suggested integrating the issue of inequality into the theme. Mr. Murillo stated his agreement with the suggestion of including the concept of equality, highlighting the need for strengthening laws against racism. Observers pointed out that equality of treatment is the realization of the principle of non-discrimination articulated in all core human rights instruments and that equality was a consequence of recognition and the essential basis for justice and development. It was argued that the inclusion of equality in the theme would provide an “actionable” and measurable universal normative component, which directly and explicitly links the decade theme to the rule of law, the necessary foundation for realization of the broad “aspirational” principles of recognition, justice and development.

45. Other issues that were raised for inclusion in the theme were the issues of education, history, discrimination, racism and reparations. Many observers noted that the theme of recognition, justice and development should involve a cultural approach based on cultural relevance, human development, prior consultation, recognition of the contribution of people of African descent, and intercultural dialogue, with a special focus on women and children.

46. A joint intervention was made by the five Fellows from the 2012 OHCHR fellowship programme for people of African descent which supported the three elements of the Decade and focused on international measures. They underlined priority areas including the effective follow up on recommendations made by CERD, particularly general recommendation No. 34, as well as recommendations made by other human rights monitoring mechanisms within the United Nations system, and emphasized the importance of mainstreaming contributions of people of African descent into policy making.

47. The Fellows also highlighted the promotion of awareness-raising around issues of health for people of African descent and the importance of incorporating a gender perspective in areas such as the media, access to employment, political participation and representation, as well as research and development into diseases that affect people of African descent, including for example sickle-cell anaemia, hypertension and diabetes, amongst others. They also urged to take preventive and legal measures to protect people of African descent against racial profiling. Finally, they expressed the view that due recognition of the achievements of people of African descent and the contributions they have made in all areas of human endeavour should play an essential role in the Programme of Action for the Decade. This should include the preservation and promotion of their history, cultural contribution and heritage. They called for the International Decade to be developed with the full involvement of people of African descent and supported by civil society

48. The issue of a lack of statistical data was raised throughout the meeting during presentations and in the interactive discussion. The existence of little or no hard data on what discrimination is taking place, where, how and with what consequences was seen as a current problem and limited efforts to combat racial discrimination.

49. Regarding the scope and content of the Decade, participants recommended several elements to be included as components of the Programme of Action, such as a quest for substantive, disaggregated data on the situations, conditions and treatment of people of African descent, including concrete data on the situations and character of discrimination to which people of African descent were subject. In this regard, it was suggested that specific legislation and methodological approaches, in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantee, would need to be elaborated, quantitative as well as qualitative measurement and indicators to be developed, and institutions and procedures to conduct data collection and analysis identified and strengthened.

50. Some observers also suggested the review and analysis of fundamental assumptions, concepts and intersectionalities in view of evolving conditions and realities around the world. They suggested reinforcing linkages among and application of the directly relevant international legal standards and instruments that apply or are applicable to people of African descent, including the Charter of the United Nations, the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Other instruments mentioned were the international labour standards, particularly ILO Convention No. 111 on discrimination in employment and occupation, the “core” instruments on migrants rights protection, namely the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO Convention No. 97 on Migrant Workers and ILO Convention No. 143 on migration for employment (Supplemental Provisions), the instruments addressing gender discrimination, notably the Committee on the Elimination of Discrimination against Women (CEDAW) and ILO Convention No. 158 on termination of employment, ILO Convention No. 169 on Indigenous peoples and to include an explicit dimension addressing xenophobia in the Programme of Action, components and activity support.

51. Observers also suggested prioritizing the formulation, adoption and implementation of national action plans against racial discrimination, as recommended in the Durban Declaration and Programme of Action. Emphasis was also placed on the need to review existing domestic laws and adopt new laws that should be in line with international law, including laws which criminalize acts of racism, including incitement to racial hatred and to take measures to ensure that people of African descent have equal protection of the law and equal access to justice.

52. An intervention by a non-governmental organization representative was made on the changing nature of discrimination and exclusion in the context of contemporary global migration, which involves a significant number of people of African descent. The high incidence of xenophobic crimes with lethal consequences for non-nationals, many of whom are of African descent was presented as an example of this issue. The issue of discrimination in employment was also highlighted as an area in which the intersection of immigration, racial discrimination and xenophobic manifest in the unequal access by many people of African descent to employment opportunities. It was noted that there is a lack of statistical data on migrants which has serious consequences for the formulation of policies and laws around migration.

