

# Addressing the Problems of Racial Discrimination at the UN Level: The ‘Post-Durban Mechanisms’ and Their Agenda

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[In memory of Professor Janusz Symonides (1938–2020)]

The 20<sup>th</sup> anniversary of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, provides a good opportunity to look at the institutional arrangements undertaken to implement the Durban Declaration and Programme of Action, as well as to study and assess state practice in this regard. This article discusses the activities of expert bodies and the intergovernmental forms of co-operation established after the Durban Conference in order to implement its conclusions and recommendations. The author notes that while the post-Durban developments in the area of counteracting racism are substantial, structural racism, racial injustice, inequality, and discrimination still constitute a disturbing threat to both human dignity and the basic values of the United Nations. It is argued that the 20<sup>th</sup> anniversary of the Durban Conference should induce states and other relevant stakeholders to reflect on – and reinforce – the UN’s action against racism, racial discrimination, xenophobia, and related intolerance.

*Keywords:* United Nations, special procedures of the Human Rights Council, post-Durban mechanisms, racism, racial discrimination, xenophobia, Durban Declaration and Programme of Action, International Decade for People of African Descent

## Introduction

The decision to convene the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) was made by the United Nations General Assembly, resolution 52/111.<sup>1</sup> The main objectives of the conference included:

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<sup>1</sup> Resolution A/RES/52/111 adopted at the 70<sup>th</sup> plenary meeting of the UN General Assembly, 12 December, 1997.

- a) *reviewing progress made in the fight against racism, racial discrimination, xenophobia and related intolerance – in particular since the adoption of the Universal Declaration of Human Rights – as well as reappraising the obstacles to further progress in this field and ways to overcome them;*
- b) *considering methods and means to more effectively ensure the application of the existing standards and to implement the existing instruments to combat racism, racial discrimination, xenophobia and related intolerance;*
- c) *increasing the level of awareness of the scourges of racism and racial discrimination, xenophobia and related intolerance;*
- d) *formulating concrete recommendations on methods increasing the effectiveness of the activities and mechanisms of the United Nations through programmes aimed at combating racism, racial discrimination, xenophobia and related intolerance;*
- e) *reviewing the political, historical, economic, social, cultural, and other factors leading to racism, racial discrimination, xenophobia and related intolerance;*
- f) *formulating concrete recommendations to further action-oriented national, regional, and international measures to combat all forms of racism, racial discrimination, xenophobia and related intolerance;*
- g) *drawing up concrete recommendations for ensuring that the United Nations has the financial and other necessary resources for its actions to combat racism, racial discrimination, xenophobia and related intolerance.*<sup>2</sup>

The Conference was held in Durban, South Africa, from 31 August to 8 September, 2001, and brought different reactions, from fierce criticisms<sup>3</sup> to moderate appreciation,<sup>4</sup> and unbiased reviews some time later, when ‘the dust has settled’.<sup>5</sup> It is a well-known fact that although two delegations (US and Israeli) departed the conference in the atmosphere of controversy over the draft conclusions harshly critical towards Israeli policies in Palestine (and over some regrettable incidents of anti-Semitism), the participating states managed to negotiate and agree on a final text of the Durban

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<sup>2</sup> Resolution A/RES/52/111, paragraph 28.

<sup>3</sup> See Tom Lantos, “The Durban Debacle: An Insider’s View of the UN World Conference against Racism,” *Fletcher Forum of World Affairs* 26, issue 1 (2002): 31–52; Anne Bayefsky, “The UN World Conference against Racism: A Racist Anti-Racism Conference,” *American Society of International Law Proceedings* 96 (2002): 65–74; Christopher N. Camponovo, “Disaster in Durban: the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance,” *George Washington International Law Review* 34, issue 2 (2003): 659–710.

<sup>4</sup> José Augusto Lindgren Alves, “The Durban Conference Against Racism and Everyone’s Responsibilities,” *University of San Francisco Law Review* 37, issue 4 (2003): 971–1001; Gay McDougall, “The World Conference against Racism: Through a Wider Lens,” *Fletcher Forum of World Affairs* 26, issue 2 (2002): 135–152.

