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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 fourteenth session*

(Geneva, 31 March–4 April 2014)

Chair-Rapporteur: Mireille Fanon Mendes-France

Summary

The main focus of the discussions during the fourteenth session of the Working Group of Experts on People of African Descent was the theme of “People of African descent: access to justice”. The Working Group acknowledged the importance of the theme and noted that, despite guarantees in international and national law, racism, racial discrimination, xenophobia and related intolerance affect people of African descent in a unique fashion, to the point that many of them are still unable to obtain remedies for wrongful acts through their domestic institutions. The Working Group urged States to develop a national atlas mapping injustices, on the basis of comprehensive disaggregated data. It also urged States to adopt national action plans against racial discrimination, which should include special measures and be based on disaggregated data, as appropriate, to address structural discrimination against people of African descent, taking into account general recommendation No. 32 (2009) of the Committee on the Elimination of Racial Discrimination on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination. It also reiterated its recommendation that practical activities should be developed at the national, regional and international levels during the International Decade for People of African Descent.

* Annex II is reproduced as received, in the languages of submission only.



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I. Introduction

1. The Working Group of Experts on People of African Descent held its fourteenth session from 31 March to 4 April 2014 at the United Nations Office at Geneva. It was attended by all the members: Monorama Biswas, Mireille Fanon Mendes-France, Mirjana Najchevska, Maya Sahlí and Verene Shepherd. The present report of that session is submitted in accordance with Human Rights Council resolutions 9/14 and 18/28 requesting the Working Group to submit an annual report to the Council on all activities relating to its mandate.

2. Representatives of Member States, the Holy See and the State of Palestine, international organizations, regional organizations, non-governmental organizations (NGOs) and invited panellists participated in the session of the Working Group of Experts (see annex II).

II. Organization of the session

A. Opening of the session

3. The outgoing Chair-Rapporteur, Ms. Shepherd, opened the session and welcomed all who were attending, especially the United Nations High Commissioner for Human Rights.

4. The High Commissioner, in her opening statement, expressed appreciation for the recommendations that had emanated from the Working Group which had had great impact in the fight against the historical and continuing inequality faced by people of African descent, and welcomed the fact that the Working Group had started dealing with allegation letters and urgent appeals. She also noted that the Working Group had decided to focus the session on the issue of access to justice, in line with the theme for the International Decade for People of African Descent, which was due to begin in 2015. She highlighted the importance of access to justice and the fact that, at both the international and the domestic levels, respect and protection of human rights could be guaranteed only if effective judicial remedies were available when an individual's rights were violated.

5. The High Commissioner also pointed out that, despite guarantees in international and national law, many victims of racial discrimination were still unable to obtain remedies for wrongful acts through their domestic institutions. She noted that some of the most important challenges facing people of African descent related to discriminatory treatment by the very institutions that were supposed to administer justice. She gave the example of when judicial and law enforcement bodies, which should be primary forces in opposing and preventing racism, failed to uphold justice and equality and instead mirrored the prejudices of the society they served. Thus, racial discrimination persisted among law enforcement officials, in the application of the law and in the functioning of the criminal system.

6. She noted the importance of recommendations emanating from the various human rights mechanisms, including general recommendation No. 31 (2005) 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. The High Commissioner also noted the finding of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance that institutional discrimination in justice systems often had a disproportionate impact on people of African descent. She expressed the strong commitment of her Office to supporting efforts that helped realize the rights of people of African descent.

B. Election of the Chair-Rapporteur

7. Ms. Fanon Mendes-France was elected Chair-Rapporteur of the Working Group.
8. Ms. Shepherd delivered her outgoing statement, thanking all who had supported her during her tenure. She expressed her pride in the work that the Working Group had accomplished over the previous year, at times in collaboration with other special procedures mandate holders, in the struggle against racism, racial discrimination, xenophobia and related intolerance. The results of the country visits and complaints of individuals and groups that felt discriminated against, along with reports in the international media of racial and xenophobic incidents, indicated that the struggle against racism, racial discrimination, xenophobia and related intolerance was still necessary. She stressed the need for recommitment to the struggle, no matter how challenging it appeared to be. She said that, at a time when the world was still discussing Nelson Mandela's legacy, attendees should decide to use the International Decade for People of African Descent to work on the unfinished business of his legacy.
9. Several countries, including Brazil and Jamaica, expressed appreciation to Ms. Shepherd for her work during her tenure as Chair-Rapporteur.
10. In accepting her new role, the Chair thanked the other experts for her election and the participants for their support. She added that the Working Group would continue to strive to further strengthen the mandate that had been entrusted to it.