53. During the interactive discussion, the concept of “intercultural education” was highlighted as a positive strategy to address the rights of people of African descent and structural discrimination. Intercultural education recognizes and respects cultural diversity, challenges discrimination and ensures that the particular needs of specific ethnic groups are addressed through education and promotes exchanges between cultural groups within a society. In the case of people of African descent, this may entail ensuring the provision of bilingual education where relevant, and ensuring that curricula value and respect the history, culture and contributions that people of African descent have made to their nations and global development in order to promote their recognition within society and a sense of identity, particularly for children and young people of African descent.

54. The Working Group was encouraged to include the theme of political inclusion in the Decade, both in terms of people of African descent being actively involved and represented in political parties, and their increased participation in decisions that affect their lives. States were encouraged to pay particular attention to consulting with and involving people of African descent in the development and implementation of policies and programmes that concern them, while including developing national action plans against racial discrimination. They were also encouraged to strengthen leadership among people of African descent and to undertake initiatives for their participation, which should be carried out with special consideration for the meaningful participation of women and young people of African descent. During the interactive discussion an observer proposed several priority areas of action including: training of political leaders of African descent in the countries; improvement in access to higher education; protection of the environment; gender and ethnic approaches in public policies; and implementation of effective measures against racial discrimination based on human rights indicators.

55. At its third meeting, held on 1 May 2012, Doudou Diène, former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, stressed the importance of the Working Group in providing substance to the discussion on people of African descent. He stated that the concept of people of African descent might be ambiguous as it cannot be limited historically and geographically. He stressed the importance of a holistic and universal approach to the issue. Mr. Diène emphasized that people of African descent could not be linked only to the slave trade as the issue of people of African descent was broader. He mentioned that in India there were a number of people of African descent who arrived from the African continent while many

others moved to Middle East and Russia in previous centuries through the trans-Saharan slave trade.

56. Mr. Diène expressed concern that racism was on the rise and suggested the inclusion of the concept of identity in the programme. He emphasized that it was essential to promote multiculturalism and not victimize people of African descent. Legal strategies should be used to combat racism and legislators should include international human rights standards in their national policies. Mr. Diène stressed that people of African descent were not the only group that were victims of racism and racial discrimination and that in the context of multicultural societies, it was necessary to interact with other communities and unify actions in order to fight against discrimination.

57. During the interactive discussion, the importance of taking a multicultural or intercultural approach was raised in terms of promoting shared respect for cultures and identities and exchanges between cultural groups within a society.

58. In her presentation on the objectives and principal actors of the Decade, Ms. Sahli pointed out that racism remained powerful in many societies. She said the main objective of the General Assembly's proposal for a Decade for People of African Descent was to eliminate racism and to raise awareness of the issue throughout the world. She stressed that non-discrimination should be applied to all rights and enshrined in the constitutions of all States. Re-establishing equality and promoting the right to full citizenship are some of the objectives on which actions should be focused. Economic, social and cultural rights should be also a priority for the decade. She emphasized that other objectives should include: the reduction of the precariousness in which people of African descent are living; employment; racial profiling; access to health care; right to education; and revision of curricula in order to include the history of all people of African descent.

59. She stressed the importance of collecting disaggregated data, conducting research, and establishing a United Nations Permanent Forum for people of African descent. She then added that it would be necessary to adopt a declaration for the promotion of the rights of people of African descent and to develop complementary standards. She emphasized that communities of people of African descent, especially young people, were key participants in the fight against racial discrimination thanks to their dynamism and commitment to pursue equality. This participation should be capitalized on.

60. The Chairperson reiterated that in many countries history was not a compulsory subject in the schools' curricula; she stressed the need to review and revise curricula in order to address this deficiency.

61. In her presentation on Basic Components of the Programme of Action, Ms. Biswas stated that it had become clear that the community of humankind could not claim progress of equality and human rights unless it could defeat poverty, racism and any sort of disparity. She said that in order to remedy historic injustice, efforts should be made to ensure access to education, development and health. She noted that social investment in childhood and youth as a strategy to combat poverty could help prevent the continued exclusion of people of African descent from the benefits of economic, social and human development.

62. She stressed the need to develop a programme of action which included special measures, plans and policies in areas such as employment, housing, education and culture in order to bring a sense of fairness and parity between people of African descent and the rest of the population. Such measures should include a gender focus. Ms. Biswas called for further action to promote the rights of people of African descent, including the creation of offices to monitor and respond to human rights violations and the adoption of affirmative action policies.

