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**REPORT OF THE COMMISSION ON THE DURBAN REVIEW
CONFERENCE ON THE WORLD CONFERENCE AGAINST
RACISM, RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE**

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I. Introduction and General Framework of the Conference

1. Council will recall that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa on 8 September 2001. This Conference led to the adoption of the **Durban Declaration and Programme of Action (DDPA)**, two instruments of particular importance that heralded significant progress in the fight against racism, racial discrimination, xenophobia and related intolerance. The Declaration in particular addressed the sources, causes, forms and manifestations of racism, preventive measures, effective remedies, recourse, redress and compensatory measures for victims, as well as strategies to achieve full and effective racial equality.

2. The 2001 Programme of Action focused on the implementation measures at national, regional and international levels, identification of several categories of victims such as Africans and people of African descent, indigenous peoples, migrants, refugees and other victims. With regard to reparations and effective recourse, the Programme of Action dealt mainly with national legislation and programmes for reparations. Lastly, with respect to racial equality strategies, the Programme of Action identified an international legal framework, and highlighted internal and regional cooperation, as well as the role of the Office of the United Nations High Commissioner for Human Rights and of the civil society.

3. The holding of the Review Conference, as a follow-up to the Durban Conference, stemmed from the need - as reflected in the Declaration and Programme of Action ratified in 2002 by the United Nations General Assembly that decided on the holding of a conference in 2002 - to evaluate the implementation of the DDPA and propose measures aimed at improving the effectiveness of the fight against racism.

4. The United Nations Human Rights Council served as the forum for the consideration of mechanisms for monitoring the implementation of the DDPA. It was under the aegis of this Council that three mechanisms were established, namely the Intergovernmental Working Group on the Effective Implementation of the DDPA, the Working Group of Experts on People of African Descent, and the Group of Five Independent Eminent Experts on Racism as well as the Durban Review Conference Preparatory Committee. These three mechanisms were mandated to come up with concrete measures for implementation of the DDPA.

5. The Durban Review Conference, of which this reports gives an account, was held in Geneva, Switzerland, from 20 to 24 April 2009.

II. Durban Review Conference Preparatory Process

6. The entire process of preparation of the Durban Review Conference was conducted by the Preparatory Committee under the control and supervision of the Human Rights Council. The Preparatory Committee chaired by Libya included the representatives of different regional groups. Africa was represented on this Committee by South Africa, Cameroon, Libya and Senegal.

7. The mission of the Preparatory Committee was to take decision on the organization of the Conference particularly on its date and venue, the level of representation at this Conference, its slogan, accreditation of non-governmental organizations, the high-level segment, draft conclusions and on the chair of the Conference. All these issues gave rise to discussions and extremely difficult negotiations, particularly with the Western countries in general, and the European Union in particular. Most of the decisions were taken at the last minute, and often on the basis of very fragile consensus.

8. As the Preparatory Committee progressed in its deliberations, the attitude of some Western countries became increasingly inflexible, often bordering on obstruction. Consequently, the countries of the South, including the African Group, had to contend with repeated threats by the European delegations to withdraw from the process and boycott the Review Conference. These threats were carried out by some countries prior to and by others during the Conference itself.

9. The reticent on the part of Western countries, particularly the Europeans, could be explained by factors relating mainly to the question of reparations for historical injustices such as slave trade or colonialism, the issue of the rise of racist and xenophobic ideologies in their internal political arenas, the non-recognition of contemporary forms of racism (racial profiling, stigmatization of categories of persons such as migrants, attacks on religious symbols), and the fear of the Conference being viewed as an anti-Semitic event. All these factors and the resulting tensions were reflected in the draft conclusions.

10. The very painstaking negotiations resulted in an initial compromise that was achieved with difficulty. In spite of this compromise, several delegations, individually or collectively, stuck to their initial positions, particularly on the issues outlined below which were the subject of fierce controversy.

a) Defamation of Religions/Freedom of Expression

11. The fundamental idea of this element is that limits should be set on freedom of expression where this leads to defamation of religions or incitement to religious hatred. This theory, propounded mostly by the countries of the Organization of the Islamic Conference (OIC), was informed particularly by the numerous attacks, stigmatization and stereotyping of which Muslims in the West have been victims since the 11 September 2001 attacks in the United States of America. The proponents of this theory maintained that despite the fundamental nature of freedom of expression, this freedom could not be absolute and should be subject to restrictions when it concerned defamation of religions, be it Islam, Christianity or Judaism. In their view, defamation of religions as a matter of cause inevitably leads to incitement to religious hatred. Lastly, the advocates of this approach explained that the proposed limitation of freedom of expression has its legal basis in Article 20 of the International Pact on Civil and Political Rights.