C. Organization of work

11. The Working Group adopted the agenda (see annex I) and programme of work.

III. Update and briefings on activities undertaken by the Working Group in the past year

12. Under item 5 of the agenda, Ms. Najchevska informed participants that she had presented three reports to the Human Rights Council during its twenty-fourth session: the reports of country visits to Panama from 14 to 18 January 2013 and to the United Kingdom of Great Britain and Northern Ireland from 1 to 5 October 2012, and the report on the twelfth session of the Working Group. The reports had been received with appreciation and she was hopeful that the recommendations they contained would be useful. Member States had welcomed the positive aspects reflected in the reports and been eager to introduce the practices referred to in the reports at the national level. She also mentioned that the report on the twelfth session of the Working Group had generated important discussion, especially in relation to the International Decade for People of African Descent.
13. Ms. Shepherd informed participants that, on 4 November 2013, she had attended a meeting of the Third Committee of the General Assembly of the United Nations in New York and had made a presentation on the status of the work of the Working Group on the International Decade for People of African Descent. It had been the first time that a member of the Working Group had been asked to make a presentation to the Third Committee. Her presentation had focused on the rationale for lobbying for the International Decade, including the need to pay more serious attention to the Durban Declaration and Programme of Action, as well as build on the achievements of the International Year for People of African Descent. She pointed out that there had been a vibrant question and answer session at the end of the presentation, as well as a side event that had allowed more detailed discussion on the International Decade and the work of the Working Group; the

majority of those who had participated in the session had supported the work of the Working Group. She also briefed the meeting on the thirteenth session of the Working Group, which had been an internal meeting in which it had dealt with communications, future work, country visits and meetings with various stakeholders and units of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

14. The Chair-Rapporteur briefed participants on the country visit of the Working Group to Brazil from 3 to 13 December 2013. At the end of the visit, the Working Group had released press statements, which were available on the OHCHR website.¹ The experts thanked the Government of Brazil for its invitation and for its assistance before, during and after the visit. The Chair also thanked the representatives of NGOs and the people of African descent with whom the Working Group had met during the visit. She said that the detailed reports of the mission would be made available to the public following their submission to the Human Rights Council at its twenty-seventh session.

15. Yury Boychenko, Chief of the Anti-Discrimination Section of OHCHR, provided an update on the International Decade for People of African Descent and informed the session of two resolutions that had been adopted by the General Assembly, namely resolution 68/151 and resolution 68/237. In resolution 68/237, the General Assembly had proclaimed the International Decade for People of African Descent, commencing on 1 January 2015 and ending on 31 December 2024, with the theme “People of African descent: recognition, justice and development”, to be officially launched immediately following the general debate of the sixty-ninth session of the Assembly. Mr. Boychenko added that the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, which would prepare the programme of activities for the International Decade, would report to the Human Rights Council at its twenty-sixth session in June 2014 and its written report would be then be submitted to the General Assembly.

16. The representatives of Austria, Brazil, Jamaica, Mexico, South Africa, Switzerland, Venezuela (Bolivarian Republic of) and the European Union congratulated the Working Group on its work.

IV. Summary of deliberations

Thematic analysis: access to justice

17. Anthony Bogues, Professor of Social Sciences and Critical Theory and Director of the Center for the Study of Slavery and Justice at Brown University, Providence, Rhode Island, United States of America, made a presentation entitled “The arch of justice bends towards equality: reflections on Africa and African Diaspora today”. He began by stating that people of African descent were currently living in a post-colonial, post-slavery, post-apartheid and post-civil rights historical moment, and in more complicated contexts which were not necessarily limited to colour lines only. He provided country contexts of the situation of people of African descent, highlighting the economic inequalities, discrimination in the criminal justice system and prevalence of poverty and inequality faced by people of African descent in different parts of the world. Given the overall situation of inequities faced by people of African descent, he argued that it was important to raise questions about justice and its relationship to equality. He added that the detachment of

¹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14159&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14161&LangID=E.

justice from the notion of equality had led to the “disposability” of people of African descent. In conclusion, he said that it was important to assess the state of people of African descent, including by means of an international conference on the state of people of African descent globally.

18. Launching the interactive discussion, the Chair-Rapporteur thanked Mr. Bogues for highlighting the linkage between equality and justice. Commenting on the presentation, the representative of South Africa stated that her country still faced the triple challenge of poverty, inequality and unemployment; dealing with those challenges had been a central focus for all democratic Governments in South African since 1994. Replying to a question from Ms. Shepherd about the Center for the Study of Slavery and Justice, Mr. Bogues provided an overview of activities currently under way at the Center, including an activity aimed at reforming the education system.

19. Pastor Murillo Martínez, a member of the Committee on the Elimination of Racial Discrimination, delivered his presentation on people of African descent and the prevention of racial discrimination in the administration and functioning of the criminal justice system, focusing on the Committee’s general recommendation No. 31. He said that the two major issues regarding racism in the administration and functioning of the criminal justice system were adherence to the principle of equality before the law and the criminalization of racism. In terms of equality before the law, he highlighted the proportionately higher crime rates attributed to people of African descent and said that racial profiling and indirect discrimination were two significant areas of concern in terms of discrimination faced by people of African descent. The obligation on State parties to prosecute by means of criminal law all acts of racism covered by the International Convention on the Elimination of All Forms of Racial Discrimination, particularly those relating to the dissemination of ideas based on racial superiority or hatred, incitement to racial hatred, racial violence and incitement to racial violence, as well as racist propaganda activities and participation in racist organizations, remained a major challenge. In terms of access to justice, he pointed out that general recommendation No. 31 also stated that States should seek to eliminate the discriminatory effects of legislation and in any case respect the principle of proportionality in its application.

