

# **Administration of Justice: Police Violence, Prisons and Accountability**

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## **Distinguished representatives**

### **Ladies and Gentlemen**

My presentation this morning is on the administration of justice focusing on police violence, prisons and accountability.

All human beings are born free and equal in dignity and rights. This provision is found in Article 1 of the Universal Declaration for Human Rights. People of African Descent, just like any other human beings, are born free and equal in dignity and rights. Article 1 of the Declaration further provides that all human beings “are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Needless to say, as human beings, people of African descent are endowed with reason and conscience.

The reality is that generally, to those who are involved in the administration of justice in relation to people of African descent, this article does not mean anything. In this intervention, an attempt is made to show that police violence against people of African descent continues to be on the rise. The overrepresentation of people of African descent in prisons remains a cause for concern. The absence of accountability on the part of police negates the whole notion of respect for human rights of people of African descent. States must take action to address challenges faced by people of African descent, particularly in the administration of justice.

Article 3 of the Universal Declaration of Human Rights guarantees to everyone the right to life, liberty and security of person. Article 6 of the International Covenant on Civil and Political Rights elaborates this guarantee even further by providing that every human being

has the inherent right to life and that this right shall be protected by law, and no one shall be arbitrarily deprived of his life. To a majority of people of African descent, these guarantees are constantly not respected by those who administer criminal justice. This is illustrated by the many examples of police brutality against people of African descent in many parts of the world.

### **Police Violence**

People of African descent are subjected to untold police violence. Serious human rights violations, excessive use of force by law enforcement officials remain pervasive. In its mission to Germany, the Working Group of Experts on People of African Descent (Working Group) expressed concern by the failure of the State to investigate effectively and provide justice in the case of Oury Jallow, an African asylum seeker, who died in a fire in a police cell in Dessau in 2005 while his hands and feet were cuffed. In Canada, the Working Group was concerned about the disturbing pattern of impunity for police violence. The Working Group learnt with shock that no police officer had served time in prison for killing a black person yet black people were extraordinarily overrepresented in instances of police use of lethal force.

In the United States, the Working Group found that killings of unarmed African Americans by the police was as a result of a pervasive racial bias in the justice system. These examples are but a tip of an iceberg and illustrate the point that to some, people of African descent are not born free and equal in dignity and rights. The pervasive police violence against people of African descent does not promote the spirit of brotherhood among the human race, to which we all belong.

## **Prisons**

Article 3 of the Universal Declaration of Human Rights provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. For people of African descent the reality points to the complete opposite. A quick scan of what obtains in prisons and detention centres illustrates this assertion.

In Canada, the Working Group found that black inmates in federal custody were overrepresented in maximum security, segregation (or solitary confinement) and use of force incidents. The Working Group learnt that black inmates were 1.5 times more likely to be placed in maximum security institutions where programming, employment, training, education upgrading, rehabilitative programming and social activities were limited.

In the United States, the Working Group found that African Americans were overrepresented in the penitentiary system. Most disturbingly, studies showed that with the rate at which African Americans were incarcerated, one in every three black American males born today could expect to go to prison in his lifetime.

In the United Kingdom, the Working Group expressed concern on the fact that people of African descent represented a disproportionate percentage of the prison population and offenders on probation in England and Wales. It was also found that there were a disproportionate number of young people of African descent in young offenders’ institutions.

In Guyana, the Working Group was appalled by the overcrowding of prisons which was caused by limited capacity of prison facilities, lengthy pretrial detention and lack of resources. In its preliminary statement after a visit to Guyana, the Working Group found that majority of inmates in the prison were Afro-Guyanese and were kept in appalling conditions not fit for human habitation. Of great concern was the fact that the facility was located close to a landfill with foul odour coming from stagnant dirty water. The overall prison was way below the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

### **Accountability**

Accountability could be referred to a system of internal and external checks and balances aimed at ensuring that the police carry out their duties properly and are held responsible if they fail to do so. This system is aimed at upholding police integrity and deter misconduct and restore or enhance public confidence in policing. Of great importance, accountability aims at ensuring the respect of human rights of those who become subject of the criminal justice system, particularly the police.

The Working Group is constantly confronted with denials that racial profiling is taking place. Racial profiling remains a form of discrimination which not only violates basic human rights of people of African descent but also contributes to ineffective and inefficient policing. In fact, racial discrimination, in the form of racially biased policing, has a number of harmful effects, including the mistrust by people of African descent of the police. If people of African descent do not have confidence in the police, they are far less likely to report any criminal behaviour or participate or assist in criminal investigations. Racial biased policing also results

in people of African descent feeling disengaged from the wider society as a result of feeling over-surveilled or singled out for different treatment.

In Sweden, the Working Group received reports of racial profiling of Somalis, who were often singled out and put under suspicion in public places as potential terrorists. No reports were provided of police accountability for racial profiling. In the United States, the Working Group expressed concern about the low number of cases where police officers were held accountable for police shootings and excessive use of force. In Canada, the Working Group found that the police officers who were involved in the killing of Jermaine Carby (who allegedly refused to drop a knife when ordered to do so – a knife that was never found) were never charged, disciplined or even publicly identified.