<sup>5</sup> Corinne Lennox, “Reviewing Durban: Examining the Outputs and Review of the 2001 World Conference Against Racism,” *Netherlands Quarterly of Human Rights* 27, issue 2 (2009): 191–235; Theo van Boven, “The Anti-Racism Durban Review Conference,” *Netherlands Quarterly of Human Rights* 27, issue 3 (2009): 325–330.

Declaration and the Programme of Action (DDPA).<sup>6</sup> It was deeply unfortunate that in 2001 the international community proved unable to speak with one voice on how to respond and react to contemporary forms of racism and racial discrimination. Nevertheless, the DDPA initiated the so-called ‘Durban process’ which has continued to provide a vital point of reference and a ‘road-map’ in the global struggle to address racism and related forms of intolerance over the last two decades. It should also be remembered that despite the splits and controversies, the final version of the DDPA was approved by a consensus of 160 states.

Before dwelling on the institutional follow-up of the WCAR, let us recall that the UN stance against racism and racial discrimination dates back to the very beginning of the Organisation. Promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to, *inter alia*, race was considered one of the purposes of the United Nations in Article 1 paragraph 3 of its Charter, and re-affirmed in the Universal Declaration of Human Rights.<sup>7</sup> It would not be an exaggeration to say that issues concerning racism and racial discrimination have always formed a crucial part of the UN agenda, even if the effectiveness of UN activities and/or genuine political will of certain member states of the Organisation in combating racism could be put into question.<sup>8</sup> Be as it may, some egregious manifestations of racism, such as the system of apartheid in South Africa, were a subject of international concern and condemnation, not only in political but also legal terms.<sup>9</sup> Speaking of the context of international law, it should be underlined that one of the core UN treaties in the domain of human rights is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>10</sup> which had been adopted shortly before two landmark International Covenants of 1966.<sup>11</sup> The ICERD set up the Committee on the Elimination of Racial Discrimination (CERD), which is an expert body entrusted with the task of monitoring the compliance of states’ parties with the Convention.

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<sup>6</sup> UN Doc. A/CONF.189/12. Text of the DDPA: [www.un.org/en/durbanreview2009/pdf/DDPA\\_full\\_text.pdf](http://www.un.org/en/durbanreview2009/pdf/DDPA_full_text.pdf).

<sup>7</sup> Resolution A/RES/217/A of the UN General Assembly of 10 December, 1948. See in particular Article 2: ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status (...).’ See also Article 7 of the Declaration: ‘All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’.

<sup>8</sup> Michael Banton, *International action against racial discrimination* (Oxford: Clarendon Press, 1996), *passim*.

<sup>9</sup> See the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on 30 November, 1973, United Nations Treaty, Series no. 14861.

<sup>10</sup> United Nations Treaty Series no. 9464 adopted and opened for signature on 21 December, 1965. Entered into force on 4 January, 1969.

<sup>11</sup> See the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted on 16 December, 1966.

The Committee held its first session in 1970 and remains the oldest one in the system of treaty bodies created on the basis of the UN human rights treaties.

Apart from the activities of CERD, an important institutional development in the sphere of UN action against racism was the establishment of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in 1993. The Special Rapporteur forms part of what is known as the system of special procedures of the Human Rights Council, which replaced the UN Commission on Human Rights in 2006.

It is also noteworthy that the Durban Conference of 2001 was preceded by two other world conferences aimed at combating racism, in 1978 and 1983. The earlier conferences were supposed to review the two UN Decades for Action to Combat Racism and Racial Discrimination (1973–1982, 1983–1992). However, they were convened with a somewhat narrow approach, focusing on the situation in South Africa and Israeli actions towards Palestinians, and to a lesser extent on other contexts, e.g. situation of minorities, indigenous populations, and migrants, as well as wholly omitting such important themes as slavery, transatlantic slave trade, or colonialism.<sup>12</sup> The WCAR of 2001 was a unique chance for a broader and better informed discussion on issues related to racism and racial discrimination, without sweeping under the carpet the tragic legacy of slavery and the slave trade as well as their links with contemporary manifestations of racism, xenophobia and related intolerance. This broader approach was actually taken, and did bring some tangible results, even though the overall impression and ‘spirit’ of the WCAR was overshadowed by the above-mentioned controversies as well as the use of anti-Semitic language by some NGOs which participated in the NGO Forum just before the intergovernmental conference. Another reason why the effects of the WCAR were at least partly outshone in global discourse were the terrorist attacks of 11 September, 2001, in the United States, which were committed only three days after the official closure of the conference and the adoption of the DDPA. Nevertheless, the Durban Conference should be regarded as a historic event, since it reaffirmed the commitments of the overwhelming majority of states in the domain of combating racism and racial discrimination while highlighting specific areas of concern and manifestations of racism which had been affecting, *inter alia*, people of African and Asian descent, migrants, displaced persons, refugees, and asylum-seekers.