20. Laurens Hueting from the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists made a presentation entitled “Judicial independence and impartiality and diversity on the bench”. Addressing the relationship between judicial independence and impartiality on the one hand and diversity on the bench on the other, he pointed out that diversity on the bench could improve access to justice for minorities and individuals from marginalized or discriminated groups, including women, improve the legitimacy and quality of judicial decision-making and contribute to strengthening the independence and impartiality of the judiciary. He emphasized that the appointment of judges from groups that were discriminated against should take place against a backdrop of respect for judicial independence and the rule of law. He concluded that diversity in the judiciary enhanced the legitimacy of the judiciary and improved the quality of legal decision-making, thus helping to safeguard judicial impartiality.

21. Mireille Fanon Mendes-France made a presentation entitled “Impunity and justiciability: people of African descent”. She provided several examples of situations in which lack of effective application of the law coupled with lack of provisions to criminalize racism had led to a lack of judicial accountability and to impunity. The number of cases alone did not reflect the reality of discrimination prevalent within societies. Even almost two centuries after the abolition of slavery and 50 years after the end of colonialism, negative stereotypes remained prevalent and did not allow any sustainable change in the racial paradigm. As a result, millions of people of African descent on various continents, including Africa, faced social inequalities, exclusion, marginalization and

underrepresentation at the political level. In terms of access to justice, she outlined the challenges faced by victims of racial discrimination in receiving a fair trial and judicial remedy in line with international norms and standards. She emphasized the detrimental impact racial discrimination had on democratic society and public order. In conclusion, she said that the justiciability of racial discrimination depended to a great extent on the nature of power relations, which were often in contradiction with the internationally accepted Charter of the United Nations and various human rights instruments which stipulated the principles of equality and non-discrimination.

22. During the interactive discussion, Maya Sahli asked about the number of complaints received from people of African descent by the Committee on the Elimination of Racial Discrimination. Mr. Murillo Martínez said that there had been an increasing trend in terms of complaints that were being received from people of African descent. Responding to a question from an NGO representative about efforts to increase the representation of people of African descent in the judiciary, Mr. Murillo Martínez said that the minimal or non-existent representation of people of African descent on the bench was a glaring problem. He informed participants that the Committee was taking up the issue, including through an early warning and early action procedure, in order to address gross patterns of racism and racial hatred or violence, as well as the lack of legislative procedures or due process to seek legal remedy. Responding to a question from an NGO representative about the importance of training for judges, Mr. Hueting said that training was important and was linked to enhancing the independence and impartiality of judges.

23. Giles Devers, a lawyer and Professor of Law at the University of Lyon, France, made a presentation entitled “Effective ways to address acts of racism at the national and regional levels”. Mr. Devers highlighted various ways of addressing racism at the national level under the European system, focusing on the applicability of existing law and problems with its implementation. He drew attention to the role of the European Court of Human Rights in handling hate speech, as well as cases of direct and indirect discrimination. He pointed out that civil action was essential in combating racism, together with knowledge of the law so that people who wanted to bring cases before the courts were aware of the judicial procedures. He also said that it was essential to produce compilations of case law and set up microcredit schemes to fund legal proceedings to support activists in combating racism.

24. Luis Espinosa, Counsellor at the Permanent Mission of Ecuador to the United Nations, made a presentation on Ecuadorian experience of mapping injustices. He highlighted several provisions of the Constitution of Ecuador and national legislative instruments and policies aimed at addressing the inequalities faced by various vulnerable communities, including people of African descent. In explaining how the Government had addressed inequalities, he made reference to the Atlas of Socioeconomic Inequalities in Ecuador, a tool which provided a historical and territorial analysis of the different types of inequalities that had existed in Ecuador over the previous 20 years. The Atlas, which graphically presented multiple socioeconomic indicators reflecting changes in numerous parameters related to health, education and poverty, had also facilitated the development of national and local policies to narrow social and economic gaps.

25. During the interactive discussion, Ms. Najchevska asked about the effectiveness of national implementation of the decisions made at the European Court of Human Rights. Mr. Devers responded by stating that, while national procedures did exist for the effective application of the decisions of the European Court, there were possibilities in some countries to review procedures at the domestic level even after the Court had issued a judgement. The representatives of Morocco and the Bolivarian Republic of Venezuela commended Ecuador for developing the Atlas, noting that it represented an example of

good practice in the development of national action plans supported by a wide variety of disaggregated data.

