Regional Arrangements for the promotion and protection of human rights

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*Statement by Elisabeth Kaneza*

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Mr. Chairperson,

Dear Delegates,

Dear colleagues,

It is a great honor to join you for this important Workshop on Regional Arrangements for the promotion and protection of human rights, and to make a contribution on the human rights framework for people of African descent. I will focus my intervention on Europe, in particular the European Union.

The majority of European Union Member States have ratified the International Convention on the Elimination of all Forms of Racial Discrimination. The EU too is bound by fundamental rights and considers the UN human rights framework. As key human righst mechanism, I wish to highlight the European Court of Human Rights, established by the European Convention on Human Rights. The European Court of Human Rights has an individual complaint procedure. Compared with the individual complaint procedures of UN treaty bodies it is worth highlighting that the decisions of the European Court of Human Rights are binding.

Despite the existing regional human rights framework the rights of ethnic minorities are not yet fully realized in Europe. Allow me to elaborate on this statement by focusing in particular the group of people of African descent. At the 3rd World Conference against Racism, that took place in Durban, South Africa, in 2001, people of African descent were recognised as victims of historical racism, namely the transatlantic slave trade, colonialism and apartheid. In the outcome document of this conference, the Durban Declaration and Programme of Action (DDPA), Member States acknowledged that the transatlantic slave trade is a crime against humanity and that colonialism “has led to racism, racial discrimination, xenophobia and related intolerance“. Positive outcomes of the DDPA with regard to people of African descent are the International Decade for People of African Descent, to be observed from 2015 until 2024, as well as efforts for creating a Permanent Forum for People of African Descent. Last year, the General Assembly decided to establish a permanent forum on people of African descent that shall serve as a consultation mechanism for people of African descent and also to contribute to eleborate a United Nations Declaration on the promotion and full respect of human rights of people of African descent.

Now when we compare this development with the regional level, the picture looks different. Starting with the fact, that despite the recommendation of the Durban Declaration and Programme of Action to adopt National Action Plans against Racism, only a dozen of EU Member States have done so. And where action plans were adopted, unfortunatley, it did not result in the recogtion of people of African descent as victims of racism and racial discrimination. For example, in my country Germany, the Government adopted a National Action Plan against Racism in 2007, yet without the mentioning of people of African descent or Black people. This changed only recently, when a new action plan was endorsed in 2017. And I wish to emphasize here the important role of the international mechanisms and civily society for achieving change at the national level. The consultation for the new action plan coincided with the first country visit of the UN Working Group of Experts on People of African Descent to Germany. The country visit led to a nation-wide mobilization of human rights defenders and community members who shared the human rights situation of people of African descent with the Working Group in town hall meetings. At the political level, politicians and state institutions started to deal with the human rights situation of people of African descent and discussed measures to be taken.

At the EU level, dealing with the human rights situation of people of African descent is a relatively new development, which, in my view, is a direct consequence of the International Decade and the engagement of civil society. When it comes to the development of new standards, we can observe that there is an interplay between international and regional standards. Let me illustrate this by giving two examples, and good practices. The first one is the European Parliament Resolution on fundamental rights of people of African descent, adopted on 26 March 2019. The preemble of the resolution makes reference to both regional and international instruments and mechanisms. Its language is inspired by the Durban Declaration and Programme of Action, the Committee on the Elimination of All Forms of Racial Discrimination, the programme of activities for the International Decade for People of African Descent and a draft resolution submitted by civil society. Its recommendations are based on these documents as well, and in particular on the findings and data collected by the EU Fundamental Rights Agency and the European Commission against Racism and Intolerance. Here, I wish to stress the importance of data collection for the development of standards. The European Union Minority and Discrimination Surveys done by FRA and especially its last report titled “Being Black in the EU” were important for sheding light on the experience of people of African descent with racism across the EU.

The second example is the EU High Level Group on Combating Racism, Xenophobia and other Forms of Intolerance, under the auspices of the European Commission. Following the proclaimation of the International Decade for People of African Descent and demands from civil society, the Commission published a working paper on people of African descent. While the EU High Level Group focuses mainly on fighting hate crime, such papers can be first steps on the path of recognising victim groups which can then be followed-up by group-based measures.

Coming to my recommendations, I think that the presented examples show that there is no clear-cut approach. A visible trend as far as the rights of people of African descent in Europe are concerned, is that there is a top-down spillover of standards. This means that regional and national instutions do react to standards developed at the international level. However, this does not happen automatically. Rather, it requires an interaction of a multitude of actors. The participation of civil society and regional organisations that can furnish needed expertise and data is indispensable for this process.

My recommendations are as followed:

1. Stronger exchange and cooperation between international and regional organisations. Exchange and cooperation need to be intensified regarding victim groups, especially on information and data collection.
2. Testing the effectiveness of regional human rights mechanisms. As mentioned, the European Court of Human Rights has an individual complaint procedure. However, as it is the case for UN Treaty Bodies, a key requirement is that national remedies must be exhausted. For victims of racial discrimination, who in many cases belong to marginalised communities this can be a long and too costly avenue. Therefore, it is important to text existing mechanisms with a victims-based approach, so that we can establish whether or not they are accessible for victims. Let us keep in mind that at the moment we lack complaints from victims of racial discrimination, although we know that many people are affected by it.
3. Capacity Building for human rights activists. OHCHR organises three Fellowship Programmes for human rights activists – for people of African descent, minorities and indigenous peoples. And they are effective and sustainable. I am prove of that. Following my selection as Fellow of African descent I have worked with different stakeholders, governmental and non-governmental, to promote the rights of people of African descent in my country. My engagement has resulted in Germany’s launch of the International Decade in 2016 and also the advocacy for the new national action plan against racism. I have shared my human rights knowledge with communities, and my organisation continues to train human rights activists of African descent. This year we implemented three trainings for women and two study tours for young people. Therefore, I wish to recommend to Member States to continue supporting the Fellowship Programmes, and for regional organisations who are present to consider creating their own programmes. For, to conclude with the words of UN High Commissioner for Human Rights, Michelle Bachelet, “We all have rights by virtue of being human. But if we wait for our rights to be conferred top-down through law and policy, we could wait forever. Rights must also be claimed from the bottom up, through empowerment and participation.”

Thank you for your attention.