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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\***

### **Visit to the United States of America (25 to 29 January 2010)**

#### *Summary*

At the invitation of the Government of the United States of America, the Working Group of experts on people of African descent undertook an official visit to the United States of America from 25 to 29 January 2010. In the present report, the Working Group summarizes information received during the meetings it held with Government officials and civil society organizations regarding the general situation of people of African descent in the United States and the situations that expose them to discrimination and outlines the action taken at various levels for their well-being. It concludes with recommendations that the Working Group believes will, if implemented, make tangible improvements in the situation of people of African descent in the United States.

The Working Group members appreciated the very informative and frank discussions they had with Government and civil society representatives and were impressed with the comprehensive way in which attention to the situation of people of African descent is contemplated in all of the Government's programmes to ensure the fundamental rights of its citizens. Although the members identified challenges still facing African Americans, the various Government representatives with whom they met accepted that, as is the case in all societies, in some areas there are still barriers to the full enjoyment of rights and efforts are continuing to correct disparities and discrimination where they are found to exist.

During their visit, the members of the Working Group found that the challenges faced by people of African descent in this country related mainly to disproportionately high levels of unemployment, generally lower income levels than the rest of the population,

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\* Late submission.

access to education (especially to higher levels of education) and quality of education, problematic access to quality health-care services and the high incidence of certain health conditions, electoral disenfranchisement and structural issues in the administration of justice (in particular incarceration rates).

The concrete measures recommended by the Working Group include the adoption of an anti-discrimination act, the continuation and enhancement of educational initiatives such as magnet and charter schools, the adoption of an appropriate employment quota system in the private sector, the extension of the use of statistics in court proceedings to demonstrate a prima facie presumption of discrimination, measures to address the disproportionate incarceration rates of people of African descent and the discriminatory application of some laws, greater consultation with African American communities concerning urban development projects that affect them, the establishment of a human rights commission in accordance with the Paris Principles with a dependency that deals specifically with people of African descent, and efforts to ensure to children of African descent all of the rights contained within the Convention on the Rights of the Child.

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## **I. Introduction**

1. Bearing in mind its status as a special procedure of the former Commission on Human Rights, the Working Group of experts on people of African descent decided at its fourth session to undertake country visits as a means of effectively discharging its mandate. The Working Group recognized that such visits could contribute to in-depth understanding of the situation of people of African descent in various regions of the world (E/CN.4/2005/21, para. 98).

2. At the invitation of the Government of the United States of America, the Working Group undertook a country visit to this country from 25 to 29 January 2010. The delegation, headed by Mirjana Najcevska, the Acting Chairperson of the Working Group, also included the experts Ralston Nettleford and Monorama Biswas. During their visit, the experts visited New York and Washington, D.C. The members of the Working Group regret to report that Mr. Ralston Nettleford passed away during the country visit.

3. In New York, the Working Group members met with various non-governmental organizations (NGOs). In Washington, D.C., the Working Group members held meetings with representatives of the Department of State, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, the United States Equal Employment Opportunity Commission, the United States Census Bureau and the Department of Homeland Security. They also met with Congressman Donald Payne of the Congressional Black Caucus and with NGOs.

4. The experts wish to thank the Government for its invitation and for its exemplary assistance before and during their visit to the country. They would also like to thank the NGOs and people of African descent with whom they met during their visit. In the present report the experts describe the information received by the members of the Working Group during their visit to the United States, identify good practices and make recommendations for actions that may assist in remedying challenges that were identified.

## **II. Context of people of African descent in the United States of America**

### **A. General situation**

5. Most people of African descent in the United States are the direct descendants of Africans who were held captive and survived slavery in the seventeenth century. The conception of a race-based slave system developed in the 1700s. By 1775, Africans made up 20 per cent of the population in the American colonies, which made them the second largest ethnic group after the English. In 1863, during the American Civil War, President Abraham Lincoln signed the Emancipation Proclamation, which declared that all slaves in states that had seceded from the Union were free.

6. The civil rights movement between 1954 and 1968 endeavoured to abolish racial discrimination against African Americans. Since then, direct individual or institutional (especially openly violent) discrimination has mainly disappeared from everyday life and African Americans have significantly improved their social and economic standing. However, structural and indirect discrimination is still visibly present in many fields of public life. Due partially to the legacy of slavery, racism and discrimination, African

Americans have had economic, social and educational disadvantages, as well as challenges to the enjoyment of basic human rights.

7. Today, African Americans have advanced greatly in education, but continue to have, on average, fewer years of studies than others in the United States. There remain today African American colleges and universities which were set up when segregated colleges did not admit people of African descent. By 1947, about one third of African Americans over 65 were considered to lack the literacy to read and write their own names. The 2004 American Community Survey reported that about 80 per cent of people of African descent aged 25 and older were high school graduates and about 17 per cent had a bachelor's degree or higher education. The inequality that African Americans have faced is also evident in the area of work, where African Americans are still underrepresented in employment nationwide. Although African Americans have benefited from the advances made over the past centuries, particularly among the educated, lingering effects of historical marginalization continue to exist.

## **B. Framework for the protection of the human rights of people of African descent**

### **1. The international legal framework for the protection of the human rights of people of African descent**

8. The United States has signed and ratified two international instruments related to the fight against racial discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The combined initial to third reports (CERD/C/351/Add.1) of the State to the Committee on the Elimination of Racial Discrimination were submitted in 2000 and the combined fourth to fifth periodic reports (CERD/C/USA/6) were submitted to that body in 2007. The initial report of the United States to the Human Rights Committee (CCPR/C/81/Add.4) was submitted in 1994 and the combined second and third periodic reports (CCPR/C/USA/3) were submitted to that body in 2005.