Despite some drawbacks, the ‘Durban process’ has continued on various institutional and political levels. In 2009, the Durban Review Conference was held<sup>13</sup> and in 2011 a high-level meeting of the UN General Assembly was convened to mark the 10<sup>th</sup>

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<sup>12</sup> Lennox, “Reviewing Durban”, 195.

<sup>13</sup> Lennox, “Reviewing Durban”, 223–233. See also Dimitrina Petrova, “‘Smoke and Mirrors’: The Durban Review Conference and Human Rights Politics at the United Nations,” *Human Rights Law Review* 10, vol. 1 (2010): 129–150.

anniversary of the DDPA. The 20<sup>th</sup> anniversary of the WCAR in Durban will most likely be of the same format, i.e. a special session of the UN General Assembly.<sup>14</sup>

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

While not being a source of legal obligations, the Durban Declaration and the Programme of Action constitute the most important collection of political commitments and action-oriented approaches to combating racism, racial discrimination, xenophobia and related intolerance in the 21<sup>st</sup> century. The non-binding nature of the DDPA should not be perceived as its weakness, since – firstly – at no point in time did the participants of the Durban Conference assume engaging into law-making activity; and, secondly, the DDPA invoked and drew inspiration from the pillar of the UN law against racism and racial discrimination, i.e. the ICERD. The DDPA took the fundamental assumption that ‘racism, racial discrimination, xenophobia and related intolerance constitute a negation of the purposes and principles of the Charter of the United Nations’,<sup>15</sup> and stressed the importance for states to consider signing, ratifying, or acceding to all relevant international human rights instruments, with a view to universal adherence.

In addition to affirming that racism, racial discrimination, xenophobia and related intolerance constitute serious violations and obstacles to the full exercise of all human rights, as well as that these violations result in human suffering, disadvantage, and violence, the DDPA went further in adopting a victim-oriented approach and recognising that sometimes victims suffer from multiple or aggravated forms of discrimination.<sup>16</sup> Although the DDPA did not explicitly use the very term ‘intersectionality’, it can be presumed that the phenomenon of discrimination based on more than one criterion was duly identified as a serious concern.

The Durban Declaration focused extensively on the sources, causes, forms, and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance.<sup>17</sup> On this quite long list, special attention should be paid to the role of slavery, slave trade, and colonialism, which can be considered as principal sources and causes of racism and racial discrimination. Admitting that slavery and the slave trade should be regarded as crimes against humanity is perfectly compliant with international law as we know it. Since the very phrase ‘crime against humanity’ was a result of the Nürnberg trial, some states were reluctant to use it directly to denote events and tragedies prior to the 1940s. However, the participants in the Durban Conference

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<sup>14</sup> See *Preliminary exchange of views on the preparations of the twentieth anniversary of the Durban Declaration and Programme of Action. Report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action on its seventeenth session, A/HRC/43/73/Add.1*, dated 1 June 2020.

<sup>15</sup> Preamble to the DDPA, p. 2.

<sup>16</sup> See paragraph 2 of the Durban Declaration.