12. On the other hand, those strongly opposed to this approach, particularly Western delegations, argued that no limit should be imposed on freedom of expression, which, they insisted, is at the very core of democracy. For this group of countries, the provisions of Articles 19 and 20 of the International Pact on Civil and Political Rights do not contain any reference to defamation of religions, just as the DDPA does not mention it. The concept of defamation of religions is not a human rights concept and any discussion on the issue should rely on the idea of incitement to hatred. Using this argument, the Western Group, particularly the European Union, felt that this aspect should be omitted from the final document of the Durban Review Conference.

13. Anxious not to undermine the success of the Review Conference, member countries of the OIC and their allies, notably the African Group, decided to give up the concept of defamation of religions and stick to the idea of incitement to hatred, be it based on religion or on any other consideration. This strategy of flexibility was dictated by the importance of the DDPA and the Conference was intended primarily to accommodate the Europeans.

b) Slavery, slave trade, reparations and remedies

14. African countries strongly defended the issue of reparations for the wrongs and injustices resulting from past tragedies, a stance which is in line with the fight against racism and the spirit of the Durban Declaration and Programme of Action (DDPA). The main arguments put forward by the African Group and other groups with similar vision were that since 2001, no progress had been achieved in implementing the relevant provisions of the DDPA on slavery. Therefore, slavery, slave trade and the manner in which these scourges had been addressed fell within the competence of the Durban

Review Conference. These issues should not be ignored in the substantive debate or on procedural grounds. The African Group made constant reference to a number of initiatives related to past tragedies such as the official apologies presented in Australia and Canada.

15. The European Union held the view that slavery was a thing of the past and that it was time to turn over a new leaf and move forward. Meanwhile, European countries argued strongly in favour of adoption of such slogans as "The duty of Memory" or "Lest We Forget" for similar cases of crimes against humanity such as the Holocaust. The European Union continued to oppose the issue of slavery because of the problem of reparations, although this issue is well reflected in the DDPA.

16. It is noteworthy that the draft conclusions addressed the issue of transatlantic trade in African slaves. This was seen by Europeans as stigmatizing one aspect of the issue since, according to them, history attests to the existence of slave trade in the African continent. At the insistence of the African Group, the final document adopted at the Review Conference incorporated the concerns of Africa.

c) The Middle East Question

17. The right of the Palestinian people to self-determination was addressed in the DDPA, causing the United States and Israel to withdraw from the 2001 World Conference.

18. In Europe, some delegations continued to regard the issue as that of singling out one country. In their view, the issue has nothing to do with racism, racial discrimination, xenophobia and related intolerance.

19. The Palestinian delegation intervened to indicate that it would not allow the Review Conference to fail on account of the issue of the Middle East conflict, and that the Middle East question had been reflected in the DDPA. In the end, the item was removed from the draft conclusions of the Conference.

d) Sexual Orientation

20. The concept of sexual orientation, championed in particular by the European Union and some Latin American countries, is a new concept that aims to combat all forms of discrimination against people with preference for persons of the same sex. In

other words, this concept concerns the recognition of a number of homosexual rights. The European Union made this issue a priority in the fight against discrimination, although it has no connection with race and does not appear in the DDPA.

21. The African Group and other regional groupings, such as the Arab Group and OIC member countries, were strongly opposed to this new concept on the grounds that it reflected the reality of only a specific region of the world. Moreover, it had been agreed that the Durban Review Conference would be devoted to assessing the implementation of existing instruments and that the Conference was not the appropriate forum to discuss sexual orientation.