### **2. The national legal framework**

9. The United States has demonstrated its commitment to combating racism and discrimination in its wide-ranging and comprehensive legislative framework, which protects and advances the right to non-discrimination on the bases of, inter alia, race and ethnicity. The most important elements of the framework are the Constitution and the Civil Rights Act of 1964. The prohibition upon racial discrimination appears in the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, all adopted after the end of the Civil War, and in the Fifth Amendment which, since 1954, has been interpreted as prohibiting the federal Government from racially discriminating.<sup>1</sup> The Thirteenth Amendment abolished slavery, the Fourteenth Amendment ensures that states provide equal protection of the laws to all persons within their jurisdiction and the Fifteenth Amendment provides that the right to vote shall not be denied or abridged on account of race, colour or previous condition of servitude. However, the abolition of slavery is not absolute and unlimited. The Thirteenth amendment allows slavery "as a punishment for crime whereof the party shall have been duly convicted... within the United States, or any place subject to their jurisdiction".

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<sup>1</sup> See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

10. The Civil Rights Act of 1964 is widely considered one of the most important references for the prohibition of discrimination in the United States and contains thematic titles that deal with non-discrimination in a range of areas. Title II prohibits discrimination on the basis of race, colour, religion or national origin in places of public accommodation, including, inter alia, lodgings, restaurants and places of entertainment. Title IV provides for the desegregation of public schools and non-discrimination in admissions to public colleges and universities. Title VI provides that no person shall be excluded from participating in, or denied the benefits of, federally funded or assisted programmes or activities on the grounds of race, colour or national origin. Title VII prohibits discrimination in employment on the grounds of, inter alia, race, colour and national origin.

11. Among other pieces of legislation that contain provisions prohibiting racial discrimination, the Civil Rights Acts of 1866 and 1871 prohibit racial discrimination in certain criminal and civil matters, the Voting Rights Act of 1965 provides several safeguards against the introduction of laws and regulations that have a discriminatory purpose or a discriminatory effect upon the voting rights of minorities and authorizes the United States Attorney General and individuals to bring lawsuits in federal court to enforce the guarantees of the Fourteenth and Fifteenth Amendment. The Fair Housing Act prohibits discrimination on the grounds, inter alia, of race, colour, religion or national origin in the sale or rental of housing as well as in other residential real estate-related transactions and residential brokerage services.

12. Other statutes that protect against racial discrimination include, inter alia, the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Violent Crime Control and Law Enforcement Act of 1994, the anti-discrimination provision of the Immigration and Nationality Act, the Higher Education Act of 1965, the Equal Educational Opportunities Act of 1974, the Housing and Community Development Act of 1974 and the Workforce Investment Act of 1998.

13. Also, the President of the United States, in furtherance of the Constitution and State laws, has often issued executive orders prohibiting various types of discrimination, including discrimination on the bases of race and national origin. Some Executive Orders also require affirmative action, which is defined in implementing regulations. Most states have also enacted their own legislation prohibiting racial discrimination in the various areas where they have jurisdiction. A racially discriminatory act may contravene both state and federal legislation and, in some cases, local law as well, each jurisdiction having its own sanction.

14. Finally, as the United States uses a common law system, jurisprudence is a significant source of guarantees and protections for its citizens, including people of African descent. Landmark decisions, especially those of the United States Supreme Court, have established legal benchmarks in upholding the right to non-discrimination for racial minorities such as people of African descent.

15. An important recent development regarding anti-discrimination legislation and practice in the United States is the gradual rolling back of affirmative measures introduced during the 1960s and 1970s and aimed at overcoming the effects of past societal discrimination. This process continues, as racism is often perceived as a thing of the past, and wider American society as “colour blind”. In several meetings with NGOs it was mentioned that there is a need for a specific non-discrimination law containing affirmative measures and positive action as well as a shift in the burden of proof in cases of discrimination brought before courts.

### **III. People of African descent in the United States: general comments**

#### **A. Participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of the country**

16. The members of the Working Group acknowledge the strenuous efforts of the Government of the United States to address the challenges that face people of African descent in this country. In their meetings with Government agencies, the members found that each of the many different departments has programmes that assist people of African descent to realize their fundamental rights and improve their daily lives. While there is no federal authority charged specifically with monitoring and advancing the situation of people of African descent, there is a comprehensive structure in place that ensures that their situation is included in the agenda and programmes of the different agencies that have thematic responsibility for ensuring the provision of health, education, housing and other fundamental services.

17. Through its many meetings held with State officials, a member of Congress and civil society representatives, the experts found the following to be the most pressing issues in the United States as regards the participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of their country.

##### **1. Employment**

18. In their meeting with the Department of Labor, the members were informed that there are non-discrimination requirements placed upon those private enterprises that wish to contract with the federal Government. These include the requirement that the contractor does not discriminate against any member of its entire workforce during the performance of a federal contract or subcontract and that it has, or puts in place, self-monitored affirmative action measures. While contractors are required to self-monitor, the Office of Federal Contract Compliance Programs will review selected contractors' compliance with both the non-discrimination and affirmative action obligations.

19. It was explained to the members that the Workforce Investment Act is designed to provide workforce investment activities that increase the employment, retention and earnings of participants for all Americans. Section 188 of the Act prohibits discrimination on various bases, including race and national origin, in those activities. The activities may, however, be targeted to various other population groups - for example, persons who are income disadvantaged. Section 188 of the Workforce Investment Act is a primary source of authority for the Department of Labor's Civil Rights Center, which, inter alia, enforces the section 188 prohibition of discrimination and requirement of equal opportunity for those who participate in a financially assisted programme or activity under Title I of the Workforce Investment Act.