<sup>17</sup> See paragraphs 13–30 of the Durban Declaration.

acknowledged that slavery and the slave trade ‘[were] crimes against humanity and should always have been such’. The two most vital paragraphs of the Durban Declaration pertaining to slavery, slave trade, and colonialism were formulated as follows:

[13.] *We acknowledge that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude, organized nature and especially their negation of the essence of the victims, and further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so, especially the transatlantic slave trade and are among the major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, Asians and people of Asian descent and indigenous peoples were victims of these acts and continue to be victims of their consequences;*

[14.] *We recognize that colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, and people of Asian descent and indigenous peoples were victims of colonialism and continue to be victims of its consequences. We acknowledge the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its reoccurrence prevented. We further regret that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today.*

Other factors considered by the Durban Declaration to be sources of racism, racial discrimination, xenophobia and related intolerance were, *inter alia*, poverty, underdevelopment, marginalisation, social exclusion, and economic disparities.<sup>18</sup> Without attempting to name all categories of victims who have been suffering from manifestations of racism and racial discrimination, the Durban Declaration focused on several groups and referred in particular to Africans and people of African descent,<sup>19</sup> Asians and people of Asian descent,<sup>20</sup> indigenous peoples, as well as migrants, displaced persons, refugees, and asylum seekers.<sup>21</sup> Some of these groups were already recognised as potential and/or real victims of racial discrimination or xenophobia, with at least some attention given to their status in international law pre-dating the Conference.<sup>22</sup> Other groups, and in particular those identified by reference to their descent (African or

<sup>18</sup> See paragraph 19 of the Durban Declaration.

<sup>19</sup> Paragraphs 32–35 of the Durban Declaration.

<sup>20</sup> Paragraphs 36–38 of the Durban Declaration.

<sup>21</sup> See, respectively, paragraphs 39–46, 47–51 and 52–55 of the Durban Declaration.

<sup>22</sup> By way of example: international refugee law – and in particular the Convention Relating to the Status of Refugees of 1951 and the Protocol Relating to the Status of Refugees of 1967 – constitutes the cornerstone of protection granted to this particular group, although these instruments do not focus *per se* on the protection against racial discrimination or xenophobia.

Asian), had remained 'invisible' from the perspective of international law and the UN human-rights discourse, at least until their recognition in the Durban Declaration.

The Declaration mentioned 'the plight of the Palestinian people under foreign occupation' in a carefully drafted paragraph<sup>23</sup> which was the source of the aforementioned controversy; the other nation explicitly mentioned as one discriminated against involved Roma.<sup>24</sup> Obviously, these references constituted merely a fraction of a much broader spectrum when it comes to discrimination based on the criterion of national or ethnic origin. One should remember that discussing discrimination based on these criteria does not in any way go beyond the concept of 'racial discrimination' adopted in international law, and in particular Article 1 of ICERD, where it is defined as 'any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.<sup>25</sup>

Having provided quite a detailed diagnosis and identified the most vulnerable victims of racism, racial discrimination, xenophobia and related intolerance, the Durban Declaration turned to provide specific answers and offer solutions, structured into three parts: 'measures of prevention, education and protection'; 'provision of effective remedies, recourse, redress, and compensatory and other measures'; and 'strategies to achieve full and effective equality'. Among many significant submissions, the Durban Declaration noted that 'some States have taken the initiative to apologize and have paid reparation, where appropriate, for grave and massive violations committed'.<sup>26</sup> In a subsequent paragraph, the states 'further note that some have taken the initiative of regretting or expressing remorse or presenting apologies, and call on all those who have not yet contributed to restoring the dignity of the victims to find appropriate ways to do so and, to this end, appreciate those countries that have done so'.<sup>27</sup> These parts of the Durban Declaration were a result of a compromise between states and

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<sup>23</sup> See paragraph 63 of the Durban Declaration, which provided: 'We are concerned about the plight of the Palestinian people under foreign occupation. We recognize the inalienable right of the Palestinian people to self-determination and to the establishment of an independent State and we recognize the right to security of all States in the region, including Israel, and call upon all States to support the peace process and bring it to an early conclusion'. On the diplomatic struggles around the Palestinian issue, see Lindgren Alves, "The Durban Conference", 979 *et seq.*

<sup>24</sup> See paragraph 68 of the Durban Declaration.

<sup>25</sup> Article 1(1) of ICERD. The Durban Declaration fully adopts this definition and adds that not only racism and 'racial discrimination' occur on these grounds, but also xenophobia and related intolerance (see paragraph 2 of the DDPA).

