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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

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

(Geneva, 29 January-2 February 2007)*

Chairperson-Rapporteur: Mr. Peter Lesa Kasanda

Summary

At its sixth session, the Working Group of Experts on People of African Descent examined the theme of racial profiling. The Working Group acknowledged that racial profiling is a violation of the right to non-discrimination and recalled that international and regional norms make clear that racial discrimination in the administration of justice is unlawful. The Working Group urged States to clearly define and adopt explicit legislative provisions banning racial profiling; to take positive action to secure the real participation of people of African descent and other vulnerable groups at all levels throughout law enforcement agencies; and invited States to establish disaggregated data collection and oversight mechanisms to combat racial profiling. The Working Group also welcomed the General Assembly decision to convene in 2009 a review conference on the implementation of the Durban Declaration and Programme of Action.

* This report is being presented late because the Working Group held its session in January 2007, after the initial date set.

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Introduction

1. The Working Group of Experts on People of African Descent held its sixth session from 29 January to 2 February 2007 at the United Nations Office at Geneva.
2. The High Commissioner for Human Rights, Louise Arbour, opened the session. The Working Group elected Peter Lesa Kasanda as its Chairperson-Rapporteur.
3. The present report reflects the general course of the debate.

I. ORGANIZATION OF THE SESSION

4. During the sixth session, the Working Group held six public meetings and three private meetings. It was attended by the following members: Peter Lesa Kasanda (Chairperson-Rapporteur), Joe Frans, Georges Nicolas Jabbour, and Irina Moroianu-Zlătescu; observers for 60 Member States and 1 observer from a non-member State, 12 non-governmental organizations (NGOs), and 2 intergovernmental organizations. The list of participants and the agenda are contained in the annexes. All working papers submitted by the experts and participants are available at the Secretariat or can be found on the OHCHR web site.¹

II. SUBSTANTIVE SUMMARY OF DELIBERATIONS

A. General statements

5. The High Commissioner for Human Rights delivered the opening address.
6. The High Commissioner stated that the Durban Declaration and Programme of Action not only records a solemn commitment by States to work together but also offers a functional common agenda for the international community to counter racism in all its manifestations.
7. The High Commissioner stressed the important achievement of the Durban Conference, which addressed the appalling tragedy of slavery. She saluted the adoption of General Assembly resolution 61/19, unanimously declaring 26 March 2007 a day for the worldwide commemoration of the two-hundredth anniversary of the abolition of the trans-Atlantic slave trade, as a confirmation of the commitment undertaken in Durban to repudiate slavery as a major human rights violation.
8. The High Commissioner voiced her concern over the practice of racial profiling, which violates certain fundamental human rights guarantees. She stressed that the practice of racial profiling violates the principle of equality before the law, as well as international legal norms aimed at eliminating racism and racial discrimination. She reaffirmed the fundamental premise enshrined in article 1 of the Universal Declaration of Human Rights and re-emphasized the incompatibility of the practice of racial profiling with respect for human rights and the principle of non-discrimination. She encouraged the Working Group to adopt concrete recommendations to assist Governments in tackling the problem of racial profiling.

¹ See www.ohchr.org/english/issues/racism/groups/african/4african.htm.

9. The Working Group elected Peter Lesa Kasanda as its Chairperson-Rapporteur.
10. The Chairperson-Rapporteur thanked the High Commissioner for the support given to the mandate of the Working Group. The provisional agenda and programme of work were adopted.
11. In introducing item 5 of the agenda, the Chairperson-Rapporteur submitted that people of African descent continue to be victims of racial discrimination and exclusion in many parts of the world, in particular as regards access to health, livelihood, social security, education and income-generating activities.
12. The Chairperson-Rapporteur saluted the adoption of General Assembly resolution 61/149 in which it decided to convene by no later than in 2009 a review conference on the implementation of the Durban Declaration and Programme of Action. It also requests the Human Rights Council to undertake preparations for this event, as well as to formulate a concrete plan and provide updates and reports on an annual basis starting in 2007.
13. He recalled that the Working Group had so far pursued the implementation of its mandate by undertaking a substantial thematic analysis of issues of relevance for people of African descent, including measures to overcome their social exclusion, as well as actions and policies fostering their participation in the basic political, economic and social functioning of the society in which they live.
14. The Chairperson-Rapporteur stressed that the Working Group would be devoting its attention during the sixth session to making concrete recommendations on the elimination of racial profiling that affects people of African descent and Africans in all parts of the world.
15. During the general debate, several government observers and NGOs shared information on activities and measures undertaken at the national level to implement the Durban Declaration and Programme of Action, and on the thematic issue to be discussed during the sixth session.
16. The observer for Algeria, on behalf of the African Group, underlined the importance of the work of the Working Group. He reiterated the support of the African Group for the Working Group and encouraged it to increase the number of country visits, during which members would have the chance to discuss important issues with relevant authorities such as representatives of public services, schools, hospitals and law enforcement agencies, amongst others. He stressed that people of African descent, despite various international efforts, continue to pay a high price for past practices and there is a lack of real integration. He pointed out that the effective implementation of the Durban Declaration and Programme of Action is a long process and, to this day, there are only a few effective efforts towards implementation. He stressed that the IMF and World Bank should be involved in the process of devising effective measures in the fight against racism, racial discrimination, xenophobia and related intolerance. He added that it is also very important that Governments put in place national action plans and strategies to fight racism, racial profiling, xenophobia and related intolerance. He added that special attention should be devoted to women of African descent.
17. An observer for an NGO emphasized that in the past years, in the Americas, the frequency of the practice of racial profiling has increased. She underlined that it is important