20. When an employer is alleged to have acted in a discriminatory way, workers may file a complaint with the Equal Employment Opportunity Commission. In addition, the Civil Rights Center has jurisdiction over entities that are recipients of certain types of federal financial assistance. The laws administered by the Center prohibit those entities from discriminating in their provision of services to customers and in the operation of programmes and activities for individual beneficiaries, as well as in their capacity as employers. The Center conducts investigations of discrimination complaints against these entities; it also conducts broader reviews to ensure compliance with legal requirements

related to non-discrimination and equal opportunity. Similarly, the Department of Labor's Office of Federal Contract Compliance Programs, at its own initiative, reviews companies contracting with the federal Government to ensure compliance with requirements, including non-discrimination. It administers and enforces three legal authorities that require equal employment opportunity: Executive Order 11246, as amended; section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. These laws ban discrimination and require federal contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, colour, religion, sex, national origin, disability or status as a Viet Nam-era or special disabled veteran. The members were informed that the two most significant issues related to discrimination in the reviews conducted by the Office are race and gender discrimination.

21. In a meeting with the Equal Employment Opportunity Commission, the members were informed that the main work of the Commission is enforcement of anti-discrimination laws in employment, including Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on, inter alia, race, colour, and national origin. These provisions prohibit both intentional and unintentional discrimination, or "disparate impact" discrimination. While employers are liable for discrimination suffered by employees, compensatory and punitive damages are available only for intentional discrimination, not disparate impact. More than 30,000 complaints were received by the Commission last year concerning racial discrimination. In cases where the Commission finds that discrimination has taken place, the first stage of dealing with the case is mediation or conciliation. Any individual can file a charge of discrimination, and 72 per cent of mediated charges are settled. About \$121.6 million was paid in relief last year in the context of mediation or conciliation of cases. Conciliation and other settlement avenues brought an additional \$170 million. Where mediation or conciliation cases are not settled, the Commission investigates the case, makes a finding and, where appropriate, turns to litigation. A total of 280 lawsuits were brought by the Commission last year and they enjoyed more than a 90 per cent success rate.

22. As well as mediation, conciliation and litigation, the Equal Employment Opportunity Commission also produces policy papers on different issues, such as whether the practice of employers taking criminal records into account in screening potential employees has a disparate impact. The members were informed that although the Commission does not focus on affirmative action, it may be sought as relief in a case.

23. In a meeting with the Department of State, the members were informed that its Office of Civil Rights enforces laws related to non-discrimination in employment and other civil rights laws within the Department. In this Office, as well as a Diversity Officer, there is a Diversity Governance Council which discusses and addresses issues that may constitute barriers to promotion. It was emphasized that diversity is a key element of the strategic plan of the Office. While it was recognized that people of African descent and other ethnic minorities have been historically underrepresented in the employees of the Department of State and other Government agencies, the Department representatives explained that they are working to address this issue and that there are 16 diplomats posted at colleges around the country looking for diverse candidates for possible employment. Similarly, the Department runs fellowships each year, whereby it pays for the education of a number of students in exchange for service with the Department upon graduation. This programme is also used to promote diversity within the institution.

24. In several of the Working Group's meetings with Government departments it was reiterated that employment quotas were not used by the Government as they would be discriminatory against those who were not of the racial group that the policy was designed

to assist, and therefore unconstitutional. The Supreme Court has said, however, that race can be taken into account as a factor to increase diversity, for example in a school.

25. In their meetings with NGOs, the members were informed that unemployment is a very serious issue for the Afro-descendant community, with levels of unemployment being, proportionately, four times higher among this population than in the white community. Reference was made to a case where the New York City Fire Department was found to have discriminated against people of African descent who had applied for employment as firemen. Of the 11,000 firemen employed by the New York City Fire Department, only about 300 were of African descent, despite their being about 27 per cent of the population of New York. This case of discrimination was run successfully by the Department of Justice's Civil Rights Office. It was pointed out by NGOs that a lack of affirmative measures is a serious obstacle to improving the present situation.

26. The members were also informed about the particularly onerous employment situation that many women of African descent endure, working two or three jobs in order to support their families as single mothers. This has adverse effects upon their children, who do not have a parent present for most of the day. Taking into account the educational level of women of African descent, the prevailing differences in salaries between men and women, the cost of childcare services and transportation problems, employment is becoming unrewarding for many African American women. In this context, it may sometimes be more attractive to receive social welfare than to work.

27. Statistical information received concerning the challenges facing people of African descent in the area of employment is included below (paras. 63-70).

## 2. Access to education

28. In its meeting with the Department of Education, the members learned that the Department's Office of Postsecondary Education funds a number of programmes to promote access and educational opportunity for racial and ethnic minorities. The Department also funds many programmes that often benefit racial or ethnic minorities, although they do not focus explicitly on such minorities, due to their focus on low-income or disadvantaged persons.

29. The federal Government does not have a large role in the implementation of educational programmes at the state level and there is a lack of general and unified policy. Federal programmes are offered to states but they cannot be imposed. In many cases intervention by the federal level is possible only when there are problems. Although the federal Government promotes and supports long-term programmes, there are very few specifically targeted towards people of African descent. The majority of programmes are designed to address wider problems of disadvantage in education of racial minorities in general. The members learned of various initiatives designed to improve access to quality education by racial minorities such as people of African descent. Magnet schools, which are public schools with specialized curricula that draw students from across the normal zoning boundaries established by education authorities, are one way by which the Government addresses the issue of racial segregation in education. Financial assistance may be applied for by those magnet schools that intend to implement certain projects, such as a project for the reduction, elimination or prevention of minority group isolation. However, the members were informed that a majority of white parents are not great supporters of the inclusion programmes run by the Government.

30. In meetings with NGOs, the members were told that lack of access to quality education is a major problem for people of African descent in the United States. They emphasized that more than 50 years after *Brown v. Board of Education*, many students of colour continue to struggle in inadequate schools. They referred to problems connected

with a need for a larger number of, and more qualified, teachers and more funds for schools where most students are African American. Some NGOs indicated that African American students are often in large classes (more than 40 students), affecting their ability to do well at their exams. It was also pointed out that there is a need for, and lack of, programmes to prevent male students of African descent from dropping out of schools or to bring them back into classes. Furthermore, while the number of students of African descent at universities compared to white students was improving, there is still a significant “class” gap between the two. Charter schools, which are intended to provide parents and communities with the flexibility to try innovative educational models, have had some success in providing higher quality education to students of African descent who could not otherwise afford private education. Such schools operate under a written contract (charter) with a state, district or other governmental entity which details how the school will be organized and managed, what students will be taught and expected to achieve, and how success will be measured. Some NGOs said, however, that they provide an effective alternative for only a small number of poorer students and a more comprehensive solution to inadequate access to quality education is needed.