<sup>26</sup> Paragraph 100 of the Durban Declaration, second sentence. The first sentence of this paragraph stipulates: *We acknowledge and profoundly regret the untold suffering and evils inflicted on millions of men, women and children as a result of slavery, slave trade, the transatlantic slave trade, apartheid, genocide and past tragedies.*

<sup>27</sup> Paragraph 101 of the Durban Declaration, second sentence.

other stakeholders advocating in favour of confronting the past and offering adequate reparations for slavery and slave trade, and states – mostly Western – which were not prepared to meet these expectations to the full extent. Thus, the idea of reparations was hardly ‘resolved’ in Durban;<sup>28</sup> rather, it was a matter of a diplomatic struggle and as such it remains on the agenda of the ‘Durban process’.

The Programme of Action of the WCAR aimed at translating the objectives of the Declaration into practical activities and undertakings to be carried out on national and international levels. These activities and proposals were listed on almost forty pages and should be regarded as the most comprehensible set of guidelines for states and other stakeholders in the domain of combating racism, racial discrimination, xenophobia and related intolerance, as well as regarding the prevention of their manifestations and provision of effective remedies, recourse, or redress to their victims.

### **The aftermath – ‘post-Durban mechanisms’ and their agenda**

After the WCAR in 2001, states established three mechanisms which were entrusted with follow-up of the DDPA. These new mechanisms were set up irrespective of the mandates and tasks exercised by the Office of the High Commissioner of Human Rights, as well as bodies set up specifically for the purpose of monitoring states’ compliance with their international obligations in this domain: the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,<sup>29</sup> as well as the Committee on the Elimination of Racial Discrimination – the treaty body of 18 independent experts established under the ICERD and representing ‘different forms of civilization as well as of the principal legal systems’.<sup>30</sup>

The other three ‘post-Durban’ follow-up mechanisms were not supposed to duplicate the tasks of the above-mentioned entities but, rather, to focus on specific tasks and challenges related closely to the DDPA. Thus, in 2002, the UN General Assembly, acting in accordance with paragraph 191 of the DDPA, decided to set up the Group of Independent Eminent Experts on the Implementation of the Durban Declaration and the Programme of Action, composed of five members from each UN region, from among candidates proposed by the Chairperson of the Commission on Human Rights.<sup>31</sup> This Group was tasked with the general ‘follow-up to the implementation of the provisions

<sup>28</sup> See Lennox, “Reviewing”, 201–203. See also Michelle E. Lyons, “World Conference against Racism: New Avenues for Slavery Reparations,” *Vanderbilt Journal of Transnational Law* 35, no. 4 (October 2002): 1235–1268; Luke Moffet, Katarina Schwarz, “Reparations for the Transatlantic Slave Trade and Historical Enslavement: Linking Past Atrocities with Contemporary Victim Populations,” *Netherlands Quarterly of Human Rights* 36, no. 4 (2018): 247–269. <https://doi.org/10.1177/0924051918801612>.

<sup>29</sup> Created by the resolution 1993/20 of the Human Rights Commission.

<sup>30</sup> Article 8 paragraph 1 of ICERD. See also Patrick Thornberry, “The Committee on the Elimination of Racial Discrimination (CERD),” in *The United Nations and Human Rights. A Critical Appraisal*, eds. Frédéric Mégret, Philip Alston (Oxford: Oxford University Press, 2020), 309–338.

<sup>31</sup> Resolution 56/266 of the UN General Assembly.

of the DDPA', as well as with assisting the High Commissioner for Human Rights in fulfilling his/her duties related to the assessment and evaluation of the existing international standards and instruments to combat racism, racial discrimination, xenophobia and related intolerance'.<sup>32</sup> After two sessions (in 2003 and 2005), the Group remained inactive for almost a decade, until it resumed its activities in 2014.<sup>33</sup>

The two other follow-up mechanisms established by the Human Rights Commission in 2002<sup>34</sup> included: the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and the Programme of Action (IWG), and the Working Group of Experts on People of African Descent (WGEPAD). The first of these groups is an open-ended forum which, apart from UN member states and observer states, can be attended by intergovernmental organisations as well as NGOs with the ECOSOC consultative status or NGOs that were accredited for the World Conference against Racism. The IWG meets yearly and its main purpose is to make recommendations with a view to the effective implementation of the DDPA. The themes undertaken by the IWG include, *inter alia*, encouraging states to develop national action plans against discrimination as well as liaising with other anti-racism UN bodies and mechanisms.