that Member States and other representatives realize that there are no participants from NGOs and civil society representing people of African descent from Latin America at the session, due to lack of funding.

18. Mr. Frans recalled the remark of the High Commissioner concerning General Assembly resolution 61/19 on the commemoration of the two-hundredth anniversary of the abolition of the trans-Atlantic slave trade. He made public his solemn request to Member States to raise awareness of the abolition of slavery and use it as a stepping stone for further discussions on racism, racial discrimination, xenophobia and related intolerance. He stated that Governments should do their best to ensure that children learn about the past and that the history of slavery and the slave trade must be included in school curricula. With regard to the envisaged review conference on the Durban Declaration and Programme of Action, Mr. Frans stressed that it is essential that the various stakeholders take their time to reflect on the issue and submit concrete recommendations to the Working Group, thus contributing in a constructive way to the effective organization of the review conference. Mr. Frans also stressed that there is a need for further research on slavery. He underlined that it is extremely important to have representatives of NGOs and civil society participating in the sessions of the Working Group. He added that it would be very useful if, over the following days, States and NGOs could inform the experts on the Working Group as to the progress of implementation of the Durban Declaration and Programme of Action.

19. An observer for an NGO supported Mr. Frans' statement that it is essential to have NGOs and civil society involved in such consultative meetings.

20. Mr. Jabbour stated that with regard to the review conference, regional organizations have a special role to play. They should organize regional meetings in order to review what has been implemented in the context of the Durban Declaration and Programme of Action.

21. Ms. Zlătescu appealed to the Working Group to work hard in order to produce a better definition of racial profiling.

22. The observer for South Africa supported the statement of the representative of Algeria. She emphasized that racial profiling is a serious problem, as well as the victimization and social exclusion of people of African descent. After the terrorist attacks of 11 September 2001, the occurrences of racial profiling have increased around the world. In addition to skin colour and descent, religious symbols and religion have been added to the grounds for racial profiling. There are many unreasonable police interrogations, arrests, imprisonments and other actions due to suspicions of terrorism. She stressed that international instruments are not enough and added that it is important to remember that the Durban Declaration and Programme of Action also refer to "political will".

23. One observer for an NGO pointed out that Member States are reluctant to implement international standards and the occurrence of racial profiling is the outcome of this reluctance. He recommended that the Working Group collaborate closely with the respective treaty bodies.

24. Mr. Kasanda recalled that more and more States have signed and ratified the respective international treaties, which demonstrates the increasing importance they attach to ending racism, racial discrimination, xenophobia and related intolerance. He made the point that it would be very helpful if participants could report on the implementation of Durban.

25. The observer for Egypt pointed out that the recommendations of the Working Group are sometimes not clear enough or not addressed to a relevant authority. In this regard, it is important that the Working Group collaborates closely with the treaty monitoring mechanisms so as to facilitate the effective implementation of recommendations. He added that he supported the statement of the observer for Algeria.

26. An observer for an NGO read a declaration of support and recommendations to the Working Group on behalf of all NGOs present at the sixth session. He began his comments by emphasizing the need to bring to the attention of the international community the increasing number of violations of the human rights of people of African descent around the world. He stressed that the Working Group must become the voice of the international community in identifying and promoting relevant, sustainable and effective solutions towards the elimination of all forms of racism, racial discrimination and xenophobia affecting people of African descent all over the world. He noted the importance of the work done by the Working Group and emphasized that it must maintain its work on the human rights of people of African descent. He underlined that the budget of the Working Group should come from a regular United Nations fund. Currently, a lack of funding restricts the ability of the Working Group to work directly with the victims of racism in their own countries. He added that the involvement of civil society in the sessions of the Working Group was important and to this end there was a need for a fund to help with the travel expenses of participants, so as to permit greater participation by people of African descent.