31. One of the structural reasons for poor access by people of African descent to quality education is that the public schools are funded by the local property taxes and so the poorer neighbourhoods have less revenue to spend on their schools. As people of African descent often live in poorer neighbourhoods, the schools that their children attend often have inferior facilities. The members were informed that there is still insufficient information on the history of African Americans in school textbooks but this appears to be improving.

32. One NGO with which the members met informed them that there is an alarmingly high level of illiteracy among people of African descent. This is partly due to there being insufficient teachers with remedial skills in the schools in poorer neighbourhoods and class sizes that average 35 to 40 children. Many parents of students of African descent do not read to their children or encourage their reading at home, either because they are working at night or have poor reading skills themselves. Drop-out rates among students of African descent, especially boys, are high compared to the rest of the population.

33. In several of the meetings that the members had with NGOs, they were told of the phenomenon of a “pipeline from school to the criminal justice system” existing in the case of boys of African descent. According to one NGO, males of African descent who drop out of school have a 66 per cent chance of ending up in jail or being processed by the criminal justice system. The members were also informed that the presence of the police in schools disproportionately affects children of African descent, the police sometimes being called to schools when children of African descent misbehave in relatively minor ways. The members were told of a case where a five-year-old African American child had been handcuffed by police for a temper tantrum at school, and several other similar cases. In all of the cases investigated by the NGO, the children in question were of African descent. The members were also informed that, according to studies, students of African descent are two times more likely to receive corporal punishment than white students.

### **3. Access to housing**

34. According to information contained in the 2007 periodic report of the United States (CERD/C/USA/6), to which the members were referred by the Department of State, federal and state laws guarantee a right to equal opportunities in housing and prohibit discriminatory practices in the sale and rental of housing as well as in the mortgage lending and insurance markets related to housing. Despite this legislation, systematic discrimination persists in those markets. Recent studies by the Department of Housing and Urban Development suggest that one in five individuals of an ethnic or racial minority experiences discrimination during their preliminary search for housing. While the Government does

prosecute violations of fair housing law that are brought to its attention, many more go unreported. In order to address these realities, the Government has a number of programmes designed to improve housing availability to racial and ethnic minorities as well as to actively combat racial segregation.

35. In its meetings with Government departments, the members were told that many people of African descent are geographically isolated from the mainstream culture, as de facto residential segregation is often a stark reality. In an attempt to address this problem, the current strategy in urban planning is to build low-rise public housing on scattered sites instead of tall, densely populated buildings. Also, rental assistance is being used so that those who would have previously lived in public housing now enter the free market and choose where they wish to live. In reality, choice is limited because there is no federal law that requires landlords to accept rental assistance from the Government. This shift in policy has led to the loss of 150,000 units of public housing over the past 15 years.

36. The members were informed that in the city of Washington, D.C., there is a dramatic wealth disparity between African descendants, who make up 55 per cent of the population, and the white population. Given the disadvantaged economic circumstances of a large proportion of the population of African descent in that city, they have been adversely affected by some urban development plans. When land becomes valuable, real estate is developed and the poor are forced to move out as they can no longer afford the cost of living in the neighbourhood. In order to address this problem, the Government is implementing strategies that ensure urban development makes all communities more attractive, inter alia, by including services such as public transport.

37. In its meetings with NGOs, the members were informed that access to affordable housing is a serious problem for many people of African descent and that as neighbourhoods that were traditionally home to large communities of African descent, such as Harlem and Brooklyn in New York, are redeveloped, the African descent population is being gradually forced to move out due to the now unaffordable cost of living there. The members were also informed that in the city of New York public spending is being funnelled towards short-term emergency accommodation shelters rather than public housing. As people of African descent are increasingly unable to afford to live in the neighbourhoods where they have traditionally built their communities, there is an increasing need for, but declining availability of, public housing. Some NGOs stressed that changes in the urban environment have had a negative impact on the life of people of African descent, such as the closing of small markets and shops and the opening of large supermarkets, which makes it difficult for people without cars to satisfy their needs and obtain necessary supplies. They also highlighted the lack of participation by people of African descent in the decision-making process concerning these changes as well as a lack of consideration of their real needs during this process.

#### **4. Access to health care**

38. The members found during their meetings that health and access to health care is an issue of great importance to the population of African descent in the United States, particularly to women of African descent. Although discrimination in access to health-care services is prohibited in Title VI of the Civil Rights Act, which prohibits discrimination based on race, colour or national origin in programmes or activities that receive federal funding, including health-care services, health disparities between people of African descent and the white population continue to be of concern.

39. According to information contained in the 2007 periodic report of the United States (CERD/C/USA/6), to which the members were referred by the Department of State, there are persistent health disparities between the African American population and the white population. For example, the age-adjusted death rate for cancer for African Americans was

approximately 25 per cent higher than for white Americans in 2001. To understand such disparities better, in 1999 Congress requested the Institute of Medicine of the National Academy of Sciences to report on the issue. According to the 2002 report of the Institute, the vast majority of studies indicated that minorities are less likely than whites to receive needed care, including clinically necessary procedures, in certain types of treatment areas. Disparities were found in treatment for cancer, cardiovascular disease, HIV/AIDS, diabetes, and mental illness, and were also seen across a range of procedures, including routine treatments for common health problems.