In the first years of its activities, the IWG was also a forum of discussion on additional complementary standards which would fill the gaps in the existing international normative anti-racism framework. This issue raised some controversies and divisions, particularly with regard to the actual need to supplement the existing standards. This led to the establishment of yet another body, namely the Ad Hoc Committee on the Elaboration of Complementary Standards,<sup>35</sup> entrusted by the Human Rights Council with the task of 'elaborating, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocols(s) to ICERD filling in the existing gaps in the Convention, and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred'. The discussions on the need to elaborate complementary standards continued throughout the second decade of the 21<sup>st</sup> century, also with the participation of external experts.<sup>36</sup> However, so far these activities have not produced any tangible results due to differences among states,<sup>37</sup> although the Ad Hoc Committee has discussed and proposed some elements of a draft additional protocol

<sup>32</sup> Paragraph 21 of the resolution 2003/30 of the Commission on Human Rights.

<sup>33</sup> As of 2020, the Group was composed of the following members: Ibrahim Agboola Gambari (Nigeria) from African States, Saied A. Ashshowwaf (Saudi Arabia) from Asia-Pacific States, Hanna Suchocka (Poland) from Eastern European States, Edna Maria Santos Roland (Brazil) from Latin American and Caribbean States. The position of a member from Western European and other States was vacant.

<sup>34</sup> Resolution 2002/68 of the Commission on Human Rights.

<sup>35</sup> Decision 3/103 of the Human Rights Council adopted on 8 December, 2006, A/HRC/DEC/3/103.

<sup>36</sup> Petrova, "Smoke and Mirrors," 135–138.

<sup>37</sup> See the Progress report presented by the Chairperson of the Ad Hoc Committee to the 74<sup>th</sup> General Assembly on 30 October, 2019, agenda item 68(b).

to the ICERD with regard to the criminalisation of racist and xenophobic acts.<sup>38</sup> Only time will tell whether the proposals of such a protocol will gain enough political support to be further pursued. As of 2020, it does not seem very likely.

The other group established by the Commission on Human Rights in 2002 – i.e. the Working Group of Experts on People of African Descent – was created as a so-called special procedure, i.e. part of a system of independent human-rights experts (special rapporteurs, independent experts, members of working groups) who were mandated to report and advise on human rights from a thematic or country-specific perspective.<sup>39</sup> The mandate of the WGEPAD, renewed in subsequent resolutions of the Commission on Human Rights and its successor, the Human Rights Council, entrusts it with the following tasks:

- (a) *to study the problems of racial discrimination faced by people of African descent living in the diaspora and, to that end, gather all relevant information from governments, non-governmental organisations, and other relevant sources, including through holding public meetings with them;*
- (b) *to propose measures to ensure full and effective access to the justice system by people of African descent;*
- (c) *to submit recommendations on the design, implementation, and enforcement of effective measures to eliminate the racial profiling of people of African descent;*
- (d) *to make proposals on the elimination of racial discrimination against Africans and people of African descent in all parts of the world;*
- (e) *to address all the issues concerning the well-being of Africans and people of African descent contained in the Durban Declaration and the Programme of Action;*
- (f) *to elaborate short-, medium- and long-term proposals for the elimination of racial discrimination against people of African descent, bearing in mind the need for close collaboration with international and development institutions and the specialised agencies of the United Nations system to promote the human rights of people of African descent*<sup>40</sup> (...).

The WGEPAD is composed of five members, one from each of the UN Regional Groups.<sup>41</sup> It holds two annual sessions, a private and a public one, undertakes country visits, and may respond to information and allegations submitted to it via communication procedure. As reflected in the reports of the Working Group to the Human Rights Council and the General Assembly, the second decade of the 21<sup>st</sup> century was quite

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<sup>38</sup> Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its tenth session, 9–27 September 2019, A/HRC/42/58, pp. 18–19.