B. Thematic analysis: discussion on and analysis of racial profiling

27. The Chairperson-Rapporteur introduced agenda item 6 by calling the attention of the Working Group to the need to make concrete recommendations on the elimination of racial profiling. He stated that racial profiling existed in all regions of the world and that the absence of information is not an indication that the phenomenon does not exist.

Item 6 (a): The definition of racial profiling and the international framework prohibiting racial profiling

28. Leila Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, presented a paper focused on the definition of racial profiling. She stressed that racial profiling is a violation of the right to non-discrimination, which is firmly anchored in international law, as it is considered to be an integral part of customary international law. She explained that a problematic issue with regard to racial profiling is the lack of one widely accepted definition. Instead, there are several definitions, which makes it more difficult to prove the occurrence of racial profiling. She pointed out that two very different definitions of racial profiling have emerged, one narrow and restrictive, and the other fairly broad. Under the restrictive definition, racial profiling is defined as an activity on the part of law enforcement officers based exclusively on race. The other category is comprised of broad definitions, where all possible grounds for discrimination, in addition to race, are taken into consideration. Furthermore, Ms. Zerrougui

underlined that there is a difference between racial profiling and criminal profiling. The main difference is that racial profiling relies on race while criminal profiling relies on behaviour. She underlined the importance of statistics on racial profiling to determine the magnitude of the problem, general trends and the methods that can be best used to combat it.

29. Irina Moroianu-Zlătescu, member of the Working Group on People of African Descent, began her presentation by providing an overview of the United Nations international framework applicable to the prohibition of racial profiling, including instruments, mechanisms and procedures. She explained that the provisions contained in international human rights instruments are only a general framework for approaching the issue of racial profiling. She underlined that for effective prohibition of such practices, aimed at eradicating the phenomenon, there is a need for specific legislative measures. Good practice also needs to be circulated, in particular to law enforcement agencies.

30. Georges Jabbour, member of the Working Group on People of African Descent, reviewed two definitions of racial profiling: one by police and one in the administration of justice. He stressed that the practice of racial profiling is ineffective in fighting crime, in addition to being contradictory to international human rights law. He stressed that racial profiling ought to be criminalized in national legislation.

Item 6 (b): The problem of racial profiling in the administration of justice

31. Régis de Gouttes, Chairman of the Committee on the Elimination of Racial Discrimination (CERD), provided a detailed overview of CERD general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system. He explained that people of African descent are covered by the general recommendation and that it covers not only racial profiling but all manifestations of racial or ethnic discrimination in the administration and functioning of the criminal justice system. Racial profiling is explicitly addressed in paragraph 20 of the general recommendation. He explained that the definition of racial profiling contained in paragraph 72 of the Durban Programme of Action is larger in scope than that contained in paragraph 20 of the general recommendation.

Item 6 (c): Regional work on and experience of the issue of racial profiling

32. Claudia Lam, a lawyer at the European Commission against Racism and Intolerance (ECRI), made a presentation on the work of ECRI in relation to the issue of racial profiling. This started with a country-by-country approach and will now deal with the issue by means of its general policy recommendations. A provisional draft definition of racial profiling used by ECRI focuses on the use of racial profiling by law enforcement officials. ECRI has chosen to use the notion of racial profiling and not ethnic profiling as this term would be too narrow. ECRI defines racial discrimination as discrimination on grounds of race, colour, language, religion, nationality, or national or ethnic origin. This definition stresses that racial profiling is a form of racial discrimination, based on the ECRI definition of racial discrimination, itself based on the case law of the European Court of Human Rights. The definition does not refer to stereotypes, as do many other definitions.

33. Ms. Lam stated that the draft general policy recommendation contains the following recommendations: to clearly define and prohibit racial profiling; to collect data and carry out research and monitoring on racial profiling; to introduce a reasonable suspicion standard; and to provide police with training on the definition of racial profiling. She clarified that prohibition does not necessarily imply criminal law provisions, as constitutional law, civil and/or administrative law can be more appropriate tools in some cases.

Item 6 (d): The human impact of racial profiling

34. G r me Topka, secretary-general of the Carrefour de r flexion et d' action contre le racisme anti-noir, Switzerland, made a presentation on racial profiling against people of African descent in Switzerland. Mr. Topka stressed that racism against people of African descent was a specific form of racism. He discussed the current state of affairs in Switzerland with reference to certain high profile cases in the Swiss courts and the attitude of the Swiss media towards racism. He also discussed racial bias against and stereotyping of people of African descent and spoke of the trivialization of racism against people of African descent. He recommended, inter alia, more education on the issue of racism in schools, police forces, the public sector and the justice system; greater racial diversity in police forces; the creation of an anti-discrimination charter; the creation of a racism monitoring body; greater innovation in the fight against racist attitudes towards people of African descent; and for measures to be taken to generate greater awareness in society of the problem of racism against people of African descent. He discussed the positive work the Carrefour had achieved in collaboration with the media and police but stressed that further collaboration was necessary to improve the situation of people of African descent in Switzerland.