63. The Chairperson encouraged participants to rethink the geographical focus of the Decade in order to appreciate the universality of people of African descent. She then mentioned other crucial issues, such as integration, identity and interculturalism.

64. At the request of the Chair, Mr. Diène gave a second presentation on the issue of reparations. He mentioned that reparations had historic legitimacy as slave owners had been granted financial reparations when slavery was abolished and that reparations for unjust acts were the basis of law. However he stressed the complexity of how to devise reparations for the transatlantic slave trade, an issue that is four centuries old, cost millions of lives and still has consequences. He noted that there are several debates around forms of reparations. However he asserted the financial cost of slavery could not be calculated and that such a calculation would legitimize the slave-trade ideology that human life had only financial worth.

65. Mr. Diène asserted that there should be four dimensions to reparations: ethical reparations, noting that in the Durban Declaration States were requested to declare slavery as a crime against humanity; historical reparations which involve the reparation of memory and the documentation of the crime sourced from both written documentation and oral histories; educational reparations, ensuring that history of slavery is included in education curricula; and economic reparations since, although financial cost of slavery cannot be calculated, the origins of the underdevelopment of Africa and the prosperity of Europe and the Americas can be traced to slavery. Mr. Diène pointed out that the issue of reparation did not concern only people of African descent but all members of society.

66. The Chairperson noted the importance of addressing reparations in the programme of action. She noted that some countries had requested financial reparations for historical wrongs but agreed that reparation does not have only a financial dimension as other forms of reparation exist and there is a need for documentation of the crime. She went on to reiterate that the history and the consequences of slavery remain unknown to young people and children and should be taught in schools.

67. During the interactive discussion, a representative of a State expressed appreciation for Mr. Diène's presentation and noted the importance of focusing on the history of slavery, the slave trade and movement of people. He reported that his country adopted a law on slavery as a crime against humanity.

68. During discussion around the concept of people of African descent it was highlighted that the definition of "people of African descent" had already been developed in the DDPA and the discussion should focus on the situation of people of African descent rather than the terminology of people of African descent.

69. The issue of nationality and how to ensure that people of African descent acquire nationality in countries where they live was raised and related to general recommendation No. 34 which states that legislation regarding citizenship and naturalization should not discriminate against people of African descent. Discussions were also held on the issue of multiculturalism, how it could be utilized and how to transcend it.

70. Ms. Sahli recognized women, children, and persons with disabilities of African descent as victims of multiple discrimination and noted that the Decade would be an opportunity for people of African descent to enjoy rights in cross-cutting situations. She stated that the Working Group should stay within the context of the DDPA and focus on priority aims. The Decade would lead to a situation where people of African descent could enjoy key rights – identity, nationality, justice, healthcare, right to development. She also stated that the focus should be on the right to development.

71. Ms. Sahli added that many people of African descent did not have nationality in countries in which they lived, including in African countries.

72. Representatives from States noted that historical memory was an essential element in the Programme of Action. The importance of mainstreaming a gender perspective in designing and monitoring public policies, taking into account the specific needs and realities of women and girls of African descent and adopting a holistic approach to ensure their rights was also discussed. The call for a declaration on the rights of people of African descent was also reiterated.

73. In his presentation the Special Rapporteur on contemporary forms of racism, Mutuma Ruteere, expressed the importance of the theme of recognition, justice and development for achieving equality for people of African descent. He stressed that, while people of African descent had been recognized as victims of racism in the Durban process, the existence of racism was still often denied. He noted that the situation of people of African descent was rendered invisible by the lack of disaggregated data or recognition of their contributions to society. He asserted that recognition was essential for the achievement of justice for people of African descent in terms of recognizing past injustice and current rights violations. He highlighted that justice also required equality in enjoyment of rights and noted the discrimination that people of African descent faced in many areas of their lives, including education, employment, health, housing, political participation and administration of justice.

74. Mr. Ruteere linked recognition and justice to development, stating that racial discrimination remained an obstacle to development and that rights were central to the achievement of the Millennium Development Goals. He encouraged States to develop specific programmes regarding economic and social development and stressed the importance of adequate training to ensure people of African descent themselves can participate and be key actors in these processes. He stressed the importance of a comprehensive approach to the Programme of Action, which addressed civil and political as well as economic, social and cultural rights in relation to the specific areas of concern highlighted. He pointed to the need for legislation, affirmative-action policies, data collection, appropriate training for justice officials and other actors, and national action plans against racism.