<sup>39</sup> See Aoife Nolan, Rosa Freedman, Thérèse Murphy, *The United Nations Special Procedures System* (Leiden: Brill Nijhoff, 2017).

<sup>40</sup> Resolution 9/14 of the Human Rights Council, para. 8.

<sup>41</sup> As of 2020, the Group was composed of: Dominique Day (United States), Ahmed Reid (Jamaica), Sabelo Gumede (South Africa), Ricardo A. Sunga III (Philippines), and the author of this article.

a busy time. Of particular importance was the proclamation of the UN Decade for People of African Descent (2015–2024) by the UN General Assembly,<sup>42</sup> followed by the Programme of Activities.<sup>43</sup> The Decade focused on three main pillars – namely recognition, justice, and development for people of African descent – and as such it should be viewed as one of the main follow-up initiatives actively supported by both the WGEPAD and the Intergovernmental Working Group.<sup>44</sup> Among many guidelines and ideas, the Programme of the Decade requested states “to consider the elaboration of a draft UN Declaration on the promotion and full respect of human rights of people of African descent”.<sup>45</sup> The framework for the declaration was discussed during one of the public sessions of the WGEPAD (in 2018) and although the preparatory works are still at an early stage, it can be expected that this idea will take shape in the coming years.

Other public sessions of the WGEPAD covered themes such as ‘Data for Racial Justice’ (2019), ‘Leaving no one behind: People of African descent and the Sustainable Development Goals’ (2017), or the interlinkages between the three themes of the International Decade (2016). The Group remains actively involved in discussions and actions concerning institutional racial bias and law enforcement, racial stereotyping,<sup>46</sup> as well as the impact of COVID-19 on the situation of people of African descent.

The Group was also actively pursuing the part of its mandate concerning country visits. In the second decade of the 20<sup>th</sup> century, it engaged in 17 such missions on three continents.<sup>47</sup> During these visits, the WGEPAD did the following: engaged in the assessment of the human-rights situation of people of African descent; gathered information on racism, racial discrimination, xenophobia and related intolerance which they were facing; and examined the official measures and mechanisms intended to prevent structural racial discrimination and protect victims of racisms. As a rule, the above analysis includes historical overviews, a study of legal frameworks, and extensive consultations with relevant stakeholders – in particular members of civil society – as well as multiple meetings with representatives of executive (and other) branches of government. Each country visit is concluded by a press conference and the presentation of preliminary findings and recommendations. Governments have an

<sup>42</sup> Resolution 68/237 adopted by the General Assembly on 23 December, 2013.

<sup>43</sup> Resolution 69/16 adopted by the General Assembly on 18 November, 2014.

<sup>44</sup> See in this context the resolution 35/30 of the Human Rights Council, adopted on 23 June, 2017, which entrusted the Intergovernmental Working Group with specific tasks as regards the elaboration of the draft Declaration on the promotion and full respect of human rights of people of African descent.

<sup>45</sup> Resolution 69/16, paragraph 29 h).

<sup>46</sup> See the report of WGEPAD to the General Assembly, A/74/274, dated 2 August 2019, part II: *Addressing negative racial stereotypes and stereotyping of people of African descent*, p. 4 *et seq.*

<sup>47</sup> Between 2010 and 2020 the WGEPAD visited the following countries: United States (in 2010 and 2016), Portugal (2011), United Kingdom (2012), Panama (2013), Brazil (2013), Netherlands (2014), Sweden (2014), Italy (2015), Canada (2016), Germany (2017), Guyana (2017), Spain (2018), Argentina (2019), Belgium (2019), Ecuador (2019), and Peru (2020). All reports after country visits are available at the WGEPAD’s website: <https://www.ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/CountryVisits.aspx>.

opportunity to take note of the final report prior to its publication; however, the Working Group acts independently and remains solely responsible for the contents of its report.