35. Joe Frans, member of the Working Group of Experts on People of African Descent, made a presentation on the impact of racial profiling on people of African descent in Europe. He noted that racial profiling is a serious human rights problem affecting millions of people of African descent residing in Europe. In his opinion, there is a sufficient constitutional and legal framework in most European countries to challenge the legality of racial profiling against people of African descent. He stressed that there is incontrovertible proof that racial profiling does not give law enforcement officials an advantage in fighting crime. Profiling is counterproductive insofar as it misdirects law enforcement resources and alienates some of the very people whose cooperation is necessary for effective crime detection.

36. Mr. Frans stressed the psychological, social and economic effects of racial profiling on its victims. Furthermore, it is quite clear that one of the most significant and potentially long-lasting impacts of racial profiling is its effect on children and youth. He pointed out that a possible side effect of the practice of racial profiling is the risk of criminalizing entire communities. He explained that the true extent and nature of racial profiling remains difficult to gauge because of the absence or ineffectiveness of official data collection in several European countries. Many countries do not have adequate official data collection mechanisms in place to record and make information publicly available on racial profiling. The consequences of racial profiling are felt far beyond the law enforcement sector. It impacts unfavourably in an aggregated manner as racial discrimination.

37. Mr. Frans put forward the following recommendations to be considered by the Working Group: the systematic collection of disaggregated data on racist crimes and profiling;

the development and adoption of legal norms prohibiting profiling; the development and implementation of a strategy to recruit people of African descent residing in Europe to the law enforcement field; the strengthening of community relations; and the commissioning of a special study on the phenomenon of the impact of racial profiling on people of African descent residing in Europe.

38. Peter Lesa Kasanda, Chairperson-Rapporteur of the Working Group of Experts on People of African Descent, made a presentation focused on the human impact of racial profiling. He stressed that racial profiling is a violation of human rights law. He also stressed that its practice is not only limited to people of African descent. He further stressed that racial practices occur in many contexts. He then presented an overview of studies on racial profiling in different countries.

39. Mr. Kasanda said that racial profiling is an attack on human dignity, inflicting psychological and emotional pain on its victims. Racial profiling leaves its victims angry, frustrated and humiliated. He stressed that racial profiling erodes public confidence in law enforcement agencies, especially among youths. Racial profiling diminishes the sense of citizenship of its victims, as they feel alienated from society. It disrupts the relationship between the community and law enforcement officers by branding whole communities as suspects and encouraging prejudice against law enforcement agencies by the targeted population.

**Item 6 (e): The problem of impunity and accountability
relating to acts of racial profiling**

40. Robert L. Wilkins, partner at Venable LLP, Washington D.C., made a presentation on fighting impunity and forcing accountability within law enforcement with regard to racial profiling in the United States of America. He stressed that, although there have been improvements in some areas, racial profiling is still a serious problem in the United States. Mr. Wilkins focused his attention on traffic stops and automobile searches. He recalled an incident of racial profiling of which he and his family were the victims and the legal action his family took thereafter against the law enforcement authorities. He then proceeded to propose what would be in his view essential components of a successful campaign for accountability. According to him, a successful strategy would include three key components: first, there must be a concerted effort to engage the citizenry, the political leadership, and the law enforcement community on the problem of racial profiling and to make the issue a priority; second, it is essential to have data collection; third, any effective strategy must strive to create a culture of accountability within law enforcement.

41. Margaret Parsons, African Canadian Legal Clinic, made a presentation focusing on the problem of accountability relating to acts of racial profiling. She stressed the importance of independent accountability mechanisms that address organizational change and hold institutions and individuals accountable, to counter impunity for racial profiling. Ms. Parsons spoke of the measures taken by the African Canadian community to increase the accountability of public institutions and State actors, notably by raising awareness of racism within the police forces, providing the police with anti-racism training, and requiring a clear definition of reasonable suspicion. She discussed best practice with regard to accountability, emphasizing the need for oversight mechanisms, diversity in the police forces and clearer police guidelines on reasonable suspicion. She stressed that anti-racist auditing is an important means of making police forces

fulfil public and legislative expectations. Without audits, law enforcement agencies lose perspective on the impact they have on the communities they serve. To be effective, anti-racist auditing must focus on producing an overall culture shift within police forces. Ms. Parsons explained that audits can also be useful in assessing the usefulness and impact of police education and training. She added that the only way to move the discussion about racial profiling from rhetoric and anecdotal experiences to a more rational dialogue that supports accountability and transparency, is to collect disaggregated information that will allay community concerns and help people of African descent and law enforcement agencies ascertain the scope and magnitude of the problem.