26. Mirjana Najchevska made a presentation entitled “Youth at risk: racial profiling”. She highlighted the fact that, in the course of its country visits, the Working Group had found that, owing to institutionalized racial discrimination, the rate of unemployment for people of African descent, particularly young people, was above national averages. Similarly, children and young people of African descent constituted one of the most vulnerable groups in the countries the Working Group had visited. They experienced disproportionately low rates of access to good quality education, alarmingly high rates of violence, including on the part of law enforcement officers, and were too often targeted by the police, breeding in them anger, frustration and a lack of faith in law enforcement agencies. She highlighted the need to criminalize racism, address cultural differences in societies, strengthen international and national commitment and action based on recognition of the racial aspects of violence and incarceration, prioritize prevention and create accessible and youth-friendly reporting systems and services.

27. Suzanne Charles from the Institute of Gender and Development Studies at the University of the West Indies delivered through videoconference a presentation entitled “Gender, human rights and education: a Caribbean perspective”. She highlighted various challenges faced by youth of African descent in the Caribbean, including: differential access to schooling, particularly at the secondary level and in rural areas, and consequent differential outputs and outcomes for various groups within the educational system; an inadequacy of facilities to accommodate students with special needs, such as physically and mentally challenged students as well as the gifted; the inability of some schools to access adequate human and physical resources, including appropriately qualified staff, appropriate technology and suitable space; the prohibitive cost of schooling for a number of parents and inadequate support in the homes and communities of many students; and the lack of student engagement, particularly among certain groups, which had led to high levels of attrition and ultimately, dropout.

28. During the interactive discussion, NGO representatives asked about the extent of profiling in prisons, the role of the media in racial profiling, the profiling of children of African descent, including migrants, who were often subjected to such profiling, and the risks of data collection being used for racial profiling purposes. In response, Ms. Najchevska said that there was a risk of the misuse of data, just as any tool could be misused as a weapon. She said that the use of statistics by the media without in-depth research risked creating stereotypes. She emphasized the need to take advantage of the International Decade for People of African Descent to address various State institutions, among others the judiciary, law enforcement authorities and education authorities, and urge them to bring about structural changes in relation to the ongoing practice of racial profiling. She also said that the phenomenon of racial profiling affected a multitude of rights, including the rights to privacy, freedom of movement, work and education.

29. Ms. Shepherd asked if there had been any research into the linkages between structural discrimination, the content of education curricula and the legacy of slavery. In response, Ms. Charles said that the legacy of slavery persisted in the Caribbean region. Regrettably, despite comprising the majority of the population in the region, Afro-Caribbean people constituted the lower strata of society in many areas, including the education system. Despite reforms in formal equality in terms of numbers, there had been no fundamental reshaping of the education system, which had resulted in people of African descent remaining marginalized in terms of access to education, especially at the secondary and tertiary levels. The representative of South Africa asked if education was justiciable in Jamaica and whether there was any ongoing adaptation of the education system to address the prevalence of structural discrimination. In response, Ms. Charles said that, while she

was not aware of any case that had been taken to court in relation to education, there had been some discussion on adapting to the changes in society to deal with the issue of structural discrimination. However, challenges remained in terms of moving from access to education to access to good quality education.

30. Monorama Biswas delivered her presentation entitled “Facilitating access to justice for people of African descent, especially legal aid for women”. She said that coordinated international efforts to disseminate greater knowledge, intercultural dialogue, tolerance and respect for diversity were essential tools for overcoming discrimination and hatred. She pointed out that the media played an important role in reflecting the diversity of multicultural societies and thus fighting racial discrimination, social injustice and related intolerance. She also pointed out that legal remedies must be made readily available, affordable and viable to people of African descent.

31. Maya Sahli delivered a presentation on constraints in women’s access to justice. She said that in most cases, while States had ratified a number of international agreements and regional conventions on issues relating to women, the difficulties women experienced in gaining access to justice were compounded by several factors, including a lack of education and awareness of their rights, a lack of legal assistance that was readily available to women and societal discrimination against women. The situation was even more troubling for women of African descent, even though relevant international norms existed, such as general recommendations No. 31 and No. 32 of the Committee on the Elimination of Racial Discrimination. She pointed out that it was crucial to focus on raising awareness of legal rights for women of African descent, and drew attention to the Quito Declaration on the enforcement and realization of economic, social, and cultural rights in Latin America and the Caribbean, which focused on that issue in relation to multiple forms of discrimination. Ms. Sahli added that racial and sexual violence, as well as harassment, deprived women of African descent from accessing justice. The problem was even worse for women of African descent in prisons in foreign countries where legal and consular services were unavailable. She recommended that legal assistance for women of African descent should be prioritized through awareness-raising, including the development of user-friendly, gender-sensitive information guides on the administration of justice.

