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PREVENTION OF DISCRIMINATION:
RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

Joint written statement* submitted by the African Society of International And Comparative
Law and North-South XXI, non-governmental organizations
in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 July 2003]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

1. We wish to commend the Sub-commission on the Promotion and Protection of Human Rights on its ardent work in combating racism and discrimination throughout the years since its creation in 1947. Its competence and authority in this area is especially outstanding. We count very much on the work of the Sub-commission and its member experts to ensure a concerted and effective follow-up for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR).

2. The WCAR represented an important occasion for the victims of racism and racial discrimination to assert themselves and contribute to the ongoing efforts to end their victimhood. It provided the world community with a whole set of principles that have unequivocally defined the boundaries for a holistic approach targeting solutions for the problems of racism, discrimination, xenophobia and intolerance anywhere they occur. It was an additional step in a series of similar activities initiated by the international community in a bid to eliminate racism and discrimination from our world since the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination in 1969. The Conference, therefore, should not be regarded as an isolated event but rather it should be considered the beginning of a re-energized process, in reality a long-term process, in a continuum of activities from the adoption of the Universal Declaration of Human Rights in 1948 to the full elimination of racism and racial discrimination.

3. However, we observed that few steps were taken in follow-up of the implementation of the provisions of the Durban Declaration and Programme of Action at both the international and national levels. At the international level much more efforts need to be exerted in order to invigorate the main mechanisms for follow-up of the WCAR in particular the work of the Five Independent Eminent Experts to assist the UN High Commissioner for Human Rights that have just been appointed. Another important element is the empowerment of the Anti-Discrimination Unit at the Office of the High Commissioner, which is yet to be fully manned. It is disappointing that at the national level States are yet to take up the commitments they made at Durban with the expected enthusiasm and seriousness. By the end of 2002, only three governments (Argentina, Norway and Sweden) have introduced National Plans of Action to combat racism and racial discrimination as required by the Durban Declaration and Programme of Action.

4. As Africans and people of African descent are among the prime victims of racism and racial discrimination, it is imperative that the Sub-commission strongly recommends that governments consider implementing such National Plans of Action as a matter of priority and that, when applicable, the relevant plans should place special emphasis on the following:

- a. Facilitating the participation of people of African descent in all the political, economic, social and cultural aspects of society, and to promote a greater knowledge of, and respect for, their heritage and culture.¹
- b. Increasing public actions and policies in favour of women and young males of African descent, given that racism affects them more deeply, placing them in a more marginalized and disadvantaged situation.²
- c. Ensuring access to education and promoting access to new technologies that would offer Africans and people of African descent, in particular women and children, adequate resources for education, technological development and long-distance learning in local communities.³

- d. Promoting the full and accurate inclusion of the history and contribution of Africans and people of African descent in the education curriculum.⁴
- e. Taking specific steps to ensure full and effective access to the justice system for all individuals, particularly those of African descent.⁵
- f. Undertake, in accordance with international human rights standards and respective domestic legal framework, to resolve problems of ownership of ancestral lands inhabited for generations by people of African descent and to promote the productive utilization of land and the comprehensive development of these communities, respecting their culture and their specific forms of decision-making.⁶
- g. Identifying factors which prevent equal access to, and the equitable presence of, people of African descent at all levels of the public sector, including the public service, and in particular the administration of justice, and to take appropriate measures to remove the obstacles identified.⁷
- h. Encouraging the private sector to promote equal access to, and the equitable presence of, people of African descent at all levels within their organizations.⁸

Working-Group on People of African Descent

5. Meanwhile, an encouraging sign is the commencement of the work of the Working-Group on People of African Descent and the Inter-governmental Working-Group on Effective Follow-up of the WCAR. We fully support the conclusions and recommendations put forward by the previous sessions of the Working-Group on People of African Descent especially with regard to measures to identify its mandate through the designation of its members to initiate some basic studies on the situation of people of African descent. These recommendations represent ample background for the Working-Group to build on in the long process for an effective follow-up of the implementation of the provisions of the Durban Declaration and Programme of Action.