42. Ignacio Cano, professor at the Department of Social Sciences, State University of Rio de Janeiro, made a presentation on racial bias in lethal police action in Brazil. Mr. Cano explained that Brazil is a society sharply structured by socio-economic differences and the debate on inequality and discrimination has often centred on whether these differences originate in class or in race. He discussed racial prejudice in the public security system in Brazil and gave an overview of the different manifestations of racial bias. He then went on to present the findings of a study he had carried out. He highlighted the need for data collection to determine the existence and impact of racial profiling in law enforcement agencies.

Item 6 (f): De jure discrimination and the institutional dimension of the discrimination ascribed to the police and other law enforcement services

43. Leïla Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, made a presentation on de jure discrimination and the institutional dimension of the discrimination ascribed to the police and other law enforcement services. Ms. Zerrougui noted that discrimination is frequently practised in judicial and law enforcement systems in many countries around the world. Identifiable discrimination practices are often linked to endemic forms of racism. An analysis of discriminatory practices in the administration of justice reveals that discrimination is not only the result of the behaviour of individuals who have the authority to apply laws, but can also be de jure and institutional, structurally integrated in the organization and functioning of police forces, judicial systems and prison services. She explained that policies can be either explicitly discriminatory (direct and de jure discrimination) or indirect (institutional). Indirect discrimination has the effect of direct discrimination in practice. She pointed out that there is a need to look beyond the formal idea of equality to the effect of a policy in practice. Ms. Zerrougui stressed that it is with the help of statistics that the institutional dimension of racial profiling has been shown in practice. She commented that the weakness of minority representation in law enforcement helps perpetuate stereotypes founded on race, ethnic origin, colour or religion.

Item 6 (g): Terror, crime and suspect communities: evidence of and solutions to ethnic profiling by police

44. Rachel Neild, Open Society Justice Initiative, presented a paper on ethnic profiling by police in Europe. What prevails in Europe is ethnic profiling on the grounds of race, ethnicity, nationality or religion. She pointed out that, although it is widespread in Europe, it is not sufficiently documented and not explicitly prohibited under European law. Furthermore, she noted that terrorist profiling is mainly based on religious affiliation. Another issue of concern

that she raised was the concept of radicalization, where the objective is to detect people who are in the process of “radicalizing”. Ms. Neild noted that before putting in place a discriminatory measure it is important to estimate its proportionality - cost and effectiveness. Some of the negative effects of profiling that were mentioned include stigmatization of entire suspect communities, increase of crime and disorder due to reduced trust in police and the reduced cooperation of citizens with police. She pointed out that profiles are quite predictable, and terrorist groups have demonstrated that they manage to avoid them. She stressed the need for legal prohibition, ethnic data collection, improving the treatment of minorities and furthering police-minority relations.

Item 6 (h): Profiling in countering terrorism

45. Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, raised once more the importance of the issue of definition in regard to profiling. He explained that, in his view, profiling is an acceptable means of law enforcement activity when profiles are statistically proven. Mr. Scheinin explained that in the context of counter-terrorism, permissible profiling should be based on the principle of proportionality and legitimacy of aim. He also clarified that, as in many cases religion is not readily identifiable, law enforcement officers use profiling based on ethnicity and nationality. He emphasized that any profiling is counter-productive and ineffective against terrorism, as terrorist groups are adaptive and manage to pass undetected under the usual stereotypes. He suggested that universal or random searches, done in a professional way, are more efficient than profiling, as they are non-discriminatory and impossible for terrorists to evade. Mr. Scheinin stressed that profiling, if used, should be based on behaviour rather than ethnic or religious characteristics. In this regard, States need to establish clear guidelines for law enforcement on the measures that are permissible in counter-terrorism operations. He also explained the need to document and monitor terrorist profiling practices, to establish oversight of law enforcement agencies, and ensure their compliance with human rights standards.

Item 6 (i): The meaning of racial profiling in the context of the increase of racism

46. Edna Santos Roland, independent eminent expert on the follow-up to Durban, stated that racial profiling does not necessarily manifest itself in the same way in all regions. She said that in Latin America, societies have been racist for a long time and people of African descent have suffered the most from racism. The Durban Conference has created opportunities for a dialogue between people of African descent and Governments. Despite this dialogue, people of African descent continue to be the victims of racial discrimination and their representatives have not been monitoring the increase in racial profiling resulting from the implementation of the war against terror.

47. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, noted that racial profiling is an indicator of the extent of racism, discrimination, xenophobia and related intolerance. He explained that certain communities became visible as their groups became the target of racial profiling. He pointed out that racism is based on the social construction of the concept of identity. Furthermore, the “naturalization” of racism which makes people believe that racism is part of human nature is a most dangerous, ideological, and manipulative tool. He explained that the

sources of each trend in racism can be traced to the social construction of identity and it is essential to deconstruct it. He believes that the upsurge of racism in the past years is due to the return of old stereotypes. According to him, identity crises are the reason for the increase of racial profiling. With regard to immigration, he stressed that host countries often put in place policies which force people to forget and abandon their past cultural identity to prove that they have integrated into their host society. He suggested that the construction of multiculturalism in an interactive, democratic and non-discriminatory process is the way to overcome racism and discrimination.

Item 6 (j): Measures to combat racial profiling, including preventive positive measures

48. Ömür Orhun, Personal Representative of the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) on Combating Intolerance and Discrimination against Muslims, made a presentation focusing on preventive positive measures to combat racial profiling, with specific reference to Muslims. He stressed that the rise of Islamophobia is of great concern. To remedy this negative and disturbing phenomenon, sound strategies and educational approaches must be developed and vigorously implemented. Increasing understanding and respect for cultural and religious diversity would be the first step in identifying and developing criteria for good practice in combating intolerance and discrimination against Muslims. In order to effectively achieve this, condemnation of such behaviour must be accompanied by effective legislative and judicial measures, as well as education.

49. Anastasia Crickley, Personal Representative of the Chairman-in-Office of the OSCE on Combating Racism, Xenophobia and Discrimination, also focusing on intolerance and discrimination against Christians and members of other religions, and Chairperson of the European Union Monitoring Centre on Racism and Xenophobia (EUMC), began her presentation by emphasizing that there is no room for complacency in fighting racism and much more needs to be done. She spoke of the struggle to achieve a multicultural society that is just and equal. She stressed that maximum use needs to be made of existing international and regional conventions in the fight against racial profiling. In this regard, she made reference to the Durban Declaration and Programme of Action and commented on the importance of national plans of action in addressing racial profiling. She spoke of the need to address direct and indirect discrimination by mainstreaming it into the legal framework within countries and through education. In this regard, political will and leadership is paramount in effectively combating racial profiling. Ms. Crickley added that in addressing racial profiling, there is a need to go beyond police forces to the immigration and prison services and the judiciary. There needs to be a mainstreaming of the whole institutional approach to racial profiling, to include not only pre-service but also in-service training. Furthermore, the promotion of the culture of leadership needs to be built on anti-racist values. She spoke of the need to embed action on racial profiling in laws to address racism and racial discrimination, recognizing in particular the ways in which direct and indirect racism are embedded in the structures of our various systems. She added that there is a need to take positive action in law enforcement agencies to secure real participation of targeted minorities at all levels. Furthermore, stakeholders at all levels need to be engaged in the development of actions to address racial profiling. She explained that any action on racial profiling needs to be supported by independent data collection mechanisms. In conclusion, Ms. Crickley spoke of the need to go beyond racism and discrimination and look at the parallels

between racial profiling and poverty and exclusion. In addition, she emphasized the need to recognize that the complexities of racial discrimination and racial profiling may be experienced differently by different groups and require different responses.

Item 6 (k): Data collection on ethnic profiling

50. Panagiotis Dimitrakopoulos, head of unit, Research and Data Collection at the European Monitoring Centre on Racism and Xenophobia, made a presentation on the work and research of the Centre. The focus of his presentation was on the collection of data on ethnic profiling in Europe. He gave a brief overview of the EUMC and stated that its prime objective was to collect and analyse data and information on the phenomena of racism, xenophobia and anti-Semitism in order to support the Community and its member States when they take measures or formulate courses of action within their respective spheres of competence. He stressed the importance of statistical data in the fight against racism in order to document the extent and nature of racism and inform on the development and implementation of policies combating racism. He noted that ethnic profiling has come to increasing prominence in the European Union in recent years, primarily as a reflection of terrorism threats, security measures and concerns about rising illegal immigration.

Item 6 (l): The benefits from overall representativeness in the police and criminal justice systems

51. Tom Hadden, Professor of Law, Queen's University, Belfast, focused his presentation on developing preventive strategies in the fight against racial profiling. He stressed that it was more useful to approach a practice such as racial profiling by seeking to reform institutions rather than simply condemning and prohibiting the practice. His presentation drew on the experience of institutional racism in the British police and communal problems in Northern Ireland. He stressed that the practice of racial profiling is clearly discriminatory and counter-productive. He underlined the fact that profiling or differential treatment does not necessarily constitute unlawful discrimination. In cases where there is an underlying objective and rational justification for differential treatment, whether statistical or other, differential treatment is acceptable.

