

Remarks on the impact on the UN working Group of Experts on People of African Descent

Joe Frans

1. African Diaspora delegates in Europe met at a Regional Consultative Conference co-organized by the African Union (AU) and the Government of South Africa in Paris, France, on 11-12 September 2007. The delegates were drawn from France, Italy, Spain, Portugal, The Netherlands, Germany, Sweden, Switzerland and Belgium, among others. They were all people of African Descent Living in Europe.
2. The Conference was one of the six regional consultative fora organized by the AU worldwide with the view to harnessing African Diaspora contributions and input towards the AU's African Diaspora Ministerial meeting which was held in South Africa in November 2007, and the Summit of Heads of State and Government scheduled for early 2008 in the same country.
3. In their deliberations in the Opening Ceremony, two Plenary Sessions, and the seven Commissions, participants at the Conference were guided by the objectives that are to inform the AU's African Diaspora Summit, namely: To create sustainable partnerships between the People of African Descent around the world and the African continent through a realizable program of action.
4. Accordingly, the Conference was organized under the theme: "Towards the realization of a United and Integrated Africa and its Diaspora". Chair, I dare say that the conference took place with inspiration from the deliberations of our Working Group.
5. The Conference was opened by South Africa's Minister of Foreign Affairs, Dr Nkosazana Dlamini Zuma; Ambassador Mahamat Annadif, AU's representative to the European Union; Ambassador Raymond Lafontant Jr, representative of the Caribbean Community (CARICOM) to the European Union; and Dr Jinmi Adisa, representing the Chairperson of the AU Commission, Prof. Alpha Konare.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

6. The Conference was also addressed in the Opening Ceremony by Prof Thandika Mkandawire, Director at the United Nations Research Institute for Social Development (UNRISD), who gave a characterization of the People of African Descent in Europe and the challenges confronting this constituency, African Governments and the AU.
7. The Conference noted the enduring legacy of slavery, especially in its current manifestation in the form of human trafficking, racism, discrimination and xenophobia; and that Africa's place in the global system is largely a function of the legacy of slavery and colonialism. Furthermore, the Conference observed that:
8. Institutional racism and discrimination, including distortions in the media, affect the plight of People of African Descent at the work place and the broader society.
9. In the context of the "war on terror" stereotypes, people of African Descent in Europe are often accused of involvement in terrorist activities; and that, consequently, this impacts adversely on the administration of justice vis-a-vis the African community in Europe.
10. The General Assembly in its resolution 61/149 decided to convene a Durban Review Conference in 2009 , to review progress on and assess implementation of the Durban Declaration and Programme of Action by all stakeholders, to assess the effectiveness of the existing Durban follow-up mechanisms and other relevant United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance in order to enhance them, to promote the universal ratification and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and proper consideration of the recommendations of the Committee on the Elimination of Racial Discrimination and to identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance. The Human Rights Council in its resolution 3/2 decided that the Council will act as the Preparatory Committee for the Durban Review Conference.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

11. At its 9th meeting, on 31 August 2007, the Preparatory Committee for the Durban Review Conference, in decision PC.1/10, decided to request the Working Group of Experts on People of African Descent and other relevant human rights mechanisms including other special procedures to assist the Preparatory Committee by undertaking review and submitting recommendations, through the Office of the High Commissioner for Human Rights, as contributions to the outcome of the Review Conference (see A/62/375, annex I, p. 34).
12. In her working paper to the Human Rights Commission, Ms. Zerrougui recalls the significance of the non-discrimination clause, equality before the law and equal protection of the law in the most relevant international instruments. She identifies the potential victims of discrimination and proposes a conceptual framework for a possible study on discrimination in the criminal justice system. This framework stresses the need for information regarding the manifestations of discrimination in the criminal justice system, while suggesting that the study should concentrate on research into and the identification of discriminatory mechanisms responsible for the persistence of discrimination in the administration of criminal justice.
13. While the preparatory work for the World Conference against Racism drew attention to the scale of the phenomenon of discrimination in the administration of criminal justice, the actual Declaration of the Conference is absolutely unambiguous in that respect: it not only confirmed the existence of behavioural discrimination in national criminal justice systems, but it also referred to the persistence of de jure discrimination. Paragraph 25 of the Declaration reads as follows: “We express our profound repudiation of the racism, racial discrimination, xenophobia and related intolerance that persist in some States in the functioning of the penal systems and in the application of the law, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement, especially where this has contributed to certain groups being over-represented among persons under detention or imprisoned.” (A/CONF.189/12)
14. The Programme of Action adopted by the Conference draws attention to inequalities of treatment regarding access to justice for people of African descent, migrants and their