40. Based on the findings of the study, the Institute recommended a strategy to eliminate disparities that would include cross-cultural education and training; policy and regulatory changes to address the fragmentation of health plans along socio-economic lines; health-system interventions to promote the use of clinical-practice guidelines; language and cultural interpretation where needed; and the collection of further data to refine the understanding of the problem. The Department of Health and Human Services has acted to implement a number of the recommendations emanating from the study and has made the elimination of health disparities affecting racial and ethnic minority populations, including women's health issues, a critical goal of Healthy People 2010, the nation's public-health agenda for the current decade.

41. Within the Department of Health and Human Services, the Office of Minority Health is developing the National Partnership for Action to End Health Disparities, a recently drafted plan to address health disparities between minorities and non-minorities in the United States that will serve as the road map to tackle this issue. The plan will promote strategic actions by the Office of Minority Health and its partners and has four main goals: illuminating the compelling issues that impact health outcomes; identifying action steps that partners can adopt and adapt for their target audiences; seeking out and highlighting promising practices that help eliminate health disparities; and promoting tools, programmes and information sources for consumers, caregivers and health providers.

42. In a meeting with the Department of Health and Human Services, the members were informed that the particular health problems that are of most concern for people of African descent are obesity, heart disease, infant mortality (which is 2 to 3 times higher for mothers of African descent compared to the white population), diabetes, HIV/AIDS (17 times higher for women of African descent than white women and 7 times higher for men of African descent than white men) and certain cancers (which are 2 times more prevalent in people of African descent than in the white population). One NGO informed the members of the Working Group that 71 per cent of children with HIV/AIDS are of African descent. The members were also informed that even with access to health services, the health outcomes for people of African descent are inferior to those of the white population. Other disparities include life expectancy: Americans of African descent have a life expectancy of 73 years compared to white Americans' life expectancy of 78 years.

43. The members were informed about the Healthy Start programme that provides attention for pregnant women. A total of 59 per cent of the beneficiaries of this programme were women of African descent. Other Government initiatives that benefit people of African descent in this area include the National Center on Minority Health and the Health Disparities, which coordinates Government actions concerning racial minority health. The members were also told that all medical institutions must have a plan to decrease health disparities between racial groups.

44. The members learned that the Department of Health works with communities to disseminate relevant health information, using faith-based groups and other non-conventional channels to gain access to ethnic minorities such as people of African descent.

## 5. Participation in public life

45. According to information contained in the 2007 periodic report of the United States (CERD/C/USA/6), to which the members were referred by the Department of State, in 2001, of the nearly 60,000 judges and judicial officers in state, federal and tribal courts in the United States, 1,798 were African American. With respect to federal elected officials, of the 535 members of the 109th Congress, 41 were African American (8 per cent). Of the state and territorial governors, as of January 2007, two were of African descent (Massachusetts and United States Virgin Islands).

46. The same report indicates that in 2002, the Joint Center for Political and Economic Studies in Washington, D.C., released its report, entitled "Black elected officials: a statistical summary 2000". This report encompasses federal, state, municipal and local officials, including those in law enforcement and education. The report showed a six-fold increase in black elected officials, from approximately 1,500 in 1970 to 9,040 in 2000. It also highlights key trends that are shaping the future of black political leadership. First, black women accounted for all of the growth in the number of black elected officials for two years prior to 2000 and constituted 34.5 per cent of the total figure. Second, younger black Americans, who often have different views and experiences from their older counterparts, are increasingly being elected. Finally, an increasing number of black mayors are being elected in large cities (over 50,000) where the majority of the population is not African American. According to the National Conference of Black Mayors, there were 542 black mayors in the United States in 2005, including 47 black mayors of cities with populations greater than 50,000.

47. In meetings with NGOs, the members were informed that the disenfranchisement of some voters was a structural issue that disproportionately affected people of African descent and their ability to participate in public life and influence Government. According to those interviewed, at any given time, 5.3 million American citizens are denied the right to vote because of criminal convictions. Given the racial differences in incarceration rates, Americans of African descent constitute a disproportionately large percentage of this electorally disenfranchised population. In many states the right to vote is still denied to persons after they have completed their prison sentence. In the United States, nearly 10 per cent of adult Americans of African descent are barred from voting based on criminal convictions. The members were informed that in some states, the number is more than 20 per cent and that in one state, Iowa, more than one-third of all African American citizens have lost the right to vote in this way. The members were also informed that some states have voting rules which require proof that residence in a state is "permanent" or "legal", or that a voter has a "permanent established domicile" or is an "actual and physically bona fide resident"; in some cases this means a requirement of at least 10 years residence in order to vote. This affects the voting rights and rights to political participation of people of African descent employed as seasonal workers.

48. The members were also informed by one NGO that in many states a felony conviction disqualifies a person from being eligible for jury duty. This also impacts negatively upon the ability of people of African descent to participate in this aspect of public life due to the disproportionately high levels of criminal convictions of this population group. It was explained to the members that a vicious circle exists whereby people of African descent are disproportionately convicted of crimes under laws passed by legislators but their ability to change these legislators and laws is diminished due to the disproportionately high electoral disenfranchisement of African Americans because of criminal convictions.

## 6. Administration of justice

49. In a meeting with the Department of Justice, the members were informed that the Department's Civil Rights Office runs cases on hate crimes and oversees civil rights legislation. The Office carries out outreach activities in the community to inform people about their civil rights; when it detects an employer that is systematically discriminating against a racial group it files a case against it. The Office also receives complaints of discrimination from individuals. There are Civil Rights Offices in the different Government agencies and they work together and coordinate efforts.

50. According to information contained in the 2007 periodic report of the United States (CERD/C/USA/6), to which the members were referred by the Department of State, in 2004, 3.2 per cent of males of African descent, 1.2 per cent of Hispanic males, and 0.5 per cent of white males in the country were incarcerated in state or federal prisons. Distributions were similar among the female population – the rate for African American females was more than two times higher than the rate for Hispanic females and four times higher than the rate for white females. Overall, the prison population was estimated to be 41 per cent African American, 34 per cent white, 19 per cent Hispanic, and 6 per cent other or two or more races.