52. Mr. Hadden offered some general comments on strategies that might be developed to prevent acceptable forms of criminal profiling and security risk assessment from degenerating into unacceptable forms of racial or communal profiling. He highlighted the need for data collection to establish whether police powers are being used in a racially or communally discriminatory manner. He stressed the importance of ensuring that law enforcement agencies are fully representative of the communities which they serve. Where this cannot be achieved in practice, there is a need to develop structures for discussion and liaison with representatives of minority communities. A further measure of accountability with regard to minorities can be achieved by the creation of national or regional mechanisms to monitor and oversee the full range of policing of security policies and to undertake more detailed investigations into particular incidents or issues.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

53. The Working Group acknowledges that racial profiling is a violation of the right to non-discrimination, which is firmly anchored in international law. Racial profiling breaches several rules of international law, since the prohibition of discrimination is mentioned in Article 55 (c) of the Charter of the United Nations, and in almost all international instruments on the protection of human rights.

54. The Working Group recalls that international and regional norms make clear that racial discrimination in the administration of justice is unlawful. The Working Group urges States to clearly define and adopt explicit legislative provisions banning racial profiling.

55. The Working Group reiterates the definition of racial profiling in paragraph 72 of the Durban Programme of Action which comprises the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities, or for determining whether an individual is engaged in criminal activity.

56. The Working Group stresses 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 a profoundly negative stigmatization and stereotyping of persons of African descent as having a propensity to criminality.

57. The Working Group acknowledges that religion should be included as one of the prohibited grounds on which racial profiling can be manifested.

58. The Working Group affirms that in most cases where racial profiling has been applied, no significant results have been achieved in terms of enhanced security and great harm has been done to people of African descent and other vulnerable groups.

59. The Working Group welcomes the General Assembly decision to convene in 2009 a review conference on the implementation of the Durban Declaration and Programme of Action.

60. The Working Group is convinced that States must take action and pursue policies that reduce de facto inequalities and help groups facing deep-rooted discrimination to overcome their adverse situation vis-à-vis other members of the community.

61. The Working Group believes that Governments should implement and enforce appropriate and effective legislation to prevent acts of racism, racial discrimination, xenophobia and related intolerance, thereby contributing to the prevention of human rights violations.

62. The Working Group believes that States should review and reform immigration laws and practices in order to ensure that they are in accordance with international human rights standards.

63. The Working Group reaffirms that diversity is an asset. It believes that mutual understanding and interaction are important tools for combating racism, racial discrimination, xenophobia and related intolerance, and can prevent the occurrence of racial profiling.

64. The Working Group believes that anti-racist auditing and monitoring, both internal and external, are essential means of making sure that law enforcement agents respect the principle of non-discrimination, which will increase the trust and cooperation of the population and boost the efficiency of their actions.
65. The Working Group believes that tolerance and coexistence are the lowest common denominators for a society free of racism and discrimination. States should adopt appropriate measures that aim to create and/or strengthen cohesive communities, where every individual has a real sense of belonging to his or her community and State, as well as a stake in its well-being.
66. The Working Group condemns the utilization of racist and discriminatory concepts by political and community leaders. Their leadership is essential for prioritizing issues related to the fight against racism, racial discrimination, xenophobia and related intolerance.
67. The Working Group believes that States should prioritize, in the short-term, the improvement of the professional conduct of law enforcement officers during stop and search actions. The Working Group recognizes that in conjunction with this, and to prove a real commitment to accountable and equitable policing, must go the creation of effective complaints mechanisms that include external, civilian-led components.
68. The Working Group is convinced that complaints mechanisms should be strengthened and that complaints about discrimination against people of African descent by law enforcement officers must be investigated with the utmost seriousness by the relevant bodies.
69. The Working Group condemns institutionalized discrimination and believes that States should eradicate such practices as a matter of urgency.
70. The Working Group emphasizes the need for relevant, disaggregated and detailed data in order to monitor the occurrence of racial profiling and to propose corrective measures. In this respect, the Working Group urges States and relevant agencies to collect and publicize data on their actions and on the profile of those subject to these actions, while complying with international best practice in the protection of personal data.
71. The Working Group encourages research, both by law enforcement organizations and by external and independent actors, in order to detect and prove the existence of racial profiling.
72. The Working Group believes the utilization of criteria such as race, religion, ethnicity, nationality or skin colour in police procedures, aimed at identifying trends in criminal acts or establishing a propensity for legal violations, leads to the stigmatization of people of African descent and other groups which have historically been discriminated against and assigned inferior status in society. The Working Group reaffirms that such practices violate the principles of non-discrimination and equality.
73. The Working Group affirms that terrorist profiling practices that are based on race violate international human rights standards.
74. The Working Group affirms that discrimination and intolerance against Muslims have devastating effects not only on the daily lives of Muslim communities, but also on the societies where they live. To remedy this negative and disturbing phenomenon, sound strategies and

educational campaigns must be developed and vigorously implemented. Increasing understanding and respect for cultural and religious diversity would be the first step in identifying and developing good practice in combating intolerance and discrimination against Muslims.