Identification and Definition of People of African Descent.

6. The concept of “people of African descent” should be considered a general term that covers groups of persons of ethnic African heritage both on the continent of Africa and in the African Diaspora. We maintain that such a concept cannot be only confined to the descendants of the African victims of the trans-Atlantic, Mediterranean and Indian Ocean Slave Trade as suggested in the conclusions and recommendations of the first session of the Working-Group. However, special categorization may be used for the sole purpose of facilitating treatment of certain problems that face specific segments of this wider family. In this context it is imperative that the success of the Working-Group in its work will largely depend on an effective participation from competent and representative organizations of people of African descent and their worldwide groups and communities. In this process special attention should be accorded to the situation of the often forgotten and invisible groups of people of African descent in the Asian continent. In addition to their presence in almost all countries of the Middle East, people of African descent are also present in the Indian peninsula and in places as far as Papua New Guinea etc. In all these regions of the world people of African descent live at the bottom of the social strata. The Sub-commission should closely assist the Working-Group in its efforts and recommend, as a matter of

priority, that a study be initiated to identify these groups as well as studying the situation in which they live.

Issues of Reparations and People of African Descent.

7. We wish to remind the Sub-commission that in a landmark resolution unanimously adopted at its 53rd session held in Geneva in August 2001, it drew the “attention of the international community to the cases of massive and flagrant violations of human rights which should be considered as crimes against humanity and which have, to date, benefited from impunity, in spite of the tragic suffering which slavery, colonialism and wars of conquest have inflicted on numerous peoples of the world.”⁹ The Sub-commission considered that “ ... it is not possible to combat racism and racial discrimination, struggle against impunity or denounce the human rights violations which persist in the world without taking account of the deep wounds of the past.” It has also considered “ ... that the historic responsibility of the relevant powers towards the peoples whom they ... reduced to slavery should be the subject of solemn and formal recognition and reparation” and that “ ... such recognition and reparation will constitute the beginning of a process that will foster the institution of an indispensable dialogue between peoples whom history has put in conflict for the achievement of a world of understanding, tolerance and peace.”¹⁰ Once again the Sub-commission reaffirmed the principles contained in this resolution at its 54th session held in August 2002.¹¹ It is therefore imperative that the Sub-commission continues its work and insight on this question.

8. The Sub-commission should continue to emphasize that issues of reparations of the damage done to people of African descent find their roots in fundamental justice. This is because Africa and people of African descent have paid and continue to pay a dire price to racism and racial discrimination in many ways. The Slave Trade was, indeed, the most egregious racist crime to be committed against people of African descent and, therefore, it needs to be especially singled out for separate action. Yet many more other crimes against people of African descent remained unaddressed.

9. For example surviving members of the Herero tribe of Namibia are suing Germany for the extermination of thousands of their ancestors - estimated at 80% - of their population during the period (1904-1908) and the use of the remaining others as guinea pigs for medical experiments. This policy was implemented by the occupying power in retaliation to their revolt against Germany's expropriation of their land. Victims of British atrocities against the Kikuyu tribal people of Kenya during the Mau Mau revolt of 1952 – 1956 are now filling lawsuits against the British government for the massive violations of their human rights. In addition, a group of victims of the deposed Apartheid regime in South Africa are currently launching lawsuits against Western financial institutions for their role in sustaining the Apartheid regime in its criminal practices against people of African descent despite universal condemnation of Apartheid as a crime against humanity, an affront to the dignity of mankind and a threat to peace and security in the world.¹² We consider it appropriate that the Sub-commission extends its expertise as well as its diplomatic and moral support to all these groups in their just demands.