32. A member of the secretariat of the Committee on the Elimination of Discrimination against Women presented an overview of the Convention on the Elimination of All Forms of Discrimination against Women, access to justice and women of African descent. She highlighted the salient provisions of the Convention and referred to a number of the Committee’s general recommendations, including those related to access to justice: general recommendations No. 19 (1992) on violence against women; No. 21 (1994) on equality in marriage and family relations; No. 28 (2010) on the core obligations of States parties under article 2 of the Convention; and No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations. She informed the meeting that the Committee was in the process of drafting a new general recommendation specifically on access to justice, and provided specific examples of cases received by the Committee of relevance to women of African descent in terms of seeking access to justice.

33. During the interactive discussion, the representative of Brazil commended the presenters on the theme of women and access to justice, which was a priority for Brazil, and asked for examples of how to address the multiple forms of discrimination experienced by women of African descent in accessing justice. Ms. Sahli suggested guidelines that had been drawn up on women and access to justice in Malawi as one example, and also mentioned that guidelines of the International Law Commission could be useful reference material for States. The representative of Austria enquired whether the Working Group and the Committee on the Elimination of Racial Discrimination had developed any new joint general recommendations and whether the Committee on the Elimination of Discrimination

against Women had received individual complaints concerning people of African descent. The member of the secretariat replied that the only joint initiative remained that of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women concerning harmful practices. The Committee on the Elimination of Discrimination against Women had not received any individual complaints specifically concerning women of African descent.

34. Verene Shepherd delivered a presentation entitled “Justice for people of African descent through history education: addressing psychological rehabilitation”, which supported the ongoing discussion on how formerly colonized people, specifically those in the Caribbean and the African Diaspora, could experience psychological rehabilitation and develop an African-centred knowledge programme that would help to address the cultural rupture caused by the transatlantic slave trade. She said that the draft programme of action for the International Decade for People of African Descent prioritized culturally sensitive education for children and youth. She emphasized the importance of revisionist history education, which represented a more liberating narrative of self, instead of what so many formerly colonized people had been taught. She concluded that it was important to honour post-colonial historians, who had provided a road map for true mental liberation.

35. Martyn Day, a senior partner with Leigh Day, a law firm in the United Kingdom, delivered a presentation on the roots of contemporary injustices and ways to attain justice for people of African descent. He gave an overview of contemporary routes to justice for historical wrongs worldwide and of reparations in relation to the slave trade, providing a number of examples of States that had apologized for past wrongs and cases in which that had been supported with monetary compensation for victims. He also detailed various claims for reparations in relation to the slave trade and provided information on the case concerning five elderly Kenyans who had been victims of torture by the British colonial administration in Kenya during the Mau Mau uprising, which had led to the landmark decision of the Government of the United Kingdom to compensate the victims.

36. During the interactive discussions, NGO representatives asked about issues such as teaching the history and culture of people of African descent to people who were not of African descent and dealing with cases of reparations at the international level and the implications thereof, including cases involving multinational or transnational corporations. In response, Ms. Shepherd said that it was important to teach the correct history and culture of people of African descent to all the world to enable the contribution of people of African descent to the world at large to be recognized. In relation to reparations, Mr. Day said that there had been several legal cases involving multinational companies. He added that the media had played an important role in highlighting the Mau Mau case.

37. In addition to the panel discussions, the Working Group sought to reach out to a wider audience and had organized a programme of talks focusing on access to justice for people of African descent, in collaboration with OHCHR and the Library of the United Nations Office at Geneva. During the programme, Ms. Shepherd delivered a lecture entitled “Reparation and the right to development: the CARICOM case”. She informed the audience about ongoing developments in the Caribbean Community (CARICOM) region in relation to reparations, including the CARICOM Reparatory Justice Programme and the action plan for its implementation. Catherine Fiankan-Bokonga, Vice-President of the Foreign Press Association in Switzerland and Liechtenstein (APES), gave a presentation on the role of the media in promoting access to justice for people of African descent. She said that, while there was much potential in the media to promote the rights of people of African descent, it was particularly difficult to do so owing to the inherent challenges in reporting on issues related to the rights of people of African descent.

38. A staff member from the Library of the United Nations Office at Geneva presented the Online Resource Guide of the Library on people of African descent. The Online

Resource Guide, available from <http://libraryresources.unog.ch/africandescent>, was formally launched during the programme of talks. It provided links to the most relevant United Nations documents on people of African descent, including resolutions, reports, declarations and treaties. People of African descent were of specific interest to the United Nations because of the discrimination they continued to suffer even after the end of the historical slave trade. The Online Resource Guide also highlighted the collections of the Library on the topic, both print and online resources, which consisted of books, articles, journals and databases. In addition, librarians had selected key websites in order to keep the Online Resource Guide up-to-date on the subject. The programme of talks was attended by over 80 representatives of Member States, NGOs, United Nations officials and the media.

39. To support the proposal for the International Decade for People of African Descent, the Library of the United Nations Office at Geneva had organized a special exhibition entitled "People of African descent: recognition, justice and development". The exhibition had been opened in August 2013 and would run until May 2014.