B. Recommendations

75. The Working Group urges States:

- To design and implement a system of education and training for law enforcement officers and military personnel that will ensure that they are familiar with international human rights norms against racism, discrimination, xenophobia and related intolerance, and where racial profiling is a violation of certain international law provisions;**
- To ensure that issues of racial profiling and non-discrimination are integrated into all aspects of training and education, including ongoing training and professional development, for law enforcement agencies. This should include thorough training in standards and alternatives to racial profiling;**
- To abolish and prohibit any discrimination in legislation within their jurisdiction and to criminalize racial profiling, envisaging sanctions for those who violate the law and ensuring remedies for the victims.**

76. The Working Group invites States to establish disaggregated data collection and oversight mechanisms to monitor and combat racial profiling. These mechanisms should include both procedures that are internal to law enforcement agencies and also those for external oversight bodies, which have the participation of the community.

77. The Working Group urges law enforcement agencies to take positive action to secure real participation of people of African descent and other vulnerable groups at all levels throughout law enforcement agencies. This should include specific recruitment, retention and promotion goals for positions of responsibility in such institutions.

78. The Working Group reiterates the importance of the recommendation made by the independent eminent experts on the follow-up to Durban to develop a racial equality index as a tool to better assess the discrimination that affects people of African descent and other vulnerable groups, and to guide the adoption of policies to remedy their situation.

Annex I

AGENDA

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda.
4. Organization of work.
5. General statements: exchange of information on the implementation activities of participants and debate on issues of general interest to the implementation process.
6. Thematic analysis: discussion on and analysis of racial profiling:
 - (a) The definition of racial profiling and the international framework prohibiting racial profiling;
 - (b) The problem of racial profiling in the administration of justice;
 - (c) Regional work on and experience of the issue of racial profiling;
 - (d) The human impact of racial profiling;
 - (e) The problem of impunity and accountability relating to acts of racial profiling;
 - (f) De jure discrimination and the institutional dimension of the discrimination ascribed to the police and other law enforcement services;
 - (g) Terror, crime and suspect communities: evidence of and solutions to ethnic profiling by police;
 - (h) Profiling in countering terrorism;
 - (i) The meaning of racial profiling in the context of the increase of racism;
 - (j) Measures to combat racial profiling, including preventive positive measures;
 - (k) Data collection on ethnic profiling;
 - (l) The benefits from overall representativeness in the police and criminal justice systems.
7. Adoption of conclusions and recommendations.
8. Other matters.
9. Closing of the session.

Annex II

LIST OF PARTICIPANTS

A. Members

Mr. Peter Lesa Kasanda (Chairperson-Rapporteur)

Mr. Joe Frans

Mr. Georges Nicolas Jabbour

Ms. Irina Moroianu-Zlătescu

B. States Members of the United Nations represented by observers

Algeria, Argentina, Austria, Belgium, Bosnia and Herzegovina, Burkina Faso, Canada, Chile, China, Congo, Côte d'Ivoire, Croatia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Guatemala, Guinea, Haiti, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Lesotho, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mauritius, Mexico, Morocco, Nepal, Nigeria, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Slovakia, South Africa, Spain, Sudan, Sweden, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, Venezuela (Bolivarian Republic of), Yemen, Zambia.

C. Non-member States represented by observers

Holy See

D. Intergovernmental organizations

African Union, Organisation internationale de la Francophonie

E. United Nations

Office of the United Nations High Commissioner for Refugees

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

Anti-Racism Information Service, December Twelfth Movement International Secretariat, Interfaith International, International Association Against Torture, International College of Surgeons, International Commission of Jurists.

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

Asociación de Afrocolombianos Desplazados, Conseil national des citoyens et citoyennes d'origine haïtienne, Diaspora Afrique, Espacio Afroamericano, Mouvement international pour les réparations, National Consultative Committee on Racism and Interculturalism.

H. Panellists and presenters

Mr. Ignacio Cano, Ms. Anastasia Crickley, Mr. Panagiotis Dimitrakopoulos, Mr. Régis de Gouttes, Mr. Tom Hadden, Ms. Claudia Lam, Ms. Rachel Neild, Mr. Ömür Orhun, Ms. Margaret Parsons, Ms. Edna Santos Roland, Mr. Martin Scheinin, Mr. Gérôme Topka, Mr. Robert L. Wilkins, Ms. Leïla Zerrougui.