10. We welcome the recognition of the WCAR of the Slave Trade as a crime against humanity. This belated recognition fulfills an old demand of the victims of this human tragedy. In his famous speech of 4th July 1852 entitled “What to the Slave is the Fourth of July”, former African-American slave Frederick Douglass¹³ argued that: “Slavery is not divine; that God did not establish it; that our doctors of divinity are mistaken? There is blasphemy in the thought. That which is inhuman cannot be divine!” He concluded that slavery as practiced at that time was a crime

“against God and man”. It is obvious what he meant was nothing less than what is currently well accepted principle of the crime against humanity. By this acknowledgement, the Conference resolved, for all times, the main controversy that monstrous historical evils such as the trans-Atlantic Slave Trade can now, in retrospect, be considered crimes against humanity under contemporary international law.

11. Another achievement was the Conference’s approval of the principle of an apology for slavery and the Slave Trade including the trans-Atlantic Slave Trade as a necessary measure to restore the dignity and humanity of those who suffered their brunt. The action-oriented text indicated that a clear and unequivocal apology for those wrongs of the past constitutes a starting point for reconciliation and healing of their victims. It observed that some countries have taken the initiative of regretting or expressing remorse or presenting apologies, and called on all those who have not yet contributed to restoring the dignity of the victims to find appropriate ways to do so and, to this end, the Conference appreciated those countries that have done so.¹⁴ In this respect the Conference made implicit reference to the decision adopted by the French National Assembly and Senate in May 2001, by which the Government of France officially acknowledged slavery and in particular the trans - Atlantic and trans-Indian Ocean Slave Trade as well as the enslavement of Africans that was practiced in the Americas, the Caribbean and Europe since the 15th century as crimes against humanity. Furthermore, the law requires the Government of France to request the European Union and international organizations to recognize the Slave Trade as a crime against humanity.

¹ Durban Declaration and Programme of Action, paragraph 4.

² Ibid, paragraph 9

³ Ibid, paragraph 10

⁴ Ibid, paragraph 12

⁵ Ibid.

⁶ Ibid, paragraph 13

⁷ Ibid, paragraph 11

⁸ Ibid, paragraph 11

¹ *Commentary for the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* subsection d. at p. 18, last edited April 11, 2003.

² *Id.* at subsection d.

³ *Id.* at subsections a.-i. on pp. 20-21.

⁴ Mary Robinson, *The Ways a ‘Business Leaders Initiative on Human Rights’ Might Add Value*, May 7, 2003 (Brussels, Belgium).

⁵ Principles 1 and 2 of UN Global Compact available at http://www.unglobalcompact.org/content/AbouttheGC/TheNinePrinciples/prin1_&_prin2.htm.

⁶ See OECD Watch, Review of National Contact Points: June 2002-June 2003 available at <http://208.55.15.210/OECD-Watch-June-2003.htm>, Oliver Williams, *Major US Companies doubt Global Compact credentials*, Business Day, April 22, 2003 available at <http://www.bdfm.co.za/cgi-bin/pp-print.pl>, and CALIFORNIA GLOBAL CORPORATE ACCOUNTABILITY PROJECT, BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY 5-7 (2002).

⁷ BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY at pp. 23-44.

⁸ Juan Forero, *Rights Groups Overseas Fight U.S. Concerns in U.S. Court*, N.Y. TIMES, June 26, 2003, at A3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

⁹ Resolution No. E/CN.4/Sub.2/Res/2001/1 dated 6th August 2001 adopted by the 53rd Session of the UN Sub-commission on the Promotion and Protection of Human Rights.

¹⁰ Ibid.

¹¹ Resolution No. E/CN.4/Sub.2/2002/5 dated 12th August 2002 adopted by the 54th Session of the UN Sub-commission on the Promotion and Protection of Human Rights.

¹² The Declaration and Recommendations of the Second World Conference against Racism and Racial Discrimination, held in Geneva (Switzerland) 1983.

¹³ Frederick Douglass was born a slave in February 1818 in Maryland (USA). He escaped slavery life in September 1838. After meeting Anti-Slavery groups and activists like William Lloyd Garrison, Douglass became an outspoken abolitionist voice.

¹⁴ Durban Declaration and Programme of Action, Paragraphs 99, 100, 101 and 102