75. Mr. Ruteere stressed that education and awareness raising should be pillars of the Decade and there must be cooperation between States, international and regional bodies including United Nations specialized agencies. He noted that the International Convention and the DDPA should be the cornerstones of the Decade. He concluded that the concepts of equality and dignity could be discussed as possible elements in the theme of the Decade.

76. Ms. Najcevska presented a detailed summary of the questionnaire based on General Assembly resolution 66/144, in which the Assembly encouraged the Working Group to develop a programme of action for the Decade. The Working Group requested inputs from Member States, United Nations agencies and bodies, regional organizations and civil society. Ms. Najcevska thanked the actors who had responded to the questionnaire. She reported back the examples of problems faced by people of African descent as presented in the questionnaire through which most respondents had shown concern for the issue and support for the Decade. The answers from all stakeholders were also taken in account in drafting the Programme of Action presented to the session.

77. Ms. Najcevska noted that most respondents had stressed the relevance of heritage, and recognizing the contributions and history of people of African descent. She also said that many respondents highlighted the fight against poverty as a key priority. Others mentioned the necessity of data collection to give visibility to the claims of people of African descent. Other issues raised in the replies were the need to counter hate speech, racial profiling and negative stereotyping in the media; to call for equal access to justice; and the need to counter discriminatory practices by law-enforcement authorities.

78. Ms. Najcevska mentioned the proposals that respondents to the questionnaire had made for the Decade, which included a world summit on people of African descent. She also mentioned the positive measures adopted by some States, including the recognition of people of African descent in constitutions and the adoption of national laws that promoted racial equality; the creation of special bodies to combat discrimination; strategies to encourage better participation of stakeholders, academia and experts on the topic; support to national programmes to eliminate racial discrimination and racism; and the promotion of African studies to acknowledge people of African descent's heritage and contributions.

79. Ms. Najcevska continued with a second presentation about the Programme of Action for the Decade focusing on the target groups and the structure for coordination and implementation of the Decade. In terms of the target groups she stressed that the Decade should be perceived as an international initiative which brought together United Nations bodies, specialized agencies, States, inter-governmental organizations, relevant non-governmental organizations and people of African descent. The activities should bring the objectives of the Decade to as wide an audience as possible including through campaigns, awareness-raising and through formal and non-formal education. Special emphasis would be given to women, children and young people, and migrants of African descent as well as to those living in extreme poverty and in conflict with the law.

80. Ms. Najcevska noted that special attention would be given to training relevant actors including police, justice officials, teachers, Government officials and the media. Schools, universities and other educational institutions would also be a point of focus for ensuring that the history and contributions of people of African descent be taught. Civil society should be encouraged to develop non-formal programmes in the framework of the Decade. She stressed that the international community, particularly the United Nations, should give high priority to programmes to combat racial discrimination, intensifying their efforts in the framework of the Decade and providing assistance to Governments and other actors. People of African descent should be involved in these processes throughout the Decade.

81. In terms of the coordination of the Decade, Ms. Najcevska stated that the General Assembly should charge the United Nations High Commissioner for Human Rights with a coordinating role for the implementation of the Programme of Action and evaluating its activities with the support of a specially designed body. She suggested several steps to strengthen the Decade, including an inter-agency meeting with the Working Group and coordination of activities by the High Commissioner. At the national level, she suggested that national focal points to develop national action plans should be appointed to channel regional and international recommendations and to support grass-roots initiatives. States should establish resource centres and international initiatives should support national activities. Ms. Najcevska concluded that clear identification and division of responsibilities was crucial to achieve the complex goals of the Decade.

82. During the interactive dialogue it was pointed out that the Programme of Action must be consistent with existing human rights texts related to the topic, particularly with the consensual language of the DDPA. There was also agreement on the importance of addressing the issue of discrimination in the administration of justice, including measures against racial profiling and impunity for racist crimes as priorities. The issue of Pan-Africanism was also raised as one that should be present in the discussions. The need to analyse some aspects of the Programme of Action according to the context of each country was pointed out.

83. Mr. Murillo mentioned the International Year as a critical reference point for the Decade. He pointed out that the Programme of Action should aim for realistic goals and stressed the importance of using language from the DDPA adopted by consensus.