22. This strong opposition led to what could be referred to as fresh awareness on the part of European and Latin American countries. Indeed, following an initiative by Brazil, any reference to what was commonly known as sexual orientation was removed from the conclusions of the Conference. In any event, the issue of sexual orientation, which will undoubtedly return to the negotiating table at other forums, deserves special attention and thorough analysis, especially in view of its possible impact on our societies and on future generations. Moreover, it would be desirable to establish a special committee on the issue.

e) Durban Mechanisms

23. Some regional groups with similar views raised questions as to why the activities of DDPA mechanisms (cited above) should be continued, insisting that such mechanisms had no value added. The EU justified its attitude by denouncing the inefficiency of these mechanisms. It said their activities overlapped and the results they produced were very limited. The Group of Five Eminent Experts, for example, met only twice in two years, while attendance at meetings of the Working Group on People of African Descent was scant. For the European Union, the Durban mechanisms should be streamlined through an in-depth review of their usefulness and contribution to the effective implementation of the DDPA.

24. From the perspective of the African Group and its allies, the Durban mechanisms should be evaluated and strengthened. The results produced by these mechanisms, which some consider limited, were due to the lack of financial support from the Office of the High Commissioner for Human Rights in addition to the ineffectiveness of this body in scheduling the meetings of the various mechanisms.

25. African countries had, on several occasions, underscored the relevance of these mechanisms and asserted their determination to work towards continuation of their mandate and their enhancement. The Working Group on People of African Descent, at its last session in January 2009, adopted a work programme. This Group could be expected to make a significant contribution to the fight against racism. Once the other mechanisms are evaluated and strengthened, they could continue to operate effectively. It is worth noting that the Durban Review Conference is not empowered to abolish these mechanisms. The Human Rights Council is the appropriate forum to make such a decision.

26. It is also needful to retain the Ad Hoc Committee on the Elaboration of Complementary International Standards, currently chaired by Algeria. When the Human Rights Council established this mechanism by virtue of paragraph 199 of the DDPA, the European Union vehemently opposed it on grounds that there was no study nor scientific work showing fresh manifestations of racism other than those already addressed in the DDPA, and that there was therefore no need for complementary standards. It would be recalled that the African Group, with financial support from the African Union Commission, Algeria and South Africa, mandated two independent experts to prepare a draft additional protocol or an optional protocol to the International Convention on the Elimination of all Forms of Racial Discrimination.

27. The European Union was strongly opposed to the draft protocol and threatened to withdraw from the Durban Review Conference if a legal instrument of any kind was brought to the negotiating table.

28. In order not to undermine the Durban Review Conference, the African Group decided to present elements of the complementary standards, without prejudice to any legal form that they may take in future. Within this framework, a roadmap for future work of the Committee was agreed on and the Ad Hoc Committee will resume its work after the Durban Review Conference.

III. Preparatory Activities of the African Group

29. Given the sensitive nature of the issues discussed as part of preparations for the Review Conference, the African Group in Geneva held two seminars to consider and define the position to be adopted with regard to the draft final document of the Durban Review Conference as well as a strategy that would ensure the success of the Conference.

30. Under the auspices of the African Union Commission, the African Group met in the seminars held on 5 April 2008 and 7 March 2009, respectively. These seminars enabled the Group to examine several aspects of the preparatory work and the Review Conference itself, particularly the draft final document and a strategy for the future.

31. The conclusions of the 5 April 2008 seminar informed the stance of the African Group up to the preparation of the draft conclusions in February 2009. The African Group made this seminar a real reference for all the issues it had to discuss with the other regional and political groups as well as a sound basis for harmonizing the position of the Group.

32. As regards the dynamics of the various regional groups in the context of the preparations for the Review Conference, there was clear and perceptible symbiosis between the African Group and its traditional allies. It was possible, through continuous discussions particularly among the respective coordinators of these groups, to identify common or at least similar stances, and this impacted positively on the negotiations. Threats of withdrawal by certain Western countries was in fact only a last resort tactic in the face of this synergy with all its implications, in anticipation of possible vote.

33. On the issue of cooperation with the International Criminal Court and the international arrest warrant issued by the Court against the President of The Sudan, the position of the African Union was underscored and defended. The issue of targeting African leaders and the abuse of the use of the principle of universal jurisdiction was advanced as argument in the bid to avoid any reference to the International Criminal Court. After lengthy discussions and several meetings of the Ambassadors of the African Group, a compromise solution was found, i.e. to use the terms in the DPAD of 2001 which refers exclusively to special international criminal tribunals, the only tribunals existing at that time.