Arguably, the country reports provide the most up-to-date and detailed information on concerns and problems identified with regard to racism and racial discrimination in the course of the visit. While the Working Group is obliged to assess the situation objectively and critically, it can also identify good practices and, above all, it is supposed to provide the authorities of the visited country with reliable and professional advice and recommendations. Many states issued the so-called open invitations, declaring readiness for visits of UN special procedures. However, organising such a visit can be problematic for a variety of reasons: some states feel overburdened by requests coming from multiple special procedures, some are not necessarily eager to engage in a dialogue or unwilling to receive a visit due to approaching elections, etc. In any case, country visits allow special procedures – including the WGEPAD – to encompass a real conversation about human rights with their holders and assess the situation *in loco*.

Another field of the WGEPAD engagement which is worth mentioning is the elaboration of ‘Operational Guidelines on the inclusion of people of African descent in the 2030 Agenda’.<sup>48</sup> The document draws from the 2030 Agenda and its Sustainable Development Goals (SDGs), adopted by Heads of States and Governments at the United Nations Summit in 2015,<sup>49</sup> and supplements the SDGs with standards and guidelines intended to assist all stakeholders in a human-rights-based approach in the implementation of the SDGs as far as they relate to Africans and people of African descent. The guidelines are also supposed to assist the United Nations System and development partners in implementing the International Decade for People of African Descent. It can be expected that the Guidelines will also be used as a tool and reference source for human-rights standards in conducting state visits.

## Conclusions

In 2009, C. Lennox expressed a rather harsh assessment of the three above-mentioned mechanisms, i.e. the Group of Eminent Experts, the Intergovernmental Working Group, and the Working Group of Experts on People of African Descent.<sup>50</sup>

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<sup>48</sup> *Operational Guidelines on the inclusion of people of African descent in the 2030 Agenda*, adopted on 9 December, 2020, at the 26<sup>th</sup> session of WGEPAD. Text of the Guidelines: [https://www.ohchr.org/Documents/Issues/Racism/WGEPAD/Guidelines\\_inclusion\\_2030\\_Agenda.pdf](https://www.ohchr.org/Documents/Issues/Racism/WGEPAD/Guidelines_inclusion_2030_Agenda.pdf).

<sup>49</sup> Resolution A/RES/70/1.

<sup>50</sup> Lennox, “Reviewing,” 216: *For the most part, these mechanisms have proven to be unremarkable talking shops, demonstrating little innovation and weakened further by the poor attendance of civil society*. As regards the latter issue, i.e. the participation of civil society, the common problems have always been revolving around funds for travel and accommodation of the representatives of NGOs who express interest to participate in meetings. Follow-up mechanisms have no budget that would allow to cover these costs. With respect to WGEPAD public sessions, the attendance of civil society has slightly improved; on the other hand, at times the problem involved the attendance of representatives of states.

According to the author of this article, however, the second decade of the 20<sup>th</sup> century did prove that the working groups have been fulfilling their missions effectively and with decent results, despite significant hurdles in promoting and implementing the DDPA in the complex geopolitical arena. The activities of the Group of Eminent Experts have indeed been obstructed by a long period of inactivity; however, this mechanism also managed to ‘reactivate’ itself after 2015. Obviously, the assessment of the effectiveness and progress achieved by the follow-up mechanisms is a matter of calibrating expectations and offering a ‘reality check’. It could be the case that the first years of the Durban process were marked by some over-cautiousness in order to ‘save’ the DDPA. Nonetheless, the fight against racism and racial discrimination is an area where ‘over-cautiousness’ is definitely not the way to go.

Regrettably, as proved in numerous reports by the Special rapporteur on contemporary forms of racism as well as by the Working Group of Experts on People of African Descent, manifestations of structural racism and racial discrimination in the contemporary world are still widespread and do not allow for excessive optimism. Even though some progress was achieved (which, by the way, is quite hard to measure and requires a country-specific approach), much remains to be done in order to fully implement the DDPA as well as the objectives of the UN Decade on People of African Descent. One should hope that states would take a moment to reflect on where we stand 20 years after the 2001 Durban Conference. Even the best international mechanisms cannot substitute for the political will and commitment of states, as they are the principal actors responsible for fighting against racism, racial discrimination, xenophobia and related intolerance.