84. The Rapporteur on the Rights of Afro-Descendants and Against Racial Discrimination of the Inter-American Commission on Human Rights, Rose-Marie Belle Antoine, presented the objectives of the Inter-American Commission on Human Rights in its work to fight against racism and promote the rights of people of African descent at the regional level in the Americas. Ms. Antoine talked about the collaborative work of the Commission with non-governmental organizations and other institutions, including the Caribbean Community and Common Market (CARICOM), as a way to raise the issue of people of African descent. She noted that a report on people of African descent in the Americas had recently been completed and would be soon launched in different countries to enhance visibility on the issue. The Inter-American Commission presented this study as input for the development of the draft programme of action in which several issues were highlighted, including access to quality education, health and justice and discrimination in employment and in the justice system and standards of living.

85. Ms. Antoine stressed that one way of proceeding was to develop the litigation capacity of Afro-descendants in relation to access to justice by bringing more court cases. She also mentioned the issue of gender and spoke both about the rights of women and girls, and the issues affecting young men of African descent around the world. She agreed that one of the key problems was the invisibility of the issue of people of African descent. Despite the issue of race and colour, the question of identity is important. She noted that in some countries where people of African descent are not necessarily a minority, but rather the majority, there were still no mechanisms for self-identification. She pointed out the high percentage of indigenous and people of African descent in the Americas. Finally Ms. Antoine recommended paying attention to the use of the term of “victim” and talking about victims of rights violations rather than a victim-centric approach.

86. Simon Woolley, Commissioner of the Equality and Human Rights Commission of Great Britain (EHRC), presented the work of the Commission and some solutions being explored in this institution. He discussed the role of the EHRC as an A-status NHRI in protecting and promoting equality and human rights in the United Kingdom and presented some of its activities including assisting victims of rights violations to seek remedies, investigating incidents of rights violations, providing statutory and non-statutory guidance on the law, and promoting international human rights mechanisms.

87. Mr. Woolley spoke about the role of the EHRC in the recent process of examination of the United Kingdom of Great Britain and Northern Ireland by the Committee on the Elimination of Racial Discrimination, including developing its report for submission, the work EHRC has done in collaboration with civil society to promote the human rights process, raising awareness of the issues raised in the report to the Committee, and plans for implementing the CERD concluding observations. The Commission’s wider activities relating to people of African descent include analysing data to understand the nature and scale of discriminatory practices by the police, addressing the disproportionate rates of unemployment faced by young men of African descent, and political participation.

88. Mr. Woolley made several recommendations for the Decade, including strengthening the treaty monitoring bodies and the implementation of the ICERD and CERD recommendations; a focus on data collection and exchange of information and good practices on measurement frameworks; focus on issues including criminal justice, employment, health and education and a reflection of multiple forms of discrimination.

89. Mr. Diène noted that one of the big challenges was how to take into account the issue of race and colour, how to go beyond it in multiculturalism and enlarge the identity of people of African descent.

90. During the interactive discussion the importance of using the framework of the DDPA was raised several times. It was also highlighted that new issues, relating to new

groups and new forms of oppression have emerged since the DDPA was adopted that also need to be included in the Programme of Action.

91. A representative from the European Union (EU) made a statement on behalf of her regional group and reiterated the EU's standing position regarding some of the issues raised by the Working Group. She stressed that the EU was not in a position to make detailed comments and thus did not endorse the Programme of Action for which the Working Group of experts retains full ownership.

92. The EU representative noted that, as stated on previous occasions, the EU did not recognize the concept of race. As a result, it is not possible and it is often illegal in many States of the European Union to collect disaggregated data, based on race. This has not prevented the EU, however, from adopting a comprehensive framework to combat racism, racial discrimination, xenophobia and related intolerance. She noted that EU legislation allows Member States to adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin but that targeting one specific group can be problematic. Indeed, judgments by the European Court of Justice have highlighted the difficulty that exists in combining the promotion of equal treatment with affirmative action in favour of one group of individuals. The representative emphasized that human rights were rights to be enjoyed by each individual; therefore the EU does not recognize the Working Group's general notion of "collective rights". The EU also rejects cultural relativism in the enjoyment of human rights because this undermines the universal nature of human rights.

93. She noted that the issue of reparations for the transatlantic slave trade was a divisive issue that jeopardized the 2001 Conference and that recognising that slavery is a crime against humanity does not imply that the issue of reparations for people of African descent is a human rights issue.

94. Ms. Sahli re-emphasized the need to adopt special measures to remedy structural discrimination and historic discrimination faced by people of African descent. She pointed out that merely addressing formal discrimination would not ensure substantive equality as envisaged by international law. In order to eliminate substantive discrimination, States parties might be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures were legitimate to the extent that they represented reasonable, objective and proportional means to redress de facto discrimination and were discontinued when substantive equality had been sustainably achieved.