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

families, women, children, minorities, Roma, refugees and asylum-seekers and indigenous peoples. States are urged to ensure that the treatment of such persons by police and immigration services respects their dignity and is non-discriminatory, to prevent and detect effectively misconduct by police officers and other law enforcement personnel which is motivated by racism and discrimination, to implement and enforce effective measures to eliminate the phenomenon known as “racial profiling”, to combat impunity, seen as a serious obstacle to a fair and equitable justice system, and to examine possible links between criminal prosecution, police violence and penal sanctions, on the one hand, and racism, racial discrimination, xenophobia and related intolerance, on the other. (A/CONF.189/12, paras. 66 et seq.)ⁱ

15. In other words, the manifestations of discrimination in the administration of criminal justice are clearly spelt out in the Declaration and Programme of Action of the World Conference against Racism. Follow-up bodies are planned for the Conference and the Sub-Commission on the Promotion and Protection of Human Rights has been called upon, as a mechanism of the Commission on Human Rights, to contribute to the implementation of the Conference’s Programme of Action. At its fifty-eighth session, the Commission on
16. The Human Rights Commission adopted a decision (2002/109) inviting the Sub-Commission to give careful consideration to the Durban Declaration and Programme of Action and to play a complementary role in the realization of the objectives of the World Conference.ⁱⁱ
17. The non-governmental organization Penal Reform International describes the issues we are talking of very well on page 6 of its annual report for 2000: “Proportions of people from ethnic minorities in the prison population in very many countries are higher than that in the general population. Studies have shown that this is frequently the result of racial bias in police and court activities, and that people from ethnic minorities are also discriminated against within prison. In some countries, there are

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

18. Substantial numbers of foreigners in prison who may have difficulty with the national language and therefore have limited access to information vital to their case. They may also experience many other problems in prison.ⁱⁱⁱ Mentally disturbed people have special difficulties within justice systems and are often imprisoned inappropriately as opposed to receiving hospital treatment. Often children in conflict with the law are imprisoned and harshly treated, in contravention of international standards designed to protect and promote children's rights. ... Women form less than 5 per cent of prison populations in most countries. Because they are in a minority, their specific needs are often overlooked. They are often imprisoned far from their homes, further damaging important family relationships.”

19. **The Working Group has made several recommendations concerning the administration of justice as it affects people of African descent, including adequate access to legal aid, racial equality and diversity in the recruitment and training of law enforcement personnel, proportional representation in jury selection and adequate representation in judicial appointments at all levels. Other recommendations such as the elimination of violence, including police violence, which affects people of African descent are still of particular relevance. As the Working Group recommended at its third session, “the collection and publication of disaggregated data on arrests, prosecutions and sentencing would enable States and other stakeholder to monitor the situation of people of African descent in the administration of the justice system and to determine whether they are the victims of discrimination”¹. Available information suggests that people of African descent in some States constitute a disproportionately high percentage of the prison inmate population and receive harsh sentences at a greater rate than those of the predominant race. Closely related to this is the issue of racial profiling about which the Working Group, at its sixth session, acknowledged that racial profiling has been recognized as a specific problem as a result of the systematic and historic targeting of persons of African descent, with severe consequences in creating and perpetuating profoundly negative stigmatization and stereotyping of persons of**