V. Conclusions and recommendations

40. **The Working Group concluded its fourteenth session. The theme for the session, "People of African descent: access to justice", was drawn from the broader theme, "Recognition, Justice and Development", proposed by the Working Group in its draft programme of action for the International Decade for People of African Descent.**

41. **The rationale for the focus of the fourteenth session is that the legacies of the slave trade, enslavement, colonialism, racial hierarchy and inequality are reflected even today in the justice system.**

42. **The Working Group records its appreciation to the United Nations High Commissioner for Human Rights for her intervention at the fourteenth session and her support for the draft programme of action for the International Decade for People of African Descent.**

A. Conclusions

43. **The Working Group underlines the importance of questioning the very concept of justice in all fields, and the need to broaden the definition of justice to include social justice, access to justice and the application of the legal system to address historical injustices.**

44. **The Working Group is concerned that the principles of restorative justice are not applied in addressing access to justice for people of African descent.**

45. **The Working Group emphasizes that there can be no exceptions to the criminalization of discrimination, which applies in the public and private spheres, to social, economic and cultural rights, civil and political rights and environmental rights. The Working Group is concerned about the prevalence of impunity and the lack of accountability in addressing discrimination against people of African descent in public and private spheres under the guise of freedom of expression.**

46. **The Working Group underlines the importance of mapping injustices at the national and regional levels. It re-emphasizes the conclusions of its twelfth session, which itself focused on recognition of people of African descent, and reiterates that mapping injustices cannot be done without the collection of disaggregated data.**

47. The Working Group recognizes the right to education as a tool for achieving social justice for youth of African descent.
48. The Working Group notes that the failure to provide good quality education and appropriate professional orientation for people of African descent is an obstacle to their accessing positions in the judiciary and administrative institutions at the highest levels.
49. The Working Group recognizes that the failure to provide appropriate education and training for youth of African descent often results in their aimlessness and unemployment and leaves them vulnerable to social and police profiling, consequently resulting in their overrepresentation in the criminal justice system.
50. The Working Group recognizes the intersectionality between multiple forms of discrimination based on gender, ethnicity, religion or origin and other forms of discrimination.
51. The Working Group regrets that, despite having gained independence, formerly colonized peoples are still living with the legacies of slavery and colonialism. The forced separation of Africans from their homeland has resulted in cultural and social alienation from their roots and identities. The cultural rupture caused by the transatlantic trade in Africans as well as by European colonization still has an impact on the discrimination faced by people of African descent in their search for justice.
52. The Working Group recognizes that it is possible to seek and achieve reparatory justice and compensation for victims of colonial injustices, as demonstrated by the Mau Mau case in Kenya.
53. The Working Group notes that education that is culturally appropriate and history education that is not only linked to slavery but includes Africa before the transatlantic slave trade are forms of social justice for people of African descent.
54. The Working Group notes that, despite guarantees in international and national law, the prevalence of racism, racial discrimination, xenophobia and related intolerance affects people of African descent in a unique fashion, to the point that many people of African descent are still unable to obtain remedies for wrongful acts through their domestic institutions. Structural discrimination occurs at all stages and levels of the administration of justice, inter alia in legislation, law enforcement, courts and tribunals. One of the most important challenges that people of African descent face is discriminatory treatment by the very institutions that are supposed to administer justice.
55. The Working Group underscores that both judicial and law enforcement bodies, which should be primary forces in opposing and preventing racism, fail to uphold justice and equality, and instead mirror the prejudices of the society they serve. In some cases, even if the law is not discriminatory, people of African descent are denied the right to a fair trial, which puts them at an increased risk of harsh punishments, including the death penalty in some countries.
56. The Working Group emphasizes the need for philosophical and legal changes to juvenile justice systems, which currently maximize penalties and lead to the increased entry of juveniles into the adult criminal justice system, thereby resulting in the institutionalization of young people of African descent, instead of using alternative methods and solutions.
57. The Working Group stresses the need to address the persistence of racial discrimination among judicial and law enforcement officials, which affects the application of the law and the functioning of the criminal justice system and

contributes to an unfair overrepresentation of people of African descent among persons in detention. The Working Group notes that people of African descent are often subjected to longer sentences than other individuals who have committed the same offence. The practice of racially profiling youth of African descent leaves them disproportionately policed, prosecuted, convicted and imprisoned compared to the rest of the population.

58. The Working Group is concerned about the torture, ill-treatment and harassment suffered by people of African descent at the hands of law enforcement officials. When the rights of people of African descent are violated, recourse to institutions of justice is often a distant possibility. Inadequate complaint mechanisms prevent young people of African descent from responding to misuse of power and discriminatory practices by the law enforcement and judicial authorities. The consequences of racial targeting are far-reaching and have both individual and collective effects.