51. In meetings with NGOs, the members were informed that the overrepresentation of people of African descent in the United States as subjects of the criminal justice system and their disproportionately high rate of incarceration compared with the white population is of great concern and demonstrates structural discrimination against them. They were informed that women of African descent are three times more likely to be imprisoned than white women, while men of African descent are six and a half times more likely to be imprisoned than white men. The members were informed that at any one time 11 per cent of all men of African descent in the United States between the ages of 30 and 34 are behind bars.

52. One explanation given of the disproportionately high incarceration rate for people of African descent was the discriminatory application of laws. Discrimination was identified by NGOs in terms of perpetrators as well as victims. According to them, black perpetrators are much more likely to be convicted than white perpetrators, and they tend to be punished more severely. Furthermore, it is likely that there will be a difference in convictions and punishment depending on the race or colour of the victim, with generally lower sentences in cases where the victim is black as compared to cases involving white victims. The discriminatory application of laws was illustrated to the members by way of the application of the laws against illegal drug use. Whereas the available evidence shows that people of African descent use illegal drugs at approximately the same rate as white people, they are 10 times more likely, on a per capita basis, to go to prison for drug-related offences. An NGO informed the members that the application of some laws that seem race neutral tend to contribute to disproportionately high rates of incarceration for people of African descent. For example, under United States federal law, possession of 5 grams of crack cocaine (a drug associated in the public mind with African Americans) triggers a mandatory minimum sentence of five years in prison. It takes 100 times as much powder cocaine (500 grams) to trigger the same mandatory five-year sentence. Although African Americans constitute about 12 per cent of the United States population, more than 80 per cent of those prosecuted under the crack cocaine mandatory minimum laws are of African descent.

53. This same disparity was indicated in other areas of criminal law. For example, more than 2,500 persons are currently serving a life sentence without the possibility of parole or release for crimes committed when they were less than 18 years old. The members were informed that the rate of African Americans serving this sentence is more than 10 times higher than that of whites. The process of criminalization of children from very early childhood and the higher percentage of children of African descent placed in adult facilities is negatively influencing the present protection of the rights of children and their future

development. The members were informed that there is not an appropriate education system for children in adult prisons and children are forced to work during their imprisonment for very low compensation.

54. According to NGOs with which the members met, racial profiling against people of African descent by the police is an ongoing concern; the darker a person's skin, the more likely they are to be stopped, questioned and frisked by police. The members were informed that the New York City Police Department is working on a training programme to eliminate unconscious racial bias in officers that may contribute to racial profiling.

55. The members were also informed by an NGO that in cases where the death penalty is a possibility, a convicted felon is four times more likely to receive the death penalty if the victim was white than if the victim was of African descent. The members also learned of the Racial Justice Act, adopted in the state of North Carolina in 2009, whereby a defendant can now invoke statistics to establish a presumption that racism affected their case.

## **7. Poverty**

56. In many of the meetings that the members had, particularly with NGOs, poverty was identified as being a particular concern for people of African descent in the country, impacting as it does upon the enjoyment of a host of rights. NGOs stressed that poverty is very much connected with the slavery past and long-lasting discrimination even after slavery was prohibited. According to some of them, racism and poverty are intimately linked and still part of the system. The criminalization of poverty and reliance upon welfare programmes instead of a more comprehensive approach to fighting poverty were seen as specific obstacles to breaking the circle of poverty. NGOs also emphasized the connection between racism, poverty and segregation, which is becoming much more visible in the period of economic crisis.

57. According to data provided by the Census Bureau for 2008, about 24 per cent of people of African descent were living below the poverty level - considerably higher than the poverty rate for the total population, which was about 13 per cent. About 33.5 per cent of children of African descent lived in poverty, compared to about 18 per cent of the total population. Among those aged 65 and older, people of African descent had a poverty rate of about 20.5 per cent while the total population had a rate of about 10 per cent. According to the same statistics, in 2008 the median annual income of households of people of African descent was about \$35,400. This compares to the median annual income of the total population, which was \$52,000.

## **B. Policies for the integration of people of African descent**

58. In a meeting with the Department of Homeland Security, the members were informed of several outreach initiatives that the Department has undertaken to facilitate the better integration of American Arab, Muslim, Sikh, South Asian, Somali and Middle Eastern and other ethnic and religious communities. The Engagement Team of the Department's Office for Civil Rights and Civil Liberties leads or plays a significant role in round-table discussions between federal, State and local government and community leaders in eight metropolitan areas. Other initiatives include the production, in collaboration with leaders from the Somali community, of a guide for newly arrived Somalis in the United States. At the time of the meeting, the Department of Homeland Security was also looking for funding for Somali Community Centers.

59. The Department of Homeland Security produces informative publications and has special procedures designed to prevent discriminatory behaviour by civil servants who

make first contact with immigrants of African descent. However, members of the group did not have the opportunity to see the practical implementation of these procedures.

60. Several NGOs raised the issue of a lack of recognition of the connection between the present situation of African Americans and the slavery past. They stressed that discrimination is addressed by the State in general terms, not as an issue of particular importance for people of African descent. Such an approach, according to them, undermines the question of reparations for slavery, is minimizing the effects of past and present segregation and leaves little space for discussions on the specific situation of people of African descent. One of the results of such an approach is the rejection of affirmative action as a tool to combat existing discrimination and the consequences of past discrimination. In several meetings it was stressed to the members that there is a lack of affirmative measures which take into consideration the specific roots and history of discrimination against people of African descent. The members were also informed in several meetings that while the Supreme Court has held that the use of quotas would be unconstitutional, other affirmative action measures are not prohibited when used to promote diversity. One NGO expressed its concern, however, that affirmative action programmes have been scaled back in recent years and that where they do exist they focus on access for people of African descent but do not provide adequate support once entrance is gained to a given institution or organization.