¹ E/CN.4/2004/21, para. 111.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

African descent as having a propensity to criminality². The Working Group's concern regarding racial profiling is shared by the European Commission against Racism and Intolerance which, on 29 June 2007, adopted its General Policy Recommendation No. 11 on racism and racial discrimination in policing in which, inter alia, it adopts the broader definition of racial profiling and recommends measures to combat this practice. The recommendations of the Working Group concerning the administration of justice are particularly salient for the Preparatory Committee in its preparations for the Durban Review Conference.

20. The Working Group has encouraged States and national institutions to include people of African descent, in particular, in the elaboration and implementation of national plans of action to combat racism and racial discrimination, as recommended in the Durban Declaration and Programme of Action. These plans of action would serve to address many of the concerns expressed by the Working Group during its deliberations. Such issues as equal access to health, housing, employment, education and participation in public life would all be well served if States were to elaborate national plans of action concerning people of African descent. Although there have been some advances in this regard, the majority of States have not yet established national plans of action, as called for in the Durban Declaration and Programme of Action, and the inclusion of the Working Group's recommendations in this regard in its contribution to the Preparatory Committee would underline the importance of concerted national initiatives directed at ameliorating the difficult situation faced by people of African descent in many countries. The Office of the United Nations High Commissioner for Human Rights is in a position to offer technical assistance to States in the elaboration of such plans. These plans should include a gender perspective and serve to further the goal expressed by the Working Group at its fifth session regarding the empowerment of women of African descent. Along with national plans of action, the existence or creation of national institutions mandated to advance the situation of people of

² A/HRC/4/39, para. 56.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

African descent is important in addressing the issues identified by the Working Group as the most pressing and assuring effective, coordinated and coherent implementation of its recommendations. In many countries with a considerable population of African descent, national institutions exist to guide and implement policy concerning this sector of the community but the functioning of these institutions will be impaired if they lack adequate funding, autonomy or political legitimacy.

- 21. The experiences of millions of people worldwide testify to a simple fact: where there is racism there can be no justice.³**

- 22. Reforming criminal justice systems means ensuring primarily that no one is deprived of justice and that all should have equal access to justice. Today, one of the main and most complicated problems faced by penal reformers is the pervasiveness of racism and discrimination within penal and penitentiary systems worldwide.**

- 23. People of African descent and African people are amongst the most vulnerable and discriminated against groups, and for this reason need specific legal mechanisms protecting their right to an adequate and fair trial.**

24. Comparison of discrimination throughout Europe and the U.S. illustrates the prevalence of racial discrimination across continents and in old and new democracies. The problem of racism is made more complicated by the links between racial discrimination and social and economic disparities. Racial minorities are generally among the poorest and most marginalized in societies, often as a result of long time histories of colonial exploitation, slavery and discrimination.

25. Racial profiling based on presumed immigration status disrupts communities where both legal and illegal immigrants live and both groups are routinely challenged.

³ *Racism and the Administration of Justice*, Amnesty International Publications, 2001. p. 5.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