34. This issue of cooperation with the International Criminal Court which has been handled somewhat badly will continue to be a potential source of division. The issue was raised during discussions on the situation of Human Rights in the Democratic Republic of the Congo (Human Rights Council of March 2009); it was also raised during the Durban Review Conference and will certainly be raised during discussions on the mandate of the Special Rapporteur in the Sudan which will take place at the 11th Session of the Human Rights Council (June 2009).

35. Mention should be made of one last issue although it was not discussed by the African Group. The issue concerns the genocide committed against Tutsis in Rwanda. The Group preferred to deal with the matter in general terms with no specific reference to the Tutsis; rather, it focussed on condemnation of the refusal to acknowledge genocide. The problem arose when Turkey opposed a reference to the issue in general terms whereas Armenia felt it was fundamental. This matter was resolved by a declaration from the President of the Conference which made reference to the genocide of the Tutsis in Rwanda and condemned the refusal to acknowledge the genocide. This declaration by the President was not included in the conclusions, but it was incorporated in the report of the Conference.

36. The role of the African Union Commission throughout the different stages of preparations for this Conference enabled the African Group in Geneva to define its principled position and points of discussion for use in the negotiations, and to promote regular dialogue with its partners.

IV. Proceedings of the Conference and Conclusions

1. Bureau of the Conference

37. In accordance with an amendment introduced in the Rules of Procedure of the Review Conference by the Preparatory Committee, the 20 members of the Bureau of the Preparatory Committee were elected Vice-Chairpersons of the Conference, and Cuba as Rapporteur General. The Review Conference then constituted a Drafting Committee and a Plenary Committee, members of which were appointed from among the 20 Vice-Presidents of the Conference. Ms. Najat Al-Hajjaji of Libya was elected Chairperson of the Plenary Committee and Mr. Yury Boychenko of the Russian Federation, Chairman of the Drafting Committee. In accordance with the Rules of Procedure, the President of the Review Conference, the Vice-Chairpersons, the Rapporteur General and the Chairpersons of the Plenary Committee and the Drafting Committee constitute the membership of the Bureau of the Conference.

38. The Review Conference adopted its agenda as proposed by the Preparatory Committee on 22 April 2009. It should be mentioned that the discussions and preparation of the draft final document of the Review Conference were completed by the Preparatory Committee and its working group composed of an unlimited number of members. The Conference received from the Preparatory Committee a text that was meticulously negotiated, acceptable to all the parties and ready for transmission to the Plenary Committee which, in turn, would recommend its adoption by the plenary of the Conference.

2. Outcomes of the Conference

39. In its final Document, the Durban Review Conference reaffirms the Declaration and the Programme of Action adopted in Durban in 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It takes note of the efforts deployed at all levels and expresses satisfaction at the progress so far achieved. It however expresses concern at the fact that the challenges and obstacles identified in Durban persist and that there are several areas where there has been no progress at all or where there is still room for improvement. These conclusions underscore the need to tackle with more determination and political will all forms and manifestations of racism in all spheres of life and in all regions of the world including those under foreign occupation.

40. The Review Conference reiterates that all peoples and individuals belong to one human family that is rich in its diversity, and that all human beings are born free and equal in dignity and in rights. It energetically rejects every doctrine of racial superiority and theories which tend to establish the existence of so-called distinct human races. It underscores the fact that cultural diversity is an invaluable asset for the progress and well-being of the entire humanity. Moreover, the Conference recalls that poverty, underdevelopment, marginalization, social exclusion and economic disparities are closely linked to racism, racial discrimination, xenophobia and related intolerance, and that they contribute to the promotion of racist mentalities and practices which, in turn, exacerbate poverty. It condemns any legislation, policies and practices based on racism, racial discrimination, xenophobia and related intolerance, and incompatible with democracy and transparent and responsible governance.

41. The Conclusions of the Conference recall that democracy, transparent and responsible governance that conforms to accountability and is participatory at national, regional and international levels, a governance that takes into account the needs and aspirations of the people, are essential for the prevention and elimination of racism. It deplores the number of incidents of violence and racial or religious intolerance, including Islamophobia, anti-Semitism, christianophobia and anti-Arab sentiments reflected particularly in disparaging stereotypes and the stigmatization of persons based on their religion or beliefs. In this regard, the Conference urges all Member States of the United Nations to implement paragraph 150 of the Durban Declaration and Programme of Action.