61. In several of the meetings that the members held with NGOs, it was emphasized that there was not a State institution dedicated to the situation of people of African descent and that such an institution could be beneficial to protecting and advancing the rights of this population and its integration. Although the different Government departments have programmes that attend to the African American population, it was suggested that a dedicated institution would assist in relevant policy formulation and enhance coordination between the various Government agencies that monitor the situation of, and provide services to, the African descendant population. This lacuna has contributed to a very passive attitude towards segregation and a lack of interest by the white majority for participating in the programmes for inclusion. It was emphasized by several NGOs that the dedicated institution should address the perception of people of African descent as criminal, combat the social and racial profiling of African Americans and reinvigorate the fight against the still very much present racist bias.

62. It was also suggested by several NGOs that the existing Commission on Civil Rights should be transformed into a Commission on Civil and Human Rights. This would allow the mandate of the Commission to include the international obligations of the United States and to cover the rights of non-citizens.

### **C. Collection of disaggregated data on people of African descent**

63. The members were impressed by the comprehensive structure that is in place in the United States for collecting and analyzing disaggregating data, including by race. This information has proven to be an important tool that the Government has used to identify racial disparities in access to employment, education, health and other fundamental rights and to design and implement policies to remedy the challenges identified.

64. The Department of Health and Human Services informed the members that it collects disaggregated data from over sixty sources on the health of different racial groups. These data are used to focus on trends and design programmes to address the particular health concerns of different communities.

65. The Equal Employment Opportunity Commission informed the members that they maintain data on all ethnic groups employed in companies of more than 100 employees and

that this data is used to formulate Government policy. Data disaggregated by race, age, etc. is collected, inter alia, from employers and schools and made available to the public, different Government departments, universities and scholars. The data indicates that currently 13.9 per cent of employees are of African descent. About 3.3 per cent of African descent employees are in managerial positions, 7.6 per cent are in middle management and 7.7 per cent are in professional positions. African descendents are statistically overrepresented in labouring and clerical positions.

66. In a meeting with the United States Census Bureau, the members were informed that the Census Bureau does not develop policy; it just collects data to be used by other Government dependencies to formulate policy. The Census Bureau has several areas that collect data on people of African descent as well as an advisory committee on people of African descent (the African American Committee). The American Community Survey is an ongoing survey that provides information on social factors relating to a sample 2.5 per cent of the population. The results of the survey are released yearly. The Decennial Census is far more basic but covers the country's entire population. The surveys allow the person providing information to self-identify his or her race or ethnicity and have a wide list of categories to select from. Also, multiple race reporting is allowed.

67. According to statistical information for 2009 provided in the Working Group's meeting with the Department of Labor, people of African descent were more likely than other groups to experience labour market problems. While they made up 11 per cent of the labour force in 2009, they represented 18 per cent of the unemployed and 25 per cent of the long-term unemployed (persons unemployed for 27 weeks or longer). They also made up 25 per cent of the marginally attached (persons who were available for work and had searched for work during the prior 12 months but who were not currently looking for work). Also, at 62.4 per cent, people of African descent are less likely to participate in the labour force (persons 16 years and over who are working or looking for work) than whites (65.8 per cent), Asians (66 per cent) or Hispanics (68 per cent). The unemployment rate for people of African descent 16 years and over has generally been about twice or more that of whites. It was also indicated that people of African descent are unemployed longer than whites, Asians or Hispanics, with African Americans comprising 23 per cent of long-term unemployed workers in 2009. About 16.5 per cent of teenagers (16 to 19 years old) of African descent and 15.3 per cent of Asian teenagers were employed, compared to about 24 per cent of Hispanics and 32 per cent of white teens. Notably, nearly 40 per cent of teenagers of African descent were unemployed in 2009 compared to 30 per cent for Hispanics, 21 per cent for whites and 26 per cent for Asian teenagers.

68. Regarding occupational categories, the information provided indicated that people of African descent and Hispanics were less likely to be employed in management, professional and related occupations than their white or Asian counterparts and that they were more likely to work in service occupations. Median weekly earnings for wage and salary workers who usually work full time were considerably higher for Asians and whites than for people of African descent and Hispanics. Mothers of African descent with children under 18 were more likely to be in the labour force than white, Asian or Hispanic mothers, a trend that has been an historical constant.

#### **D. Gender perspective**

69. During their meetings, the members identified several issues which were of particular concern to women of African descent, particularly challenges related to health and employment. As mentioned above, in their meeting with the Department of Health and Human Services, the members were informed that there are certain health issues that particularly affect women of African descent, including infant mortality, HIV/AIDS and

certain types of cancer. The Department has programmes aimed at addressing many of the issues of most concern to women of African descent, such as the Healthy Start - Eliminating Disparities in Perinatal Health programme, which is designed to improve health care for pregnant women and reduce higher than average infant mortality rates in targeted communities.

70. The information provided to the members by the United States Census Bureau indicated that women of African descent have higher unemployment rates than the national average for women (in 2009, 12.4 per cent compared to 8.1 per cent), while information provided by the Department of Labor indicated that their median usual weekly earnings are less than the national average for women (in 2009, \$582 compared to \$657). When one considers these statistics in the light of the fact that, according to information provided by the Department of Labor, in 2009 44 per cent of families of African descent were maintained by women with no spouse present, the economic vulnerability of many women of African descent is brought into stark relief.