26. Studies show that profiling is not only an inefficient police tool but it also damages trust in the police and alienates communities who feel that the law enforcement apparatus is used against them rather than to protect them. As a result, those communities are less likely to cooperate with the authorities in preventing and detecting crime.
27. Because some racial groups are seen as more prone to criminal behavior and are generally discriminated against, abusive behavior by the police is tolerated to a greater extent than it would be against other groups. As a result, racial and religious minorities are more likely to be victimized and less likely to have their complaints taken seriously. In addition to the harm done to individuals, discriminatory behavior by the police can lead to the breakdown of trust in the system and increases alienation among particular racial or ethnic groups.
28. Though decisions in prosecution and sentencing may appear to be objective and race neutral, racism is so deeply embedded within the criminal justice system that discrimination occurs even absent any conscious racist intent. There is a cumulative effect. Discriminatory practices at one stage of the criminal justice system negatively impact other stages. In addition, economic and class factors can add to the discrimination faced by minorities. Prejudicial prosecutorial, judicial and jury decisions, disproportionately harsh sentencing, or the failure to make alternative non-custodial sanctions available can all result in discriminatory treatment.
29. As a result of racial discrimination at earlier stages in the system, minorities are over-represented in most prison systems and so as a group they suffer disproportionately from all the ill effects of prison.
30. In addition, the racist assumptions that can prejudice the result of their interactions with police or with the courts and juries can lead to them receiving harsher conditions and more abusive treatment while they are in prison. Both prison staff and other prisoners may be responsible for isolating and abusing particular racial or ethnic groups. Religious minorities may find it difficult or impossible to practice their religion.

Introductory contribution by Joe Frans on the round table discussion on the African Diaspora in Europe

31. Vulnerable groups can also suffer disproportionate long-term effects from incarceration. Reintegration into society is difficult for all prisoners, but prisoners of particular races or ethnic origin may suffer from increased stigmatization and lack of access to support services, accommodation and employment. This is especially problematic in the U.S. where collateral consequences of conviction can be profound.
- 32. The problem of racial profiling is acknowledged and there is acceptance of the need for change but problems persist. Since September 11 the problem has become worse with the profiling of people of South Asian and Arab descent and Muslims.**
33. The War on Drugs has a disproportionate impact on people of color. Although all racial and ethnic groups use drugs at similar rates, the prosecution and sentencing of drug crime is far more focused on people of color.
- 34. Sentencing is a continuing problem despite the move away from discretionary sentences as the effect has been to remove discretion from the judiciary and give it to prosecutors.**
35. The Death Penalty shows an obvious racial imbalance with many studies demonstrating that the race of the victim in particular affects capital sentencing, though such reports are routinely ignored by the government.
- 36. Chair, clearly there are a number of pertinent issues we need to discuss in analyzing the recommendations that we have we made previously in this regard as part of our contribution to the Durban review conference. My hope is that our conclusions at the end of the day will be practical, action oriented and implementable.**

I thank you

ⁱ In this respect it is worth highlighting the significant effort made by non-governmental organizations in Durban to include discrimination in the administration of criminal justice in the Programme of Action of the World Conference. See in particular the contributions by Amnesty International, the World Organization against Torture, Penal Reform International and International Criminal Justice CAUCUS.

ⁱⁱ A second draft decision (E/CN.4/2002/L.82) submitted under item 6 of the agenda was withdrawn by its joint authors.

ⁱⁱⁱ See the annual reports of Gabriela Rodríguez Pizarro, Special Rapporteur of the Commission on Human Rights on the human rights of migrants. On page 4 of her report on her visit to Ecuador in 2001, she writes: “In the prison system, the Special Rapporteur noted with concern the situation of many foreign detainees who benefit from no representation from their countries’ consuls. She was provided with testimony from persons unable to speak English or Spanish who had been tried without even being able to communicate with their defence counsel, in the absence of interpreters for their languages. Most detainees in such situations come from African, East European and Asian countries. The Special Rapporteur also encountered foreigners imprisoned for ordinary offences who, though they claimed to have served their sentences, remained in prison because they had no travel documents or money for the journey home” (E/CN.4/2002/94/Add.1). The Working Group on Arbitrary Detention made similar findings during its visit to Bahrain: “In its interview with prisoners, the delegation found that there were a very large number of foreigners serving prison sentences; many of them spoke neither Arabic nor English, yet had been sentenced without a lawyer present. Some were in prison for offences their employers said they had committed, which in some cases appeared to relate to labour-law disputes; they could call their consulates, but in practice the consulates let things be and neither visited them nor offered assistance” (E/CN.4/2002/77/Add.2, para. 94).