59. The Working Group notes that, despite the existence of numerous legislative instruments at the national, regional and international levels, women and girls of African descent are facing even more challenging obstacles to justice. Women of African descent very often suffer physical or verbal violence on the part of judicial and law enforcement authorities.

B. Recommendations

60. In order to provide equal access to justice for people of African descent and as a part of the duty of States to protect human rights, the Working Group calls upon States to guarantee that:

(a) The principles of restorative justice are applied in addressing access to justice for people of African descent;

(b) At the national and regional levels, an atlas mapping injustices is developed, supported by comprehensive disaggregated data. Such atlases can be the framework for dialogue in addressing the realization of fundamental rights and the protection of knowledge for vulnerable populations, including people of African descent;

(c) Youth of African descent enjoy, including, when appropriate, through the provision of special measures, access to quality education and appropriate professional orientation in order to have access to positions in the judiciary and administrative institutions at the highest levels;

(d) Institutionalizing young people is used as a last resort;

(e) The intersectional nature of discrimination on the basis of gender, religion or ethnicity and other forms of discrimination is recognized, keeping in mind that perpetrators of multiple forms of discrimination are not always cognizant of the fact that they are racially discriminating;

(f) Appropriate education and training are provided for youth of African descent in order to prevent unemployment, social stigmatization, police profiling and brutality;

(g) Good quality and free legal aid is offered to women of African descent who are in need, so that access to justice is available to everyone. Information about legal services and legal centres should be easily available and widely distributed, especially among groups facing multiple forms of discrimination, such as women of

African descent. Regular training and education should be provided to people of African descent about their legal rights and the available services;

(h) Guidelines are adopted for the prevention, recording, investigation and prosecution of racist or xenophobic incidents. Guidelines should guarantee that people of African descent who are victims of acts of racism, especially women of African descent who are victims of multiple forms of discrimination, receive proper treatment in police stations and that complaints are recorded immediately, investigations are pursued without delay and in an effective, independent and impartial manner, and files relating to racist or xenophobic incidents are retained and incorporated into databases;

(i) People of African descent can seek protection and remedies effectively, through the competent national tribunals and other State institutions, against any acts of racial discrimination, and seek just and adequate reparation or satisfaction from such tribunals for any damage suffered as a result of racial discrimination;

(j) Judicial remedies in cases of racial discrimination are easily accessible, prompt, impartial, affordable and geographically accessible. Law enforcement and judicial services should have an adequate and accessible presence in the neighbourhoods, regions, collective facilities, camps or centres where groups of people of African descent reside, so that their complaints can be expeditiously received. Accessible and youth-friendly reporting systems and services must be in place;

(k) People of African descent enjoy all the guarantees of a fair trial and equality before the law, as enshrined in the relevant international human rights instruments, and specifically the rights to presumption of innocence, assistance of counsel and an interpreter, an independent and impartial tribunal and guarantees of fair punishment, and the enjoyment of all the rights to which prisoners are entitled under the relevant international norms;

(l) Acts of racial discrimination are prosecuted and punished and the victims receive full reparation. The obligation to prosecute and punish should cover all material and intellectual perpetrators of the violation. Cases of racial discrimination must receive effective, proportionate and dissuasive sanctions and remedies, both to reduce impunity and to ensure that victims can regain the dignity of which they were deprived;

(m) Programmes are in place to provide reparatory justice for people of African descent as victims of racial discrimination and historical injustices, including full recognition of wrongs committed;

(n) Measures are adopted to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour, features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion;

(o) The administration of justice and the criminal justice system are subject to permanent monitoring and adequate review in order to gauge better the existence and extent of racial discrimination. The judicial system should adopt special measures to recruit and promote people of African descent;

(p) The criminalization of race is addressed, taking measures to eliminate the overrepresentation of young people of African descent who are subject to the criminal justice system, as well as double standards in sentencing. The racial aspects of violence and imprisonment should be recognized;

(q) The potential discriminatory effects of domestic legislation are eliminated, particularly of legislation on terrorism, immigration and nationality, as well as legislation that has the effect of penalizing without legitimate grounds certain groups or members of certain communities, including people of African descent, and in any case, respecting the principle of proportionality in its application;

(r) Measures are adopted to eliminate sociocultural ideologies inherited from the slavery period, which perpetuate racism and racial discrimination against people of African descent and their continued invisibility at all levels of society. Programmes should be established to preserve knowledge of the culture and history of people of African descent in museums and other forums for future generations, and efforts made to encourage and support the publication and distribution of books and other print materials, as well as the broadcasting of television and radio programmes, about their history and cultures. States and civil society should work with the media and communications companies to promote more positive and inclusive images and representations of people of African descent in order to increase their visibility within society and challenge negative stereotypes and resultant discrimination;

(s) A greater knowledge of and respect for the heritage and culture of people of African descent are adopted, particularly for children and youth, through intercultural education and dialogue, awareness-raising and activities designed to protect and promote African culture and African-descent culture in its various manifestations. Specific plans must be in place for the ethnic recognition and visibility of people of African descent. Measures should be adopted to preserve, protect and restore traditional knowledge, and the intangible patrimony and spiritual memory of sites and places of the slave trade and slave resistance;