95. The representative of Senegal made a final statement on behalf of the African Group in which he expressed the Group's appreciation for the progress made by the Working Group and for the draft presented. He stressed the importance of considering the Decade in the context of three decades in the fight against racism, racial discrimination, xenophobia and related intolerance, which culminated in the adoption of the DDPA, and related events.

96. He pointed out that the background and measures included in the Draft Programme of Action presented by the Working Group were in keeping with the theme of recognition, justice and development and that the importance and centrality of the DDPA and of CERD's recommendations was evident.

97. The African Group noted the next stages of the process for adoption of the draft Programme of Action at the Human Rights Council and the General Assembly and appealed to the political will and positive spirit of other Member States to participate in this process and to keep it mind that the final aim is to ensure its effective implementation for the full enjoyment of all human rights by people of African descent. The African Group emphasized the importance of using the framework of the Durban Declaration and

requested that the Working Group did not include any concept that does not already have a legal basis and is not in accordance with the DDPA.

98. The African Group concluded by reiterating its support for the Working Group and its commitment to the fight against racism, racial discrimination, xenophobia and related intolerance, particularly in protecting the rights of people of African descent.

#### **IV. Closing remarks by the Chairperson-Rapporteur**

99. **In her closing remarks the Chairperson-Rapporteur explained that the absence of the usual conclusions and recommendations for adoption was a result of a decision taken by the Working Group to give priority to the draft Programme of Action for the Decade. She also announced that the Working Group would devote attention to the revision of its methods of work and will provide a new text.**

100. **She then thanked participants for the constructive dialogue and expressed her hope that the draft Programme of Action for the Decade to be presented to the Human Rights Council would find consensus. She affirmed that the aim of the Decade and its Programme of Action was the promotion and protection of the rights of all people of African descent around the world and that the fight against racism and the promotion of inclusive and equal societies is a matter that concerns all human beings, not only those groups facing discrimination. The Chairperson concluded that a society free from discrimination would only strengthen peace, the rule of law and democracy and declared the eleventh session closed.**

## **Annexes**

### **Annex I**

#### **Agenda**

1. Opening of the session.
2. Election of the Chairperson-Rapporteur of the Working Group.
3. Adoption of the agenda.
4. Organization of work.
5. Achievements and challenges in the promotion and protection of the rights of people of African descent.
6. Briefings by the Working Group members.
7. Presentation and Discussion of the draft Programme of Action for the Decade for People of African Descent based on contributions, including answers to the questionnaire.
8. Presentation and discussion of the proposal for the Programme of Action.
9. Adoption of the report of the eleventh session.

## Annex II

*[English only]*

### List of participants

#### A. Members of the Working Group

- Monorama Biswas
- Maya Fadel-Sahli
- Mireille Fanon Mendes-France
- Mirjana Najchevska
- Verene Shepherd

#### B. Member States

Algeria, Argentina, Austria, Barbados, Belgium, Brazil, Bulgaria, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Denmark, Egypt, Eritrea, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, India, Indonesia, Italy, Jamaica, Japan, Mexico Morocco, Norway, Pakistan, Paraguay, Portugal, Russian Federation, Senegal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of), Zimbabwe

#### C. Non-member States

Holy See

#### D. International organizations

United Nations Development Programme

#### E. Intergovernmental organizations

African Union, European Union, Inter-American Commission on Human Rights.

#### F. Non-governmental organizations in consultative status with the Economic and Social Council

African Canadian Legal Clinic, African Commission of Health and Human Rights Promoters, Al-Hakim Foundation, Association of World Citizens, Cameroun Terre Nouvelle, Commission africaine des promoteurs de la santé et des droits de l'homme, December 12th Movement International Secretariat, Human Rights Watch, International Association Against Torture, International Youth and Student Movement for the United Nations (IYSMUN), North-South XXI, Rencontre Africaine pour la défense des droits de l'homme, U.S. Human Rights Network, World Against Racism Network.

**G. Non-governmental organizations not in consultative status with the Economic and Social Council**

Afrohispanos, Movimiento Mira.

**H. Panellists and presenters**

- Rose-Marie Belle Antoine, Special Rapporteur on the Rights of Afro-descendants and against Racism of the Inter-American Commission on Human Rights;
  - Doudou Diène, former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
  - Pastor Elías Murillo Martínez, member of Committee on the Elimination of Racial Discrimination (CERD);
  - Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
  - Simon Woolley, Commissioner, Equality and Human Rights Commission of Great Britain.
-