42. Also in the conclusions, the Review Conference urges States to redouble their efforts to protect the human rights of all migrants regardless of their immigration status.

It identifies in particular a number of new concrete measures and initiatives to combat and eliminate all manifestations of racism, racial discrimination, xenophobia and related intolerance.

43. The Review Conference further notes the actions of countries which, in regard to past tragedies, have offered their apologies and put in place institutional mechanisms such as Truth and Reconciliation Commissions. It requests those who have not yet contributed to restoring the dignity of the victims to find appropriate means to do so.

44. The Review Conference underscores the fact that the right to freedom of thought and expression is one of the basic foundations of any democratic and pluralistic society. It emphasizes the role that this right can play in combating racism across the world. It takes note of the proposal made by the High Commissioner for Human Rights to organize a series of workshops for experts in collaboration with regional stakeholders from all parts of the world in light of the deliberations on the links between freedom of expression and the ban on incitement to national, racial or religious hatred. The objective will be to gain deeper insight into the legislative frameworks and legal practices as well as the national policies of countries in different parts of the world on the concept of incitement to hatred so as to assess the level of implementation of the ban.

45. Furthermore, the Durban Review Conference was given high media coverage in Switzerland and in Europe. In view of the media campaign around the Conference, it can be said that there was a general tendency to continue to view the event as anti-Semitic, as was the case for the first Durban Conference in 2001. This apprehension has persisted despite efforts at building compromise and the concession made by some countries or regional groups to remove all reference to the situation in the Middle East from the draft outcomes. Similarly and in the same spirit, the reference to the holocaust was kept in a separate paragraph, while several other past tragedies were consigned in one paragraph. It is also important to point out that the comments of the Iranian President, strongly directed against the Jewish State, including the refusal to recognize the genocide, stoked this idea on the part of the European media.

46. The media also covered extensively the issue of religious defamation, particularly in terms of freedom of expression although religious defamation was not mentioned in the outcomes of the Conference. Western countries also tried to tone down the racist and segregationist ideologies increasingly characterizing their domestic political scenes. Paradoxically, this element remained quite marginal in, if not absent from, the media coverage of the Durban Review Conference.

VI. Comments and Recommendations

47. With the adoption of the outcomes of the Conference, it is appropriate to note that the struggle against racism managed to make some progress. Such outcomes, general and conciliatory as they may be, must be assessed in light of the text and the spirit of the Durban Declaration and Programme of Action adopted in 2001, and unequivocally reaffirmed by the 2009 Review Conference. The DDPA remains at the forefront of the struggle against racism and is still a vital reference on the issue. On this score, one cannot but describe the Review Conference as a success.

48. The African Union Commission is invited to play the role of initiator in the implementation of the international instruments to combat racism. The struggle against racism, it must be emphasized, remains high on the continent's agenda.

49. In this regard, a number of actions could be undertaken by the African Union Commission particularly:

- creation of a specialised structure to handle racism issues. Such a structure could, in close collaboration with Member States and international partners, carry out a timely appraisal of the implementation of the instruments to combat racism including new forms of racism. It would also act as a mechanism for detection of the manifestations of racism in Africa and across the world.
- initiation of awareness-building, dialogue and *rapprochement* programmes for regional groups. Such a structure could also contribute substantially towards the debates on racism.
- highlighting the continent's initiatives in combating racism. The programmes initiated by the African Union could be an undeniable added value to African countries' fight against racism and would be a precious information tool for African decision-makers. The United Nations High Commissioner for Human Rights has an Anti-Discrimination Unit which could be a source of inspiration on the matter.

50. Indeed, the global arsenal for combating racism has just been reinforced by the adoption of the outcomes of the Durban Review Conference which will complement the DDPA, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and other

regional instruments. However, implementation remains fundamental to give the texts real life and make them have meaningful impact on the victims of racism.

51. This dimension of implementation is predicated on mobilisation of committed and proven political will. Such political will must first emerge from within our countries. There will always be resource constraints, but this should not lead the Continent to slacken its efforts at easing the sufferings and inequalities Africans face all over the world. The African Union must be a driving force in this regard. Effective implementation activities to combat racism must form a vital part of our organisation's programmes in the years ahead.

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