(t) The rights of children and youth of African descent are specifically protected with regard to their identity, culture and language, particularly by promoting culturally and linguistically sensitive education policies and programmes. Measures should be adopted to combat the indirect discrimination faced by children in education systems by removing the negative stereotypes and imagery often used in teaching materials, ensuring the inclusion in curricula of the histories and cultures of people of African descent, and the history of the transatlantic slave trade, and ensuring the cultural or linguistic relevance of teaching for children of African descent. Formal education at the early childhood, primary, secondary, post-secondary and adult levels must incorporate knowledge about the history of transatlantic slavery, the role of people of African descent in global development, and the diversity and richness of civilizations and cultures which constitute the common heritage of humankind. Comprehensive curricula reform should also tackle all forms of stereotypes;

(u) Good practices of other countries and regions that have been able to address the negative heritage of slavery and to build inclusive, multicultural and multi-ethnic societies are shared and exchanged.

61. The Working Group urges States to adopt national action plans against racial discrimination which include special measures, based on disaggregated data, as appropriate, to address structural discrimination against people of African descent, taking into account general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, adopted by the Committee on the Elimination of Racial Discrimination.

62. The Working Group reiterates its support for the implementation of the Programme of Action for the International Decade for People of African Descent. The

Programme of Action builds on the 12 years of experience of the Working Group, the recommendations of various stakeholders and the active participation of most of the Member States and civil society and experts that attended the twelfth session of the Working Group. The Working Group recommends that its Programme of Action serve as the basis for practical activities to be developed at the national, regional and international levels during the International Decade for People of African Descent.

Annex I

Agenda

1. Opening of the session.
2. Election of the Chair-Rapporteur of the Working Group.
3. Adoption of the agenda.
4. Organization of work.
5. Update and briefings on activities undertaken by the Working Group in the past year:
 - (a) Human Rights Council and General Assembly;
 - (b) Visit to Brazil by the Working Group;
 - (c) Update on the International Decade for People of African Descent;
 - (d) Report on the internal meeting of the Working Group;
 - (e) Other activities.
6. Thematic discussion on people of African descent, with a focus on the theme “People of African descent: access to justice”:
 - (a) Keynote address;
 - (b) Other presentations;
 - (c) Interactive discussion with participants.
7. Adoption of the conclusions and recommendations of the Working Group at its fourteenth session.

Annex II

[English only]

List of participants

A. Members of the Working Group

Ms. Monorama Biswas

Ms. Maya Sahli

Ms. Mireille Fanon Mendes-France

Ms. Mirjana Najchevska

Ms. Verene Shepherd

B. Member States

Afghanistan, Albania, Algeria, Andorra, Angola, Argentina, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Liechtenstein, Lithuania, Malaysia, Mauritius, Mexico, Morocco, Nepal, Netherlands, Nigeria, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Serbia, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Zimbabwe.

C. Non-Member States

Holy See, State of Palestine.

D. International organizations

United Nations Educational, Scientific and Cultural Organization (UNESCO), World Federation of United Nations Associations (WFUNA).

E. Intergovernmental organizations

African Union, Organisation internationale de la Francophonie (OIF), European Union.

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

African Canadian Legal Clinic, Association of World Citizens, Commission africaine des promoteurs de la santé et des droits de l'homme, Human Rights Watch, International Youth and Student Movement for the United Nations (ISMUN), Nord-Sud XXI, Rencontre africaine pour la défense des droits de l'homme, UN Watch.

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

Black Mental Health UK, Culture of Afro-Indigenous Solidarity, Mouvement contre le racisme et pour l'amitié entre les peuples, Swedish National Committee for the International Year for People of African Descent, World Against Racism Network.

H. Panellists and presenters

Mr. Anthony Bagues, Brown University Providence, Rhode Island, United States of America;

Ms. Catherine Fiankan-Bokonga, Vice-President of the Foreign Press Association in Switzerland and Liechtenstein (APES);

Ms. Cristina Giordano, Library of the United Nations Office at Geneva;

Ms. Georgina Mendoza Solorio, Human Rights Treaties Division, secretariat of the Committee on the Elimination of Discrimination against Women, OHCHR;

Mr. Gilles Devers, lawyer and Professor of Law, University of Lyon, France;

Mr. Laurens Huetting, Centre for Independence of Lawyers and Judges, International Commission of Jurists;

Mr. Luis Espinosa, Counsellor, Permanent Mission of Ecuador;

Mr. Martyn Day, Senior Partner, Leigh Day, United Kingdom;

Mr. Pastor Elías Murillo Martínez, Member of Committee on the Elimination of Racial Discrimination;

Ms. Suzanne Charles, Institute for Gender and Development Studies, University of the West Indies.