The Working Group has expressed an opinion that the root cause of structural racism and police killings, among other things, lies in the serious lack of accountability for perpetrators of such killings. It has further called upon States to ensure that perpetrators are held responsible and effective remedies are provided and that steps are taken to prevent further human rights violations against people of African descent.

### **Human Rights and Criminal Justice**

In many States, the criminal justice system does not favour people of African descent. While racism is not blatant, it is largely structural. This indirectly results in police violence, overrepresentation of people of African descent in prisons, which are sometimes not conducive for rehabilitation, and absence of accountability remains a great concern.

Criminal justice systems must as a matter of fact balance different and sometimes conflicting interests:-

First, the legitimate interest of the State in the observance of national laws, the fight against crime and the maintenance of internal security; second, the interest of the victims of crime and abuse and third, the rights of the accused or the convicted and sentenced offenders.

International human rights law acknowledges the need to balance State power and individual liberty, and sets out the minimum guarantees that States must observe throughout their criminal justice process. For instance, Article 7 of the Universal Declaration of Human Rights provides that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 of the Universal Declaration of Human Rights guarantees the right of everyone to “an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.”

The criminal justice must not target people of African descent as offenders largely stemming from the way they look or differ from other population groups. Instead, it must subject those who violate the rights of people of African descent and ensure that they account for their actions or omissions in the administration of criminal justice. The criminalization of people of African descent must end.

### **The Durban Declaration and Programme of Action**

The examples referred to above points to the need for a Declaration for the Rights of People of African Descent. In many States the justice systems have become “injustice systems” for people of African descent. In addressing some of the challenges faced by people of African descent in the administration of justice systems, the Durban Declaration and Programme of Action (DDPA) provides a solid foundation for States.

First, the (DDPA) calls upon States “to take specific steps to ensure full and effective access to the justice system for all individuals, particularly those of African descent.” The justice system must be one that promotes and protects the rights of people of African descent, among other things.

Secondly, the DDPA urges States “[to] create and implement policies that promote a high quality and diverse police force free from racism racial discrimination, xenophobia and related intolerance, and recruit actively all groups, including minorities, into ... the police force and other agencies within the criminal justice system (such as prosecutors).” The Working Group found that in many States, people of African descent and other minority groups are not represented in the justice system, thus perpetrating the stereotype that they are incapable of contributing to the justice system.

Third, the DDPA further urges States “to design, implement and enforce effective measures to eliminate the phenomenon popularly known as “racial profiling” and comprising 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.” It is important for States to ensure that racial profiling is punished.

Fourth, the DDPa further also urges “States, including their law enforcement agencies, to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance, and to prosecute perpetrators of such misconduct.” Those involved in racial profiling and other violent acts against people of African descent must be accountable for their actions (or omissions); and the victims of racial profiling and/or police violence (including their families) must receive justice.

Fifth, the DDPa further also urges “States to undertake investigation to examine possible links between criminal prosecution, police violence and penal sanctions, on the one hand, and racism, racial discrimination, xenophobia and related intolerance, on the other, so as to have evidence of taking necessary steps for the eradication of any such links and discriminatory practices.” It is unfortunate that many States do not undertake this kind of investigation. Needless to say, the results of such investigation could better inform policy changes on minimizing police violence against people of African descent.

Sixth, the DDPa urges “States to pay specific attention to the negative impact of racism, racial discrimination, xenophobia and related intolerance on the administration of justice and fair trial and to conduct nationwide campaigns, among other measures, to raise awareness among State organs and public officials concerning their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant instruments.”

Seventh, the DDPA urges “States to strengthen the human rights training and awareness-raising activities designed for immigration officials, border police and staff of detention centres and prisons, local authorities and other civil servants in charge of enforcing laws...in order to prevent acts of racial discrimination and xenophobia and to avoid situations where prejudices lead to decisions based on racism, racial discrimination, xenophobia or related intolerance.”

### **The International Decade for People of African Descent**

The International Decade for People of African Descent under its theme of justice, directs States to introduce measures to ensure equality before the law, notably in the enjoyment of the right to equal treatment before the tribunals and all organs administering justice. It further directs States to design, implement and enforce effective measures to eliminate “racial profiling”.

It further also direct States to eliminate institutionalized stereotypes concerning people of African descent and applying appropriate sanctions against law enforcement officials who act on the basis of racial profiling.

The Decade further directs States to prevent and punish all human rights violations affecting people of African descent, including violence, acts of torture, inhuman or degrading treatment, including those committed by State officials.

### **Conclusion**

This session could not have better themed as it lays a solid foundation for a framework for the Declaration of the rights of people of African descent. The rights of people of African descent must be promoted and respected in the administration of justice.

Police violence against people of African descent must stop. The overrepresentation of people of African descent in prisons must be addressed. State officials who violate the rights of people of African descent must be accountable for the actions or omissions. Most importantly, justice for people of African descent must prevail.

After all, all human beings are born free and equal in dignity and rights.