## **IV. Conclusions and recommendations**

### **A. Conclusions**

71. **The experts greatly appreciate the comprehensive and informative meetings that were held with Government agencies. They note with satisfaction the many programmes and other initiatives that the Government implements to combat racial discrimination affecting people of African descent, including the work of the Equal Employment Opportunity Commission, the various Civil Rights Offices that exist in Government departments as well as the many other institutions that are working on the promotion of diversity.**

72. **On the other hand, the experts note that recently anti-discrimination legislation and practice in the United States of America has been gradually eroding the affirmative measures introduced during the 1960s and 1970s aimed at overcoming the effects of past societal discrimination. A perception exists of racism being a thing of the past and that American society is now generally “colour blind”. Given this process as well as the unique history of people of African descent in the United States, the experts are concerned by an insufficient recognition in the present day of the influence of the baggage of the past, which necessitates specific institutions and programmes tailored to the situation of people of African descent.**

73. **The experts believe that two challenges from the past still linger: the remnants of slavery and electoral disenfranchisement. The abolition of slavery is not absolute as the Thirteenth amendment allows slavery “as a punishment for crime whereof the party shall have been duly convicted... within the United States, or any place subject to their jurisdiction”. The second part of the amendment, when considered alongside the overrepresentation of people of African descent in the prison population, conditionally understood, could make a link between the past and present slavery. The second challenge is that at any given time, 5.3 million American citizens are denied the right to vote because of criminal convictions and Americans of African descent constitute a disproportionately large percentage of this electorally disenfranchised population.**

74. **The Working Group also noted the existence of a circle of poverty, inadequate education, limited employment opportunities and challenges in the administration of justice affecting the lives of people of African descent on multiple levels which are not**

being sufficiently addressed, in a holistic and coordinated manner, at the federal, state and local levels.

75. The experts learned that education is still one of the major areas of discrimination and one of the main sources of inequality of opportunity. The experts learned of various initiatives designed to improve access to quality education by racial minorities such as people of African descent, yet also that the majority of white parents are not very supportive of the Government's inclusion programmes.

76. Nationwide, African Americans suffer unemployment at disproportionately high levels compared to the general population. An imbalance in their participation in the labour force not only risks societal division but also indicates probable discrimination within the private sector that might escalate.

77. The experts are quite concerned with aspects of the administration of justice that adversely affect the African American population, particularly the disproportionate incarceration rates compared to the general population and the seemingly discriminatory application of some laws.

78. The experts learned that while there is no federal authority charged specifically with monitoring and advancing the situation of people of African descent, there is a comprehensive structure in place that ensures that their situation is included in the agenda and programmes of the different agencies that have thematic responsibility for ensuring the provision of health, housing and other fundamental services.

79. Since the March 2002 report of the Institute of Medicine, several health issues were detected as problematic from a racial standpoint, concluding that minorities are less likely than whites to receive needed care, including clinically necessary procedures in certain types of treatment areas. The experts were informed that currently the particular health problems that are of most concern for people of African descent are obesity, heart disease, infant mortality, diabetes, HIV/AIDS and certain cancers.

80. The experts duly note that the federal and state laws guarantee the right to equal opportunities in housing and prohibit discriminatory practices in the sale and rental of housing as well as in the mortgage lending and insurance markets related to housing, that federal and state authorities prosecute the offenders of such laws, and that there are a number of Government programmes designed to improve housing availability to racial and ethnic minorities. However, the members of the Working Group were informed about a reduction in the construction of social housing and reinvestment of money in building shelters for the homeless. The members of the group were also informed that in the United States many people of African descent are geographically isolated from the mainstream culture, as de facto residential segregation is often a stark reality. NGOs also highlight the lack of participation of people of African descent in the decision-making process concerning urban development that affects them.

81. Although the Working Group recognizes the great advances that have been made in combating direct discrimination against people of African descent, it is concerned by the ongoing structural discrimination that cannot be effectively addressed with the existing legal mechanisms and legislation. On the other hand, it should be also kept in mind that as the country is a federation of states, most states have also enacted their own legislation prohibiting racial discrimination in different areas where they have jurisdiction. However, in some cases, the lack of unified and precise federal legislation (as, for example, the definition of the permanent/bona fide residence for the exercise of voting rights) places people of African descent at a disadvantage. Finally, although there are not many international treaties on

combating discrimination, it is to be noted that the United States has not ratified the Convention on the Rights of the Child or the Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111) of the International Labour Organization. Furthermore, there is no specific anti-discrimination act that would serve to guide the drafting and implementation of relevant federal, state and local laws.

## **B. Recommendations**

82. The Working Group recommends that the particular history and context of people of African descent be taken into account in developing relevant legislation and when designing specific and holistic programmes and other remedies to address racial discrimination directed at this population group. The very procedure of, for instance, adopting a separate anti-discrimination law might assist the process of reviewing some older legislation, particularly those relating to slavery and electoral rights. Furthermore, such an act would be an appropriate instrument to regulate affirmative measures and positive actions as well to shift the burden of proof and the general use of statistics in cases of discrimination brought before courts. Such new legislation, together with the ratification of the mentioned international treaties, would represent a powerful tool in combating discrimination of any sort and on any level.

83. The experts believe that the educational system of the United States has developed different projects that could be effectively used to combat racial discrimination against people of African descent. Excellent examples are the magnet and the charter schools. The experts recommend that the Government continue and enhance these initiatives as well as develop positive action policies to achieve parity of educational conditions among students of African descent and those of the majority population.

84. In the area of employment, the experts recommend that the Government of the United States consider verifying whether the 13 per cent of Americans of African descent employed in the public service are engaged in work that appropriately corresponds to their academic level and working capacities.

85. The experts consider that a system of employment quotas could be appropriately employed by the Government in order to stimulate employment of Americans of African descent in the private sector.

86. The experts recommend that the example of North Carolina's acceptance of the use of statistics in court proceedings to demonstrate a rebuttable presumption of discrimination be followed in other states. The Government is also urged to redress the grave issue of disproportionate incarceration rates of people of African descent and the discriminatory nature and application of some laws, in particular those related to drug offences.

87. The experts encourage the Government to ensure the participation of African American communities in urban development projects that affect them, including appropriate forums to consult these communities regarding their particular needs.

88. The experts encourage the Government to establish a human rights commission, as an independent body in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), which will monitor and assist the implementation by the Government of international standards at the state and federal levels. The Government should establish within this body a dependency that deals specifically with people of African descent.

89. The Working Group particularly calls upon the Government to ensure to children of African descent all of the rights contained within the Convention on the Rights of the Child, including the right to have the child's best interest as a primary consideration in all dealings with the State.

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